

Dr. Nirmal Kumar Das Vs Rabindra Bharati University and Others

Court: Calcutta High Court

Date of Decision: Dec. 8, 2003

Acts Referred: Constitution of India, 1950 " Article 14, 19, 21, 226
Rabindra Bharati University Rules " Rule 159

Citation: (2004) 1 CALLT 494

Hon'ble Judges: Maharaja Sinha, J

Bench: Single Bench

Advocate: Arabinda Chatterjee, for the Appellant;Subrata Mukherjee and Gopa Aditya, for the Respondent

Judgement

M. Sinha, J.

In this writ application, a resolution taken by the Executive Council of the Rabindra Bharati University, on 16 July, 2001, is

under challenge. By the said resolution the said Executive Council rejected the application of the petitioner for re-employment. The petitioner

herein, Dr. Nirmal Kumar Das, made an application under the provisions of Rule 159 of the First Statute (supplements) under the Rabindra Bharati

University Act, 1981 (hereinafter referred to as "the said Rule 159") for the said re-employment. Under the said provisions if any teacher wishes

extension of his service after the completion of his full term of employment, then the said teacher is entitled to make an application before the

concerned authority for extension or re-employment and on the basis of the said application the authority concerned decides as to whether the

teacher in question should be re-employed. The provisions of the said Rule 159 for re-employment would be dealt with a little later in this judgment.

To my mind, the interpretation of the provisions of the said Rule 159 is one of the fundamental aspect of this case.

2. Since the petitioner has questioned the legal validity of the said resolution of the concerned authority of the Rabindra Bharati University whereby

the application of the writ petitioner for re-employment was rejected by the said authority, it is somewhat necessary and useful to consider the

chain of events that had taken place before passing of the said resolution by the concerned authority in the case of the petitioner herein. The

petitioner herein, Dr. Nirmal Kumar Das was appointed as a Lecturer in Rabindra Bharati University in July 1973, the said appointment as made

by the Registrar of Rabindra Bharati University by his letter dated 4 April, 1972.

The petitioner commenced his employment as such lecturer on and from 1 July, 1973, in Rabindra Bharati University. His service was confirmed

as lecturer on 28 March, 1980. Thereafter, the petitioner in March 1980, to be precise, on 20 March 1980, was promoted to the post of Reader

in Medieval Bengali and Literature. On the basis of "a resolution of the Executive Council of the said University dated 16 March, 1986, the

petitioner was appointed as the Professor of the said University with effect from 1 January, 1986. Within a period of three years on 16 August,

1989, the petitioner was appointed as Dean of the Faculty Council for Arts of the said University. The normal age of retirement of the teachers of

the University is 60 years.

3. As aforesaid, a teacher may, however, apply for re-employment and under the provisions of the said Rule 159, the Executive Council of the

University may give re-employment to such a teacher of the University who attains the age of sixty years considering his academic performance

particularly during the last five years preceding the date of his superannuation.

4. On or about 23 June, 2000, the petitioner made application for his re-employment as the petitioner was to complete his 60 years of age, in

other words, as the petitioner would attain the age of his retirement from his service in the Rabindra Bharati University on 31 January, 2001. Since,

in my opinion, the interpretation of the provisions of the said Rule 159 is one of the fundamental issues in this proceeding, the said Rule 159 made

under the provisions of the Rabindra Bharati University Act, 1981 is set out below:--

159. A whole-time teacher of the University enjoying University Grants Commission scale of pay as approved by the State Government and

introduced since January 1, 1973 shall retire after the completion of 60 years of age:

Provided that the Executive Council may give re-employment to such a teacher of the University beyond the age of 60 years considering his

academic performance particularly during the last 5 years preceding the date of his superannuation. On receipt of a written application for re-

employment along with a self-assessment statement, the Executive Council shall form a Screening Committee with the following members for

consideration of the relevant application and papers and submission of their recommendation to the Executive Council:

(a) the Vice-Chancellor, Chairman (ex-officio);

(b) the Dean of the concerned Faculty Council for Postgraduate Studies, if any;

(c) one expert in the field of specialisation of the teacher concerned nominated by the Chancellor; and

(d) two experts in the field of specialisation; Provided further that--

(i) the Executive Council shall have the power to dispense with the requirement of submission of a written application and self-assessment

statement in exceptional cases on the recommendation of the Vice Chancellor;

(ii) such period of re-employment shall initially be for a period of two years and subsequently for a period of not more than one year at a time;

(iii) such re-employment shall not be given if the teacher concerned has attained 65 years of age;

(iv) the recommendation of the Screening Committee regarding re-employment shall be made on the basis of the performance of the teacher

concerned as a Teacher and/or quality of research papers or books produced by him as also on the basis of a medical certificate indicating his

physical fitness; and

(v) the pay of such re-employed teacher shall be fixed in accordance with the normal rules applicable to the employees of the State Government.

5. It appears that pursuant to the said application of the petitioner for re-employment, on or about 31 July, 2000, a meeting was held of the

Executive Council of the said University and a Screening Committee was constituted by the Executive Committee in terms of the provisions of the

said Rule 159 for consideration of the application of the petitioner for re-employment. The Screening Committee under the said Rule 159 after

considering the said application and other relevant papers made the recommendation for re-employment of the petitioner and also other three

Professors of the said University who also applied for re-employment under the said Rule 159. The Screening Committee, therefore,

recommended altogether four cases of the four applicants, being the Professors of the said University for re-employment including the petitioner

herein.

6. The said recommendation for re-employment of the four applicants including the petitioner was made by the Screening Committee on 27

October, 2000 and the said recommendation were considered by the Executive Council in its meeting held on 15 November, 2000. In the said

meeting on 15 November, 2000 the recommendations made for re-employment of the other two applicants were accepted by the said Executive

Council but the case of the petitioner was not considered on 15 November, 2000 and the same was deferred by the Executive Council. One of the

members of the said Executive Council Professor Dilip Kumar Chatterjee, in fact, raised objection. The text of the said objection raised by the said

Professor Dilip Kumar Chatterjee, one of the members of the Executive Council, is mentioned at page 15 of the writ application. The said

objection as appears at page 15 of the writ application, is set out below:--

In the meeting dated 15th November, 2000 vide Resolution No. 6A re-employment of all the 4 teachers should be made but the members,

instead of 4 teachers only recommended two teachers for two years. In this aspect my suggestion is to give re-employment to all the four teachers

and not in respect of only two teachers because this action is totally against the interest of the teachers and totally unethical. Accordingly, I am

submitting my objection in writing and leaving this place on protest for taking this decision which is against the interest of the teachers.

7. On the subsequent date another meeting of the said Executive Council was held where the said recommendations of the Screening Committee

for re-employment of the teachers was not placed but the same was to be considered in the next meeting, it was decided. Thereafter, another

meeting was held on 22 January, 2001 where the case of recommendation of the petitioner for re-employment was to be considered by the

Executive Council but no decision was taken on 22 January, 2001, by the Executive Council and the same was again deferred till the next meeting

of the Executive Council.

8. It appears that the petitioner, thereafter, made a representation on 24 January, 2001, since the case of the petitioner was not considered as

recommended by the Screening Committee even at the meeting held on 22 January, 2001. In the said representation, the petitioner sought for a

decision on his application for re-employment of the concerned authority namely the Executive Council of the said Rabindra Bharati University by

25 January, 2001. This was done by the petitioner in view of the guideline issued by the University Grant Commission during the pendency of the

said application for re-employment of the petitioner.

9. After making the said representation, the petitioner moved a writ application as the said representation of the petitioner was not considered and

on 2 February, 2001, His Lordship Justice Ronojit Kumar Mitra (as His Lordship then was) had the occasion to consider the merits of the said

writ application of the petitioner herein. By an order dated 2 February, 2001, His Lordship Justice Ronojit Kumar Mitra was pleased to direct the

concerned respondents ""to give effect to the findings and recommendations of the Screening Committee in the next meeting of the Executive

Council....."". The said order dated 2 February 2001 of His Lordship Justice Ronojit Kumar Mitra is, in fact, set out at pages 18-20 of the writ

petition.

10. After the said order dated 2 February 2001, the Secretary of the Rabindra Bharati University issued a notice wherefrom it appears that on 22

February, 2001, a meeting of the Executive Council was to be held at 2 P.M. and at the said meeting the case of the petitioner for re-employment

was to be considered and a decision was to be taken regarding the re-employment of the petitioner, Professor Nirmal Kumar Das. As no decision

was, thereafter, taken even inspite of the issuance of the said notice by the Registrar of the said University, the learned advocate on behalf of the

petitioner addressed a letter to the Executive Council that if no steps were taken in terms of the order of the Hon"ble High Court dated 2

February, 2001, within 17 March, 2001, an application for contempt would be moved against the concerned respondents.

11. In spite of the receipt of the said letter of the learned advocate for the petitioner the concerned authorities in particular the Executive Council

did not take any decision at the meeting held by them on 14 March, 2001.

12. Thereafter, however, since the Executive Council did not implement the order of High Court passed on 2 February, 2001, the learned

advocate on behalf of the petitioner moved a contempt application and at the hearing of the said application the concerned respondents disclosed

that an appeal was preferred against the said order of the 2 February, 2001, of His Lordship Justice Ronojit Kumar Mitra. Since an appeal was

preferred the said contempt application was adjourned by His Lordship Justice Mitra. However, at the same time His Lordship was pleased to

restrain the concerned respondents by an order of injunction from interfering with the service of the petitioner in any manner whatsoever. It was

further directed that the said contempt application would be kept pending till the disposal of the appeal against the said order dated 2 February,

2001, or till the matter was mentioned by the advocates for appropriate order. In the meantime, however, the appeal preferred against the said

order of Justice Ronojit Kumar Mitra, dated 2 February, 2001, was taken up for consideration and an order was made on 20 June, 2001, by the

learned Chief Justice presiding over the Division Bench. Firstly, the Appeal Court entertained the said appeal after condoning delay of 43 days in

preferring the said appeal. On merits of the appeal the order of the learned single Judge dated 2 February, 2001, was ""modified to the extent that it

would be open for the Executive Council to consider the recommendation of the Screening Committee on merit for further extension of the writ

petitioner."".

