

PETITIONER:
DR. KUMAR BAR DAS

Vs.

RESPONDENT:
UTKAL UNIVERSITY & OTHERS

DATE OF JUDGMENT: 03/12/1998

BENCH:
SUJATA V.MANO HAR, K.VENKATASWAMI, M.JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

M.Jagannadha Rao.J.

The appellant, Dr.Kumar Bar Das has filed this appeal against the judgment of the High Court of Orissa dated 30.9.1993 in O.J.C. No. 1910. By that judgment, the High Court dismissed the said writ petition filed by the appellant challenging the orders of the Chancellor of the Utkal University dated 21.5.1990. The Chancellor, by the said order, had set aside the appointment of the appellant dated 3.2.1990 as Porfessor of Economics (State Bank of India chair) (hereinafter called SBI Chair), holding that the recommendation of the Selection Committee dated 29.2.1984 was invalid. The said order was passed by the Chancellor on a representation filed by the 5th respondent, Dr. (Mrs.) Bedabati Mohanty. The Chancellor, after setting aside the appointment of the appellant further directed that the Vice-Chancellor/Syndicate shall re-advertise the post and conduct the selection afresh to fill up the vacancy to the post of Professor (SBI Chair). The 5th respondent, being aggrieved by the order of the Vice-Chancellor dated 21.5.1990 in so far as it directed re-advertisement, filed OJC No. 2144 of 1990 of 1990. The High Court by the same common judgment, while upholding the order of the Chancellor to the extent it set aside the appointment of the appellant allowed the 5th respondent's writ petition OJC No. 2144 of 1990 and directed that she, being the next person in the panel prepared by the Selection Committee, be appointed as Professor of Economics (State Bank of India Chair). The appellant, therefore, filed a separate SLP(Civil) No....(CC 7855 of 1998) questioning the judgment of the High Court dated 30.9.1993 in OJC No.2144 of 1990 to the extent it set aside the orders of the Chancellor directing re-advertisement and directing the appointment of the 5th respondent. There is also an application for condonation of delay. In that SLP notice had not been issued but it has been pasted before us.

The facts of the case are as follows. The State Bank of India (hereinafter called the 'SBI') created an Endowment for creation of a Chair called "State Bank Chair in Rural Economics", with an investment of Rs.6 lakhs in favour of

the Utkal University so that with the interest accruing from the said amount, the salary of a professor and 2 Research Associates to the Chair, could be met. We are not concerned with the various terms of the endowment except those relating to the selection and appointment of the professor and a few other relevant provisions. It is stated in clause 2 of the amendment that the main objective of the endowment is 'to promote research' in the applicability in the field of Rural Economics which can be utilised for development of rural and tribal areas. Clause 13 of the endowment is titled 'Emphasis on Research' and states that as the main objective in creating the Chair is to promote research in the fields mentioned above, the professor's teaching and other assignments in the University shall be such as to provide him sufficient time for independent research. Clause 14 is titled 'Selection of topics of Research' and states that the topics for research work to be undertaken by the Chair will be selected in consultation with the Bank. Thus, the emphasis for the Chair is mainly 'research' in Economics. Coming to the mode of appointment of Professor to the Chair, this is contained in clauses 8, 9, and 10 of the endowment. They read as follows:

"Clause 8: Appointment of Professor to the Chair: The University shall take steps to ensure that the Chair does not remain vacant ordinarily for more than six months at a time.

Clause 9: Selection Procedure of Professor and other Staff: The procedure for selection of the Professor to the Chair would be made as followed by the University in other cases for appointment of Professor of similar status. The Bank shall be associated with the selection of the Professor. Regarding the 2 Research Associates, the University would advise the Bank their names and bio-data.

Clause 10: The initial terms of the incumbent of the Chair will not exceed five years and will be renewable for further periods as may be decided by the University."

clause 11 deals this terms of appointment of the Professor. It says that the Professor would be subject to all the rules and regulations of the University as any other Professor in the University etc.

Soon after creation of this Endowment by the SBI, the Utkal University advertised the post on 18.5.87. clause 10 of the advertisement, upon whose interpretation the entire case depends, reads as follows:

"Clause 10: Essential Qualifications:

(a) Professor : An eminent scholar with prescribed work of high quality, actively engaged in research.

about ten years experience of teaching and/or research and experience of guiding research at doctoral level

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.

