

(2006) 12 AHC CK 0101

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44758 of 2005

Arvind Kumar Singh

APPELLANT

Vs

University of Allahabad & Ors.

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 13, 31(3)(c)

Citation : (2006) 12 AHC CK 0101

Hon'ble Judges : B.S.Chauhan, J and Dilip Gupta, J

Final Decision : Dismissed

Judgement

1. This writ petition has been filed for a direction upon the respondents to regularise the services of the petitioner as a Lecturer in the Department of Chemistry of the University of Allahabad (hereinafter referred to as the "University") in accordance with the provisions of Section 31(3)(c) of the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act") which was amended by U.P. Act No. 23 of 2004 w.e.f. 20th May, 2004.

2. The petitioner claims to have been appointed for teaching in the Sheila Dhar Institute of Social Science of the University with effect from 1992 on payment of Rs. 60 per practical class which was subsequently enhanced. It is on the basis of such working that the petitioner seeks substantive appointment in terms of the provisions of Section 31(3)(c) of the Act which was amended in the year 2004 w.e.f. 20th May, 2004.

3. A perusal of the writ petition indicates that the ViceChancellor of the University had approved the appointment of the petitioner to assist in the six practical classes per week on payment of Rs. 60 per practical class subject to a maximum of Rs. 1,600/per month for the academic session. Such similar orders were passed for the subsequent academic sessions and the petitioner continued to assist in taking the practical classes as indicated in the orders. The amount paid per practical class was subsequently increased to Rs. 70/per practical class and then to Rs. 100/per practical class. It is on the basis of such working that

the petitioner contends that he had been appointed in the year 1992 as a parttime Lecturer in the Department of Chemistry and, therefore, he should be given substantive appointment under the aforesaid provisions of Section 31(3)(c) of the Act.

4. In support of his contention the learned Counsel for the petitioner has placed reliance upon Statute 10.02 of the First Statutes of the University which provides that part time Lecturers may be appointed in subjects in which, in the opinion of the Academic Council, such Lecturers are required in the interest of teaching or for other reasons and that such part time Lecturers may receive salary ordinarily not exceeding one half of the initial salary of the scale for the post to which they are appointed. The contention of the learned Counsel for the petitioner further is that the process for giving the benefit of substantive appointment under the provisions of Section 31(3)(c) of the Act had been initiated by the Executive Council on 19th December, 2004 but in view of the interim order dated 19th January, 2004 passed by this Court in Writ Petition No. 2427 of 2005 it was not finalised. This petition has been filed for giving substantive appointment as Lecturer as he had been appointed prior to 31st December, 1997 and a substantive vacancy is available in the Department and he also possesses the qualification required for regular appointment.

5. We have carefully considered the submissions advanced by the learned Counsel for the parties.

6. The basic issue, therefore, that arises for our consideration in this petition is whether substantive appointment can be given to the petitioner under the provisions of Section 31(3)(c) of the Act. In order to appreciate the contentions of the learned Counsel for the parties it would, therefore, be appropriate to reproduce Section 31(3)(c) of the Act as it stands after its amendment by U.P. Act No. 23 of 2004 and the same is as follows:

§31. Appointment of Teachers.....

3(a)

3(b)

3(c) Any teacher of the University who was appointed as Lecturer/part time Lecturer on or before December 31, 1997 without reference to the Selection Committee by way of a shortterm or part time arrangement in accordance with the provisions for the time being in force for such appointment, may be given substantive appointment by the Executive Council, if any substantive vacancy of the same cadre and grade in the same department is available if such teacher

(i) is serving as such on December 31, 1997 continuously since such initial appointment by way of shortterm/part time arrangement;

(ii) possessed the qualifications required for regular appointment to the post under the provisions of the relevant Statutes in force on the date of the

substantive appointment;

(iii) has been found suitable for regular appointment by the Executive Council;

A teacher appointed by way of shortterm/part time arrangement as aforesaid who does not get substantive appointment under this clause shall cease to hold such post on such date as the Executive Council may specify.?

7. A perusal of Section 31(3)(c) of the Act clearly shows that the benefit of substantive appointment can be given only to a teacher of the University who had been appointed as a Lecturer/part time Lecturer on or before 31st December, 1997. The petitioner has not brought on record any appointment order which may indicate that he had been appointed as Lecturer/part time Lecturer in the Department of Chemistry. On the other hand the various Annexures to the writ petition clearly show that he had been appointed to assist in the taking of practical classes on payment of Rs. 60/per practical class subject to a maximum of Rs. 1,600/per month. The petitioner has merely presumed that he had been appointed as part time Lecturer and this presumption he has drawn from the provisions of Statute 10.02 of the First Statutes of the University which is contained in Chapter X dealing with classification of teachers.

8. Statute 10.01 provides that Professors, Readers and Lecturers shall be the class of Teachers of the University. Statute 10.02 provides that a teacher of the University shall be appointed in the subject on whole time basis in the scales of pay approved by the State Government. The proviso to Statute 10.02, however, stipulates that part time Lecturers may be appointed in subjects in which in the opinion of the Academic Council, such Lecturers are required in the interest of teaching or for other reasons and that such part time Lecturers may receive salary ordinarily not exceeding one half of the initial salary of the scale for the post to which they are appointed. It is, therefore, clear that for making appointments of part time Lecturers, the Academic Council of the University has to take a decision that such Lecturers are required in the interest of teaching or for other reasons and then an appointment has to be made. In the instant case neither has the petitioner placed any decision which may have been taken by the Academic Council of the University prior to 1992 from which year he claims to have been working as a part time Lecturer in the Department of Chemistry and nor has the petitioner placed any appointment order as part time Lecturer. The contention of the petitioner that he had been appointed as part time Lecturer in the Department of Chemistry cannot, therefore, be accepted.

9. Faced with this difficulty, Sri M.D. Singh "Shekhar" learned Counsel for the petitioner submitted that even if the petitioner had been appointed as a Guest Lecturer, his case for giving substantive appointment under Section 31 (3)(c) of the Act has to be examined by the Executive Council and in support of his contention he has placed reliance upon a decision of this Court in *Sangita Srivastava (Dr.) v. University of Allahabad & Ors.*, 2002(2) LBESR 366 (All) : 2002(3) ESC 320 (All). Sri P.S. Baghel learned Counsel appearing for the

Allahabad University has, however, refuted this contention and has placed reliance upon a Division Bench judgment of this Court in the case of Birendra Bahadur Singh v. Chancellor, Allahabad University, 2004(1) LBESR 1095 (All) : 2004 (2) ESC 1030.

10. It is no doubt true that in the case of Sangita Srivastava (Dr.) (supra) the Court had issued directions to regularise the services of the petitioner who had been appointed as a Guest Lecturer but such directions were issued after a finding had been recorded by the Court, on the basis of the averments made in the petition, that the petitioner had been doing all the work of a regular Lecturer. In the case of Birendra Bahadur Singh (supra) the Court again examined the case of the petitioner who had been appointed as a Guest Lecturer for giving substantive appointment under the provisions of Section 31(3)(b) of the Act. In this context the Court observed as follows:

?The present case of the petitioner claiming regularisation under the Act on the ground that the case of the petitioner is fully covered by the case of Sangita Srivastava (supra) is not acceptable as it is distinguishable. Guest Lecturers have been engaged only on stop gap basis and the State Government has not sanctioned any post of lecturer in the photography department. Under the U.P. State Universities Act, the appointment of a regular and temporary appointment are to be made in accordance with the Act. Section 31(1) provides that in case of a teacher of University, the appointing authority shall be the Executive Council and appointment shall be made on the recommendation of the Selection Committee in the manner provided under the Act. Section 31(10) lays down that no selection for appointment shall be made except after advertisement of the vacancy.

Section 31(4)(a) prescribes the constitution of selection committee for the appointment of the teacher in the University. Even in the case of temporary teacher under Section 31(3)(a) officiating appointment can be made only on leave vacancy for a period not exceeding ten months.

In the present case neither any expert was nominated by the ViceChancellor nor was a Selection Committee constituted under the Act, and moreover no advertisement was made. In the circumstances, it is absolutely clear that the appointment of the petitioner was not made under Section 31 and, as such, he has no right to be regularised as lecturer. Another glaring point that is to be noted in the instant case is that the ViceChancellor has made the appointment on the basis of recommendation of the incharge of the department whereas it is the Executive Council which is the appointing authority of the teacher on the recommendation of the Selection Committee. In the instant case neither the initial appointment has been made after the post was advertised, nor was a Selection Committee constituted and the petitioner was given appointment only on the recommendation of the incharge and the appointment was also not made by the competent appointing authority.

The argument on behalf of the petitioner's Counsel that the case is squarely covered by the case of Dr. Sangita Srivastava appears to be wrong on the face of it as Dr. Sangita Srivastava has sought regularisation under Section 31(3)(c) of the Act. She was appointed in pursuance to the advertisement No. 6/89 and her appointment was in September 1989..... Admittedly Dr. Sangita Srivastava was appointed after due selection by a validly constituted Selection Committee and before the cutoff date i.e. 30.6.1991 and her selection was in pursuance to the advertisement. As such, the present case is not covered by the case of Dr. Sangita Srivastava (supra) and the petitioners cannot be granted the same relief as claimed by them.?

11. It is, therefore, clear that the case of Dr. Sangita Srivastava (supra) on which great reliance was placed by the learned Counsel for the petitioner was subsequently distinguished by a Division Bench of this Court in the case of Birendra Bahadur Singh (supra) and it needs to be emphasized that the Division Bench judgment in both the decisions were given by the same learned Judge. The subsequent decision in Birendra Bahadur Singh (supra) emphasises that it is imperative that the teacher who is claiming benefit of substantive appointment under Section 31(3)(c) of the Act should have been initially appointed after due advertisement in accordance with the provisions of Section 31(10) of the Act. In the present case, it is not the case set up by the petitioner that he had been appointed after issuance of any advertisement as provided for under Section 31(10) of the Act and nor the case of the petitioner that though he had been appointed as a Guest Lecturer he had been performing all the work of regular Lecturer can be accepted because he was asked to merely give assistance in the practical classes. The decision in the case of Sangita Srivastava (supra), therefore, does not help the petitioner at all.

12. Learned Counsel for the petitioner Sri M.D. Singh "Shekhar", however, submitted that in view of the fact that Section 31 (3)(c) contemplates grant of substantive appointments to those teachers who have been appointed without reference to the Selection Committee, it is not necessary that such teachers should have been appointed after due advertisement of vacancy as provided for in Section 31(10) of the Act. Sri P.S. Baghel learned Counsel appearing for the University, however, submitted that due advertisement of the vacancy has not been dispensed with.

13. To understand why the provisions of Section 31(3)(c) of the Act were substituted w.e.f. 20th May, 2004 we have to fall back on the statement of objects and reasons mentioned for amending the Act and the same are as follows:

?Section 31 of the Uttar Pradesh State Universities Act, 1973 provides for the appointment of teachers in a State University. There is no provision for ad hoc appointment of a teacher in a State University in the said Act but subsections (6) and (8) of Section 13 of the said Act provided for the appointment of Lecturers in the University by way of shortterm arrangement in matters of urgency and leave

vacancies. Under these provisions Lecturers were appointed in certain Universities and the terms thereof were also extended from time to time. On persistent demand by the said Lecturers the Uttar Pradesh State Universities (Amendment) Act, 1992 (U.P. Act No. 1 of 1992) was enacted to provide for giving substantive appointment to such Lecturers as were appointed on or before June 30, 1991 by way of shortterm arrangement without reference to the Selection Committee constituted in accordance with the provisions for the time being in force and who were continuously serving as such from the date of their initial appointment subject to the availability of substantive vacancies and for abolishing the system of appointment of teachers by way of shortterm arrangement. Thereafter provisions for the appointment of part time Lecturers were made by certain Universities in their Statutes for such subjects as were, in the opinion of Academic Council thereof, necessary in the interest of teaching or for other reasons. Such part time Lecturers were entitled to get pay not exceeding half of the initial pay of the posts to which they were appointed. Although the State Government had issued instructions in G.O. No. 1685/701200015(40)2000, dated October 9, 2000 to the Universities to omit the provisions relating to the appointment of the part time Lecturers from the Statutes, but were not complied with by the Academic Council of certain Universities in the interest of imparting education. It was, therefore, decided to amend the said Act to provide for giving substantive appointment by the Executive Council to such teachers of the University who were appointed as Lecturer/part time Lecturer on or before December 31, 1997 without reference to the Selection Committee by way of shortterm or part time arrangement subject to the availability of substantive vacancy.?

14. A bare perusal of the objects and reasons clearly indicate that the Legislature was conscious of the fact that teachers are appointed under Section 31 of the Act and there is no provision of ad hoc appointment of a teacher but subsections (6) and (8) of Section 13 does provide for appointment of Lecturer in the University by way of shortterm arrangement in matters of urgency and leave vacancies. It was on account of persistent demands made by such Lecturer for giving substantive appointment that Act No. 1 of 1992 was enacted. Subsequently the provisions for appointment of part time Lecturers was made by certain Universities in their Statutes for such subjects as were, in the opinion of the Academic Council, necessary in the interest of teaching or for other reasons and although the State Government had issued directions vide Government Order dated 9th October, 2000 to omit the provisions relating to appointment of part time Lecturers from the Statutes but they were not complied with. It was, therefore, decided to amend the said Act for giving substantive appointment to such teachers of the University who were appointed as Lecturer/part time Lecturer on or before 31st December, 1997 without reference to the Selection Committee by way of shortterm or part time arrangement subject to availability of substantive vacancy.

