

GAHC010231122015



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

Case No. : WP(C)/5333/2015

DR. RUPA BARMAN BORGHAIN and ANR
W/O PRADIPTA BORGHAIN, R/O HOUSE NO. 33, KHARGHULI,
GUWAHATI- 781004, DIST. KAMRUP METRO, ASSAM.

2: DR. PRANITA CHOUDHURY
W/O DR. PURUJIT CHOUDHURY
R/O HOUSE NO. 39
ARYA PATH
GOPINATH NAGAR
GUWAHATI - 781016
DIST. KAMRUP METRO
ASSAM

VERSUS

THE GAUHATI UNIVERSITY and 4 ORS
REP. BY ITS VICE-CHANCELLOR, HAVING HIS OFFICE AT GOPINATH
BORDOLOI NAGAR, GUWAHATI - 781014, DIST. KAMRUP METRO, ASSAM.

2:THE REGISTRAR

GAUHATI UNIVERSITY
HAVING HIS OFFICE AT GOPINATH BORDOLOI NAGAR
GUWAHATI- 781014
DIST. KAMRUP METRO
ASSAM.

3:THE PRINCIPAL

UNIVERSITY LAW COLLEGE
GAUHATI UNIVERSITY
HAVING HIS OFFICE AT GOPINATH BORDOLOI NAGAR
GUWAHATI- 781014. DIST. KAMRUP METRO
ASSAM.

4:THE BAR COUNCIL OF INDIA
REP BY ITS SECRETARY HAVING HIS OFFICE AT 21
ROUSE AVENUE INSTITUTINAL AREA
NEW DELHI-110002
DELHI.

5:THE BAR COUNCIL OF ASSAM

NAGALAND MEGHALAYA MANIPUR
TRIPURA
MIZORAM AND ARUNACHAL PRADESH
REP. BY ITS SECRETARY
HAVING HIS OFFICE AT SECOND FLOOR
OLD HIGH COURT BUILDING
GUWAHATI- 781001
DIST. KAMRUPMETRO
ASSAM

Advocate for the Petitioner : MR.G Z AHMED

Advocate for the Respondent : SC, G U

P R E S E N T

HON'BLE MR. JUSTICE NELSON SAILO

For the petitioner No.2 : Mr. A.K. Sarma, Advocate

For the Respondents : Mr. P.J. Phukan, Standing Counsel, Gauhati
University for Respondents No.1 and 2

Date of hearing : 13.12.2022

Date of Judgment : 15.12.2022
and order

JUDGMENT AND ORDER (CAV)

Heard Mr. A.K. Sarma, learned counsel for the petitioner and Mr. P.J. Phukan, learned Standing Counsel, Gauhati University for Respondents No.1 and 2. None appears for the remaining respondents.

2. At the outset, it may be noticed that the writ petition was heard and dismissed vide order dated 29.05.2018. However, the petitioner No.2 filed a review petition being Review Petition No.79/2018, and vide order dated 17.2.2021, the review petition was allowed and the writ petition restored back to file. Therefore, cause of action survives for respondent No.2 and she will be referred to as the petitioner for brevity and convenience hereinafter.

3. Brief facts of the case is that the petitioner, who is a Master Degree holder in Law (LL.M) with 56% marks, was appointed as ad-hoc part-time Lecturer in the Gauhati University Law College, Gauhati University, with effect from 17.11.2005 (Annexure-19). The petitioner, accordingly, joined the said post and has been working as such since her appointment. It is the case of the petitioner that she completed and obtained Doctorate Degree in the field of law from Gauhati University on 1.11.2012, for which programme she had registered herself on 20.01.2005 and the title of her Ph.D Thesis is "*Right to Information and Right to Know: A Critical Study*". She then completed and obtained her PhD on 01.11.2012. The petitioner, therefore, contends that she is exempted from possessing National Eligibility Test/State Level Eligibility Test/State Eligibility Test (NET/SLET/SET) to be appointed and regularized as Assistant Professor. It is the further case of the petitioner that the Bar Council of India through its delegated representatives had inspected the University Law College on 23.5.2008, and

after making a detailed study, recommended regularization of the teachers of the College including the writ petitioner, if they fulfill the norms of the Bar Council of India and the University Grants Commission (UGC). However, as the University Authorities have not considered regularizing the services of the petitioner and other similarly situated persons, a joint representation was submitted to the Bar Council of India as well as to the Vice-Chancellor of the University, but as the representations were not considered and disposed of, the writ petitioner is before this Court.

