



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

WRIT APPEAL No.102 OF 2024

1. Krishna Kanta Handiqui State Open University, represented by its Registrar, Resham Nagar, Khanapara, Guwahati - 781022, District: Kamrup (Metro), Assam.

2. The Vice Chancellor, Krishna Kanta Handiqui State Open University, Resham Nagar, Khanapara, Guwahati - 781022, District: Kamrup (Metro), Assam.

3. Board of Management, Krishna Kanta Handiqui State Open University, Resham Nagar, Khanapara, Guwahati - 781022, District: Kamrup (Metro), Assam.

.....Appellants

-Versus-

1. Shri Jayanta Kumar Sarma,
Son of Late Debendra Nath Sarma, Resident
of C/4, Giri Niwas, Kharguli, PO: Uzanbazar,
PS: Latasil, District: Kamrup (Metro), PIN -
781004, Assam.

.....Respondent

2. The University Grants Commission, Bahadur
Shah Zafar Marg, New Delhi -110002.

.....Proforma Respondent

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. K.N. Choudhury, Senior Advocate,
assisted by Mr. P.J. Phukan, Advocate.

For the Respondents : Mr. M.K. Choudhury, Senior Advocate,
assisted by Mr. M. Sarma, Advocate for
respondent No.1.

: Mrs. K. Borpuzari, Advocate on behalf of
Mr. A. Chamuah, Standing Counsel,
University Grants Commission for proforma
respondent No.2.

Date of hearing : 18.04.2024.

Date of Judgment : 22.04.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. K.N. Choudhury, learned senior counsel,
assisted by Mr. P.J. Phukan, learned counsel for the appellants.
Also heard Mr. M.K. Choudhury, learned senior counsel,
assisted by Mr. M. Sarma, learned counsel for the respondent
No.1 and Mrs. K. Borpuzari, learned counsel appearing on
behalf of Mr. A. Chamuah, learned standing counsel, University
Grants Commission (UGC) representing the respondent No.2.

2. This intra-Court writ appeal is filed by the appellants
being aggrieved with the judgment & order dated 15.03.2024
passed by the learned Single Judge in WP(C) No.2214/2023,
whereby the writ petition filed by the writ petitioner
(respondent No.1 herein) came to be allowed and the order
dated 19.04.2023 was set aside, whereby the service of the

respondent No.1/writ petitioner, as Professor in Bhupen Hazarika School of Mass Communication, was terminated with immediate effect.

3. The brief facts of the case are that the Krishna Kanta Handiqui State Open University (hereinafter to be referred as "KKHSOU") issued an advertisement dated 14.08.2020 for filling up of various posts of teachers. The respondent No.1/writ petitioner applied for the post of Professor in Bhupen Hazarika School of Mass Communication. The Board of Management of KKHSOU has approved the selection and appointment of the respondent No.1/writ petitioner on the post of Professor in Bhupen Hazarika School of Mass Communication and pursuant to that, the respondent No.1/writ petitioner has joined on the said post on 01.02.2021 in terms of an appointment letter dated 24.12.2020. After completion of the probationary period of 1(one) year, the services of the respondent No.1/writ petitioner was confirmed, i.e. from 01.02.2022, vide letter dated 11.03.2022.

4. The Registrar of KKHSOU has issued a show cause notice dated 03.04.2023 to the respondent No.1/writ petitioner indicating therein that a Committee was constituted to examine the eligibility of the respondent No.1/writ petitioner for appointment on the post of Professor of Bhupen Hazarika School of Mass Communication and the said Committee has submitted its report before the Board of Management in its 70th Meeting. The Board of Management in the said meeting has resolved that action should be taken against the respondent No.1/writ petitioner based on the recommendation of the

Committee. Vide the show cause notice dated 03.04.2023, the respondent No.1/writ petitioner was asked to furnish his opinion within 10(ten) days about the decision of the Committee and the Board of Management. Along with the said notice, the report of the Committee was also enclosed.