13. It appears further from the said order of the Appeal Court dated 20 June 2001 that the learned counsel for the appellant submitted that the

Executive Council was likely to convene a meeting within a month of this effect about the result of the consideration of the writ petitioner"s

candidature as recommended by the Screening Committee. The learned counsel on behalf of the Rabindra Bharati University also submitted in

Court that he would file a petition to that effect on the next date of hearing. After the said order of the Appeal Court dated 20 June 2001, the

Executive Council of the said University again met on 16 July, 2001 and took up the case of the petitioner for re-employment. However, the

Executive Council for the reasons mentioned in its resolution taken on 16 July, 2001, itself did not accept the recommendation of the Screening

Committee for re-employment of the petitioner. It may, however, be mentioned again that the said Screening Committee was formed by the

Executive Council of the said University in terms of the provisions of the said Rule 159, as aforesaid.

14. On or about 10 October, 2001, the present writ application was moved and the same was taken up for consideration by His Lordship Justice

Ashim Kumar Banerjee on 13 October, 2001, when his Lordship was pleased to direct the parties to maintain status quo as regards the service of

the petitioner and the said order was to continue till the disposal of the writ application or any order passed by the Division Bench in the said

appeal which was preferred against the said order of the learned single Judge Justice Ronojit Kumar Mitra on 2 February, 2001. On 9 January,

2002, however, the said appeal preferred by the University against the said order dated 2 February, 2001, of the learned single Judge was

disposed of with the observations that under the provisions of the said Rule 159, the Screening Committee was only a recommending body and it

was the discretion of the Executive Council to accept the recommendation of the Screening Committee or not to accept the same.

15. In the present case, however, the Executive Council had not approved the recommendation of the Screening Committee, which recommended

the case of the writ petitioner for re-employment as aforesaid. It is the decision and/or the resolution of the Executive Council dated 16 July, 2002,

which is under challenge in this writ application, as stated before. The resolution or the decision of the Executive Council in respect of the case of

the petitioner herein, for his re-employment is to be considered in this writ application. True it is that in considering the recommendation of the

Screening Committee for re-employment of a teacher of the University the Executive Council enjoys certain discretions as observed by the Appeal

Court in the said order but in exercising such discretion whether the Executive Council had or has acted in terms of the provisions of Rule 159 of

the Rabindra Bharati University Act, 1981, has to be considered herein. It is also to be considered whether the said discretion was exercised in

terms of the provisions of the said Rule 159 and whether the Executive Council in considering the case of the petitioner herein acted unreasonably

or arbitrarily or has abused their discretion in not accepting the said recommendation of the Screening Committee for re-employment of the

petitioner herein.

16. The entire proceeding of the meeting held by the Executive Council on 16 July, 2001, is on record of the present writ proceeding. On 16 July

2001, by the said resolution the Executive Council rejected the recommendation of the re-employment of the petitioner herein. I have had the

advantage of going through the entire proceeding and the resolution of the Executive Council dated 16 July, 2001 in rejecting the said

recommendation of the Screening Committee for re-employment of the petitioner.

17. The said proceeding or rather the material portions thereof of the Executive Council, which took place on 16 July, 2001, in rejecting the

application for re-employment on the basis of the recommendation of the Screening Committee, were as follows:--

(1) "Prof. Das (the petitioner herein) came up before the Hon'ble High Court before the report of the Screening Committee was placed before the

Executive Council. Although as per the Constitution of Rabindra Bharati University (Rule 159, First Statute Supplement Rabindra Bharati

University Act, 1981) it was completely within the power of the Executive Council to accept or reject the recommendation of re-employment of

any teacher.

(2) "Prof. Das (writ petitioner) was responsible for the monetary loss suffered by the University as reflected in the report of the Financial Officer as

well as the report of the Committee headed by Prof. Mohit Biswas in respect of North Suburban Wholesale Consumer Co-operative where Prof-

Das was the Chairman of the Tender Committee. Being the Chairman of the Tender Committee the responsibility for patronising the aforesaid

corruption also rests upon the shoulder of Prof. Nirmal Kumar Das. In spite of knowing entire incident Prof. Nirmal Kumar Das submitted the

application for getting re-employment. Prof. Nirmal Kumar Das was closely associated in respect of different administrative matter. He was the

Chief in the Department of Adult Education Centre of the University. If the report of the Financial Officer as well as the report of Prof. Mohit

Biswas could have been placed before the Executive Council then the enquiry could have been made relating to the financial irregularities of the

University against Mr. Das, in that event appropriate steps could be taken in respect of the aforesaid aspect. An opportunity will be evolved for

verification of the role of Prof. Nirmal Kumar Das in other work spheres of the University. The jurisdiction of the Executive Council has been

curtailed by sending the name of Prof. Das before the Screening Committee for considering the re-employment and accordingly, a question has

been crept up relating to the acceptance of re-employment of Prof, Das.

(3) ""Although a resolution was taken in the proceedings of the Executive Council dated 25.9.2000 and 25.11.2000 that if any complaint of

corruption against any teacher is pending for adjudication then that should be settled first before the Executive Council and then his name could be

sent to the Screening Committee for consideration of re-employment but in this case the aforesaid Rule has been violated by sending the name of

Prof. Das for consideration.....that in spite of the meeting of the Screening Committee there was enough time and opportunity for disposing

of the aforesaid complaint, but unfortunately the same has not been done. The Executive Council is the highest/prime elected representative for

administering the University. All the members of the Executive Council had altogether agitated and endorse the protest in the proceedings dated 22

January, 2001 for defaming its prerogative and Jurisdiction of the Executive Council. It is not possible for Executive Council to ratify any

recommendation of any work by which the Executive Council has lost its prestige.

(4) ""Re-employment is not the right accrued by any teacher as per the Constitution of the University. In the past huge number of distinguished

Professor, could not achieve the scope for re-employment or did not accept the ""re-employment. In the tenure of the Executive Council, elected

for the year 1994-98, not a single teacher could avail the opportunity of re-employment in terms of statute 159. Prof. Nirmal Kumar Das was very

effective member of the Executive Council at that point of time. Inspite of knowing the aforesaid for the Prof. Das in order to achieve the re-

employment filed one after another case against the University which is nothing but an incident without any example.

The acceptance of re-employment of Prof. Nirmal Kumar Das has been negated due to his harmful stand against the University as well as the

Executive Council. In this juncture the attitude and/or steps taken by Prof. Das against the University as well as the Executive Council clearly

negated his acceptance in respect of re-employment.

For the aforesaid reason the recommendation in favour of Prof. Nirmal Kumar Das by the Screening Committee cannot be accepted by the

Executive Council and it has been decided to reject the application of re-employment.

18. The Vice-Chancellor of the Rabindra Bharati University who is also the President of the said Executive Council, however, held a different view

than the majority members of the Executive Council while the Executive Council rejected the said application of the petitioner. The dissenting

opinion of the Vice-Chancellor of the Rabindra Bharati University, being the President of the Executive Council, should also be referred to and the

same is set out below:

1. I am not holding the same opinion with the resolution.

2. As the President of the meeting I had given the direction to place the recommendation of the Screening Committee in the earlier proceeding and

that has been mentioned by the Registrar. However, Dr. Nirmal Kumar Das has been identified as corrupted.

3. In the note of the Registrar of the University nothing has been indicated that Dr. Nirmal Kumar Das is corrupted and/or practising the

corruption. In respect of employment the conditions indicated in the statute has been fulfilled by Dr. Das, and moreover the screening Committee

consists of the specialist unanimously recommended for re-employment of Dr. Das. In case of re-employment, I am holding the same opinion

which I have expressed on earlier occasion in case of re-employment no rule and/or no question can be raised in respect of the corruption,

because the same is not in accordance with the Constitution and not the matter germane to the issue and the aforesaid opinion I am still holding. I

am also indicating that it is an unbecoming incident that the unanimous recommendation of the Screening Committee has been rejected by raising

the question of corruption in case of re-employment.

19. Learned counsel, appearing in support of the writ application however, attacked the above resolution or the decision of the Executive Council

of Rabindra Bharati University on a few grounds, which I shall deal with a little later. It was submitted that the said resolution or the decision had

nothing to do with the merits of the application of the petitioner for re-employment. The said order or resolution, according to the learned counsel,

was utterly perverse and was taken in complete breach of or in total disregard to the provisions of the said Rule 159. The said resolution or

decision of the Executive Council of the said University was based on wholly irrelevant factors or considerations. In taking the resolution or in

arriving at its decision regarding the re-employment of the petitioner the Executive Council took all irrelevant and improper considerations and

factors into account and conveniently omitted to take most relevant considerations and factors into account for the purpose of deciding whether the

recommendations made by the Screening Committee in support of the re-employment of the petitioner should be accepted by the Executive

Council of the University.

20. From a plain reading of the said resolution and from a plain reading of the provisions under the said Rule 159, it is apparent that in taking the

resolution or the decision in the case of the petitioner's re-employment the Executive Council acted in utter breach and/or violation of the said

provision under the said Rule 159. The power or rather the discretion given to the Council under the said Rule 159 has been thoroughly abused by

the acts and actions of the Executive Council or rather the members of the Executive Council in taking the said resolution dated 16 November,

2001, in the case of the petitioner's re-employment. The said provision under the said Rule 159 has been made nugatory or non-existent by the

extent of its abuse committed by the Executive Council of the said University, it was submitted.

21. As I have said before, I have had the advantage of considering the entire proceeding, which has been disclosed in this writ application. From a

close and plain reading of the entire resolution taken by the Executive Council of the Rabindra Bharati University on 16 July, 2001, it appears that

the Executive Council or rather its members were pre-occupied with the alleged faults or defaults on the part of the petitioner Prof. Nirmal Kumar

Das, for instance the Executive Council found fault in Prof. Nirmal Kumar Das, the petitioner, as the petitioner invoked the writ jurisdiction of the

High Court before the report of the Screening Committee was placed before the Executive Council. The Executive Council was rather pre-

occupied with the question of its own power and was also pre-occupied in establishing its ultimate superior position either in rejecting or in

accepting the recommendation for re-employment of the Screening Committee. The question is just because the petitioner invoked the jurisdiction

of the High Court by questioning the alleged actions or inactions of the Executive Council of the Rabindra Bharati University, was the petitioner

guilty and whether that factor itself disentitled the petitioner from being considered for re-employment by the Executive Council of the said

University.