4. Mr. A.K. Sarma, learned counsel for the petitioner submits that the appointment of the petitioner was preceded by a selection made by the Departmental Advisory Committee (DAC) and that the permission of the University through the Registrar was duly sought. The vacancy against which the petitioner was sought to be accommodated was due to the resignation of one of the teacher owing to illness and, therefore, the appointment of the petitioner was against a subsisting vacancy. The petitioner having worked for long 17 years by now, deserves to be considered for regularization of her service. Mr. A.K. Sarma, referring to paragraph No.53 of the Apex Court judgment in the case of *Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors. (2006) 4 SCC 1*, submits that when the appointment of an employee is not a illegal appointment, but irregular appointment and such appointment subsists not in terms of an interim order or direction of a tribunal or the Court, such employee who has otherwise worked for 10 years or more can be considered for regularization of service. He submits that such consideration was not done and, therefore, in terms of the Apex Court judgment, the petitioner should be considered by the University authorities for regularization of her service. Learned counsel also submits that the fact of the petitioner having been recommended by the DAC, as stated in the additional affidavit filed by the

petitioner on 21.03.2022, has not been denied by the respondent University and, therefore, the University should be directed to consider the case of the petitioner for regularization of her service. Mr. A.K. Sarma, referring to Section 15-A(1)(d) of the Gauhati University Act, 1947 (University Act), submits that since the Executive Council cannot make any ad-hoc appointment in terms of the said provision, the University has made the recommendation for appointment of the petitioner through the DAC. The same being a selection process undertaken by the authorities concerned, a direction should be issued to them to regularize the services of the petitioner keeping in view the continuous length of service rendered by her and also the qualifications and experience possessed by the petitioner. Mr. A.K. Sarma, learned counsel submits that the consideration of the employees under the Gauhati University for regularization as a one time measure as directed by the Apex Court has not been done till date and, therefore the petitioner is clearly eligible to be considered in terms of the said direction.

5. Opposing the submission made by Mr. A.K. Sarma, learned counsel for the petitioner, Mr. P.J. Phukan, learned Standing Counsel, Gauhati University, by referring to Section 15-A(1)(a) of the University Act, submits that the provision provides for composition of a Selection Committee for making recommendations to the Executive Council for appointment of Professors, Readers, Lecturers, Registrar, etc. and the Committee is to comprise of the Vice-Chancellor as the Chairman; three persons not holding the office of profit under the University nominated by the Vice-Chancellor, the State Government and the Executive Council respectively; and the Registrar of the University as the Member Secretary. In case of the appointment of the petitioner, no such recommendation was made by the constituted Selection Committee under the said provisions and merely because there was a recommendation made by the

Inspection Team of the Bar Council of India, such recommendation cannot prevail over the statutory provisions provided by the University Act. In this connection Mr. P.J. Phukan, learned counsel has relied upon the following authorities:-

- (1) *Union of India and another Vs. Dimple Happy Dhakad, (2019) 20 SCC 609;*
- (2) *Delhi Transport Corporation Vs. Balwan Singh and others, (2019) 18 SCC 126;*
- (3) *Lok Prahari Vs. State of Uttar Pradesh and others, (2016) 8 SCC 389;*
and
- (4) *Union of India and another Vs. Ashok Kumar Aggarwal, (2013) 16 SCC 147*

6. Mr. P.J. Phukan, learned counsel in support of his submission has also referred to the affidavit-in-opposition filed by the respondent Nos.1 and 2 on 6.5.2016, more particularly paragraphs No.11 and 19 of the said affidavit. Mr. P.J. Phukan further submits that as per the communication dated 7.10.2015, annexed by the writ petitioner as Annexure-1 to the additional affidavit, it is clear that the post against which the petitioner was appointed was earlier occupied by one part-time Lecturer who has resigned on 31.3.2005 all of a sudden due to health reasons and, therefore, it is not a regular post, as claimed by the petitioner. He, therefore, submits that the petitioner was appointed with effect from 27.4.2005, while the Apex Court decision in *Umadevi (supra)* is decided on 10.4.2006, and by that time, the petitioner hardly has a year of service in the University College. He also submits that paragraph-53 of the judgment in *Umadevi (supra)* speaks about rendering of 10 years of service

and that the petitioner did not have 1 year's of service at the relevant time. Since the one time measure, as directed by the Apex Court was to be made within six months of the judgment, the same cannot be applied to the case of the petitioner. He, therefore, submits that under the facts and circumstances of the case, the writ petition has no merit and should be dismissed.

7. I have considered the rival submissions made by the learned counsel for the parties and have perused the materials available on record.