5. Immediately after receiving the said show cause notice, the respondent No.1/writ petitioner has written a letter on 04.04.2023 to the Registrar, KKHSOU and sought for the authenticated copies of certain documents relied on by the Enquiry Committee so that he can submit his reply. The respondent No.1/writ petitioner has asked for 2(two) weeks time to submit his reply. It appears that the required documents were supplied to the respondent No.1/writ petitioner on 18.04.2023. However, without providing further opportunity to the respondent No.1/writ petitioner, the impugned termination order dated 19.04.2023 was passed by the Registrar of the KKHSOU.

6. Being aggrieved with the same, the respondent No.1/writ petitioner has preferred the aforementioned writ petition before the learned Single Judge, which came to be allowed vide the impugned judgment & order dated 15.03.2024 and the termination order dated 19.04.2023 was set aside and a direction was issued to reinstate the respondent No.1/writ petitioner forthwith as Professor in Bhupen Hazarika School of Mass Communication with all consequential benefits. However, the learned Single Judge has granted liberty to the respondent University (appellants herein) to proceed with the departmental proceedings against the respondent No.1/writ petitioner strictly

in terms of the Krishna Kanta Handiqui State Open University Employees (Academic and Non-Academic) Service Conditions, Conduct and Appeal Rules, 2019 (hereinafter to be referred as the "Service Rules, 2019"). Being aggrieved with the same, the University has preferred the present appeal.

7. Mr. K.N. Choudhury, learned senior counsel appearing for the appellant University has argued that the learned Single Judge has erred in allowing the writ petition filed by the respondent No.1/writ petitioner and has illegally quashed and set aside the termination order dated 19.04.2023. It is contended that the respondent No.1/writ petitioner was not eligible for appointment on the post of Professor in Bhupen Hazarika School of Mass Communication because at the time of his selection and appointment on the said post, he was not having the requisite qualification as prescribed in the UGC Regulations. It is contended that Clause 4.1 (III-B) and Clause 6.0 (V) of the UGC Regulations prescribed the minimum qualification for appointment on the post of Professor. It is contended that as per Clause 4.1(III-B) of the UGC Regulations, 2018, a person can be appointed on the post of Professor if he/she is an outstanding professional having a Ph.D. Degree in relevant discipline and has made significant contribution to the knowledge in the concerned discipline supported by documentary evidence with 10(ten) years experience. It is contended that the respondent No.1/writ petitioner was not having the said qualification and has not produced any documentary evidence to suggest that he has made significant contribution to the knowledge in the concerned discipline and is

having 10(ten) years experience. It is also contended that Clause 6.0(V) clearly provides that in case of selection of faculty members, who are from outside the academic field under Clause 4.1(III-B), the University must lay down clear and transparent criteria and procedure for recruiting outstanding professionals who can contribute substantially. It is contended that the appellant University has never prescribed clear and transparent criteria and procedure for selecting and appointing the faculty members who area from outside the academic field.

8. It is contended by Mr. K.N. Choudhury, learned senior counsel that before applying for appointment on the post of Professor in Bhupen Hazarika School of Mass Communication, the respondent No.1/writ petitioner was working as a Senior Publicity Inspector and Public Relation Officer in the Northeastern Frontier Railways and as such, he was not having any experience or knowledge in the field of Mass Communication and has never made any contribution in the area. It is contended that the selection and appointment of the respondent No.1/writ petitioner in the post of Professor in Bhupen Hazarika School of Mass Communication was *ab initio void*. It is further submitted that after selection and appointment of the respondent No.1/writ petitioner on the post of Professor in Bhupen Hazarika School of Mass Communication, certain persons have filed complaints and the Hon'ble Governor of Assam as well as the University Grants Commission (UGC) has ordered for enquiry into the appointment of the respondent No.1/writ petitioner as Professor. In that relation, an Enquiry Committee was

constituted and the said Enquiry Committee consisting of experts has submitted its report while concluding that the selection and appointment of the respondent No.1/writ petitioner on the post of Professor in Bhupen Hazarika School of Mass Communication is illegal as the respondent No.1/writ petitioner was not having qualification as prescribed in Regulation 4.1 (III-B) of the UGC Regulations, 2018 and the University has failed to lay down clear and transparent criteria and procedure for selecting the faculty members.

9. It is contended by the learned senior counsel for the appellants that after receipt of the said report, a show cause notice was issued to the respondent No.1/writ petitioner, however, he failed to furnish his explanation within the stipulated time after which the order of termination was issued. The learned senior counsel has argued that there is no illegality in issuing the termination order because the respondent No.1/writ petitioner lacks qualification for appointment on the post of Professor as prescribed under the UGC Regulations and the selection and appointment of the respondent No.1/writ petitioner on the said post is also in violation of Regulation 6.0 (V) of the UGC Regulations, 2018 because the University has failed to prescribe clear and transparent criteria and procedure for selection of faculty members who are from outside the academic field. It is further argued that the learned Single Judge, without considering the above aspect of the matter, has allowed the writ petition and set aside the termination order illegally solely on the ground that the procedure provided under the Service Rules of 2019 has not been followed. The learned

senior counsel has submitted that when the selection and appointment of the respondent No.1/writ petitioner on the post of Professor in Bhupen Hazarika School of Mass Communication itself was illegal and *void ab initio*, there is no need to initiate any disciplinary enquiry. It is contended that there is no straight jacket formula and the requirement of adhering to the principles of natural justice depends upon the facts of each case.

The learned senior counsel has submitted that when the requirement of the principles of natural justice is a mere formality and futile exercise, there is no need to follow the principles of natural justice or provide any opportunity to the concerned person. It is submitted that in the present case since the respondent No.1/writ petitioner was lacking qualification for appointment on the post of Professor and admittedly the University has not prescribed clear and transparent criteria and procedure for selection of faculty member from outside the academic field, the appointment of the respondent No.1/writ petitioner is illegal and *non est* in the eye of law. The requirement of providing an opportunity of hearing was not at all required.

10. The learned senior counsel for the appellants has submitted that before the Writ Court, the respondent No.1/writ petitioner has failed to demonstrate that he possess the requisite qualification for appointment on the post of Professor in Mass Communication discipline or the University has prescribed clear and transparent criteria and procedure for selection of faculty members outside the academic field, the learned Single Judge has illegally set aside the termination

order and has also erred in granting liberty to the appellant University to proceed with the departmental proceedings against the respondent No.1/writ petitioner strictly in terms of the Service Rules of 2019. The learned senior counsel has submitted that the services of the respondent No.1/writ petitioner has not been terminated on the ground of any misconduct or violation of the service conditions but was terminated because his appointment itself was illegal due to lack of qualification and in the absence of any criteria fixed by the University and, therefore, in such circumstances there is no justification in granting liberty to the appellant University to initiate departmental proceedings against the respondent No.1/writ petitioner strictly in terms of the Service Rules of 2019. The learned senior counsel has, therefore, submitted that the impugned judgment is liable to be set aside and the writ petition filed by the respondent No.1/writ petitioner is liable to be dismissed.

In support of the above contention, the learned senior counsel for the appellants has placed reliance on various decisions of the Hon'ble Supreme Court as well as the decision of the Division Bench of this Court on which he has also placed reliance before the learned Single Judge and the learned Single Judge has dealt with the said decisions extensively in the impugned judgment. Apart from relying on the said decisions before us also, the learned senior counsel for the appellants has placed reliance in 2(two) more judgments of the Hon'ble Supreme Court rendered in ***Ashwani Kumar & Ors. -Vs- State of Bihar & Ors.***, reported in ***(1997) 2 SCC 1*** and

Devendra Kumar & Ors. -Vs- State of Uttarakhand & Ors.,
reported in ***(2013) 9 SCC 363.***

11. Mr. M.K. Choudhury, learned senior counsel appearing for the respondent No.1/writ petitioner has opposed the appeal and has supported the impugned judgment passed by the learned Single Judge. Mr. Choudhury has submitted that the respondent No.1/writ petitioner was selected and appointed on the post of Professor in Bhupen Hazarika School of Mass Communication after going through the selection process as mandated by the relevant provisions of the UGC Regulations, 2018. It is contended that after his selection and appointment on the said post, the respondent No.1/writ petitioner successfully completed his probationary period and was also confirmed on the said post by the KKHSOU. The learned senior counsel has submitted that being a permanent employee of the KKHSOU, the services of the respondent No.1/writ petitioner can only be terminated after following the due procedure as laid down under the Service Rules of 2019. It is submitted that in the present case, the said procedure has not been followed and, therefore, the learned Single Judge has rightly set aside the said termination order since it is violative of the principles of natural justice and is in contravention of the statutory Rules.

12. It is further contended by Mr. Choudhury that the respondent No.1/writ petitioner was fully qualified for appointment on the post of Professor in Bhupen Hazarika School of Mass Communication but the appellant University without providing sufficient opportunity to him to prove that there is no illegality in his selection and appointment on the

post of Professor, has illegally terminated his services. It is contended that the show cause notice was issued to the respondent No.1/writ petitioner on 03.04.2023 and immediately on 04.04.2023 he sought copies of certain authenticated documents which though provided to the respondent No.1/writ petitioner but on 18.04.2023 and without providing any opportunity to him to furnish his explanation/opinion, the appellant University has passed the termination order dated 19.04.2023. It is contended that in the above facts and circumstances of the case, it is clear that the termination order passed by the appellant University is violative of the principles of natural justice and was passed in violation of the procedure laid down under the Service Rules of 2019 and, therefore, the learned Single Judge has not committed any illegality in allowing the writ petition while granting liberty to the appellants University to proceed with the departmental proceeding against the respondent No.1/writ petitioner strictly in terms of the Service Rules of 2019.

The learned senior counsel has further submitted that the judgments relied upon by the appellants has no application in the facts and circumstances of the case and, therefore, the learned Single Judge has rightly distinguished the same. It is also contended that the other 2(two) judgments on which the appellants have relied upon while arguing this appeal are also distinguishable on the facts of those cases. It is finally contended by Mr. M.K. Choudhury, learned senior counsel for the respondent No.1/writ petitioner that the appeal filed by the appellants is devoid of any merit and the same is, therefore, liable to be dismissed.

13. Heard the learned counsel appearing for the parties and also perused the material available on record.

14. The learned Single Judge, while allowing the writ petition and setting aside the termination order dated 19.04.2023, has mainly influenced by the fact that no opportunity of hearing was granted to the respondent No.1/writ petitioner before issuing the said termination order.

15. The facts which are not in dispute are that the show cause notice was issued to the respondent No.1/writ petitioner on 03.04.2023 and on the very next day, i.e. on 04.04.2023, the respondent No.1/writ petitioner has written a letter to the Registrar of KKHSOU and sought certain authenticated documents to enable him to file reply to the said show cause notice. The appellant University indeed supplied the said documents but only on 18.04.2023 and thereafter without granting any further opportunity to the respondent No.1/writ petitioner to submit his reply, has passed the impugned termination order on 19.04.2023.

16. The appellants may be justified in contending that the selection and appointment of the respondent No.1/writ petitioner in the post of Professor in Bhupen Hazarika School of Mass Communication is *void ab initio* since he is not possessing the requisite qualification for selection and appointment on the said post as per the UGC Regulations, 2018 and his selection and appointment was *per se* illegal because the University has not prescribed clear and transparent criteria and procedure for the selection of faculty members outside the academic field as

per Regulation 6.0 (V) of the UGC Regulations, 2018 but in any case the respondent No.1/writ petitioner is required to provide sufficient opportunity to defend his case.