(c)....."

For the post of Professor (SBI Chair), 14 candidates applied, 13 candidates were called for interview and 8 of them appeared at the interview. The appellant and the 5th respondent were among them. The appellant's application is dated 30.6.1987. The selection Committee's proceedings dated 29.12.1989 stated that

"Taking into consideration the academic record, teaching experience, research activities, teaching experience of the candidates and their performance at the interview, the Committee recommends in order of preference:--

(i) Dr. Kumar Bar Das

(ii) Dr. (Mrs.) Bedabati Mohanty."

In other words, the appellant was placed at No. 1 while the 5th respondent was placed at NO. 2.

Thereafter, the Syndicate of the University approved the same on 2.2.1990 and directed appointment of the appellant. Consequently the appellant was appointed as Professor (SBI Chair) on 3.2.1990. The appellant gave his joining report on 10.4.1990.

Thereafter, it appears that the 5th respondent filed a representation before the Chancellor of the University in February, 1990 stating that the appellant was not eligible to be considered for the post of Professor as he had only 7 years and 7 months of teaching experience on the date of his application though the required period was 10 years. On that a show-cause notice was issued in April, 1990 by the chancellor to the appellant stating that on a "preliminary enquiry and on scrutiny of the papers, it was found that the appellant had only 7 years and 8 months of teaching experience by the last date of application and no outstanding academic career and, as such, the appellant could not be said to be eligible for consideration to the post of professor as per qualification prescribed in the advertisement for the post and in the UGC (qualification requires of a person to be appointed to the teaching staff of a University and other institutions affiliated to it) Regulations, 1982 which stipulates the minimum qualification for appointment to the post of Professor as follows:

"An eminent scholar with published work of high quality, activity engaged in research, About ten years of experience of teaching and/or research and experience of guiding research at doctoral level; or

An outstanding scholar with established reputation who has made significant contribution to knowledge."

The show-cause notice further stated that the appellant was awarded 4 marks under the heading 'teaching experience' which was not in conformity with the provisions contained in Schedule 'A' of the Orissa Universities Employees (Conditions of Service) Statutes, 1988 and had he not been awarded such marks deviating from the principles of marking provided in the Statute above-stated, the merit list of the candidates would have been materially affected. The Chancellor, in exercising his powers under section 5(10) of the Orissa Universities Act, 1983 asked the Syndicate to show cause why its decision appointing the appellant should not be annulled. A copy of the same was sent to the appellant for his statement in writing.

Accordingly, the Syndicate sent its detailed explanation and so did the appellant. We shall advert to the details thereof at the appropriate stage.

The Chancellor rejected these replies and passed orders on 21.5.1990 annulling the appellant's appointment on the ground that the appellant was ineligible. He stated:

(i) that the appellant was not eligible to be considered for the post inasmuch as by the date of application as per the essential qualifications mentioned in the advertisement and

the minimum qualifications set out in UGC Regulations 1982.

(ii) that in contravention of the provisions mentioned in the Schedule 'A' prescribed under Statute 5 of the Orissa Universities Employees (Conditions of Service) Statutes, 1988 (then in force), the appellant had been awarded 4 marks under the heading 'teaching experience'.

(iii) that had the illegality mentioned in para (ii) above been committed, the select list of the candidates would have been materially affected."

The further reason (iv) given by the Chancellor concerns the 5th respondent. It says that there was lapse in "awarding marks to the candidates including the candidate in the 2nd position" i.e. 5th respondent, under the heading "teaching experience" without reference to the Honours and PG teaching experience as provided in Schedule A of the Statutes. Thus the Chancellor found that the mistake was common to the selection of the appellant as well as the 5th respondent. Consequently the Chancellor set aside the appointment of the appellant and directed fresh advertisement. It may be noticed that the Chancellor did not conclude that, in addition, the appellant did not have an 'outstanding career', though such a reason was mentioned in the earlier show-cause notice.

Questioning the above order of the Chancellor, the appellant filed OJC No. 1910 of 1990 while the 5th respondent filed OJC No. 2144/90 in so far as the direction for fresh advertisement was concerned. As already stated, the High Court by judgment dated 30.9.1993, dismissed the appellant's writ petition and allowed the one filed by the 5th respondent.

