

GAHC010041322021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1447/2021

DR. BISWAJIT SARMA
S/O LATE DUGDHA NATH SARMAH, R/O RAJAMAIDAM, P.S. AND P.O.
JORHAT, DIST. JORHAT, ASSAM, PIN 785001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECY., EDUCATION
(HIGHER) DEPTT., DISPUR, GUWAHATI 06

2:THE GAUHATI UNIVERSITY

REPRESENTED BY THE VICE CHANCELLOR
GOPINATH BORDOLOI NAGAR
JALUKBARI
GUWAHATI 781014

3:THE REGISTRAR

GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
JALUKBARI
GUWAHATI 781014

4:THE EXECUTIVE COUNCIL

GAUHATI UNIVERSITY
REPRESENTED BY THE VICE CHANCELLOR AND CHAIRMAN EXECUTIVE
COUNCIL
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
JALUKBARI

GUWAHATI 78101

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. U.K. Nair, Senior Advocate.
	: Ms. M. Das, Advocate
For respondent No.1	: Mr. K. Gogoi
For respondent Nos.2 to 4	: Mr. K.N. Choudhury, Senior Advocate
	: Mr. P.J. Phukan, Advocate
Date of hearing	: 24.01.2022
Date of judgment	: 25.02.2022

JUDGMENT AND ORDER

(CAV)

Heard Mr. U.K. Nair, learned senior counsel, assisted by Ms. M. Das, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel for the Education (Higher) Department, Respondent no. 1 and Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. P.J. Phukan, learned standing counsel for Gauhati University, respondent nos. 2 to 4.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside resolution dated 26.02.2021, passed by the Executive Council of the Gauhati University (respondent no. 4) as well as the impugned order dated 26.02.2021 issued by the Registrar, Gauhati University (respondent no. 3), thereby releasing the petitioner from service as

Director, College Development Council, Gauhati University and for consequential relief.

3) The case of the petitioner, in brief, is that in the month of March, 2013 the Gauhati University had issued an advertisement to fill up the post of Director, College Development Council. Pursuant to his application, the petitioner was selected and appointed to the said post by order dated 11.06.2015 and accordingly, the petitioner had joined in the said post on 27.06.2015. The petitioner claims that he was appointed in a permanent post. However, by the impugned resolution and order, the petitioner was released from service without giving him any opportunity of hearing, treating that the post to which the petitioner was appointed was a tenure post.

4) The learned senior counsel for the petitioner has submitted that the respondent nos. 2 to 4 had surreptitiously and behind the back of the petitioner had formed a 5 (five) man committee to look into the matter of the tenure of service and terms of appointment of the petitioner in the post of Director, College Development Council and that three out of five members were heavily biased against the petitioner and the proceeding was conducted behind the back of the petitioner without subjecting him to any notice and without hearing him. It was also submitted that the finding in the report are based on presumption, surmises and conjectures and therefore, not tenable. By referring to the additional affidavit filed by the petitioner on 14.09.2021, it is submitted that the respondents had to practice deception by creating a subsequently prepared appointment letter dated 11.06.2015 and by projecting as if the said second/rectified letter was misplaced and showing it to be obtained from the

office of the respondent no.1, projected as if the terms of appointment was made a tenure post. It was submitted that although selective documents from the file of the Gauhati University was purportedly missing, no FIR was lodged and no steps was taken to reconstruct the file and resultantly, owing to the loss of documents, at this stage, only the petitioner alone is prejudiced. It is submitted that falsity of deceptive second appointment letter gone missing has been exposed by finding of the committee because the committee had recorded that they had perused both the appointment letters, wherein the first letter reflects that the post is permanent and the second/rectified letter projects that the post was for a 5 year tenure. Moreover, it was submitted that the letters/documents available after page 219 of the Government record could not have been considered for the purpose of decision of the Government on the question of lien of the petitioner. By referring to the resolution no. 2006/14/127 of the Executive Council of the Gauhati University, it was submitted that the post of Director, College Development Council was not a tenure post. It is also submitted that on absorption in a permanent post, the lien of the petitioner to his previous post of Assistant Professor in Geology Department in Jorhat Engineering College, Jorhat was terminated and therefore, it was submitted that if the petitioner is illegally ousted from service, he would be put out of employment. Accordingly, it was submitted that the petitioner was removed from service at the *ipse dixit* of the members of the Committee, who had also undone the resolution 2006/14/127 illegally without power or authority.