15. It also needs to be mentioned that subsections (6) and (8) of Section 13 of

the Act was amended by U.P. Act No. 1 of 1992 so that the ViceChancellor was divested of the power of making any appointment of a teacher of the University under these Sections. Thus, only the part time Lecturers or such Lecturers who were appointed under subsections (6) and (8) of Section 13 prior to 22 November, 1991 could be given the substantive appointment under Section 31(3) (c) of the Act. It also needs to be emphasized that appointment of teachers in the University, teachers of a Associated or Affiliated College is made under Section 31 of the Act on the recommendation of a Selection Committee in the manner provided in the other subsections. The constitution of the Selection Committee has been provided for in Section 31(4) of the Act. Section 31(10) of the Act clearly provides that no selection for any appointment under Section 31 shall be made except after advertisement of the vacancy in at least three issues of two newspapers having adequate circulation in Uttar Pradesh. It is, therefore, more than apparent that what Section 31(3)(c) of the Act has dispensed with is the requirement of the recommendation of the Selection Committee. It does not dispense with the provisions of Section 31(10) of the Act which provides that no selection for any appointment under Section 31 shall be made except after advertisement of the vacancy in at least three issues of two newspapers having adequate circulation in Uttar Pradesh. In the present case, there is nothing on the record to indicate that the petitioner had been appointed as a Guest Lecturer after advertisement of the vacancies in the manner provided for under Section 31(10) of the Act. This is what was also emphasized by this Court in the case of Birendra Bahadur Singh (supra).

16. In the case of Yogendra Singh Rawat & Ors. v. Hemwati Nandan Bahuguna Garhwal University & Ors., (1993) 3 UPLBEC 1699, this Court while interpreting the provisions of Section 31(3) (c) of the Act, again emphasized this fact:

?Apart from this, the question for consideration is whether the petitioners who had been given shortterm ad hoc appointment are entitled to get substantive appointment. The procedure for making appointment is that a vacancy has to be advertised in accordance with subsection (10) of Section 31 of the Act, which provision has been held to be mandatory by two Division Benches of our Court in Dr. R.C. Gupta v. Chancellor, 1983 UPLBEC 519 and Dr. Sudhir Chandra v. Chancellor, 1983 UPLBEC 110. In absence of advertisement there is violation of Article 16 of the Constitution and appointments so made are rendered illegal.?

17. The Appeals filed against the said decisions in the Supreme Court were dismissed by a detailed judgment in the case of Yogendra Singh Rawat & Ors. v. Hemwati Nandan Bahuguna Garhwal University & Ors., 1998(2) LBESR 128 (All) : (1998) 3 SCC 704, and the relevant portion of the judgment is quoted below:

?....Thereafter the High Court addressed itself to the question if the appellants who had been given shortterm ad hoc appointments were entitled to substantive appointments. It noted that procedure for making appointments was that the vacancy had to be advertised in accordance with subsection (10) of Section 31 of

the Act and in the absence of the advertisement there would be violation of Article 16 of the Constitution and any such appointments would be rendered illegal.?

18. We, therefore, express our inability to accept the submissions of Sri M.D. Singh ?Shekhar?, learned Counsel for the petitioner that the advertisement of the vacancy was not necessary.

19. Before parting with this case, we must also make reference to the Constitution Bench decision of the Supreme Court in the case of Secretary, State of Karnataka & Ors. v. Umadevi & Ors., 2006(3) LBESR 260 (SC) : JT 2006 (4) SC 420. In this decision the Supreme Court examined at length the issue about regularisation of services of daily wage/ad hoc employees as there were conflicting decisions and it was clarified that those decisions which run counter to the principles settled in the decision, or in which directions had been issued which ran counter to what was held in the decision, shall stand denuded of their status as precedents. It would, therefore, be appropriate to refer to the relevant portions of the judgment which are as follows:

?Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

.....

The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the Court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so,

would be negation of the principle of equality of opportunity.

.....

No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

.....

It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.?

20. The aforesaid Constitution Bench decision of the Supreme Court emphasises that adherence to the Rule of equality in public employment is the basic feature of our Constitution and, therefore, unless the appointment is in terms of the relevant Rules and after a proper competition among qualified persons, the same would not confer any right on the appointees and that any appointment made without following the due process of selection as envisaged under the Rules would not entitle the persons appointed to claim absorption in regular service merely on the strength of such continuance. It has also been emphasised that those decisions which run counter to the principles settled in the Constitution Bench decision, will stand denuded of their status as precedents.

21. Such being the position, the benefit of Section 31(3)(c) of the Act as amended w.e.f. 20th May, 2004 cannot be given to the petitioner as there is nothing on the record to indicate that he had been appointed as part time Lecturer in accordance with the procedure prescribed under the Act and the Statutes of the University and nor is there anything on the record to indicate that the petitioner had been appointed after due advertisement of the vacancy. The evidence on record, on the contrary, indicates that the petitioner had been merely asked to assist in the holding of the practical classes.

22. In view of this finding, the contention raised on behalf of the University that even otherwise, as the University has become a Central University under the provisions of the University of Allahabad Act, 2005 which came into force w.e.f.

14th July, 2005, no direction can be given to the Executive Council to consider the cases under the provisions of the Act, is not required to examine it in this petition.

23. Thus, in view of the discussion made above, the writ petition is liable to be dismissed and is, accordingly, dismissed.