22. It appears from the proceedings of the meeting of the Executive Council, held on 16 July, 201 that the Executive Council preceded to consider

the case of the petitioner for re-employment with a closed mind from the beginning as the petitioner, rightly or wrongly, invoked the jurisdiction of

this High Court. At this juncture, however, the provisions under the said Rule 159 should be considered in somewhat detail, as the provisions of

Rule 159 are to determine whether the Executive Council in considering the case of the petitioner for re-employment acted in terms of the said

provision. In my opinion, the said provisions of the said Rule 159 give a complete guideline as to what considerations should be taken into account

for considering whether a teacher of the University who has applied for re-employment under this provision is to be re-employed and in order to

re-employ a teacher what factors should be taken into consideration by the authority concerned namely both the Screening Committee and the

Executive Council in a particular case of re-employment. Under the provisions of the said Rule 159 the Executive Council is empowered to give

re-employment to a teacher of the University beyond the age of 60 years. It is to be mentioned at this stage that normally a teacher of the

University retires at the age of 60 years but under this provision of the said Rule 159 the teacher also is entitled to apply for re-employment and the

re-employment is for a maximum period of 5 years as no re-employment is given or can be given after the teacher concerned has attained the age

of sixty five years.

23. Once an application is made for re-employment along with a self-assessment statement, the Executive Council is to form a Screening

Committee for consideration of the relevant application and papers in support of the said application and once such consideration is made the

Screening Committee makes recommendation if it finds that a particular case should be recommended for re-employment and such

recommendation is made, needless to mention, to the Executive Council who are to be the members of the Screening Committee are also

mentioned in the said Rule 159 itself. The members of the Screening Committee will be (a) Vice Chancellor, Chairman (ex-officio), (b) the Dean of

the concerned Faculty Council for post Graduate Studies, if any; (c) one expert in the field of specialisation of the teacher concerned nominated by

the Vice-Chancellor; and (d) two experts in the field of specialisation of the teacher concerned nominated by the Executive Council,

24. The Executive Council, it appears, is also empowered to dispense with the requirement of submission of a written application and self-

assessment statement for re-employment in exceptional cases on the recommendation of the Vice-Chancellor. Such period of re-employment shall

initially be for a period of two years and subsequently for a period not more than one year at a time. But no re-employment can be made after a

teacher has attained the age of 65 years.

25. Under the said Rule 159, it is categorically provided on what basis the Screening Committee can make recommendations for re-employment,

in other words, for the purpose of making a recommendation for re-employment of a teacher what factors should be the sole considerations for the

purpose of making recommendations for re-employment of a teacher are provided in the said Rule 159 itself. The said considerations, as appear

from the said Rule 159, are "the performance of the teacher concerned as a teacher and/or quality of research papers or books produced by him

as also on the basis of a medical certificate indicating his physical fitness.

26. Under the said Rule 159, therefore, for the purpose of making recommendation for re-employment of a teacher the Screening Committee is to

consider the performance of the teacher concerned as a teacher and or his quality of research papers or books produced by him. Nothing else

need be considered by the Screening Committee for the purpose of making recommendation for re-employment of a teacher to the Executive

Council of the University.

27. In the instant case, it appears, the recommendation for re-employment was made by the highly qualified and competent persons such as the

Vice-Chancellor of the University, Dean or the concerned Faculty in which the petitioner was a teacher and other experts named in the said Rule

159. The recommendation made by the Screening Committee in favour of the petitioner was a unanimous recommendation.

28. I have already dealt with the first objection or rather first ground upon which the Executive Council decided not to accept the recommendation

of the petitioner's re-employment and that was a ground of invoking the jurisdiction of the High Court of Calcutta by the petitioner to redress his

grievance in the case of his re-employment. The Executive Council also rejected the said recommendation of the Screening Committee for re-

employment on the alleged ground of misconduct. The second ground, however, has already been mentioned hereinabove in the judgment. It is

difficult for a reasonable man to appreciate as to why and how a teacher, in this case Prof. Nirmal Kumar Das, could be said to be guilty of

misconduct, no proceedings was ever held against him, nor any disciplinary proceeding was pending at the relevant point of time when the

Executive Council took up the case for consideration of the recommendation for re-employment of the petitioner. No reasonable man in my view

will be in a position to appreciate the real objection of the Executive Council to the recommendation of the Screening Committee for re-

employment of the petitioner.

29. The Executive Council or rather the members of the Executive Council merely mentioned a report of one Prof. Mohit Biswas. What was the

alleged report of Prof. Mohit Biswas, whether the petitioner had any opportunity to know what the contents of the said report was. The

observations of allegations made by the Executive Council against the teacher cannot, in my opinion, be at all relevant factors in considering a case

for re-employment of the petitioner herein under the provisions of the said Rule 159. The said Rule 159, in clear terms, provide that the Screening

Committee shall make the recommendation on the basis of the performance of a teacher as a teacher and or the quality or research papers or

books produced by him and the physical fitness of the teacher concerned. These are the only considerations for the purpose of recommendation

for re-employment of a teacher of the University. The Screening Committee had been satisfied as to the performance of the petitioner as a teacher

of the University either on the basis of his performance as a teacher or with the quality of research papers or books produced by him or perhaps

with both and made the recommendation for re-employment of the petitioner. On the date of the recommendation made or even thereafter, no

show-cause was issued against the petitioner, no disciplinary proceeding was contemplated, and no disciplinary proceeding was pending. No

allegation against the moral character of the petitioner had ever been made. Even then the members of the Executive Council took these factors

into account, which in my opinion, are wholly irrelevant factors and decided to leave out the most relevant factors which according to the Screening

Committee were the determining factors as far as the question of re-employment of the petitioner was concerned.

