

(2012) 04 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 16065 and 4864 of 2008

Ashok Kumar Chowdhary

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 345, 346
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2012) 6 ADJ 347 : (2012) 4 AWC 4930

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : D.D. Yadav, R.K. Singh, A.K. Singh, Niraj Tewari, Vijay Gautam, Sanjeev Singh, N.K. Pandey, Sudha Pandey, R.M. Saggi, P.S. Baghel and A. Sharma, for the Appellant; Ajit Kumar Singh and C.S.C., for the Respondent

Judgement

Hon'ble Sabhajeet Yadav, J.—Heard learned counsel for the petitioner, learned counsel for the contesting respondents and the learned Standing Counsel. The facts of both the writ petitions are identical except the petitioner of Writ Petition No. 16065 of 2008, has applied for the post of Junior Clerk and petitioner of Writ Petition No. 4864 of 2008 has applied for the post of computer operator. Since identical question of facts and law is involved in both the writ petitions, therefore, the same are jointly heard and are being decided by a common judgment.

2. By means of these writ petitions petitioners have challenged the order dated 25th September, 2007, passed by the Special Secretary, U.P. Government, Lucknow, whereby the result of the selection for the post of Clerks, which includes and Computer Operators in U.P. Rajarshi Tandon Open University, Allahabad hereinafter referred to as the University has been withheld until further order.

3. The brief facts of the case are that the State Government on 3.2.2006 sanctioned 46 posts in different categories of the Director, Lecturer, Assistant

Librarian, Junior Clerks and Computer Operators etc. in the University. In pursuance thereof, the University has advertised aforesaid vacancies in two newspapers, namely, "Hindustan" and "Dainik Jagran" inviting the applications for filling the aforesaid vacancies including the posts of Clerks and Computer Operators. There were 13 posts of Clerks out of which 4 posts reserved for scheduled caste candidates. The said advertisement was also issued on the website. Copies of the advertisement published in two newspapers namely "Hindustan" and "Dainik Jagran" are on record as Annexure 2 to the writ petition. In pursuance of the aforesaid advertisement, the petitioners have applied for the post of Clerk and Computer Operator and a written test was conducted in May 2007. Thereafter, on the basis of some news papers reports the State Government vide order dated 10.7.2007 cancelled the re-cruitment of Clerks including Computer Operator. In respect of the other posts, the recruitment process was completed and the appointment letters were issued. Copy of the order of the State Government dated 10.7.2007 is on record as Annexure 3 to the writ petition.

4. It is stated that after some time the process of selection was again started from 26.8.2007 and was continued till 30.8.2007. In the said re-examination, written test and computer knowledge test was again held. The petitioners have participated in the said tests. The result of the re-examination was declared and those candidates who were found suitable, were called for the interview scheduled to take place from 25th to 28th September, 2007. Meanwhile the State Government on 25.9.2007 passed an order that the result of the selection for the post of Junior Clerks shall not be declared till further orders. A copy of the order dated 25.9.2007 of the State Government is on record, as Annexure 4 to the writ petition. Accordingly, the University has not declared the result for the post of Clerks till date.

5. It is stated that the Executive Council in its meeting dated 27.9.2007 has resolved that although the State Government does not have any power to issue direction to the University for not declaring the result, however, it is resolved to respect the decision of the State Government but in view of the difficulty faced by the University on account of shortage of the clerical staff, the State Government was requested to revoke its direction. A copy of the relevant part of the Minutes of the Executive Council dated 27.9.2007 is on record as Annexure 6 to the writ petition.

6. At the strength of assertions made in the writ petition learned counsel for the petitioners has submitted that the respondent No. 2, being an University, is an autonomous body under the provision of the Uttar Pradesh Rajarshi Tandon Open University Act No. 10 of 1999 (hereinafter referred to as the Act). Under the provisions of Act, Statute and Ordinances, the State Government does not have any power to interfere in matters of the recruitment of the teaching and non-teaching staff of University, the University is the only authority, which has power to deal with the recruitment of the teachers and non-teaching staff. In support of

aforesaid submissions, reliance has been placed upon the decision in the case of G.K. Rai, 2004(1) ESC 498, wherein it has been held that the State Government is not in picture in the matter of appointment etc. and the order of the State Government was set aside by this Court. The State Government in the instant case without any material, has earlier cancelled the recruitment, merely on the basis of some newspaper reports, there was no other material before the State Government to reach at the conclusion that there was any irregularity in the recruitment.

7. In justification of its action the State Government has filed a detail counter-affidavit in the writ petition inter alia stating in paras 5, 6 and 7 of the counter-affidavit that u/s 8 (1) of the Act, the State Government is empowered to make inspection and inquiry in the University in respect of its building, library, laboratories, workshop, equipments and also examination and in respect of any matter connected with administration and finances of the University or Colleges or Centres of University. It is stated that 15 posts of computer operator and 13 posts of junior clerk alongwith other posts of various categories were advertised on 1.6.2006 and written test was held on 27.5.2007 for recruitment on the said posts. Thereafter the State Government received numerous complaints against the University in the matter of appointment on the posts of computer operator and junior clerks. It was brought to the notice of the State Government that the University has committed gross irregularities in holding selection and physically handicapped persons were not called for to participate in the said test, which was held on 27.5.2007. The State Government was also informed that ad hoc employees of the University were made to sit separately in a single room and the University employees were deputed to invigilate in that room. Keeping in view the aforesaid irregularities committed in the selection the State Government vide order dated 10.7.2007 has directed the University to cancel the test conducted by University on 27.5.2007 with a direction to conduct the test/examination strictly in accordance with prescribed provisions. In para 9 of the said counter-affidavit it has been stated that in pursuance of the aforesaid order of State Government dated 10.7.2007 the University once again conducted the test on 26.8.2007 in utter violation of prescribed procedure and direction of the State Government. Under the circumstances the State Government was left with no option but to stop the University from declaring the result of the test conducted on 26.8.2007 till further orders. It is relevant to point out that declaration of result was stopped by the State Government on the ground that University did not advertise the posts afresh and proceeded with making selection on the basis of earlier advertisement.

8. In paras 10 and 11 of the counter-affidavit it is further stated that vide order dated 25.9.2007 the State Government appointed the District Magistrate, Allahabad to inquire into the matter and send the report to the State Government within a month. In pursuance thereof the District Magistrate, Allahabad conducted inquiry and sent inquiry report to the State Government on 21.11.2007, in which it has been stated that the posts of Professors, Director,

Readers and Lecturers were advertised through an advertisement dated 1.6.2006 and the post in question (non-teaching staff) were also mentioned in the same advertisement at a place below the table meant for the teaching posts causing confusion to the candidates for non-teaching posts and thus, they were deprived of the opportunities. In para 12 of the said counter-affidavit it is stated that educational qualifications and age were not mentioned for non-teaching posts in the aforesaid advertisement. Besides, the University asked the candidates to send the application through registered/ speed post but the University received some of the applications by hand also and the applications were not entered in daily register of the University. In para 13 of the said counter-affidavit it is also stated that Selection Committee constituted by the University for appointment on the post of non-teaching posts did not comprise a member belonging to minority community which is mandatory as per the appointment Rules. The Inquiry Officer has also mentioned in his report that fairness and transparency has not been observed about the matter of holding selection for non-teaching posts and gross irregularities have been committed by the University in the matter. In this view of the matter, the State Government took a decision to stop the University from declaring the result of test/selection held by the University on 26.8.2007. A true copy of which is on record as Annexure-CA-5 to the counter-affidavit. Besides this, a short counter-affidavit has also been filed by the University.

9. Having regard to the rival submissions of learned counsel for the parties first question arises for consideration is that as to whether State Government has power to interfere in the matter of recruitment, of non-teaching staff of the University? In this connection it is to be noted that the University is autonomous body established u/s 3 of the Act. Section 26 (d) of the said Act inter alia provides that subject to provisions of the Act, statutes may provide for any matter relating to the appointment of teachers and other employees of the University, their emoluments and other conditions of service. Chapter VII of the Uttar Pradesh Rajarshi Tandon University First Statute 2002 provides for terms and conditions of service of employees other than teachers. These statutes appears to have been framed by the Governor of Uttar Pradesh u/s 26 (d) of the said Act. Statute 7.08 lays down that the appointment and terms and conditions of the service and Code of Conduct of other officers and non-teaching staff shall be governed by the procedure of appointment as laid down in the Ordinance. For the sake of convenience the Statute 7.08 is quoted as under :

7.08 The appointment and terms and conditions of service and code of conduct of other officers and non-teaching staff shall be governed by the procedure of appointment, terms and conditions of the service and the code of conduct as may be laid-down in the Ordinance.

10. Chapter XIV of the Uttar Pradesh Rajarshi Tandon Open University First Ordinances 2002 which has come into force with effect from 24th March, 1999 deals with the appointment, terms and conditions of service of other officers and non-teaching staff. These ordinances appears to have been issued under Statute

7.08 of the University. Chapter XIV (A) (1) of the Ordinances of the University provides that the appointing authority of the other officers including Dy. Registrar and Assistant Registrar shall be Vice-Chancellor. Appointing authority is in respect of non-teaching staff of the University other than the teaching and academic staff shall be the Registrar or any other officer of the University who shall be designated by the Executive Council. Chapter XIV (D) of the Ordinance of University provides procedure for selection to the posts meant for direct recruitment which reads as under:

1. The Registrar shall notify the vacancy/vacancies by pasting the notice on the Notice Board of the office and also placing advertisement in two daily Newspapers.

(2) The minimum and maximum age limit shall be such as may be determined from time to time by the State Government for its employees.

(3) The Educational and other qualifications for Employees of the University shall be such as determined from time to time, by the State Government for its employees.

(4) There shall be a Selection Committee for appointment of other officers and non-teaching staff which shall consist of--

(a) Vice-Chancellor or his nominee not below the rank of Professor- Chairman

(b) Registrar - Member

(c) Finance Officer - Member

(d) Two members one each from Scheduled Caste and backward class to be nominated by Vice-Chancellor.- Member

(5) The majority of total membership shall form the quorum.

(6) Meeting of the Selection Committee shall be convened under the order of Vice-Chancellor.

(7) A Fortnight notice of meeting shall be given to candidates.

(8) Selection Committee shall be competent to adopt its own procedure regarding the mode of assessment of the candidates.

(9) It shall be the duty of appointing authority to satisfy himself about the character and Medical fitness of the candidates prior to his appointment.

11. Thus from a careful reading of the provisions of Act, Statutes and Ordinances of the University it is clear that State Government has no power even remotely to interfere in the matter of recruitment of teaching and non-teaching staff of the University. In the matter of such recruitment the recommendation of selection is placed before the Executive Council for approval of appointment, thereupon the appointment is made by the appointing authority as prescribed by the First

Ordinances of the University. The State Government is not in picture in the matter of such recruitment. Therefore, the action of State Government cancelling the selection and stopping the declaration of the result of selection for appointment of non-teaching staff of the University including Clerks and Computer Operators until further order or for indefinite period is wholly without jurisdiction and cannot be sustained. This view also finds support from a decision of Division Bench of this Court rendered in *G.K. Rai v. State of U.P. and others*, 2004 (1) ESC 498 (All), wherein while dealing with the case of selection and appointment of teachers of Allahabad University in paras 19 and 20 of the said decision by placing reliance upon a decision rendered by Apex Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, , has held that State Government is not in picture at all in the matter of making selection and appointment of University teachers and any interference of the State Government is uncalled for.

12. Next question arises for consideration is that as to whether u/s 8 of the Act, the State Government has any power to stop the declaration of result of selection for appointment of non-teaching staff of the University in the manner it has done so? In this connection it is to be pointed out that u/s 8 of the Act the State Government has no doubt power to hold inspection of the University or any college or study centre maintained by the University including its building, libraries, laboratories, workshop and other equipments and also examinations, teaching and other work conducted or done by the University or such college or study centre or hold an inquiry in respect of any matter connected with administration and finances of University or such college or such centre in the manner indicated therein but in my opinion, the State Government does not have any power to stop the declaration of result of selection for recruitment of non-teaching staff of the University nor have any power remotely to interfere in the matter of recruitment of non teaching staff of the University.

13. In order to better appreciate the issue, it would be useful to quote only the provisions of sub-sections (1) to (6) of Section 8 of the Act, which are relevant for the purpose of the case as under :

8. (1) The State Government shall have the right to cause an inspection to be made, by such person or persons as it may direct, of the University or any college or study centre maintained by the University including its buildings, libraries, laboratories, workshops and equipments and also of the examinations, teaching and other work conducted or done by the University or such college or study centre or to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University or such college or such centre.

(2) Where the State Government decides to cause an inspection or inquiry to be made under sub-section (1), it shall inform the University of the same through the Registrar, and any person nominated by the Executive Council may be present at such inspection or inquiry as representative of the University and he

shall have the right to be heard as such;

Provided that no legal practitioner shall appear, plead or act on behalf of the University at such inspection or inquiry.

(3) The person or persons appointed to inspect or inquire under sub-section (1) shall have all the powers of a civil Court, while trying a suit under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling production of documents and material objects, and shall be deemed to be a civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 and any proceedings before him or them shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

(4) The State Government shall address the Vice-Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the State Government with such advice as the State Government may offer upon the action to be taken thereon.

(5) The Vice-Chancellor shall then within such time as the State Government may fix, submit to it a report of the action taken or proposed to be taken by the Executive Council.

(6) If authorities of the University do not, within a reasonable time, take action to the satisfaction of the State Government, the State Government may, after considering any explanation which such authorities may furnish, issue such directions as it may think fit, and the authorities of the Universities shall comply with such directions.

14. Thus from a plain reading of the aforesaid provisions of the Act it is clear that State Government has right to make inspection of the University or any college or study centre maintained by the University including its buildings, libraries, laboratories, workshops and equipments and also of the examinations, teaching and other work conducted or done by the University or such colleges or such study centre or to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University or such college or study centre. Where the State Government decides to make an inspection or inquiry under sub-section (1), it shall inform the University of the same through the Registrar, and any person nominated by the Executive Council may be present at such inspection or inquiry as representative of the University and he shall have the right to be heard as such; Provided that no legal practitioner shall appear, plead or act on behalf of the University at such inspection or inquiry. Sub-section (4) of the said Section provides that the State Government shall address the Vice-Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views and advice of the State Government with its intended action. Thereafter under sub-section (5) the Vice-Chancellor is under

obligation to submit report to the State Government within stipulated time fixed by the State Government in respect of action taken or proposed to be taken by the Executive Council and under sub-section (6) if the authorities of the University did not within a reasonable time take action to the satisfaction of the State Government, the State Government may after considering any explanation which such authorities may furnish, issue such directions as it may think fit, and the authorities of the University shall comply with such directions.

15. From the material available on record it cannot be disputed that after holding inquiry purported to be under sub-section (1) of Section 8 of the Act the State Government did not communicate its decision to the Vice-Chancellor in respect of result of inquiry held by it through District Magistrate Allahabad on 21.11.2007 and its views with any advice offering any action to be taken by the University as contemplated under sub-section (4) of Section 8 of the Act. Therefore, in my considered opinion, the Executive Council through the Vice-Chancellor of the University has not been given opportunity to take any action as contemplated under sub-section (5). As such the State Government could not issue any direction for stopping the declaration of result of selection for recruitment against non teaching post of the University straightway purporting to be under sub-section (6) of Section 8 of the Act and accordingly the impugned order dated 25th September, 2007 passed by the Special Secretary of U.P. Government stopping the declaration of result of selection is not sustainable in the eye of law as it is not in accordance with the scheme of provisions of Section 8 of the Act, therefore, the same is liable to be struck down by this Court. The aforesaid view also finds support from the decisions of this Court rendered in G.K. Rai's case (supra).

16. Although these writ petitions can be decided on the basis of conclusions drawn by this Court herein before without dealing with the objections raised by the State Government in its counter-affidavit on the basis of report of District Magistrate, Allahabad submitted to the State Government on 21.11.2007 but as abundant caution it will be useful to deal with it herein after.

17. So far as objection regarding the irregularities committed in the advertisement in question in respect of age and qualification is concerned, learned counsel appearing for the petitioners has demonstrated before the Court through advertisement in question as filed as Annexure-2 of the writ petition that age of the candidates shall be as per State Government Rules and qualification on the post will be as per University Grant Commission, University Statutes and State Government Rules, therefore, the objection raised in the counter-affidavit in that regard is not tenable at all. The submission of learned counsel for the petitioner appears to be correct. From perusal of advertisement itself it is clear that in the General Conditions at item No. 5 it was mentioned that the age of candidate would be as per State Government Rules and qualification of the candidates for the post will be as per University Grant Commission, University Statutes and State Government Rules. Therefore, it cannot be said that desirous

candidates could be confused from the aforesaid advertisement.

18. So far as other objection regarding the irregularities in respect of advertisement that post of non-teaching staffs were mentioned below the posts of teaching staff appears to be without any substance for the reasons that if the candidates would go through the advertisement published in daily newspapers, such desirous candidates would also read each and every contents of the said advertisement. Besides this, in para 7 of the report of Additional District Magistrate, Allahabad dated 27.10.2007 contained in Annexure-5 of the counter-affidavit filed on behalf of State Government it has also been mentioned that against 15 vacancies of computer operator 181 candidates and against 13 vacancies of junior clerks 335 candidates have participated in the selection, therefore, in my considered opinion, such numbers of participants in the said selection process against the aforesaid vacancies cannot be said to be insufficient and on that count the advertisement of vacancy which has been made in two daily newspapers having wide circulation cannot be said to be faulty. Not only this, but by same advertisement other posts like Librarian, Professor, Director, Reader and Lecturer including Assistant Librarian have been advertised and other selections have been held and concluded according to the scheme of the said selection and candidates selected have also been given appointment without any objection. Therefore, the submission of the learned counsel for the petitioners that objections raised by the State Government are merely for the sake of objection with ulterior motive, deserves to be accepted.

19. So far as objection regarding inclusion of members of minority community in the Selection Committee is concerned, learned counsel for the petitioners has pointed out that in view of provisions contained under Chapter XIV D (4) of the First Ordinances of the University 2002, the inclusion of any member of minority community is not essential for constitution of valid Selection Committee. The submission appears to be correct. According to the aforesaid provisions of ordinance, the Selection Committee shall consist of (a) Vice-Chancellor or his nominee not below the rank of Professor -Chairman (b) Registrar - Member (c) Finance Officer - Member (d) Two members one each from Scheduled Caste and backward class to be nominated by Vice-Chancellor. Therefore, the objection regarding constitution of Selection Committee also appears to be without any substance, thus cannot be sustained.

20. So far as objection in respect of propriety of competitive examination that while holding written test the invigilators of different institutions were not mixed up and teachers of Marywana Makers Girls, Inter College, Allahabad alone were made invigilators in the said written test is concerned, it is to be noted that the invigilators were not of the University instead thereof they were asked from teaching institutions namely Marywana Makers Girls, Inter College, Allahabad and they have virtually performed the task of invigilation in the said written examination, therefore, it cannot be said to be irregular method adopted by the University authorities for conducting the examination so as to make the selection

unfair. Beside this there is no allegation that any teacher while doing invigilation has committed any irregularity or polluted the purity of said written examination, as such said objection cannot be sustained.

21. Another objection that no written certificates have been obtained from the invigilators that they are not related to any candidate also appears to be without any substance for the reason that there is no finding that any candidate was relative of any invigilator, thus such objection can also not be sustained.

22. Next objection against the said written examination was that the question papers were only of one series and question papers were not prepared in multiple series is also without any substance for the reason that there is nothing to indicate that any mass copying has been done on that count, as such this objection can also not be sustained.

23. Another objection against said selection that the vacancies were not advertised as back-log vacancies in the reserved category also appears to be without any substance for the reasons that these vacancies were against newly created post and for filling those vacancies it is first time selection process was initiated by the advertisement dated 1.6.2006, therefore, in view of settled legal position the question of advertising those vacancies as back-log vacancies in favour of reserved category candidates does not arise. Contrary to it, there is no objection that reservation has not been given in the said selection to the candidates of SC/ST and O.B.C. instead thereof from perusal of advertisement it is clear that the posts were reserved for the candidates belonging to reserved category candidates. However, so far as reservation with regard to physically handicapped quota is concerned, only 3% post can be reserved in the aforesaid quota and on the basis of available vacancies no post could be legitimately reserved in the aforesaid quota, therefore, the question of inviting applications under the aforesaid quota does not arise.

24. In view of the foregoing discussions, the impugned order dated 25.9.2007 passed by the State Government (contained in Annexure-4 of the writ petition) cannot be sustained and the same is hereby quashed. The University authorities are directed to declare the result of said selection forthwith in the wake of decision taken by Executive Council on 27.9.2007 contained in Annexure-6 of the writ petition and to proceed further in accordance with law. With the aforesaid observations and directions, both the writ petitions stand disposed of finally.