The appellant contended in the High Court that his experience was in fact 9 years and 1 month and not 7 years and 8 months as stated in the show cause notice. The award of 4 marks to the appellant was right inasmuch as the appellant had research experience at the pre-doctoral stage as Junior research scholar from June 1978 to November 1979, teaching experience from November 1979 to September, 1984, and as Reader from September 1984 till date of application, 30.6.1987. The total Research experience by date of application was 1 year, 5 months and 14 days and teaching experience by that date was 7 years, 7 months and 14 days in all 9 years and 28 days, which came within the word "about 10 years teaching and/or research experience" as mentioned in the advertisement.

The Division Bench of the High Court held that assuming that the appellant had experience of 9 years and 1 month, which assertion was disputed by the University and the 5th respondent- it could not be said that the appellant had 'about' ten years of experience. On the contrary, at the most, it could be said that he had 'about 9 years' of teaching experience on the date of application but not 'about 10 years'. The High Court further held that "there is no material in support of Kumar Bar's plea that he had acquired 9 years and 1 month experience. ON the contrary, materials considered by the Selection committee and the Chancellor would show that it was 7 years and 8 months and hence appellant was 'not eligible'.

Having held that the appellant was not eligible, the Division Bench of the High Court proceeded to go into the teaching experience of the 5th respondent. There was a difference of opinion between the two Judges. The matter was

then referred to the third Judge. He held that the 5th respondent had enough teaching experience and the Chancellor was not right in holding her ineligible and that too without giving notice to her. Consequently, the High Court held that the 5th respondent was eligible and her writ petition OJC No. 2144/90 stood allowed.

In this appeal against the judgment of the appellant's writ petition OJC 1910/90 we have heard elaborate submissions of Sri Rakesh Dwivedi, learned senior counsel for the appellant and of Sri Pramod Dayal and Sri Vinoo Bhagat, learned counsel for the respondents.

The points that arise for consideration are:

1) Whether the appellant was not eligible to be appointed as Professor (SBI Chair) on the basis of the qualifications possessed by him as on the last date for filing application?

2) To what relief?

Point 1:-

It will be seen from the statement of facts that the show-cause notice issued in April, 1990 proceeded on the footing that (i) the appellant had only 7 years, 8 months as teaching experience as on the last date for filing application and also that (ii) he did not have an 'outstanding career' and therefore was not eligible to be appointed as Professor. But in the impugned order of the Chancellor, it is not stated that the appellant was ineligible on the ground that he had no 'outstanding career'. In our opinion, it is clear that in view of the elaborate explanation given by the Syndicate and the appellant before the Chancellor and the material produced by them, the Chancellor was satisfied that the appellant was possessing an 'outstanding career'. Learned counsel appearing for the University and the Chancellor made some attempt to contend that the appellant did not have an 'outstanding career' but we cannot permit them to raise this question in this appeal. It does not arise out of the Chancellor's order. We may also state to the credit of the learned counsel for the 5th respondent that he stated that he was not arguing that the appellant did not possess an 'outstanding career'.

That leaves us to consider the sole question whether the appellant was not having "about ten years experience of teaching and/or Research" as mentioned in clause 10 of the advertisement which qualifications, as per the show cause notice, are also the qualifications required by the UGC Regulations, 1982. We may here point out that the show cause notice refers to the UGC regulations as also the advertisement as requiring about 10 years experience. During the course of arguments, learned counsel for the University sought to raise a point that the candidates must have a minimum of 'full 10 years' of teaching experience as per the "qualifications prescribed for Recruitment to the teaching posts" accepted by the University Administration on 29.1.1976, which in its turn was based on the recommendations of a Committee of Professors. We find that no such point was argued in the High Court and therefore we cannot allow this point to be raised for the first time in this appeal.

Further, the order of the Chancellor in para (i) referred to earlier, speaks of ineligibility of the appellant as per the "advertisement and the UGC Regulations, 1982" regarding the need to have 'about 10 years etc.' experience. So far as the mode of awarding marks towards 'teaching marks' is concerned, the chancellor stated that

that was in contravention of Schedule A prescribed under Statute 5 of the Orissa Universities Employees (conditions of Service) Statute, 1988 (then in force). This is another reason as to why we should not permit the learned counsel for the university to arise a question that the requirement is of 'full ten years' experience (and not 'about 10 years').

