

(1996) 09 AHC CK 0138
In the Allahabad High Court
Case No : C.M.W.P. No. 38618 of 1994

Adam Malik Khan

APPELLANT

Vs

Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (1996) 09 AHC CK 0138

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : J.J. Munir, for the Appellant; Dilip Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Whether a candidate can be appointed in excess of the notified vacancies? and

2 Whether the decision dated 16.5.1993/4.6.1993 of the Executive Council of the Aligarh Muslim University, giving absolute power to the Selection Committee to prepare or not to prepare a reserve list containing names of candidates for appointment as teachers against future vacancies is ultra vires? Are the two questions, which are involved in this writ petition.

2. The Aligarh Muslim University, Aligarh (hereinafter referred to as the University) advertised a permanent post of lecturer in the Department of Islamic Studies. The Petitioner Nos. 1, 3 and 4, who are Research Scholars in the same Department, applied for the said post. The Selection Committee, which was constituted by the University for selecting a suitable candidate for the advertised post, selected one of the candidates other than Petitioners. The Committee further prepared a panel of three candidates, namely, Respondent Nos. 3, 4 and 5 to be appointed against the future temporary or permanent vacancies. The Vice-Chancellor vide order dated 19.5.1994 appointed the Respondent No. 3, Sri Abdul Hameed Fazli as temporary lecturer against a permanent post of Reader

vacated on the retirement of the regular incumbent on 19.5.1994. The Petitioners, being aggrieved by preparation of the panel for appointment in future, filed a Writ Petition No. 21457 of 1994, which was disposed of by this Court on 12.7.1994 permitting the Petitioners to file an appeal before the Executive Council of the University. Petitioners accordingly filed an appeal before the Executive Council, which was dismissed by the Vice-Chancellor. Being aggrieved, the Petitioners have filed this writ petition, challenging the said decision of the Vice-Chancellor and the panel prepared, by the Selection Committee for appointment in future as well as the decision of the Executive Council dated 16.5.1993/4.6.1993, giving absolute discretion to the Selection Committee to prepare or not to prepare the reserve list for appointment against future vacancies, and the order dated 19.5.1994.

3. Supreme Court has laid down that appointment of candidates in excess of the notified vacancies amounts to denial of the fundamental rights under Article 14 of the Constitution. In *Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors.* (1995) 1 SCC 283, it was laid down as under:

Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the state. Therefore, vacant post arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept In waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection.

The same rule was reiterated in *Union of India v. Ishwar Singh Khatri* 1992 SCC 999 . In *State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union* 1986 and others, , the Supreme Court struck down the part of the judgment of Patna High Court and set aside the appointments with respect to future vacancies, which arose after 31.12.1988. In *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, , the Supreme Court after considering the relevant case law again reiterated the same principle by holding that the selection cannot be made for future vacancies. The case of *Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others*, , on which reliance has been placed by the learned Counsel for the Respondents, has not laid down any rule contrary to what has been laid down in the aforesaid cases. In that case Supreme Court, in

view of the statutory provisions contained in Sections 5 and 6(4) of Rajasthan University Teachers and Officers (Selection for Appointment) Act, 1974, held that Selection Committee can recommend not only the candidates selected by it for appointment but can also prepare a reserve list to the extent of 50 per cent of the vacancies. Therefore, no person can be selected for appointment in excess of notified vacancies.

4. As regards the second question, Statute 29 (2)(a) of the Statutes framed under the Aligarh Muslim University Act, which is reproduced below, has laid down that all appointments to the "permanent" posts of teachers in the University shall be made by the Executive Council on the recommendation of the Selection Committee after such posts have been duly advertised.

