

SUPREME COURT OF INDIA

Osmania University Represented By Its registrar, Hyderabad, A

Vs.

Abdul Rayees Khan

(K Ramaswamy and S Kurdukar JJ.)

25.10.1996

ORDER

Leave granted

We have heard learned counsel on both sides. This appeal by special leave arises from the order of the Division Bench of the Andhra Pradesh, made on October 11, 1995 in Writ Appeal No. 1183/88. The admitted position is that the first respondent and the second respondent, G.Manohar Rao, Lecturers of Law in the Post Graduation Department of the Faculty of Law of Osmania University had staked their claims for promotion as Reader in the said Department of the Osmania University. The University Grants Commission had recommended the procedure for evaluation of the merits of the candidates for selection as Readers and Professors as under:

"Objectives

1. The basic objectives of the scheme should be (1) to recognize outstanding work done by the university teachers in the areas of teaching and research (2) subject such work to objective evaluation by experts in the subject areas concerned and (3) to provide for reasonable opportunities for professional advancement to such teachers, who merit academic recognition on a competitive basis. The scheme should, therefore, be appropriately named as "Merit Promotion Scheme for University Teachers". This would be in the nature of a "flexible complementing scheme" as prevailing in other services, wherein no additional posts are created, and the existing person on the basis of critical assessment are promoted to the next higher level and the position is held by such incumbents as personal to them, and no resultant vacancy is required to be filled. Such a Scheme would considerably encourage the teachers to engage in advanced teaching and research and make distinct contribution and promotion.

The present scheme when compared to similar schemes operating in other services, it is in fact rather conservative, keeping in view the present pay scale structure and the time involved, for persons to advance their profession, However, even this limited scheme will prevent, stagnation and promote a better climate of teaching and research.

2. In the present context of implementation of the revised scales of pay in the universities and

colleges since January 1973 and the provision for similar merit promotion schemes prevailing in CSIR, old scheme, ICAR, DSRDO etc, and the opportunities available in other services or the Government of India for professional advancement, it is imperative that the universities be enabled to implement merit promotion scheme based upon the evaluation of the work of the teacher made effective from 1st April, 1980.

Method of implementation:

3. (a) Teachers in the university departments engaged in advanced teaching and research and whose contribution and achievements are such as to merit recognition, may be considered for merit promotion, in the first instance, after completing six years of continuous service in their respective cadre, of which at least three years should be in the institution where he/she is being considered for such assessment and merit promotion in the initial presentation could however submit his work again only after a lapse of three years, (c) Teachers interested in such assessment and consideration of merit promotions should present their work to the University, through their department, latest by 31st December each year or a date stipulated by the university (d) The university should generally take a decision before the beginning of the next academic year, so that such promotions can become effective from the date of the beginning of the next academic session, (e) While the final selection of persons to be promoted can be made by the university in accordance with its normal procedure, it would be necessary to refer to the work (to include research publications, books, reviews, curriculum development, teaching aids, innovation in teaching methods, equipment developed etc,) presented by the individual teachers- at least two referees in the subject/discipline concerned. The referees are to be selected by the Vice-Chancellor out of a panel of names set up according to the procedure prescribed yet the university for Selection Committee. The evaluation reports by these referees should be made available to the Selection Committee. The final selection comments and the unanimous opinion of the outside experts (at least two outside experts in the case of promotion to readers and three outside experts for promotion to professors) on the Selection Committee. (f) The post of a reader given to a lecturer or the position of a professor given to a reader, through merits promotion, would be personal to the incumbent concerned (g) the main criteria for promotion under this scheme would be the merit of the academic contributions and not the seniority of the teachers."

The primary step required to be taken is that the academic achievements of papers, monographs etc. are required to be referred to a committee of two members of academic experts to evaluate the merits of the teachers with the objective of the finding out the meritorious candidates for selection as a Reader or Professor, as the case may be. The members of the Committee are required to consider outstanding work done by the University Teachers in the area of teaching and research. The objective evaluation is done by the experts in the subject area engrafted as members. They have to be outsiders to the University and evaluation has to be done by these experts to find out the candidates for promotion on merits as per the scheme. The method of implementation has been stated in para 3 thus: " Method of implementation:

3 (a) Teachers in the university departments engaged in advanced teaching and research and whose contribution and achievements are such as to merit recognition, in the first instance, after completing six years of continuous service in their respective cadre, of which at least three years should be in the institution where he/she is being considered for such assessment and merit promotion. (b) Any teacher who has been considered and not selected for merit promotion in the initial presentation could however submit his work again only after a lapse of three years, (c)

Teachers interested in such assessment and consideration of merit promotions should present their work to the University, through their department, latest by 31st December each year or a date stipulated by the university (d) The university should generally take a decision before the beginning of the next academic year, so that such promotions can become effective from the date of the beginning of the next academic session , (e) While the final selection of persons to be promoted can be made by the university in accordance with its normal procedure, it would be necessary to refer to the work (to include research publications, books, reviews, curriculum development, teaching aids, innovation in teaching methods, equipment developed etc.) presented by the individual teachers at least two referees in the subject/discipline concerned. The referees are to be selected by the Vice Chancellor out of a panel of names set up according to the procedure prescribed yet the university for Selection Committee. The evaluation reports by these referees should be kept confidential, and should be made available to the Selection Committee. The final selection would be based upon the referee evaluation comments and the unanimous opinion of the outside experts (at least two outside experts in the case of promotion to readers and three outside experts for promotion to professors) on the Selection Committee.

It is seen that the Vice Chancellor of the University had nominated out of the panel (i) Dr. P.Koteswara Rao, Professor and Head of the P.G.Department of Law, Dean , Faculty of Law, Shri Venkateswara University and (ii) Dr. T.S. Rama Rao, Professor and Head Department of Legal Studies, University of Madras for evaluation of the works presented by the first respondent and G. Manohar Rao. After consideration of respective papers placed before the Expert Committee, Dr. P. Koteswara Rao recommended both G. Manohar Rao as well as Abdul Rayees Khan for consideration of merit promotion as Readers. While Dr. Rama Rao stated that the first respondent was prima facie qualified for promotion, as regards G. Manohar Rao, stated that Selection Committee may go into the articles and other material, research papers placed for consideration by G. Manohar Rao; if they are found to be based on any substantial research, he may be promoted. Thereafter, the Committee consisting of Vice-Chancellor, Justice Sardar Ali Khan, Dean, Faculty of Law, Professor E. Gupteswar, Andhra University, Professor T.S. Rama Rao, Madras University, Dr. K. Srinivas Rao, Head, Department of Law and Shri A. Narasimha Reddy, Chairman, Board of Studies, Osmania University was constituted for selection. They have stated as under: " The candidates were summoned for the interview of the candidates interviewed, the Committee recommend for appointment to the post (s) in question in the following persons. The order of the reference being (1) G. Manohar Rao (2) V. Krishnamachary subject to the condition that they obtain their ph.D. within three years from the date of their joining as Reader."

From this material, the learned single Judge came to the conclusion that evaluation committee of the two Professors had not adopted any objective criteria in evaluating the papers presented by the respective candidates while giving their opinion for consideration by the Selection Committee. The Selection Committee has not adopted any procedure in awarding marks for considering the respective claims. Therefore, the selection of G. Manohar Rao, the second respondent in the writ petition was bad in law. That was upheld by the Division Bench. Thus, this appeal by special leave. Shri H.S. Gururaja Rao, learned senior counsel for the appellant, contends that as per the procedure prescribed by the University Grants Commission, the University was required to refer to the respective papers submitted by the intending candidates to the two member Expert Committee who has to evaluate the respective papers submitted by the intending candidates to the two member Expert Committee who has to evaluate the respective merits and make recommendations for consideration for promotion. Thereafter, as per the statute, the Committee consisting of 7 persons was required to consider their cases for promotion. In this case, six members, out of seven members,

of the Committee participated in the selection, they unanimously, after interviewing the candidates, considered and selected G. Manohar Rao, the Lecturer as a Reader for the Post Graduation Department of the Faculty of Law of Osmania University. The High Court, therefore, was not right in its conclusion that evaluation committee had to adopt systematic set procedure of giving marks and was also required to give marks for the respective candidates in selection them. It is contended by the learned counsel for the respondents that the view taken by the learned single Judge is correct on law. A reading of the expert panel's finding would disclose that they did not adopt any objective criteria in recommending the candidates for consideration of merit promotion. Record, as placed before the court as regards, selection is not complete. Even that report on record does not indicate any method by which the selection came to be made by the Committee. Therefore, the selection is obviously arbitrary being without any material. In support thereof, the learned counsel places reliance on *State Bank of India & Ors. vs. Mohd. Mynuddin* [(1987) 4 SCC 486] and *Dr. J.P. Kulshrestha & Ors. vs. Chancellor, Allahabad University & Ors.* [(1980) 3 SCC 418]