Before we advert to the reasons as to why, according to us, the order of the Chancellor is bad in law, we have to refer to the constitution of the Selection Committee and the high qualifications of the experts. We shall then also refer to the elaborate reply submitted to the Chancellor by the Syndicate on 10.5.1990.

Now the Selection Committee consisted of eminent persons, namely, Dr. T. Pradhan, Vice-Chancellor; Dr. G.S. Das, director, Higher Education, (who is an eminent Economist); Dr. (Mrs.) Shiela Balla, Expert (Chancellor's nominee) J.N.U. University; Prof. P. Kumar; Export and Former V.C. of Calcutta University and Mr. N. Muranjan, Representative of S.B.I., Bombay. Obviously it was their view that the appellant was eligible and that he satisfied all the requirements for selection and that he should be placed at Serial No. 1.

In the reply of the Syndicate, the basis of the eligibility and reasons which must have prompted the selection Committee to select the appellant have been explained, - namely that the experience of the appellant was not 7 years and 8 months but was 'about 10 years' i.e. 9 years and 1 month. The Syndicate pointed out in its reply that so far as this Chair was concerned, the emphasis was more on 'research'. It stated that the Selection Committee, on the basis of the Schedule 'A' under Statute 5 of University Statutes, had issued a proforma under six heads namely General career, Research degree, Teaching experience, Research publications, Viva-voce and CCR carrying 90 marks in the aggregate. These headings did not correspond to the qualifications laid down in clause 10 of the advertisement because there was no column there regarding experience in research. But, as per the advertisement, the essential qualification in the advertisement was 'about 10 years experience of teaching and/or research', that is both research and/or teaching. The proforma did not assign any marks to research experience though the advertisement required that the candidates could be selected on the basis of their research experience also. The proforma proceeded on the assumption that 10 marks were meant only for teaching experience, likewise the Schedule 'F' under Statute 258 referred to teaching experience covering only Honours and P.G. classes. There was no division of marks as between Honours and for P.G. In addition for the SBI chair in Rural Economics, experience in Institutional Finance, publication of some research works of high standard in the field and experience of guiding research work in the subject of institutional finance, were also desirable qualifications. The Syndicate pointed out that the Selection Committee awarded to the appellant, 16 out of 19.5 marks in General career, 8 out of 10 in Research publications, 18 out of 25 in Viva voce. The 5th respondent was awarded only 15, 6 and 12 in respect of these items. All candidates were awarded 10 marks out of twelve for research degree. The 5th respondent got 10 out of 10 for 'teaching experience' whereas appellant got 4 marks only. The Syndicate pointed out that the contention of the 5th respondent that the appellant should have been awarded zero marks for 'teaching experience' was based on a misinterpretation of the

conditions of the advertisement. It was not stated in the advertisement that a candidate for the post of professor should possess a minimum of 10 years' teaching experience. On the other hand, the advertisement stated that one should have 'about 10 years' teaching and/or research experience. The appellant was admittedly doing research as Junior Research Fellow in Presidency College, Calcutta from June 1978 to Nov. 1979 (for one year, 5 months and 14 days) and adding the same to the teaching experience of 7 years 7 months and 14 days, the total experience in teaching and research would come to 9 years 1 month and this the experts opined was about 10 years. The formate speaks of teaching experience for Honours and P.G. classes. The appellant had 4 years teaching experience in P.G. classes at Ravishankar University, Raipur and thereafter in the Department of Economics, Utkal University. He had Honours teaching experience of about 4 years in Spat College, Rourkela. On the other hand, the 5th respondent had given on details of her teaching experience in the application form. She had merely stated she had experience of about 23 years under the Government of Orissa in Education Department. She had not specifically stated the names of institutions in which she had taught or whether, during this period, she had taught only at the Intermediate level or at the Honours and Post Graduate Stages. Again the appellant had Research experience and was guiding research work for Ph.D degree while the 5th respondent had left col. 14 blank. Further, the 5th respondent gave only a list of 5 publications in local papers and she published only one paper in the Indian Cooperative Review. On the other hand, the appellant had given a list of 28 publications most of which were published in Standard All India Journals. The appellant had specialised in international and Regional Economics and did his Ph.D in 'Economics of Indian Cement Industry'. The 5th respondent had not indicated her specialisation nor the subject of her Ph.D thesis. She merely stated that she had published a special paper in 'International Trade in M.A. Career and that she specialised in Small Scale Industries at the Research stage. According to the Syndicate, all these facts obviously weighed with the Selection Committee. Further, in all 8 candidates were interviewed and the Selection Committee must have got an overall view of comparative merit. The appellant had secured M.A. in Economics in 1977, he joined as a Lecturer in Nov. 1979, he attended Summer Institutions, and Conferences and Workshops in Holland in 1980, in UK in 1981 and in Germany & Italy in 1984. The Syndicate observed that there was defect in the proforma. It observed:

"In view of the fact that the advertisements wanted about 10 years experience in teaching and/or research and the Proforma in Schedule 'F' under Statute 258 wanted only Honours and P.G. Teaching, award of four marks for experience wrongly headed as "teaching experience" in the proforma does not appear to be an improper assessment..... The Selection Committee might have clubbed these two items under teaching experience."

The Syndicate stated that the subjective considerations which weighed with the experts in assessing teaching/research experience were known only to the Vice-Chancellor and the Director of Higher Education. They referred to the Judgment of the Supreme Court in *University of Mysore vs. Govinda Rao* [1964 (4) SCR 575] which stated that the views of experts in the subject ought not to have

been lightly interfered with.

In our view, having regard to the high qualifications of the experts and the reasons furnished by the Syndicate as being the obvious basis of the experts' opinion, the Chancellor ought not to have interfered with the view of the experts. The experts' views are entitled to great weight as stated in *University of Mysore vs. Govinda Rao* (supra), *J.P.Kulshrestha vs. Chancellor. Allahabad University* [1980 (3) SCC 418], *Neelima Misra vs. Harinder Kaur Paintal* [1990 (2) SCC 746], *Osmania University vs. Abdul Rajees Khan* [1997 (3) SCC 124].

In our opinion, the Chancellor cannot normally interfere with the subjective assessment of merit of candidates made by an expert body unless mala fides or other collateral reasons are shown. In *Neelima Misra's* case, above referred to, this Court observed, referring to the powers of the Chancellors in matters of appointment of Professors/Readers as being purely administrative and not quasi-Judicial. It was further stated:

"The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and statute. He must not be guided by extraneous or irrelevant considerations. He must not act illegally, irrationally or arbitrarily. any such illegal, irrational or arbitrary action or decision is liable to be quashed as being violative of article 14 of the Constitution of India."

In the present case, the Chancellor failed to notice that the advertisement and the UGC Regulations - even as per the show cause notice - referred only to "about 10 years experience in teaching and/or research". Hence, it was necessary to take into account not only the teaching experience but also the research experience. The proforma which mentioned the marks under each of the six heads did not unfortunately refer to the research experience though the advertisement did. Hence the Chancellor committed an illegality in omitting the research experience of 1 year and 5 months out of consideration. If the research experience of 1 year and 5 months and 14 days were added, the total teaching & research experience of the appellant would come to 9 years 1 month. It was not sufficient for the chancellor to just go by the proforma inasmuch as the advertisement did refer to research experience also apart from the teaching experience.

No doubt, in clause 9 of the Endowment, it was stated that the procedure for selection would be the same as followed for Professor's selection. This in our view was referable merely to the procedure. If the advertisement stressed on the research experience also and not merely the teaching experience, the column in the proforma for awarding marks when it referred to 'teaching experience' has to be treated as one meant to cover teaching and research experience. The Selection Committee and the Syndicate followed the right procedure but the Chancellor's went wrong in confining himself to the actual language of the proforma and in omitting to give effect to the words and/or research experience contained in the advertisement and the UGC Regulations. This, in our view, is a clear illegality in the order of the Chancellor. The High Court ought to have, therefore, come to the rescue of the appellant and set right the illegality.

