

(2001) 07 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15693 of 1993

Anand Mohan (Dr.)

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 3 UPLBEC 2125

Hon'ble Judges : Onkareshwar Bhatt, J;O.P. Garg, J

Bench : Division Bench

Advocate : R.N. Singh and A.P. Shahi, for the Appellant; V.B. Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg and Onkareshwar Bhatt, JJ.—By means of this petition under Article 226 of the Constitution of India the petitioner has prayed for issuance of mandamus to restrain the University from holding any selection for the post of Professor in the Department of Electronics Engineering pursuant to Advertisement No. 5/89-90 scheduled to be held on 8.5.1993. Further prayer has also been made to quash the recommendations made by the Selection Committee on 8.5.1993.

2. We have heard Sri R. N. Singh, Senior Advocate assisted by Sri A.P. Sahi, learned Counsel for the petitioner, and Sri V.B. Upadhaya, Senior Advocate, for the respondents.

3. The parties have exchanged their affidavits.

4. Banaras Hindu University made advertisement for the post of Professor of Electronics Engineering vide Advertisement No. 5/89-90. The applications were invited latest by 12.1.1990 for the said post. A copy of the advertisement is Annexure-1 to the writ petition. It is pleaded that ordinances framed by the University provided that in case the post is not filled within two years of the date

of advertisement or the last date for receiving applications fixed in the advertisement, the post has to be readvertised. It is further pleaded the Executive Council has tried to extend the period of two years to three years without following the procedure provided under the Act and Statutes. It is also pleaded that even the period of three years has run out, therefore, on the basis of the advertisement, Annexure No. 1, selection cannot be made.

5. Indisputably, the petitioner did not apply for the post in pursuance of the advertisement, Annexure to the petition. The respondents have pleaded that the petitioner could have applied for the post. It is also pleaded that the fact that the petitioner became Reader in 1986 was not a disqualification for the post. It is pleaded that the petitioner has not indicated that he did not possess the required qualifications or that he was disqualified or was ineligible for the post of Professor. These facts have not been controverted by the petitioner.

6. The fact remained that the petitioner did not apply for the post of Professor pursuant to the advertisement, Annexure 1-A writ, order or direction in the nature of mandamus can be issued by the Court for the enforcement of rights conferred by part III of the Constitution and for any other purposes. The aggrieved party has to establish that he has a fundamental right which has been infringed. In the present case, no infringement of any fundamental right is involved. The writ can be issued for any other purpose if the aggrieved party is found to have a legal right and when the same has been infringed., Therefore, the petitioner has to establish that he has legal right which is judicially enforceable. Since the petitioner was not an applicant to the post of Professor in pursuance of the advertisement, Annexure- 1, no legal right for being appointed to the post of Professor in pursuance of the advertisement, Annexure-1, accrued in his favour.

7. Since the petitioner has not applied for the post in pursuance of the advertisement, Annexure-1, the question whether the Executive Council could extend the period for filling the post in pursuance of the advertisement or the question whether the procedure provided in the Act or Statute has been followed is the question of mere academic interest and the Court need not go into those questions in exercise of its extraordinary jurisdiction, under Article 226 of the Constitution of India.

8. The respondents have pleaded that during the pendency of the writ petition another post of Professor in the Department of Electronics Engineering was advertised and the petitioner was duly selected against the said direct post of Professor and has also joined the same on May 23, 1998. This fact was not controverted by the petitioner. The question whether any appointment in pursuance of the advertisement, Annexure-1 would directly affect the seniority of the petitioner is misconceived at this stage.

9. The controversy raised in the present petition cannot be said to be public interest litigation, as contended by the petitioner. From the petition it is not clear

as to whose cause the petitioner is espousing. The petition does not show that it has been filed for redressing any public interest, enforcing public duty, protecting social rights and vindicting public interest. Hence no public interest is involved.

10. The writ petition has not force and is hereby dismissed. Interim order dated 5.5.1993 is vacated.