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(2000) 05 GAU CK 0018

Gauhati High Court (Shillong Bench)

Case No: Civil Rule No. 149 (SH) of 1998

P. Joseph	APPELLANT
Vs	
North Eastern Hill University and Others	RESPONDENT

Date of Decision: May 12, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2000) 2 GLT 464

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: V.K. Jindal, for the Appellant; S.R. Sen, P. Roy and T. Yangi, for the Respondent

Final Decision: Allowed

Judgement

A.K. Patnaik, J.
In this application under Article 226 of the Constitution of India, the Petitioner has, inter alia, prayed for directions on the Respondents to include his name in the seniority list of Assistants of North Eastern Hill University (for short, "the NEHU"), and to consider him for promotion to the rank of section Officer from the date when his immediate junior was so promoted and to grant him all consequential service benefits.

2. The facts briefly are that Regional Sophisticated Instrumentation Centre, (for short, "RSIC") was set up in NEHU at Shillong in 1982. Under the terms and conditions for setting up of RSIC contained in the letter dated 25/29.6.82 of the Government of India, Department of Science & Technology to the Vice Chancellor, NEHU, the RSIC was to be functionally a separate and identifiable unit located in the NEHU, Shillong and the recruitment of staff for RSIC was to be made n accordance with the usual practices, the Rules and the Regulations being followed by NEHU, and additions of staff were to take place with the approval of Advisory Committee. The said terms and conditions further provided that staff recruited for the RSIC would be treated as employees of the NEHU

exclusively for the purpose of working at RSIC and would thus be governed by the Rules and the Regulations of NEHU. The Petitioner was initially appointed as store in-charge in the RSIC on an initial pay of Rs. 425/- p.m. plus other allowances admissible to any employee of the NEHU of the same rank on the recommendation of the Head, RSIC, by order dated 7.12.84. Thereafter, a post of Assistant for the RSIC was sanctioned by the Vice Chancellor of NEHU, who was also the Chairman of RSIC Advisory Committee, subject to sanction of the Department of Science & Technology, Government of India, in February, 1989, and the Petitioner was appointed in the said post of Assistant on adhoc basis by order dated 24.2.89. The Petitioner joined the said post. The Head, RSIC, then wrote to the Vice Chancellor, NEHU in September 1989 for regularization of services of the Petitioner as Senior Assistant by the Selection Committee of NEHU. On 13.11.89, the Advisory Committee of RSIC met, but the consideration for regularization of the services of the Petitioner was deferred to the next Advisory Committee meeting as the Chairman wanted some time to study the case of the Petitioner. The next meeting of the Advisory Committee of RSIC was held on 18.5.90, and in the said meeting the Advisory Committee unanimously recommended that the Petitioner be regularised in the post of Senior Assistant, RSIC. Notwithstanding the said recommendation, the services of the Petitioner were terminated with effect from 25.8.90 by the Assistant Registrar (Admn.), NFHU by order dated 22.8.90. On the intervention of the Vice Chancellor, NEHU, and the Chairman of RSIC, however, the Petitioner was allowed to continue as Senior Assistant in the RSIC from 24.8.80 without any break in service till the matter relating to regularisation of his service was settled. Thereafter, the Petitioner was appointed as Assistant in RSIC, Shillong with effect from 10.7.90 and until further orders by the Vice Chancellor, NEHU and the Chairman of RSIC. The appointment order dated 19.12.90 was issued by the Assistant Registrar, NEHU. Pursuant to his said appointment, the Petitioner continued as an Assistant in RSIC.

3. In the meanwhile, the Executive Council of NEHU took decision on 30.3.90 that the RSIC staff would be treated at par with other NEHU staff in terms of salary structures, service conditions, permanency of posts, leave rules medical benefits, retirement benefits, gratuity, etc. and that the non-technical staff may be transferred within NEHU but such transferability would not apply to technical staff. Further, on 12.7.94, the Vice Chancellor of NEHU and the Director, Department of Science & Technology signed a Memorandum of Understanding which, inter alia, provided that the NEHU would provide adequate and competent staff as recommended by the Management Committee and as approved by the Department of Science & Technology for running the RSIC efficiently and the staff would belong to NEHU. It appears that on 26.10.96 a meeting of a Selection Committee took place in which the Selection Committee took a view that the regular appointment given to the Petitioner as Assistant with effect from 10.7.90 on the recommendation of the Advisory Committee of the RSIC was improper since after the decision of Executive Committee dated 30.3.90 for treating the employees of RSIC at par with those of NEHU employees for all practicable purpose it would have been proper to follow the normal recruitment procedure for such regularisation in terms of the Executive

Council"s decision. The said view of the Selection Committee was placed before the Executive Council and on 21.3.97 the Executive Council of NEHU in its 92nd meeting considered the absorption of staff of the RSIC in the non-teaching staff cadre of NEHU and resolved to absorb such staff as and when the RSIC came under NEHU, but did not consider the case of the Petitioner on the ground that he was not appointed through a Selection Committee in accordance with the recruitment policy of NEHU, and further decided that his case may be considered as and when he qualifies in the test as laid down by the University (NEHU). On 15.7.97, the Executive Council decided that the existing regular staff of RSIC who were appointed in accordance with the recruitment procedure of NEHU would be deemed to be regular staff of NEHU from the date of appointment, joining, with their service conditions/service benefits deemed to be regulated in accordance with the Rules and the Regulations as applicable to the staff of NEHU on the same cadre and grade.

4. The grievance of the Petitioner is that a seniority list of Assistants as on 1.12.91 in the NEHU was published on 31.10.92 and in the said seniority list, the name of the Petitioner did not find place. His further grievance is that promotions were also made from amongst the Assistants in the said seniority list to the posts of section Officer, but the Petitioner was not considered for such promotion. The Petitioner submitted several representations requesting for such promotion but as no relief was granted to the Petitioner by the authorities, he has filed the present writ petition for quashing the aforesaid recommendation of the Selection Committee held on 26.10.96 and the aforesaid resolution of the Executive Council of NEHU in its 92nd meeting held on 21.3.97 and for directions on the Respondents to include his name in the seniority list of Assistants of NEHU and to consider his case for promotion to the rank of section Officer from the date when his immediate junior was so promoted.

5. Mr. V.K. Jindal, learned Counsel for the Petitioner, submitted that the views taken by the Selection Committee in its meeting held on 26.10.96 and by the Executive Council in its meeting held on 21.3.97 are arbitrary and discriminatory and violative of the rights of the Petitioner under articles Hand 16 of the Constitution. He contended that since the Vice Chancellor of NEHU and the Chairman of RSIC had the power to make appointment of ministerial staff of NEHU as well as RSIC, the Selection Committee while considering the promotion of Assistants to the higher rank of section Officer cannot question the appointment of the Petitioner made by the Vice-Chancellor of NEHU and the Chairman of RSIC and refuse to consider promotion of the Petitioner to the higher rank of section Officer on the ground that the appointment of the Petitioner was not in accordance with the recruitment procedure of NEHU. Mr. Jindal submitted that the Petitioner having been appointed in the RSIC as an Assistant was to be treated as an employee of NEHU and was to be governed by the Rules and the Regulations of NEHU as per paragraph 4 of the terms and conditions for setting up of RSIC contained in the aforesaid letter dated 25/29.6.82 of the Government of India, Department of Science & Technology to the Vice Chancellor, NEHU and was entitled to be absorbed in the cadre of Assistants of NEHU in

the same manner in which other staff of RSIC have been deemed to be regular staff of NEHU as per the decisions of the Executive Council of NEHU taken from time to time and, therefore, the name of the Petitioner should have been included in the seniority list of Assistants of NEHU. He further submitted that under the circular dated 24.7.90 issued by the Officer on Special Duty of NEHU, 50% of the vacancies in the posts of section Officer were to be filled up by promotion on seniority-cum-fitness from amongst the Assistants of NEHU and that the Petitioner was entitled to be considered in the said 50% of the vacancies for promotion on seniority-cum-fitness. He submitted that the court should therefore direct the Respondents to show the Petitioner''s position in the seniority list of Assistants of NEHU and to consider him for promotion to the post of section Officer as per the said promotion policy contained in the said circular dated 24.7.90. Ms. T. Yangi, learned Counsel appearing for the Head, RSIC. adopted the aforesaid argument of Mr. Jindal and supported the case of the Petitioner.

6. Mr. S.R. Sen, learned Counsel appearing for the NEHU, on the other hand, contended that the terms and conditions under which the RSIC was set up as contained in the letter dated 25/29.6.82 of the Government of India, Department of Science & Technology to the Vice Chancellor and in particular paragraph 4 thereof would show that recruitment of staff for RSIC was to be made in accordance with the usual practices, the Rules and the Regulations being followed by NEHU. Under the Rules and the Regulations followed by NEHU, appointment of staff was to be made only on the basis of recommendations of the Selection Committee. Hence, the Petitioner could only be appointed as an Assistant on the recommendation of the Selection Committee and not on the basis of recommendation of the Advisory Committee. But the appointment order dated 19.12.90 of the Petitioner would show that the Petitioner was appointed on the basis of the recommendation of the Advisory Committee and not on the basis of the recommendation of the Selection Committee. He further submitted that the Note of the Officer on Special Duty dated 16.1.97 annexed to the affidavit-in-opposition filed on behalf of NEHU as Annexure-"E" would show that the Petitioner was appointed contrary to the recruitment policy of NEHU despite the fact that the Head, RSIC was apprised of the said recruitment policy of NEHU and the Selection Committee therefore did not consider his case for promotion and the Petitioner was not given the benefit of resolution of the Executive Council dated 30.3.90 allowing transferability of the staff of RSIC within NEHU, and the Petitioner was also not placed in the seniority list of Assistants of NEHU. Mr. Sen also pointed out that the Executive Council in its 93rd meeting held on 15.7.97 only decided to treat the existing regular staff of RSIC who were appointed in accordance with the recruitment procedure of NEHU as irregular staff of NEHU from the date of their appointment and granted them all service benefits in accordance with the Rules and Regulations applicable to the staff of NEHU of the same cadre and grade. According to Mr. Sen, since the Petitioner was not appointed in accordance with the recruitment procedure of NEHU, he could not be deemed to be a regular staff of NEHU and, therefore, he could not be included in the seniority list of Assistants of NEHU and could not be considered for promotion to the post of section Officer from amongst the Assistants of NEHU. Mr. Sen submitted that the

authorities of NEHU were right in taking the stand that the only way for the Petitioner was to compete in an open selection for the post of section Officer as and when the post was advertised for direct recruitment. Mr. Sen referred to the seniority list of Assistants as on 1.12.91 published in the order dated 31.10.92 to show that the mode of recruitment of the Assistants who have been included in the said seniority list was through Selection Committee. DPC or DE and that none of the Assistants included in the seniority list have been recruited on the basis of the recommendation of the Advisory Committee. Finally. Mr. Sen submitted that in any case the seniority list was published on 31.10.92 and the Petitioner has approached this Court in the present petition only in the year 1998 and, therefore, the writ petition should be dismissed on the ground of delay and laches.

7. In view of the aforesaid submissions made by the learned Counsel for the parties, the first question to be decided in this case is whether the Selection Committee and the Executive Council of NEHU violated the rights of the Petitioner under Articles 14 and 16 of the Constitution by excluding him from consideration for promotion to the rank of section Officer on the ground that he was not appointed as an Assistant on the basis of the recommendation of a Selection Committee in accordance with the recruitment procedure of the NEHU but on the recommendation of the Advisory Committee of RSIC. It is true, as has been submitted by Mr. Sen, learned Counsel appearing for the NEHU, that under paragraph 4 of the terms and conditions for setting up of RSIC contained in the letter dated 25/29.6.82 of the Government of India, Department of Science & Technology to the Vice Chancellor of NEHU, recruitment of staff for RSIC was to be made in accordance with the Rules and the Regulations being followed by the NEHU and. therefore, appointments in RSIC were to be made on the basis of the recommendation of a Selection Committee in accordance with the recruitment policy of NEHU. But the Petitioner"s case was not a case of normal appointment but a case of regularisation. The Petitioner had initially been appointed as Store in-charge in the RSIC by order dated 7.12.84 and was thereafter appointed as an Assistant in RSIC on ad hoc basis by order dated 24.2.89. After the Petitioner had put in more than 5 years of service in RSIC his case for consideration for regularisation was considered and he was regularised in the post of Assistant with effect from 10.7.90 by orders of the Chairman of RSIC who was also the Vice Chancellor of NEHU. It is not disputed that the Chairman of RSIC and the Vice Chancellor of NEHU had the power to appoint an Assistant in the RSIC. All that is contended on behalf of the NEHU is that the Petitioner could have been appointed only on the basis of the, recommendations of a Selection Committee and not on the basis of the recommendation of Advisory Committee of the RSIC because under the recruitment policy of NEHU such appointments were to be made only on the basis of recommendation of a Selection Committee. In State of Haryana and others Vs. Piara Singh and others etc. etc., the Supreme Court has considered at length the law relating to regularisation and has held, inter alia, that the normal rule, of course, is irregular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made and if for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must

consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. As indicated above, the Petitioner was initially appointed on ad hoc basis and had already put in 5 years of service and the Head, RSIC in his letter dated 1.9.89 had recommended regularisation of the Petitioner having found that he was a sincere and able worker and had experience in store-keeping, book keeping and general administration, and the Advisory Committee of RSIC in its meeting held on 18.5.90 had unanimously recommended that the Petitioner be regularised in the post of Senior Assistant of RSIC. No statutory provision has been shown by the Respondent? which did not permit such regularisation of the Petitioner by the Chairman, RSIC and Vice Chancellor, NEHU on the recommendation of the Advisory Committee. The Selection Committee in its meeting held on 26.10.96 and the Executive Council in its meeting held on 21.3.97 have totally lost sight of the fact that the Petitioner''s regular appointment as Assistant of RSIC with effect from 10.7.90 was not a case of normal direct recruitment to the post of Assistant in accordance with the recruitment policy of the NEHU but was a case of regularisation of an ad hoc employee who had already put in 5 years of service prior to his regularisation and who has been found suitable for regularisation. 8. That apart, the Selection Committee and the Executive Council in their respective meetings held on 26.10.96 and 21.3.97 could not have refused to consider the case of the Petitioner for promotion to the higher rank of section Officer on the ground that his appointment to the post of Assistant was not made on the basis of recommendation of a Selection Committee. This is because, once a person is appointed to the post of Assistant by the Chairman of RSIC and the Vice Chancellor of NEHU, he comes into the grade of Assistant and is entitled to be considered for promotion to the next higher post from amongst the Assistants and at the time of consideration for such promotion, the authorities cannot refuse to consider him for promotion on the ground that his initial appointment to the grade of assistant was contrary to the recruitment policy of NEHU. The Selection Committee and the authority making promotion on the basis* of recommendation of Selection Committee cannot be allowed under law to question the appointment of an employee to the grade from which promotion is to be made to the higher grade and the limited function of such Selection Committee and the authority making promotion is to consider the eligibility and suitability of the employee already appointed to the grade for promotion to the higher grade. Exclusion of the Petitioner who had been regularly appointed to the grade of assistant with effect from 10.7.90 by order dated 19.12.90 from consideration for promotion was therefore violative of the right of the Petitioner to equality of opportunity in matters of public employment guaranteed under Article 14 and 16 of the Constitution.

9. Further, equality of opportunity for all citizens in matters relating to employment or appointment to any office under a State guaranteed under Article 16 of the Constitution is not just confined to equality of opportunity at the time of initial appointment to any office under a State. I extends to all matters relating to employment or appointment to any office under a State. Thus, equality of opportunity in matters relating to employment or

appointment to any office under a State will also extend to equality of opportunity in matters of absorption and promotion. If, therefore, the Executive Council of NEHU has resolved in its meetings held on 30.3.90 and 15.7.97 to treat the RSIC staff at par with other NEHU staff in terms of salary structure, service conditions, etc. and to treat the staff of RSIC as irregular staff of NEHU from the date of appointment, joining and to give them the service conditions/service benefits under the Rules and the Regulations as applicable to the staff of NEHU of the same cadre and grade, the said Executive Council could not exclude the Petitioner who was appointed on regular basis as an Assistant in RSIC with effect from 10.7.90 on the ground that his appointment was not in accordance with the recruitment procedure of NEHU. Once the Petitioner was appointed on irregular basis with effect from 10.7.90 by the Chairman of RSIC and the Vice Chancellor of NEHU, he became part of the existing irregular staff of RSIC and he could not be excluded from absorption as a regular staff of NEHU pursuant to the said resolutions dated 30.3.90 and 15.7.97 of the Executive Council only on the ground that his appointment was not in accordance with the recruitment procedure of NEHU. As has been held above, the appointment of the Petitioner was not a normal appointment by way of direct recruitment in accordance with the recruitment procedure of NEHU but was a case of regularisation of service as he had already put in 5 years of service on adhoc basis and such regularisation was permissible as per the law laid down by the Apex Court and was made by the competent authority after considering his eligibility and suitability for regular appointment as an Assistant. The exclusion of the Petitioner from absorption as a regular staff of NEHU and from service benefits of regular staff of NEHU in the grade of Assistant is therefore violative of his rights under Articles 14 and 16 of the Constitution.

10. It is true, as has been submitted by Mr. Sen, that the seniority list of Assistants of NEHU as on 1.12.91 published under Order dated 31.10.92 contains only the names of Assistants who had been appointed through SC, DPC and DE. But this does not mean that the Petitioner''s name cannot be included in the said seniority list not having been appointed through SC, DPC or DE. As has been held above, the Petitioner''s appointment was not a normal appointment through the prescribed selection procedure but was a case of regularisation after he had put in more than 5 years of service on ad hoc basis. Once he was appointed as an Assistant on-regular basis with effect from 10.7.90, he came into the grade of Assistants in the RSIC with effect from 10.7.90. Further, in case the Executive Council of NEHU has decided to absorb the existing regular staff of RSIC as regular staff of NEHU in the same grade or cadre, the Petitioner would also be entitled to the same benefit of absorption in the grade or cadre of assistants of NEHU including promotion to the higher post of section Officer. It is however settled law that the ad hoc period of appointment will not count towards seniority and, therefore, the seniority of the Petitioner in the grade of Assistant will only count from 10.7.90 with effect from which he has been regularised as an Assistant by order dated 19.12.90. Accordingly, depending upon the turn of the Petitioner in the seniority list he is entitled to be considered for promotion to the higher post of section Officer on seniority-cum-fitness to the 50% of the vacancies in the said post as per the circular dated 24.7.90 of the Officer on Special Duty,

NEHU.

11. The seniority list of Assistants as on 1.12.91 was of course circulated as far back as on 31.10.92 and the Petitioner has approached this Court in the present writ petition only in the year 1998. But it appears that it was only on 26.10.96 that the Selection Committee recommended that the Petitioner could not be considered for promotion to the higher post of section Officer as he had hot been appointed as an Assistant on the recommendation of a Selection Committee and it was only on 21.3.97 that the Executive Council of NEHU accepted the said recommendation of the Selection Committee and excluded the Petitioner from consideration for promotion to the higher post of section Officer. The primary object of a seniority list is to place the officers of a particular grade in their respective seniority position for the purpose of consideration for promotion to die next higher post. Therefore, until promotion is considered and denied to an officer, such an officer may represent to the authorities for inclusion of his name in the seniority list at the proper place for consideration for promotion. In the instant case, it appears that die Petitioner has represented from time to time before the authorities and it was only after promotion to the higher rank of section Officer was finally denied to him that he approached this Court in the present writ petition for relief. Therefore, this is not a fit case in which the writ petition can be dismissed on the ground of delay and laches.

12. In the result, the writ petition is allowed, the recommendations/observations of the Selection Committee made in its meeting held on 26.10.96 and die resolution of the Executive Council of NEHU taken in its meeting held on 21.3.97 excluding the Petitioner from consideration for promotion to the post of section Officer on the ground mat his appointment as an Assistant was not on die basis of recommendation of a Selection Committee are quashed, and the Respondent are directed to include the name of the Petitioner in the seniority list of Assistants treating him regular Assistant of NEHU with effect from 10.7.90 and give him seniority accordingly. The Respondents are further directed to consider the case of me Petitioner for promotion to the next higher rank of section Officer with effect from the date when his immediate junior in the rank of Assistant was promoted as section Officer. It is however made clear that in case the Petitioner is promoted to such higher rank of section Officer, he will be given only notional service benefits including die seniority in die rank of section Officer but will not be given pay and allowances in the rank of section Officer with effect from the date of his promotion, for die period he has not actually worked as section Officer. It is further made clear that for me purpose of giving such promotion to the Petitioner to me higher rank of section Officer, promotion of no other person to die rank of section Officer already made will be affected pursuant to this judgment and order. Considering however die entire facts and circumstances of die case, die parties shall bear their respective costs.