So far as the contention the even 9 years and one month does

not amount to "about 10 years" We are of the view that this cannot and should not, as contended by the learned senior counsel for the appellant, be measured on the basis of a purely mathematical formula. The High Court has referred to Cross vs. Eglin [1831] (2) B. & Ad. 106 and The Re Harrison and Micks, Lambert & Co. 1917 (1) KB 755 as to the meaning of the word 'about'. These are cases dealing with contracts of sale of goods and deal with the meaning of the word 'about' in connection with quantity of goods to be supplied. The High Court has also referred to Morris vs. Levison [1870] CPD 155 [34. L.T.576]. That case again deals with the amount of Cargo to be carried out the matter of carriage of goods by sea and as to what extent the carrier can be said to have performed his contract. These cases, in our view deal with the usage in commercial transactions and cannot be of any relevance to interpret the condition of eligibility of a candidate for appointment of a 'Professor in a University. Here we are concerned with view taken by experts in the Selection Committee and as to whether experience of 9 years and 1 month falls within the word 'about 10 years'. On the facts of the case, it was for the Selection Committee to consider whether the appellant's case fell on the right side of 'about 10 years'. After all they were considering the total length of experience both in teaching and research and in conjunction with his other qualifications to find out whether he can occupy the post of Professor, a post which was merely one concerned with research in Economics.

In our view, the opinion of the experts in the Selection Committee must be taken to be that the appellant's teaching and research experience satisfied the above condition of about 10 years". In fact the chancellor in his final order did not expressly say that the period was not "about 10 years", though such a view was expressed in the show-cause notice. He merely stated that award of 4 marks towards 'teaching experience' was not justified. The appellant did have teaching experience of 7 years 7 months and 14 days and Research experience of 1 year 5 months and 14 days - in all 9 years 26 days and the Selection Committee gave him 4 marks out of 10 on this score. Even otherwise, if the view of the Chancellor was that the experience must be a minimum of 10 years and therefore Zero marks ought to have been awarded to the appellant toward 'teaching experience' we cannot agree. That would, in our view, amount to ignoring altogether the words in the advertisement 'teaching and/or research experience' and to exclude the period of 1 year 5 months and 14 days.

For the above reasons, we are unable to sustain the judgment of the High Court or the order of the Chancellor. The judgment of the High Court is liable to be set aside and the writ petition OJCNo. 1910 of 1990 is entitled to be allowed and the order of the Chancellor quashed, restoring the appointment of the appellant as Professor (SBI Chair). Point 1 is decided accordingly in favour of the appellant and against the 5th respondent.

Point 2:-

The question is about the nature of the relief to be granted to the appellant.

From the above, it is clear that there is no question of the 5th respondent, who was at serial No.2 in the Selection list, being continued as Professor (SBI Chair). Obviously, she could not have been appointed unless the appellants' appointment was cancelled. Now that we are restoring the appellant's appointment, the 5th respondent's

appointment in his place automatically falls to the ground as an immediate consequence. It is not necessary for us to decide whether, if there was a vacancy, a fresh advertisement was necessary or No. 2 in the select list could be appointed.

Some argument was advanced by the learned counsel for the 5th respondent that even if the appellant's appeal was allowed, the respondent's appointment would still stand inasmuch as that was made pursuant to a mandamus issued in the respondent's writ petition No. OJC 2144 of 1990. This argument cannot be accepted in as much as once the appellant's appointment is restored, the consequence is that there will be no vacancy. The mandamus in OJC No.2144 of 1990 automatically ceases to operate as a consequence of allowing the Civil Appeal.

We, therefore, set aside the Judgment of the High Court and quash the Chancellor's order and direct the restoration of the appellant as Professor (SBI Chair) and also declare that, as a consequence, the 5th respondent ceases to be Professor (SBI Chair) forthwith. In the circumstances, there will be no order as to costs in the Civil Appeal. Point 2 is decided accordingly.

Inasmuch as the Civil appeal is allowed and the appellant restored to office and as a consequence the 5th respondent is to vacate the office, there is no need to pass any orders in the SLP filed by the appellant against the orders in OJC No. 2144 of 1990 because the mandamus granted therein automatically ceases to be operative. Therefore, the orders of the High Court in OJC NO.2144 of 1990 automatically stand vacated as a consequence of allowing the Civil Appeal against the judgment in OJC No. 1910 of 1990 and our quashing the order of the Chancellor. No orders are necessary in the SLP. SLP is dismissed as unnecessary, after condoning delay.