In view of the respective contentions, the question that arises for consideration is: whether the view taken by the High Court is correct in law? It is not necessary to reiterate what we have already stated with regard to the merit procedure prescribed by the UGC and the steps taken by the Osmania University in nominating two external experts on the subject to evaluate the respective papers presented by G. Manohar Rao, the second respondent and the first respondent for consideration of their claim for merit promotion as Reader and the subsequent selection. It would be self-evident to show that the appellant had followed the procedure in accordance with the guidelines laid down by the UGC in referring the respective claims of the first respondent and G. Manohar Rao, the second respondent for evaluating their papers. As seen, both Dr. P. Koteswara Rao and Dr. P. Koteswara Rao recommended the cases of G. Manohar Rao as well as the first respondent for consideration for merit promotion as Reader. Similarly, while Dr. T.S. Rama Rao prima facie found the first respondent to be qualified for consideration for promotion, he did not make any specific recommendation as regards G. Manohar Rao leaving it to the Selection Committee to consider the research papers submitted by G. Manohar Rao was also a member of the Selection Committee as an outside expert. As stated earlier, he and Professor E. Gupteswar, an eminent Professor from Andhra University Law College, were outside Professors for selection of the candidates. It is seen that the Committee including two outside professors unanimously recommended promotion of the G. Manohar Rao as Reader. In other words, the outside experts were unanimous in recommending promotion of G. Manohar Rao as Reader. The procedure for promotion from the post of Lecturer to Reader as enjoined in the statute and the guidelines laid down by the University Grants Commission, was scrupulously followed and was strictly complied with. After interviewing the candidates, the Committee unanimously found G. Manohar Rao to be eligible for promotion as Reader. In view of the above facts, the learned single Judge was not right in concluding that there was no objective evaluation by the two experts on the subject, namely, Dr. K. Koteswara Rao and Dr. T.S. Rama Rao. Equally, the learned Judge was not right in concluding that the Committee should have adopted the procedure of awarding marks for selection of the candidates. When a Lecturer is selected for promotion as a Reader, respective academic preferences and performance, teaching experience and capacity to teach and other teaching material relevant to the subject in that behalf were considered by the Committee. It is not necessary, like in selection of class II and Class III officers, to award marks to each candidate for their selection. What is required to be done is dispassionate and objective selection but not arbitrary or colourable selection. When the University nominated seven members including a High Court Judge and it selected the Readers of Professors on objective test, there emerges no arbitrary selection. As held by this Court in *J.P. Kulshrestha's case*, ultimately, this Court has to leave it to the academic body to select the best

candidates suitable and fit to teach the subject. As held by this Court. "Rulings of this Court were cited before us to hammer home the point that the Court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But University organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter, or an educational question, the Court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out." In view of the above statement of law, with which we are in respectful agreement we hold that generally the Court may not interfere with the selection, relating to educational affairs, and academic matters may be left to the expert body to select best of the talent on objective criteria. What is the objective criteria is a question of fact in each case. Each case depends upon its own facts and the circumstances in which the respective claims of competing candidates has come up for consideration. No absolute rule in that behalf could be laid. Each case requires to be considered on its own merit and in its own setting, giving due consideration to the views expressed by the educational experts in the affairs of their administration or selection of the candidates. The two decisions relied on by the learned counsel are of no assistance to the facts of this case. In the first case, the Court had considered that the High Court has no power to give direction to the appointing authority to promote the candidates. Instead the Court is required to direct the authority to consider the claims in accordance with law, that is settled legal position. It does not require reiteration. That is not the situation having arisen in this case. Even the second case, which was relied upon, is not of any assistance. On the facts in that case, the finding which was questioned in this Court was upheld by this Court, as it was for the University to prescribe the grading in awarding the Post Graduation degrees. Considered from this perspective, we are of the view that the High Court was not justified in interfering with the selection. The order of the learned single Judge and of the Division Bench stand set aside. The writ petition stands dismissed. The appeal is accordingly allowed, but , in the circumstances, without costs.