5) The learned standing counsel for the respondent no. 1 has submitted that the Higher Education Department has no role to play in the matter. However, it was submitted that as per the affidavit-in-opposition filed by

the respondent no.1, the petitioner was initially granted lien for one year on condition that after completion of the term, he must return to the parent department or resign from the post if he is permanently absorbed in the borrowing department failing which his lien would stand terminated and accordingly, the lien of the petitioner to his original post of Assistant Professor was terminated with effect from 27.06.2016.

6) Per contra, the learned senior counsel for the respondent nos. 2 to 4 has referred to the various affidavits filed by the said respondents and it was submitted that the employment advertisement clearly stated that the appointment was for a 5 year term and the report of the selection committee meeting held on 21.10.2014 (as produced by the learned standing counsel for the respondent nso.2 to 4 in course of hearing) clearly reflected that the tenure was initially for 5 year tenure. Hence, the initial appointment letter of 11.06.2015 was substituted by the second/rectified appointment letter of same day. However, it appears that the petitioner had retained the previous letter and is now attempting to take an advantage out of it. It was submitted that the 5 (five) man committee to look into the matter of the tenure of service and terms of appointment of the petitioner in the post of Director, College Development Council unearthed the truth that the petitioner was appointed in the 5 year tenure post and as it was an internal committee, there was no need to hear the petitioner as it was not any adversarial proceeding. By referring to the Rule 9(30-A) of the Fundamental Rules, it was submitted that even a tenure post is a permanent post and reference was also made to the provision of Rule 9(22), 9(30) and 9(30-A) of the Fundamental Rules. It was also submitted that the submission that the lien of the petitioner was terminated and therefore, he

would be thrown out of service is fallacious because by operation of Rule 14-A(9) of the Fundamental Rules, the Government would have to take back the petitioner in his post. By referring to the documents, it was submitted that prior to the appointment of the petitioner, the earlier incumbents were also appointed for a tenure, but as they reached the age of superannuation, they would not complete their full tenure. By referring to the letter dated 20.06.2017 of the petitioner (Annexure-H of Affidavit-in-opposition in writ petition), it was submitted that the petitioner was aware that his appointment was in a tenure post for which he had written to the authorities on 12.06.2015 for extension of his lien. Moreover, there is no document to show that the petitioner was permanently absorbed in Gauhati University. In support of his submissions the learned senior counsel of the respondent nos. 2 to 4 has placed reliance on the following cases, viz., *K. Sekhar Vs. V. Indiramma & Ors.*, (2002) 3 SCC 586, *Dr. S.K. Kecher Vs. All India Institute of Medical Science & Ors.*, (1996) 10 SCC 734 and *Dr. L.P. Agarwal Vs. Union of India & Ors.*, (1992) 3 SCC 526.

7) Perused the following, viz., (i) writ petition; (ii) affidavit-in-opposition filed by respondent no.1; (iii) affidavit-in-opposition filed by the respondent nos. 2 to 4; (iv) affidavit-in-reply filed by the petitioner; (v) additional affidavit filed by the petitioner on 14.09.2021; (vi) interlocutory application filed by the respondent nos. 2 to 4, registered as I.A.(C) 912/2021; (vii) affidavit-in-opposition filed by petitioner in the said I.A.(C) No. 912/2021, (viii) affidavit-in-reply filed by the respondent nos. 2 to 4 in the interlocutory application; and (ix) additional affidavit-in-opposition filed by the petitioner in the said interlocutory application.

8) The only issue to be decided in this writ petition is whether or not the petitioner was appointed as the Director, College Development Council, Gauhati University for a 5 year tenure post.