30. From a plain reading of the second and third grounds of rejection of the Executive Council, it appears that the Executive Council was

considering that case from a wrong perspective as the entire ground was based on mere surmise and conjectures and also, to my mind, the second

ground gives an impression in the mind of a reasonable man that the said comments were made against the teacher, who applied for re-

employment, by a Council or rather its members or rather some of them who were actuated by malice. The second ground for rejection also

appears to be absolutely vague, devoid of any particulars, based on pure uncertainties and the same is incapable of carrying any meaning and I

have no hesitation to call the said second ground to be meaningless, uncertain and absolutely vague, no reasonable man could or can form any

opinion on the basis of the said ground in terms of the provisions of the said Rule 159 for re-employment for the petitioner. Most importantly,

however, the said ground or rather the considerations made by the Council for rejection of the application of the petitioner was wholly contrary to

the provisions of the said Rule 159. By taking the most irrelevant factors into account and by leaving the most relevant factors out of its

considerations the Executive Council, in my opinion, acted either wholly without jurisdiction or far in excess of its jurisdiction in rejecting the

recommendations of the Screening Committee for re-employment of the petitioner herein, conferred upon it by the said Rule 159.

31. From the third ground also it appears that the Council rejected the application for re-employment of the petitioner on the alleged plea that the

Screening Committee allegedly violated the Rule in question namely the said Rule 159. Here again, it would be impossible for a reasonable man

who is otherwise acquainted with the full facts and circumstances of the case to appreciate the relevancy of this ground. How the Screening

Committee violated any alleged rule by sending the name of the petitioner along with other candidates for considering the application for re-

employment under the provisions of the said Rule 159 cannot be understood and appreciated with any rational approach. The said ground, is in my

opinion, is utterly irrelevant considering the provisions of the Rule namely Rule 159 which confers the power upon the Executive Council to

consider the case of re-employment as recommended by the Screening Committee of the Rabindra Bharati University in question for deciding a

particular case of re-employment.

32. From a plain reading of the fourth ground in support of the resolution of the Executive Council it appears that the Executive Council was guided

by wholly irrelevant considerations in order to decide whether the recommendation made by the Screening Committee for re-employment of the

petitioner should be accepted or not. Just because the other Professors, who were distinguished, could not achieve the scope for re-employment

or did not accept the re-employment in the past when Prof. Nirmal Kumar Das, the petitioner herein, was a member of the Executive Council

could not and cannot be regarded as a valid ground or a valid consideration for arriving at a decision as to whether the recommendations made by

the Screening Committee for re-employment of the petitioner should be accepted or not the fourth ground also gives a clear impression that the

Executive Council in considering the case of the petitioner for re-employment took a retaliatory or rather a revengeful or vindictive approach on the

alleged ground of the alleged role of the petitioner as an alleged member of the Executive Council in the past, (1994-98).

33. At this juncture, from a plain reading of the Rule 159 it can safely be said that the above considerations was utterly irrelevant or extraneous

considerations which should never have been taken into account and the said Rule 159 does not also empower the council to take these wholly

irrelevant or improper considerations into account for its decision on the recommendation of the Screening Committee for re-employment of the

petitioner.

34. The above were the grounds, as mentioned earlier, on the basis of which the Executive Council rejected the recommendation in favour of the

petitioner of the Screening Committee and the application for re-employment of the petitioner was, thus, rejected as well.

35. I have already dealt with the above grounds in support of the rejection of the application of the writ petitioner and also in support of the

rejection of the recommendation in favour of the petitioner by the Screening Committee for re-employment in this judgment, I do not intend to

repeat them.

36. The said Rule 159, however, provides as to what considerations should be taken by the Executive Council into account for deciding whether

an application made by a teacher of the University beyond sixty years of age should be accepted for re-employment. The Rule 159 provides in

clear terms that the Executive Council may give re-employment to such a teacher of the University beyond the age of sixty years considering his

academic performance particularly during the last five years preceding the date of his superannuation. The last five years academic performance of

a teacher of the University who has applied for re-employment should, according to the said Rule 159, be the fundamental and/or main

consideration if not the only consideration by the Executive Council while considering an application for re-employment. How and when that

consideration is to be made is also provided in the said Rule 159 itself. When a teacher of the University, makes a written application for re-

employment the Executive Council is under a legal obligation to form a Screening Committee with the members who are named in the said Rule

itself. Once the written application is made the Executive Council is, in my opinion, under a legal duty to form such a Screening Committee, which

was in fact formed in the present case. The maker or the makers of the said provisions of the said Rule 159 made their intention quite clear in using

the words that "the Executive Council shall form a Screening Committee.....

37. Once the Screening Committee is formed by the Executive Council in terms of the provisions of the said Rule 159 the Screening Committee

shall make such recommendation on the basis of the "performance of the teacher concerned as a teacher and/or quality of research papers or

books produced by him and also on the basis of a medical certificate indicating his physical fitness.

38. Under these provisions the Screening Committee has to take into account the performance of the teacher concerned as a teacher and or

quality of the research papers or books produced by him, this is the primary consideration and the only consideration so far as the performance of

the teacher as a teacher is concerned and secondly the teacher must also be physically fit and that fitness has to be supported by a medical

certificate. Thus, the Screening Committee, as aforesaid, has to discharge its obligation as provided under the provisions of the said Rule 159. The

Screening Committee, however, in discharge of its function under the said provisions of the said Rule 159, duly took into account the performance

of the petitioner as a teacher of the University and decided to recommend him for re-employment and there has not been any allegation anywhere

by the writ petitioner that in discharge of its duties in terms of Rule 159 the Screening Committee acted illegally or in excess of its jurisdiction or

that it failed to take into account the relevant considerations in making the recommendation in favour of the petitioner for re-employment, to the

Executive Council of the University.

