**111 CWN 299**

**Calcutta High Court**

**Case No:** F.M.A. No. 443 of 2006

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| Bidhan Chandra Krishi Viswavidyalaya and Another | | APPELLANT |
| | Vs | |
| Dr. Gurupada Sarkar and Others | | RESPONDENT |

**Date of Decision:** Feb. 6, 2007

**Acts Referred:**

- Bidhan Chandra Krishi Viswavidyalaya Act, 1974 - Section 33
- Constitution of India, 1950 - Article 136

**Citation:** 111 CWN 299

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Arunabha Basu, J

**Bench:** Division Bench

**Advocate:** Kashi Kanta Moitra, P.S. Deb Burman, Sharada Parmar, Kamlesh Jha, Amal Kumar Mukherjee and Subhajit Dan, for the Appellant; P.S. Bose, Satyajit Talukdar and Praloy Kar, for the Respondent

**Judgement**

Pranab Kumar Chattopadhyay, J.
This appeal has been preferred from the judgment and order dated 28th April, 2004 passed by the learned Single Judge whereby and whereunder the said learned Singh Judge allowed the writ petition and directed the University authorities to promote the writ petitioner to the post of Professor. The main issues raised in the instant appeal on behalf of the appellants are summarised hereinbelow:

i) Whether the learned Single Judge was correct in holding that there was no scops of taking into consideration the academic attainment" of the candidates by the selection committee?

ii) Whether the learned Single Judge was correct in holding that the selection committee was only empowered to simply see whether the report of the screening committee is in accordance with the rule and the rule does not permit the selection committee to further evaluate the candidates on the ground of "academic attainment"?

iii) Whether the learned Single Judge failed to appreciate the role of the Screening Committee as well as Selection Committee?

iv) Whether the learned Single Judge was correct in granting relief nullifying the selection process even without having any challenge to the selection process?

2. The university authority by a notification dated 24th July. 2000 prescribed a scheme whereby applications were invited from the intending candidates for being placed in the post of professors from the post of Reader upon fulfilling certain objective conditions under a scheme known as "Career Advancement Scheme".

3. The prescribed eligibility criteria for promotion to the post of Professor from Reader in terms of the aforesaid notification dated 24th July. 2000 are reproduced hereinbelow:

" Professor from Reader.

i. A Reader with minimum 8 (eight) years of service in the rank of Reader or seventeen (17) years of total service including those in the rank of Lecturer, Sr. Lecturer and Reader will be eligible for promotion to professor post.

ii. Participation and presentation in two (2) seminars/conference in the subject area or two (2) refresher in courses to be offered by ICAR/SAUs/other institute of repute of 3-4 weeks duration. Contribution to leaching/research/extension education or others to enrich academic environment as", specified in Self Appraisal Form.

iii. Submission of Self Appraisal Form."

4. It has also been mentioned in the said notification that a candidate seeking promotion from the post of Reader to Professor should score atleast 40 points (cumulative). In the said notification it has been specifically clarified that cumulative point means the Points earned during the total period of service i.e. 40 points to be scored for promotion of a Reader to Professor from the period of Lectureship to the date of claim for Professorship. In the said notification, the mode of distribution of points has also been mentioned.

5. The writ petitioner submitted an application pursuant to the aforesaid notification with supporting documents and claimed that in terms of the said notification he secured 112 points while the requirement of score for promotion to the post of Professor from Reader is only 40 points. Pursuant to the said notification dated 24th July, 2000. minimum 40 points should be scored for promotion to the post of Professor from Reader and the writ petitioner although claimed 112 points but ultimately the screening committee awarded 84

points to the said writ petitioner. It has been specifically urged on behalf of the writ petitioner that three teachers even after securing lesser marks than the said writ petitioner have been promoted to the post of Professor although the writ petitioner was denied such promotion inspite of better academic records.

6. The selection process for promotion from the post of Reader to Professor is a three-tier system consisting of Screening Committee, Selection Committee and finally the Executive Council of the University. Self appraisal forms and other documents submitted by the candidates seeking promotion to the post of Professor are scrutinised by the Screening Committee and thereafter, the duly constituted Selection Committee is to assess the merits of the candidates. The Executive Council of the University takes the ultimate decision in the matter of promotion on the basis of the recommendation of the Selection Committee.

7. Although the writ petitioner claimed 112 points as per the norms regarding distribution of points mentioned in the notification dated 24th July. 2000. the screening committee without disclosing any reason came to the conclusion that the writ petitioner is entitled to 84 points only. However, even according to the appellants herein, the writ petitioner secured points far above the minimum required score. The Selection Committee constituted by the appellant University for the purpose of evaluating and recommending upliftment of teachers under Career Advancement Scheme in the Department of Genetics under the faculty of Agriculture refused to recommend the petitioner for promotion to the post of Professor from Reader on three occasions., The Selection Committed for the first time considered the case of the writ petitioner alongwith others in the meeting held on 6th December. 2000 and refused to recommended the petitioner for promotion to the post of Professor. Subsequently, on 13th February, 2002 the Selection Committee again convened a meeting and refused to recommend the writ petitioner on the ground that academic attainments need to be improved.

8. The Executive Council of the University in its meeting held on 14th May, 2002 specifically resolved in respect of the non-recommended cases like the writ petitioner as hereunder:

"4. It is resolved that all the "not recommended" cases for Career Advancement will be referred back to the Selection Committee as per the provision of the Bidhan Chandra Krishi Viswavidyalaya Statute (Clause 14 of Part 11 of the Statutes relating to the designation, manner of appointment and the terms and conditions of service of the teachers of the Viswavidyalaya). Vice-Chancellor is authorised by the Executive Council to do the needful for giving justifications/reasons for referring back the "not recommended" cases (as mentioned above) to the Selection Committee in consultation with the administration."

9. Pursuant to the aforesaid decision of the Executive Council of the University, the Selection Committee reviewed the case of the writ petitioner alongwith other

non-recommended cases on 30th May, 2003 and unfortunately the said Selection Committee again stuck to its earlier decision by not recommending the writ petitioner for promotion to the

10. Mr. Kashi Kanta Moitra, learned Senior Counsel representing the appellants submits that the University authorities are bound by the statutory provisions for implementing Career Advancement Scheme. Mr. Moitra further submits that Section 33 of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974, and Clauses 8. 9 and 14 of the Statutes of the university contemplates the selection process whereunder the screening committee is not constituted with any expert and the duty of the said screening committee is limited only to allot points to a candidate seeking promotion on the basis of self appraisal form by mere arithmetic calculations following the norms mentioned in the Notification dated 24th July, 2000. The Selection Committee comprising of experts is, however, authorised to evaluate the fitness of candidates on the basis of academic attainments. Mr. Moitra also submits that Clause 14 of the Statutes empowers the Selection Committee to recommend for appointment/promotion.

11. It has been urged on behalf of the appellants that the writ petitioner cannot be considered for promotion to the post of Professor as the Selection Committee did not recommend the name of the writ petitioner for such promotion. It is not in dispute that the Selection Committee refused to recommend the case of the writ petitioner on the ground that academic attainments need to be improved.

12. The learned Single Judge while deciding the writ petition considered the aforesaid issue regarding the authority of the Selection Committee to consider the academic attainments of the candidates under the Career Advancement Scheme for the purpose of evaluating and recommending upliftment of teachers. Upon considering the arguments advanced on behalf of the respective parties and also on consideration of the relevant materials on record, the learned Single judge came to the following conclusions :

"I thus find that the respondent authority failed to produce before this Court any just reason for superseding the petitioner when a person having obtained 43 marks has been promoted. Academic attainment is not a factor to be taken into consideration in accordance with the notification and the Selection Committee had no authority to supersede a candidate with higher score unless it is held that his scores were wrongly given. It has also been pointed out that in this case there was even no separate interview and no score-sheet was prepared by the Selection Committee for considering the candidatures which could justify supersession of the petitioner."

13. The learned Single Judge also held that there is no provision for assessment of the candidates on the basis of academic attainment under the Career Advancement Scheme.

14. In the judgment under appeal the learned Single Judge specifically held that the screening committee would verify whether self appraisal form has been properly filled up

and the scores have been allotted correctly. According to the learned Single Judge, the Selection Committee will simply see whether the report of the screening committee is in accordance with the rules. The learned Single Judge also held that the rules do not permit the Selection Committee, to further evaluate the candidates on the ground of academic attainment.

15. Now. it is to be examined whether the role of the Selection Committee can be so simplified as mentioned in the judgment under appeal.

16. The very constitution of the Selection Committee confers Special status and/or authority to the Selection Committee in the matter of recommending a candidate for appointment or promotion. The screening committee is not constituted with any expert and the duty of the screening committee is limited to scrutinise the allotments and/or distribution of points of a candidate on the basis of the self appraisal form. However, there is no scope for assessing the merits of a candidate by the screening committee since the subject experts are not the members of the screening committee.

17. The Selection Committee consists of three experts having special knowledge of the subject which the Professor will teach and therefore. the Selection Committee with the help of the expert members can assess the competence of a Candidate on evaluating the academic attainments. The role of the screening committee is somehow clerical in nature while the duty of the Selection Committee is obviously to assess the merits of the candidates seeking appointments and/or promotion. The Selection Committee for the post of Professor consists of three persons not holding any office of profit under the University and having special knowledge of the Subject which the Professor will teach or on which the said Professor will impart instructions or conduct and guide research. Clauses 8 and 9 of the Statutes are set out hereunder:

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| Screening Committee | "8. The Screening Committee shall consist of:<br><br>i) Vice-Chancellor who shall act as the Chairman;<br>ii) Dean of the Faculty concerned:<br>iii) Dean. Host-Graduate Studies:<br>iv) Registrar. Member Secretary.<br>The Chairman, the Member Secretary and another member of the Committee shall from the quorum. The Screening Committee shall scrutinize all the applications including bio-data of contact candidates and shall recommend the names of candidates for all categories of posts of teachers to be called for interview. |

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| Selection Committee for the post of teacher in the rank of Professor or Reader. | 9. There shall be a Selection Committee for Selection of candidates for the post of teacher in the rank of Professor or of Reader consisting of<br>i) Vice Chancellor who shall act as the Chairman;<br>ii) Dean of Faculty concerned;<br>iii) Three persons not holding any office of profit under the University and having special knowledge of the subject which the Professor or the Reader will teach or on which he will import instruction or conduct and guide research or extension education programme, of whom two shall be the nominees of the Chancellor and one shall be a nominee of the Executive Council " |

18. For the aforementioned reasons, we are not inclined to ignore the role of the experts in the Selection Committee as, in our opinion, the said expert members of the Selection Committee are required to discharge a very important role in the selection process in view of the fact that the expert members can only enlighten other members of the Selection Committee about the efficiency and/or merits of the candidates can only enlighten and/or seeking promotions and/or competence appointments to the posts of teacher in the rank of Professor. The academic attainments of the candidates, therefore, can only be adjudged and/or assessed by the Selection Committee.

19. Certain basic criteria have been laid down in the notification dated 24th July, 2000 for promotion to the post of Professor from Reader. The candidates seeking promotion to the post of Professor from Reader must fulfill the eligibility criteria as mentioned in the aforesaid notification dated 24th July, 2000 and the screening committee should only examine and/or scrutinise the self appraisal forms and other testimonials submitted by the candidates in order to ascertain whether the candidates concerned have fulfilled the prescribed eligibility criteria. However, the merits of the candidates cannot be assessed by the screening committee in absence of the subject experts. The selection committee, therefore, with the help of the subject expert members is authorised and competent to assess the fitness, efficiency and merits of the respective candidates.

20. For the aforementioned reasons, we hold that under the Bidhan Chandra Krishi Viswavidyalaya Act and the Statutes framed thereunder and also under Career Advancement Scheme the Selection Committee is authorised and competent to evaluate and/or assess the academic attainments and/or academic standards and/or academic achievements of the candidates while deciding the fitness and/or efficiency and/or merits

of the candidates seeking promotion and/or appointment to the posts of Professor. In the instant case, however, it is to be examined whether the Selection Committee has discharged its duties in an appropriate manner.

21. Undisputedly, the Selection Committee did not hold my interview of the candidates seeking promotion to the post of Professor from Reader and only considered the self, appraisal forms and other connected papers submitted by the concerned candidates. No score-sheet was even prepared by the members of the Selection Committee. The expert members did not express any written opinion upon assessing the merits of the candidates. The assessments of the candidates by the expert members have also not been recorded even in the minutes of the Proceedings of the meeting of the Selection Committee. Most surprisingly, the members of the Selection Committee even did not furnish any reason while reviewing and/or reconsidering case of the writ petitioner alongwith other non-recommended cases pursuant to the specific direction of the Executive Council of the appellant University.

22. Sub-section 4 of Section 33 of Bidhan Chandra Krishi Viswavidyalaya Act, 1974 is relevant in this regard and the same is reproduced hereinbelow:

" (4) If the Executive Council does not accept the recommendation of a Selection Committee, it shall refer the recommendation back to the Selection Committee with reasons for reconsideration and if the Executive Council does not accept the reconsidered views of the Selection Committee, the matter shall be referred to the Chancellor with reasons and the decision of the Chancellor shall be final."

23. In view of the clear language of the said provision, the Selection Committee was duty bound to record the reasons after reconsideration of the individual cases and the Executive Council was required either to accept or not to accept the reconsidered views of the Selection Committee.

24. In the present case, the proceeding of the Selection Committee dated 30th May, 2003 clearly reflects that the said Selection Committee reconsidered the not recommended cases as per the direction of the Executive Council but did not assign any reason or reconsidered views in respect of any of the candidates including the writ petitioner, save and except recording "not recommended". In this view of the matter, it is clear that Selection Committee acted in a manner not in consonance with the clear provision of the Statute as mentioned above.

25. The role of the expert members cannot be appreciated as, in our opinion, the said expert members did not record their individual opinion in respect of the candidates at any point of time on examining all the papers and documents submitted by the candidates concerned seeking promotion to the post of Professor from Reader. The members of the Selection Committee particularly the expert members did not indicate the short-comings of the petitioner at any point of time although the members of the Selection Committee

did not recommend the petitioner for promotion to the post of Professor from Reader on repeated occasions inspite of securing higher score than other candidates who were recommended by the said Selection Committee.

26. The writ petitioner herein alongwith other successful candidates fulfilled the eligibility criteria in terms of the notification dated 24th July, 2000. The Screening Committee recommended the name of the writ petitioner alongwith other successful candidates. Undisputedly, the writ petitioner secured higher score than many of the successful candidates recommended by the Selection Committee and therefore, the Selection Committee should have assigned proper reasons for not recommending the candidature of the writ petitioner inspite of securing higher score than the other successful candidates recommended for promotion to the post of Professor. By not specifically indicating the shortcomings of the writ petitioner in respect of the academic attainments inspite of fulfillment of the eligibility criteria in terms of the notification dated 24th July, 2000, the members of the Selection Committee committed serious error. The decisions of the Selection Committee should have been supported by adequate reasons specially when the writ petitioner herein has fulfilled the eligibility criteria pursuant to the notification dated 24th July, 2000 and secured higher score than many of the recommended and ultimately selected candidates. The decisions of the Selection Committee particularly in respect of the writ petitioner cannot be justified in absence of proper and valid reasons.

27. For the aforesaid reasons, we are unable to approve the decisions of the Selection Committee as recorded in the minutes of the meetings held on 6th December, 2000, 13th February, 2002 and 30th May, 2003. Furthermore, we also do not approve the role, conduct and functioning of the expert members of the aforesaid Selection Committee as the said members neither recorded any opinion on assessing individual merits of the candidates seeking promotion to the post of Professor in an appropriate manner nor even indicated any shortcoming with regard to the academic attainment of the writ petitioner.

28. It is true that the writ petitioner herein did not challenge the selection process as the said writ petitioner had no grievance regarding the constitution of the Selection Committee but at the same time it is also expected that the Selection Committee will discharge its obligations strictly in accordance with law and there should be no scope of any arbitrariness in the decision of the Selection Committee. In the instant case, however, the Selection Committee particularly the expert members of the Selection Committee did not specify the shortcomings of the writ petitioner with regard to the academic attainments while admittedly, the screening committee recommended the case of the writ petitioner as an eligible candidate following the norms mentioned in the notification dated 24th July, 2000.

29. The writ petitioner herein has only challenged the decision of the Committee for not recommending the case of the said writ petitioner for promotion to the post of Professor in absence of any valid ground under the relevant rules and the scheme.

30. Mr. Moitra, learned Senior Counsel of the appellants submits that the appellant University is guided by the Statutes and cannot grant promotion in absence of recommendation of the Selection Committee in terms of the provisions of the Statute. Mr. Moitra further submits that in the instant case promotion to the post of Professor can be given only on the recommendation of the Selection Committee and in no other manner. The learned Senior Counsel of the appellants relied on the following decisions of the Supreme Court in support of the aforesaid contentions :

1. (1995) 3 SCC 486 [Madan Lal & Ors. vs. State of J & K and Ors.]

2. (2003)2 SCC 111 [Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors.] (Para 40 at Page 125)

31. The principles laid down by the Apex Court in the aforesaid decisions are not in dispute but the same cannot be of any help in the instant case to support the actions of the members of the Selection Committee. We have already observed that the members of the Selection Committee particularly the expert members have failed to discharge their due duties and responsibilities in an appropriate manner as the case of the writ petitioner was not recommended for promotion to the post of Professor from Reader without any valid reason although several other candidates were recommended for promotion to the said post of Professor even though the said candidates, admittedly, scored lesser points than the writ petitioner herein,

32. The learned Advocate of the writ petitioner also urged before this Court that the Selection Committee herein has superimposed a condition outside the scope and ambit of the Career Advancement Scheme and the relevant Rules while assessing the candidates on the basis of academic attainments. Referring to a Full Bench decision of the Supreme Court in the case of The State of Maharashtra & Ors. vs. Association of Maharashtra Education Service Class II Officers & Ors., reported in AIR 1974 SC 2184, the learned Advocate of the respondent/writ petitioner submits that the superimposition of any condition contrary to the scheme of promotion is not at all permissible. The learned Single Judge has also held that there is no provision for assessment of any of the candidates on the basis of academic attainment.

33. However, for the reasons discussed hereinabove, we have already held that the academic attainments of the candidates can be assessed by the members of the Selection Committee and it cannot be said that the assessment of any candidate by the Selection Committee on the basis of the academic attainment is contrary to the Career Advancement Scheme for the simple reason that the inclusion of the expert members in the Selection Committee casts specific obligation upon the Selection Committee to assess the academic attainments of the candidates alongwith other relevant factors. Therefore, the aforesaid decision of the Supreme Court in the case of The State of Maharshtra and Ors. vs. Association of Maharashtra Education Service Class II Officers & Ors. (Supra) cannot be of any help to the writ petitioner herein in the facts of the

present case.

34. Although we have already held that the Selection Committee is authorised and/or competent and/or entitled to assess the academic attainments of the candidates seeking promotion to the post of Professor but we have also specifically held that the members of the Selection Committee particularly the expert members did not discharge their due duties and responsibilities in an appropriate manner while assessing the merits of the candidates seeking promotion to the post of Professor including the writ petitioner herein.

35. The decisions of the Selection Committee constituted for evaluating and recommending the upliftment of teachers under the Career Advancement Scheme in the Department of Genetics under the faculty of Agriculture as mentioned in the minutes of the meetings held on 6th December, 2000, 13th February, 2002 and 30th May, 2003, therefore, cannot be accepted and approved for want of transparency and non-furnishing of valid and proper reasons by the Selection Committee while assessing the merits of the candidates including the writ petitioner for the purpose of recommending promotion to the post of Professor. For the reasons discussed hereinbefore, the decisions of the Selection Committee regarding assessment of the candidates including the recommendations made by the said Selection Committee as recorded in the minutes of the meetings held on 6th December, 2000, 13th February, 2002 and 30th May, 2003 cannot be sustained and the same are liable to be quashed.

36. Under ordinary circumstances, we would have quashed the aforesaid decisions of the Selection Committee in its entirety but we cannot lose sight of the fact that few teachers have already been granted promotion to the post of Professor pursuant to the aforesaid recommendations of the Selection Committee and the interests of the said Professors would be seriously prejudiced if the entire decisions of the Selection Committee as recorded in the minutes of the meetings held on 6th December, 2000, 13th February, 2002 and 30th May, 2003 are quashed at this stage specially when the said Professor are not parties to the present proceedings. Furthermore, we are also of the opinion that settled position should not be allowed to be unsettled at this stage.

37. Accordingly, we are of the opinion that the interests of justice would be subserved if the appellants herein are directed to comply with the directions of the learned Single Judge by granting the benefits of promotion to the writ petitioner since the Selection Committee did not indicate any specific deficiency with regard to the academic qualifications or any other eligibility criteria of the said writ petitioner as per the declared norms mentioned in the notification dated 24th July 2000. The learned Advocate of the respondent/writ petitioner referred to and relied upon a decision of the Supreme Court in the case of Inder Prakash Gupta vs. State of J & K and Ors., reported in (2004) 6 SCC 786 which, in our opinion, is very much applicable in the facts of the present case. The relevant paragraphs from the aforesaid decision are quoted hereinbelow:

"42. In ordinary course we would have allowed the appeal but we cannot lose sight of the fact that the selections had been made in the year 1994. A valuable period of 10 years has elapsed. The private respondents have been working in their posts for the last 10 years. It is trite that with a view to do complete justice between the parties, this Court in a given case may not exercise its jurisdiction under Article 136 of the Constitution of India.

43. We are, therefore, of the opinion that the interest of justice would be subserved if the State is directed to fully comply with the directions of the High Court by giving all benefits to the appellant herein including monetary benefits and seniority by placing him in the select list above Respondents 3 and 9. We further direct that if any respondent has been promoted to the higher post in the meantime the same would be subject to our aforementioned direction. Necessary order in this behalf must be passed by the State."

38. In the aforesaid circumstances, although we do not approve the findings and the decisions of the learned Single Judge in respect of the power and/or authority and/or jurisdiction of the Selection Committee but at the same time, we are also not inclined to refuse the benefits of promotion granted to the writ petitioner by the said learned Single Judge as we are satisfied and convinced that the Selection Committee repeatedly refused to recommend the case of the writ petitioner for promotion to the post of Professor in absence of valid reasons and proper grounds. We, therefore, direct the appellants herein to implement the directions of the learned Single Judge as mentioned in the order under appeal in respect of the writ petitioner by granting promotion to the said writ petitioner to the post of Professor without any further delay but positively within a period of three weeks from the date of communication of this order.

39. The instant appeal thus, stands disposed of without any order as to costs. Urgent xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.