

SUPREME COURT OF INDIA

Ashok Kumar Das

Vs.

University of Burdwan

C.A.No.392 of 2004

(Markandey Katju and A.K.Patnaik JJ.)

16.03.2010

JUDGEMENT

A. K.Patnaik, J.

1. This is an appeal against the judgment and order dated 08.08.2002 of the Division Bench of the High Court of Calcutta in MAT No.2604 of 2001 and CAN No.1624 of 2001 filed by some members of the non-teaching staff of the University of Burdwan [For short 'the University'].

2. The facts very briefly are that promotions to different grades of non-teaching staff of the Burdwan University were 2 being done on the basis of seniority. On 26.06.1995, the Executive Council of the University considered the principle of promotion as enunciated in the Government Order dated 17.10.1985 and resolved that criteria of 'Seniority-cum-Efficiency' as enunciated in the aforesaid Government Order dated 17.10.1985 will be followed for promotion to different grades of non-teaching staff of the University. The Executive Council of the University in its meeting on 26.06.1995 also resolved the manner in which the efficiency of a candidate for promotion will be considered along with seniority for promotions to different grades. For the first promotion, efficiency of the employee was to be determined on the basis of recording in his personal file and the report received from the Controlling Officer of the candidate; for the second promotion, 50% weightage will be given to efficiency, out of which 25% would be allotted for work performance and 25% would be allotted to a written test for ascertaining the subject competence of the candidate and for the third promotion, the efficiency was to be determined on the basis of recording in the personal file and the report of the Controlling Officer. The 3 Resolution of the Executive Council of the University taken in its meeting on 26.06.1995 was to be implemented with immediate effect.

3. Aggrieved by the Resolution of the Executive Council of the University, some of the appellants filed the Writ Petition being C.O. No.17139 (W) of 1995 and a learned Single Judge of the High Court of Calcutta allowed the writ petition in part and set aside the

Resolution of the Executive Council of the University taken on 26.06.1995 and directed the University to re-frame its guidelines for promotion strictly in accordance with the Government Order dated 17.10.1985 in the light of the observations made in the judgment and to give promotion to the candidates on the basis of the Government Order dated 17.10.1985 after re-framing the guidelines.

4. The University challenged the judgment of the learned Single Judge before the Division Bench of the High Court of Calcutta and the Division Bench held in the impugned judgment and order that under Section 21 (xiii) of the Burdwan University Act, 1981 the Executive Council of the University was empowered to determine, with the approval of the State Government, the terms and conditions of service of non-teaching staff of Colleges other than Government Colleges, but no approval of the State Government had been taken to the Resolution of the Executive Council of the University adopted in its meeting held on 26.06.1995. By the impugned judgment and order, the Division Bench of the High Court of Calcutta directed the University to send the proposal in the Resolution of the Executive Council of the University adopted on 26.06.1995 to the State Government for its approval and further directed that in case the State Government approves the proposal, the University will undertake the exercise of promotion of their staff. Pursuant to the impugned judgment and order of the Division Bench, the proposal was sent to the State Government and the State Government by its order dated 10.10.2002 has approved the Resolution of the Executive Council of the University adopted on 26.06.1995.

5. The contention raised before us by the learned counsel for the appellants was that the Resolution of the Executive Council of the University adopted on 26.06.1995 will be effective only from 10.10.2002 when the State Government approved the Resolution and will not apply to any promotions made prior to 10.10.2002 because under Section 21 (xiii) of the Burdwan University Act, 1981 the Executive Council of the University could determine the terms and conditions of the service of the non-teaching staff of the Colleges other than Government Colleges with the approval of the State Government and not otherwise. Relying on the decisions of this Court in *T. R. Kapur & Ors. v. State of Haryana & Ors.*¹, *Prem Kumar Verma & Anr. v. Union of India & Ors.*², *Union of India v. S. S. Uppal & Anr.*³, *Kulwant Kumar Sood v. State of H. P. & Anr.*⁴ and *High Court of Delhi & Anr., Etc. v. A. K. Mahajan & Ors.*⁵, learned counsel for the appellants submitted that the Resolution of the Executive Council of the University adopted on 26.06.1995 and approved by the State Government on 10.10.2002 cannot, therefore, apply to promotions to vacancies which have occurred prior to 10.10.2002. Learned counsel for the Intervenors supported the aforesaid stand of the appellants.

6. Learned counsel for the respondents Nos. 1 to 3, on the other hand, submitted that Section 21 (xiii) used the expression "approval of the State Government" and not "prior approval of the State Government" and it has been held by this Court in *U. P. Avas Evam Vikas Parishad & Anr. v. Friends Co-operative Housing Society Ltd. & Anr.*⁶ and *High Court of Judicature for Rajasthan v. P. P. Singh & Anr.*⁷ that when an approval is required, an action holds good and only if it is disapproved it loses its force. He further submitted that promotions made on

the basis of Resolution of the Executive Council of the University adopted on 26.06.1995, therefore, hold good and now that the State Government has approved the Resolution of the Executive Council of the University adopted on 26.06.1995 by order dated 10.10.2002, the promotions made on the basis of the Resolution dated 26.06.1995 of the Executive Council of the University hold good and cannot be set aside by this Court.

7. In Black's Law Dictionary (Fifth Edition), the word "approval" has been explained thus: "the act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another." Hence, approval to an act or decision can also be subsequent to the act or decision.

8. In *U. P. Avas Evam Vikas Parishad (supra)*, this Court made the distinction between permission, prior approval and approval. Para 6 of the judgment is quoted hereinbelow:

“6. This Court in *Life Insurance Corpn. of India v. Escorts Ltd.*⁸, considering the distinction between "special permission" and "general permission", previous approval" or "prior approval" in para 63 held that: "We are conscious that the word 'prior' or 'previous' may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act."

Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act, it was stated in *Lord Krishna Textiles Mills Ltd. v. Workmen*⁹, that the Management need not obtain the previous consent before taking any action. The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1).”

9. Following the decision in *U. P. Avas Evam Vikas Parishad (supra)*, this Court again held in High Court of Judicature for *Rajasthan v. P. P. Singh & Ors. (supra)* in para 40:

“When an approval is required, an action holds good and only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained.

(See *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*)”

10. Section 21 (xiii) of the Burdwan University Act, 1981 is quoted herein below:-

“21. Subject to the provisions of this Act, the Executive Council shall exercise the following powers and perform the following functions:

(i) to (xii)

(xiii) to determine, with the approval of the State Government, the terms and conditions of service of Librarians and non-teaching staff."

The words used in Section 21 (xiii) are not "with the permission of the State Government" nor "with the approval of the State Government", but "with the approval of the State Government". If the words used were "with the permission of the State Government", then without the permission of the State Government the Executive Council of the University could not determine the terms and conditions of service of non-teaching staff. Similarly, if the words used were "with the prior approval of the State Government", the Executive Council of the University could not determine the terms and conditions of service of the non-teaching staff without first obtaining the approval of the State Government. But since the words used are "with the approval of the State Government", the Executive Council of the University could determine the terms and conditions of service of the non-teaching staff and obtain the approval of the State Government subsequently and in case the State Government did not grant approval subsequently, any action taken on the basis of the decision of the Executive Council of the University would be invalid and not otherwise."

11. We, therefore, hold that promotions to different grades of non-teaching staff made by the University on the basis of the principles laid down in the Resolution of the Executive Council of the University adopted on 26.06.1995 are valid as 10 the Resolution has been approved by the State Government on 10.10.2002. This appeal is without any merit and is dismissed with no order as to costs.

¹*AIR 1987 SC 415*

²*(1998) 5 SCC 457*

³*(1996) 2 SCC 168*

⁴*(2005) 10 SCC 670*

⁵*(2009) 12 SCC 62*

⁶*(1995) Supp.(3) SCC 456*

⁷*(2003) 4 SCC 239*

⁸*(1986) 1 SCC 264*

⁹*AIR 1961 SC 860*