9) The provisions of Rule 9(30-A) of the Fundamental Rules make it absolutely clear that even a tenure post is a permanent post. There is no dispute that the advertisement No. NTS-1/2013 by which the post of Director, College Development Council, Gauhati University was advertised clearly indicated in no ambiguous term that the post was initially for 5 years. There is no material on record to show that the tenure of the said post was made for unlimited period. Therefore, if the post was to be made with permanent tenure, then it would have been made after the initial period of 5 (five) years.

10) As two appointment letters have surfaced, for the sake of convenience, the one which is claimed to have been served on the petitioner containing words "The post is permanent" is hereinafter referred to as "the first appointment letter" for the sake of convenience and that the second appointment letter dated 11.06.2015, claimed by the respondent nos. 2 to 4 to have been rectified, which contains the words "The post is ~~permanent~~ a 5 year post" is hereinafter referred to as the "rectified appointment letter" for the sake of convenience.

11) Notwithstanding that the advertisement inviting application to fill up the post of Director, College Development Council, Gauhati University was for a 5 (five) year term, the first appointment letter dated 11.06.2015 merely

mentions in para 2 thereof that "The post is permanent". It does not indicate the term for which the petitioner has been appointed.

12) Even if it is assumed that the petitioner was not provided with the rectified appointment letter dated 11.06.2015, thereby fixing the tenure of appointment to the said post as five years, yet the petitioner had applied with eyes wide open that he was applying for a post having tenure of 5 (five) years. Therefore, the error which had crept in the first appointment letter dated 11.06.2015 is inconsequential and would not have the effect of altering the tenure as prescribed in the employment advertisement referred to herein before. The Registrar of Gauhati University (respondent no.3) while appointing the petitioner could not have altered the recruitment term which had prescribed the tenure to be 5 (five) years initially and to convert the appointment to be for a permanent tenure, as fair notice would have to be given to all prospective applicants and hence, propriety required the respondent nos. 2 to 5 to issue a fresh advertisement if the post was to be filled up with permanent tenure. Therefore, the rectified appointment letter dated 11.06.2015 cannot be allowed to be an aid for an illegality in any manner whatsoever. It is the employment advertisement that prescribed the tenure for which period the petitioner could hold office. Therefore, in the considered opinion of the Court, the tenure of the petitioner would end after expiry of the tenure from the date of his joining in the said post, i.e. 27.06.2015. Therefore, although the petitioner having been appointed in a permanent post, he would become entitled to serve till his tenure in the said post, i.e. for 5 (five) years only. In this regard, the Court finds support from the cases cited by the learned senior counsel for the respondent nos. 2 to 4.

13) In view of the discussions above, the Court is inclined to hold that the petitioner has no legal or fundamental right to hold the post for more than what was prescribed in the employment advertisement. As the 5 year tenure was prescribed in the employment advertisement, the petitioner is not found to have suffered any prejudice, nor it can be held that the terms of appointment has been altered. Moreover, the Court entertaining a writ petition under Article 226 of the Constitution of India has to exercise its discretion in furtherance of justice as this is a Court of equity. Therefore, if the proposition argued by the learned senior counsel for the petitioner is accepted, it would amount to this Court giving its seal of approval to the wrong committed by the respondent no. 3 in the first place to have issued the first appointment letter dated 11.06.2015 without prescribing the tenure for which the petitioner was to hold his office/ post of Director, College Development Council, Gauhati University, which was in utter contravention to the advertisement condition. For this reason, the petitioner is not entitled to exercise of discretion by the Court in his favour.

14) The other points urged by the learned senior counsel for the petitioner and as responded to by the learned senior counsel for the respondent nos. 2 to 4 are not required to be gone into as the core issue has been examined and decided.

15) Therefore, the petitioner is not found entitled to any relief in this writ petition. Accordingly, this writ petition is dismissed. Interim order stands vacated. Nonetheless, the decision in this writ petition would not preclude the

petitioner to seek appropriate remedy for any other relief to which he may be so advised, which includes possibility to claim his service at Jorhat Engineering College, Jorhat.

16) There shall be no order as to cost.

JUDGE

Comparing Assistant