39. While on the subject, it must also be mentioned that the Executive Council has the power to dispense with the requirement of a written

application and self-assessment statement from an intended teacher for re-employment in exceptional cases on the recommendation of the Vice-

Chancellor.

40. Here, as aforesaid, according to the Vice-Chancellor of the University, in considering a case of re-employment no question could be raised

regarding the alleged corruption of an applicant for re-employment as the provisions of the said Rule 159 do not empower the Executive Council

or the Screening Committee to take into account such considerations in the first place.

41. An affidavit in opposition was affirmed and used on behalf of the first and third respondents herein, namely, the Rabindra Bharati University

and its Executive Council respectively. Learned counsel, appearing on behalf of the said respondents, namely the first and third respondents herein,

submitted that the said Rule 159 in question conferred an absolute discretion upon the Executive Council either to accept or to reject the

recommendation of the Screening Committee. In the instant case after having considered the recommendation of the Screening Committee and

taking the other factors into account the Executive Council decided to reject the application of the petitioner by giving cogent reasons or grounds in

support of its decision in rejecting the application for re-employment of the petitioner. The discretion conferred upon the Executive Council under

the provisions of the said Rule 159, according to learned counsel, is an absolute discretion and the Executive Council is empowered either to

accept or reject any application for re-employment of any teacher who applies for re-employment under the said provision of Rule 159.

42. In support of his submission, the learned counsel on behalf of the respondents, relied on the order of the Appeal Court whereby the Appeal

Court observed that the Executive Council was empowered to consider the recommendation of the Screening Committee and that

recommendation by itself could not bind the Executive Council absolutely in deciding as to whether the recommendation of the Screening

Committee for re-employment of the petitioner should or should not be accepted. The Executive Council, however, it was submitted, by giving

cogent reasons dismissed the application for re-employment of the petitioner and in so doing the Executive Council, in fact, acted in terms of the

provisions of the said Rule 159 and not otherwise, the action or the actions of the Executive Council were also supportable by the order of the

Appeal Court made earlier in Appeal from the order of the learned single Judge in the earlier writ proceeding, as mentioned hereinabove in this

judgment.

43. The learned counsel, however, did not conclude his submission as the matter went on being heard from time to time but after a few days of

hearing the learned counsel on behalf of the respondents remained absent and eventually the hearing had to be concluded as none appeared for the

University or for the concerned respondents even though the matter was fixed from time to time for hearing. Eventually, the learned counsel on

behalf of the concerned respondents failed to appear even later and the hearing of the writ petition had to be concluded.

44. No doubt that under the provisions of the said Rule 159 the Executive Council does enjoy certain discretions and the recommendations of the

Screening Committee does not have an absolute binding effect upon the Executive Council, while the Appeal Court was considering the appeal

against the order of His Lordship Justice Ronojit Kumar Mitra, the Appeal Court did not have the occasion to consider the resolution and/or the

order of the Executive Council made on the said recommendations of the Screening Committee for re-employment of the petitioner. The Appeal

Court had the occasion to consider the provisions of the said Rule 159 and on the basis of such provisions the Appeal Court expressed its opinion

that under the provisions of the said Rule 159, it could not be said that the Executive Council did not enjoy any discretion and the

recommendations once made by the Screening Committee for re-employment was binding upon the Executive Council.

45. It appears from the said order of the Appeal Court as follows:

We do not make any observation on whether the decision of the Executive Council is good or bad and that will be agitated before learned single

Judge. However, the idea that the observations of the Screening Committee is binding on the Executive Council is not correct.

46. In the present writ petition, however, the decision of the Executive Council in rejecting the recommendation of the Screening Committee for re-

employment of the petitioner is under challenge. Question is whether in rejecting the recommendation of the Screening Committee the Executive

Council of the University had acted in terms of the provisions of the said Rule 159 and used its discretion fairly and reasonably and in a judicious

manner, these are the fundamental issues involved in the present writ application. In my opinion, there can never be any doubt that in exercise of its

writ jurisdiction the High Court is fully empowered to review the decision of the Executive Council judicially in order to find out whether the said

Executive Council acted within the ambit of the provisions of the said Rule 159 by and under which the Executive Council enjoyed and enjoys a

certain discretions.

47. At this juncture, I cannot help but referring to an observations of Lord Denning, the Master of the Rolls, in the case of *Breen v. Amalgamated*

Engineering Union, (1971) 2 QB 175 at page 190 when His Lordship said the following:

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least: the

statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it

ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless

the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in modern

administrative law." (See: *Administrative Law*. Prof. Wade, Fifth Edition at page 359)

48. In *Padfield v. Minister of Agriculture, Fisheries and Food* reported in (1968) AC 997, the House of Lords had the occasion to consider a

dispute under the milk marketing scheme established under the *Agricultural Marketing Act, 1958*. The Act provided for a committee of

investigation which was to consider and report on certain kinds of complaint "if the Minister in any case so directs". While considering such case

against the decision of the minister connected one of the law lords namely Lord Reid who considered the said case along with other law lords held

that where there was a relevant and substantial complaint the minister had a duty as well as a power and that he could not use his discretion to

frustrate the policy of the Act. Otherwise he would be rendering nugatory a safeguard provided by the Act and depriving the producers of a

remedy which Parliament intended them to have. *Mandamus* was, therefore, granted to compel the minister to act as the law required. (See:

Administrative Law, Prof. Wade, Fifth Edition at page 357-358)

49. The Courts in our country, both the High Courts and the Supreme Court have adopted the same approach as above to the problems of

identical or similar nature. It is by now well settled that if a provision of law confers a certain discretion upon an authority then the authority is under

a legal duty to exercise such discretion in terms of the provisions of the statute, if the statute wants the authority to act in a particular way then that

authority must act in that way and not otherwise. If it, in fact, acts otherwise thinking that it has an absolute discretion conferred by a statutory

provision then that would be wrong exercise of power because that discretion can never be said to be unfettered. The authority has a duty also to

exercise the discretion in the manner the provisions of law require it to be exercised. If such exercise of discretion is found to be not authorised by

law, Court in its judicial review under the Constitutional writ Jurisdiction, can correct errors, like the present one, committed by an authority under

a statute in discharge of its duty or duties under the provisions of law or statute even though the decision of the authority in question is taken in

good faith.

50. The provisions of the said Rule 159, no doubt, confer certain discretions upon the Executive Council but how that said discretion has been

exercised or is exercised by the authority concerned upon which such discretionary power or powers are conferred can always be reviewed

judicially. I have no manner of doubt, however, that in the present case the Executive Council in deciding the said application of the petitioner for

re-employment, on the basis of the recommendation of the Screening Committee for re-employment of the petitioner thoroughly abused its

discretions conferred upon it by the said provision under the said Rule 159. The Executive Council did not follow the provisions of law namely the

said Rule 159 at all. Rather it acted totally contrary to the said provisions in the said Rule 159 by taking wholly irrelevant and extraneous

considerations into account and by deliberately avoiding to take into account the most relevant considerations as specifically provided and

mentioned in the provisions of the said Rule 159.

51. The impugned resolution, I am afraid, creates an impression upon the mind of a reasonable man that the Executive Council by taking the said

resolution intended to punish the petitioner for his alleged misconduct or offences in the past, for which no proceeding of any nature was ever held

against petitioner nor any proceeding was pending nor the same was even in contemplation of the authority concerned.

52. The Executive Council, in my opinion, is empowered to consider the said recommendation of the Screening Committee by using its discretion

within the scope and/or ambit of the said provisions of the said Rule 159 and in terms thereof as the Executive Council derives its power to

consider the application of re-employment from the provisions of the said Rule and the said Rule alone. The discretion enjoyed under the said

provisions of Rule 159 by the Executive Council is coupled with an obligation or duty on the part of the Executive Council, the Executive Council is

under a legal obligation to exercise its discretion fairly, reasonably and judiciously and in terms of the provisions of the said Rule namely the Rule

159 herein, as the makers of the said provisions of law or the rules intended, The authority concerned namely the Executive Council cannot act

otherwise but in the manner as provided under the provisions of law namely Rule 159 and the said provisions alone.

53. Thus, the Executive Council, in my opinion, acted far in excess of its jurisdiction by rejecting the application of the petitioner for re-employment

as the Executive Council, being the final authority, was under a legal obligation to act in terms of the provisions namely the said Rule 159 by and

under which the Executive Council was and/or is conferred the power to consider the application of a teacher of the University for re-employment

on the basis of the recommendation of a Screening Committee formed by the Executive Council itself for the above purpose in terms of the said

provisions in the said Rule 159. These principles are so well settled that no specific judicial decision in support of this proposition need be referred

to herein. Suffice it to say that in exercise of its jurisdiction under Article 226 the High Court has enough power when it is reviewing a decision of a

body like the Executive Council judicially to interfere on the ground of excess of jurisdiction, abuse of discretion and the like, of the authority

concerned. Having considered the decision or the resolution of the Executive Council, the third respondent herein, in the facts and circumstances of

the present case and having considered the provisions made in the said Rule 159, I am of the opinion that the said resolution was passed by the

Executive Council on 16 July, 2001, in complete disregard to the provisions of Section 159 of the said Act. The decision or the said resolution in

rejecting the application for re-employment of the petitioner on the, basis of the recommendation of the Screening Committee for such re-

employment, is not sustainable in law and the same is hereby set aside.

54. The obvious consequence of the setting aside of the said resolution or decision of the Executive Council of the said University is that the

recommendations made in favour of the petitioner by the Screening Committee in terms of the provisions of the said Rule 159 have to be

reconsidered by the Executive Council once again in the light of the pronouncement made herein in this judgment regarding the scope and/or ambit

of the provisions of the said Rule 159 by the Executive Council once again.

55. Such consideration by the Executive Council of the recommendations of the Screening Committee for re-employment of the petitioner shall be

made within a period of five weeks from the date of communication of this order. The Executive Council shall once again meet and consider the

said recommendation of the Screening Committee in favour of the petitioner afresh, as mentioned above and take a fresh decision or resolution on

the application of the petitioner for re-employment in terms of the provisions of the said Rule 159 and in the manner indicated above in this

judgment.

Thus, the writ application is disposed of.

There will be no order as to costs.

Let a xerox certified copy, if applied for, be given to the parties expeditiously.