29 (2)(a). All appointments to permanent posts of teachers in the University shall be made by the Executive Council on the recommendation of a Selection Committee in accordance with the provisions of these Statutes after such posts have been duly advertised and the candidates concerned have been interviewed by the Selection Committee except in cases where such Committee decides to consider the case of a candidate, otherwise than by an interview. Except as otherwise provided for in his contract of service, every teacher thus selected shall be placed on probation for a period of one year, on the expiry of which period he shall be confirmed in his post. If he is not so confirmed the Executive Council may, if it deems fit dispense with his services as shown after the expiry of his probationary period as may be practicable or extend the period of his probation for one year at the end of which, if he is not confirmed in his post, his services shall be dispensed with after expiry of the period of extension of his probation:

Provided that, if a person in the permanent service of the University is appointed on probation to a higher post in the same Department, he shall not loose his lien on his substantive post, nor shall be deprived of the benefits of leave rules and of the provident Fund Statutes to which he was entitled at the time of his appointment to the higher post during the period of his probation:

Provided further that the service of a teacher appointed on probation may be terminated at any time during the probationary period by giving two months "notice without assigning any reason.

(emphasis supplied)

In 1987, the Executive Council has passed a resolution debarring the Selection Committee from preparing any panel for appointment against future vacancies. This resolution is as under:

Item No. 58.--The council approved that in future Selection Committee shall not draw up any panel for appointments against anticipated temporary or permanent vacancies. Persons may, however, be kept on waiting list so that in case the person(s) selected to the post(s) falls to joint alternative appointment against

the post(s) be made from the waiting list.

Petitioners in paragraph 5 of the writ petition have stated that on the basis of the said resolution of the Executive Council, the Vice-Chancellor has promulgated the Ordinance on 27.3.1987 and 22.7.1987. It appears that on 8.2.1992 the Executive Council constituted a Committee consisting of seven persons for considering as to whether it is desirable to draw up a panel of names of the candidates for appointment in future. The said Committee submitted the following recommendation at item No. 6 of its report dated 28.8.1992:

6. The committee had also been directed by the Executive Council to suggest whether it would be advisable to draw a panel of names of candidates selected through general Selection Committee for appointment in future, to avoid tuitional loss. The Committee, while deliberating on the issue, felt that it was entirely a prerogative of the Selection Committee. However, it recommended that the General Selection may consider empanelling those candidates who were already working in the University in same capacity or the other. The panel so drawn up should be valid for one year.

(emphasis supplied)

The Committee in the aforesaid report has observed that It is entirely a prerogative of the Selection Committee to prepare a panel against future vacancies. The Executive Council in its meeting held on 16.5.1993/4.6.1993 approved the aforesaid recommendation of the Committee.

5. According to Statute 29 (2)(a), appointments on permanent posts can be made by the Executive Council on the basis of the recommendation of the Selection Committee "after such posts have been duly advertised." This provision contemplates the appointment by the Executive Council only for the posts, which have been advertised. Therefore, unless the posts have been advertised, neither the Selection Committee can recommend a candidate nor can the Executive Council make an appointment. The resolution of the Executive Council passed in its meeting held on 16.5.1993/4.6.1993 accepting the recommendation of the Committee, giving absolute power to the Selection Committee to prepare or not to prepare the panel for future vacancies is thus ultra vires, being contrary to the Statute 29 (2)(a).

6. The contention of the learned Counsel for the University, however, is that Statute 29 (2)(a) does not require the advertisement of vacancy and what is required is the advertisement of post. Accordingly, it has been submitted that the candidates can be selected by the Selection Committee even if there is no vacancy. This contention cannot be accepted. The appointment can be made against a vacant post. Therefore, unless the post is vacant, it cannot be advertised. Consequently, no selection for a post, which has not been advertised, can be made by the Selection Committee. Selection of a candidate for appointment in future in a post, which has not been notified, will also be violative of Article 14 of the Constitution, as held by the Hon"ble Supreme Court in the

cases referred to hereinbefore.

7. That apart, there is no provision providing for preparation of panel for appointment against future vacancies in every case. Whether to prepare or not to prepare such a panel in a given case has been left to the complete discretion of the Selection Committee and there are no rules/principles, laying down guidelines on the basis of which the Selection Committee can decide to prepare such a panel. Executive Council has, thus, conferred absolute and unguided power on the Selection Committee. Conferment of such a power on the Selection Committee is arbitrary and discriminatory.

8. This writ petition is accordingly allowed with costs. The decision of the Executive Council, passed in its meeting dated 16.5.1993/4.6.1993 is quashed. The panel prepared by the Selection Committee for appointment in future as also the order dated 19.5.1994, appointing the Respondent No. 3 as temporary lecturer are also quashed.