17. It is the settled principle of law that no person can be condemned unheard. The appellants may be of the opinion that the respondent No.1/writ petitioner was not having qualification for appointment on the post of Professor and the University has selected and appointed the respondent No.1/writ petitioner on the post of Professor in the absence of any clear and transparent criteria and procedure for selection of faculty members outside the academic field but the propriety demands that the respondent No.1/writ petitioner was required to provide an opportunity of hearing to demonstrate that he was having requisite qualification for appointment on the post of Professor and the University has fixed the criteria which was strictly followed. From the facts of the present case, it emerges that sufficient opportunity of hearing was not provided to the respondent No.1/writ petitioner before terminating his services.

18. We are of the view that normally disciplinary proceedings are instituted against an employee in case he/ she violates the service conditions or indulged in any misconduct. In cases of illegal selection and appointment, the requirement of adhering to the procedure laid down under the Service Rules may not be necessary in every case. Strictly speaking, the use of the word "termination", mentioned in the order dated 19.04.2023 issued by the Registrar of KKHSOU while discontinuing the appointment of the respondent No.1/writ petitioner is a misnomer and actually it is a case of cancellation

of the appointment of the respondent No.1/writ petitioner on the post of Professor in Bhupen Hazarika School of Mass Communication.

19. Be that as it may, it is a settled position of law that *audi alteram partem* is one of the basic pillars of natural justice which means that no one should be condemned unheard. Ordinarily the principles of natural justice should be followed. In a given situation a show cause notice is required to be issued to a person who would be affected by the ultimate order that may be passed. It may not require to give him or her an oral hearing but an opportunity should be granted to make a representation in writing. It is also settled that in a given case, no opportunity is required to be given if it would be a futile exercise. However, in the present case, the respondent No.1/writ petitioner can very well establish that his selection and appointment on the post of Professor in Bhupen Hazarika School of Mass Communication is inconsonance with the UGC Regulations but for that, an opportunity of hearing is required to be given.

20. So far as the judgments on which the learned senior counsel for the appellants has placed reliance are concerned, as observed earlier, most of the judgments except 2(two), have already been dealt with by the learned Single Judge, so, we need not to offer any comment in respect of those judgments. However, the other 2(two) judgments, i.e. **Ashwani Kumar** (supra) and **Devendra Kumar** (supra) are concerned, they are also of no help to the appellants as in **Ashwani Kumar** (supra), the Hon'ble Supreme Court has decided the case of those employees who were appointed without there being any

sanctioned posts and the same is not the position in the present case. In **Devendra Kumar** (supra), the Hon'ble Supreme Court was considering a case wherein the incumbent has obtained appointment on the basis of fraud whereas in the present case there are no charges of fraud against the respondent No.1/writ petitioner.

21. In view of the above discussion, we have no hesitation in holding that the learned Single Judge has not committed any illegality in setting aside the termination order dated 19.04.2023 issued by the Registrar of KKHSOU terminating the services of the respondent No.1/writ petitioner as Professor in Bhupen Hazarika School of Mass Communication and has rightly ordered for reinstating the respondent No.1/writ petitioner in service forthwith on the said post with all consequential benefits. However, the appellant University can very well proceed against the respondent No.1/writ petitioner by providing him sufficient opportunity of hearing without adhering to the procedure laid down under the Service Rules of 2019.

22. The appellant University is free to proceed against the respondent No.1/writ petitioner but after providing sufficient opportunity of hearing to him. The appellant University is directed to provide sufficient time to the respondent No.1/writ petitioner to furnish his explanation/reply and after receiving the same, the proceedings initiated against the respondent No.1/writ petitioner can be dropped if the appellant University finds the explanation/reply filed by the respondent No.1/writ petitioner satisfactory. However, in case

the University decides otherwise, it shall pass a speaking and reasoned order in that regard.

23. With these observations, this writ appeal stands disposed of. No costs.

JUDGE

CHIEF JUSTICE

Mukut

Comparing Assistant