8. As may be seen, the case of the petitioner is that her name was recommended by the DAC for appointment as ad-hoc part-time teacher in the University Law College on account of resignation of one Mr. S.A. Choudhury, Part-Time Teacher, who resigned on 31.03.2005 for health reasons. This fact has been highlighted in the communication dated 7.10.2005 written by the Principal, University Law College, to the Registrar of Gauhati University. Accordingly, the petitioner was appointed as ad-hoc part time teacher with effect from 27.04.2005 vide appointment letter dated 17.11.2005. The petitioner has rendered her service against her appointed post till date and claims that her service be regularized in the University. In support of her claim, the petitioner has relied upon the recommendation made by the inspection team of the Bar Council of India in their report dated 23.05.2008. As per the said report, it has been stated that the part-time lecturers who are rendering their services to the Law Colleges for last several years, in the interest of legal education, deserve to be regularized as fulltime lecturers if they fulfill the norms of the Bar Council of India and the UGC. The UGC on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities & Colleges and Measures for Maintenance of Standards in Higher Education (Third Amendment), Regulations, 2016 (UGC Regulations of 2016), provides that in order to be appointed as Assistant Professors in Arts, Humanities, Social Sciences, Science, Commerce,

etc., good academic records with at-least 55% marks at Master Degree level in the relevant subject from an Indian University is required, besides having NET/SLET/SET. Clause 4.4.1(iii) provides for exemption of NET, SLET, SET for those who possess Ph.D Degree in accordance with the UGC Regulations of 2009 or subsequent regulations, as notified by the UGC.

9. The petitioner undisputedly possess Ph.D in the field of law, which she had acquired from Gauhati University and a certificate to that effect including her exemption for having NET for the purpose of appointment as Assistant Professor was issued by the Academic Registrar of the Gauhati University on 7.6.2013 and therefore, there is no dispute that the petitioner is qualified to hold the post of Assistant Professor under the University.

10. The Respondent Nos. 1 and 2 in their affidavit-in-opposition have taken the stand that unless a teacher is regularly appointed as per procedure of the University, he or she cannot be regularized in service. The petitioner do not possess all the requisite eligibility criteria for regular appointment and that seniority is not the criteria for appointment to a regular post and the eligibility criteria must be fulfilled. However, as stated herein above, the petitioner has obtained 56% of marks in the concerned subject at the Master Degree level and she has also acquired Doctorate Degree on 1.11.2012. Therefore, she is only qualified to hold the post of Assistant Professor in the University.

11. Mr. Phukan, learned Standing Counsel for the Gauhati University has referred to the relevant provisions in Section 15-A of the University Act, wherein the composition of the Selection Committee and its functions have been provided. Section 15-A(1)(d) provides that where an appointment is to be made to a temporary vacancy of Teachers of the University, the appointment shall be made, if vacancy is for a period of one year or more, on the recommendation of the Selection Committee in accordance with the provisions of the preceding sub-

section and no ad-hoc appointment shall be made by the Executive Council. Section 13 of the University Act provides for powers and duties of the Executive Council. The Executive Council amongst others is empowered to appoint officers, other than the Chancellors, Vice-Chancellors and the Records, such as Teachers, Librarian, the Proctor, the clerical staff and other employees of the University. Although there is no such provision which empowers the DAC to make their recommendations for appointment as ad-hoc part time teachers, but yet a recommendation was made by the DAC and pursuant to which she was appointed as an ad-hoc part time teacher in the University with effect from 27.04.2005. There is no dispute to the fact that the petitioner ever since her appointment is working as such in the University Law College. The same goes to show that the services of the petitioner is required by the institution and, therefore, she has continued in her appointed post till date. The petitioner having rendered about 17 years of service in the University Law College, it would be unfair to let her continue as a temporary employee till she attains the age of superannuation.

12. The inspection report of the team of officers of the Bar Council of India had also made recommendations for regularization of the part-time ad-hoc lecturers who were otherwise working on full time basis after making their inspection on 23.05.2008. Although the same may not be binding upon the University, but the same goes to show that the services of the part-time ad-hoc teachers have been utilized to the fullest extent and, in-fact, they were performing duties by taking more number of classes.

13. The Apex Court in the case of *Umadevi (supra)* held that the employees who have continued to work for 10(ten) years or more without intervention of the order of the Court or Tribunal should be considered for regularization as a one time measure. The consideration was directed to be made for those who

were irregularly appointed and not illegally appointed. There is no material on record to show that the University has undertaken such exercise for considering its employees for regularization in terms of the said decision. The appointment of the petitioner, under the facts and circumstances, can also be termed as irregular appointment but not an illegal appointment. If such be the case, the petitioner is entitled to be considered in terms of paragraph-53 of *Umadevi (supra)*. In the referred case, the Apex Court had directed the process to be set in motion within six months from the date of the judgment as a one time measure and there is no prescription that such consideration cannot be done after lapse of six months.

14. That upon due consideration, I am of the considered view that the petitioner has made out a case for considering her case for regularization. The Respondent University i.e. Respondents No.1, 2 and 3 are therefore directed to consider the case of the petitioner for regularization as Assistant Professor of the University within a period of 3 (three) months from the date of receipt of a certified copy of this order. As for the authorities relied upon by the learned Standing Council for the Gauhati University, there is no argument to the fact that statutory provisions will prevail over executive or administrative instructions and, therefore, the same is not being referred to.

15. With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE