
(1999) 10 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 30831 of 1994

Bhanu Prakash Singh

APPELLANT

Vs

Chancellor, Agra University, Rai Bhawan, Lucknow and others

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31, 31(3), 68

Citation : (1999) 4 AWC 3545 : (1999) AWC 3545 : (2000) 1 UPLBEC 609

Hon'ble Judges : R.R.K. Trivedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : B.D. Mandhyan and Satish Mandhyan, for the Appellant; S.C., Pankaj Mittal, R.N. Singh, Pradeep Kumar, R.K.S. Jadaun and S.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.R.K. Trivedi and M.C. Jain, JJ.—In this petition, counter and rejoinder-affidavits have been exchanged between the parties. Learned counsel have agreed that this petition may be decided finally at this stage.

2. Initially petitioner claimed relief against the order dated 13.9.1994, passed by respondent No. 2 and also for a direction to respondents to regularise the petitioner on the post of lecturer in Physics in Agra University and further not to confirm respondent No. 4 on the post of lecturer in Physics. However, petitioner was directed by order dated 10.4.1996 to approach the Chancellor of the University u/s 68 of the U. P. State Universities Act. 1973 (hereinafter referred to as the Act), within a week for the reliefs claimed in the writ petition. The reference was directed to be decided within a month by the Chancellor. However, the writ petition was kept pending. The Chancellor by order dated 11.1.1997 decided the reference u/s 68 of the Act. By this order, he set aside the order dated 13.9.1994 and directed the executive council of the University to consider the claim of the petitioner for regular appointment u/s 31 (3) (c) of the Act. The Chancellor, however, refused the request of the petitioner to set aside the

appointment of respondent No. 4. Aggrieved by the order of the Chancellor, the petitioner filed Civil Misc. Application No. 5086 of 1997 along with a supplementary affidavit and prayed for a further relief for quashing the order of the Chancellor dated 11.1.1997 to the extent the matter has been decided against him. The application has been allowed directing the supplementary affidavit filed along with the application to be treated as part of the writ petition.

3. In order to appreciate the dispute between the parties, it is necessary to narrate in brief the facts giving rise to this writ petition. Petitioner was appointed as lecturer in subject Physics in Agra University by order dated 31.8.1989 for the period 1.8.1989 to 30.6.1990 on a fixed salary of Rs. 1,500 per month. This appointment was further extended from time to time upto 31.7.1991. By order dated 24.7.1991, the appointment of petitioner was directed to be treated as part time lecturer in the Department of Physics and it was to continue upto 31.1.1992. While the petitioner was serving on the basis of the aforesaid appointment. Section 31 of the Act was amended and Clause (c) was inserted in sub-section (3) of Section 31 by U. P. Act No. 1 of 1992 with effect from 22.11.1991. The newly added Clause (c) to sub-section (3) of Section 31 of the Act provided that any teacher of the University who was appointed as Lecturer on or before June 30, 1991, without reference to the Selection Committee by way of short-term 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 on November 22, 1991--if such teacher (i) is serving as such on November 22, 1991 continuously since such initial appointment by way of short-term arrangement ; (ii) possessed on November 22, 1991 the qualifications required for regular appointment to the post under the provisions of relevant Statutes in force on the date of initial appointment ; (iii) has been found suitable for regular appointment by the executive council. In view of the aforesaid provisions contained in Section 31 (3) (c) of the Act, the petitioner claimed his regularisation on the post on the basis of the service already rendered. As no action was taken by the University, petitioner filed Writ Petition No. 1578 of 1992 on 13.1.1992. This petition was disposed of finally by Division Bench with direction to respondent University to consider claim of petitioner for regularization of service as provided u/s 31 (3) (c) of the Act. Against the order of the Division Bench, respondents approached Hon"ble Supreme Court by filing SLP numbered as 13181 of 1992, 13550 of 1992, 13837 of 1992, 13923 of 1992 (Civil Appeals Nos. 217 to 220 of 1993). Hon"ble Supreme Court by order dated 20.1.1993 allowed the aforesaid appeals, set aside the order of the Division Bench dated 19.5.1992 and remitted the matter to the High Court for rehearing in accordance with law. While disposing of the aforesaid appeals. Hon"ble Supreme Court gave the following direction while refusing the prayer for a direction to maintain status quo during pendency of the writ petition :

"Learned counsel for the respondents have prayed for maintenance of status

quo. We do not agree. We, however, make it clear that whatever steps are taken hereafter, shall be subject to the final result in the main case and if the respondents are desirous of applying and competing with other applicants for the post in question, they will be doing so without prejudice to their rights in the present cases. As suggested on behalf of the respondents the cases are to be taken up and disposed of expeditiously."

4. In pursuance of the above direction of Hon"ble Supreme Court, the writ petition was heard and decided finally by Division Bench on 12.4.1994. The relevant paragraph dealing with the claim of petitioner for appointment on regular basis is being reproduced below :

"Keeping, therefore, the entire circumstances of the case in view, the petitioner has necessarily to be held eligible for appointment in terms of Section 31 (3) (c) of the Act and consequently a direction is hereby issued to the respondent University to consider him for regular appointment in service in terms of this provision of law."

5. The University, however, on 13.9.1994 (Annexure-7 to the writ petition) communicated that he has not been found suitable for the post and he cannot be regularly appointed. By this order the representation of the petitioner dated 1.8.1994 was also rejected as having no force.

6. During pendency of the claim of petitioner, respondent University appointed respondent No. 4, Pradip Kumar Singh Paurush on the post in question by order dated 13.4.1993 (Annexure-9 to the writ petition). It will be relevant to mention here the contents of the order dated 13.4.1993 :

"With reference to their application for the post of lecturer in Physics in the department of Physics in Basic Science institute, I am to inform you that the Executive Council at its meeting held on 13.4.1993 made your appointment on the above post subject to the final decision of the High Court in the concerning case. Your appointment is made in the scale of Rs. 2,200 to 4,000 on one year's probation from the date of your joining the above mentioned appointment."

7. Aggrieved by the aforesaid actions of the respondent University, petitioner filed present writ petition. As already stated, this Court directed petitioner to approach the Chancellor u/s 68 of the Act by making a reference. The reference was made by petitioner as per direction which has been decided by the Chancellor on 11.1.1997 by which the impugned order dated 13.9.1994 has been set aside. However, the appointment of respondent No. 4 has been maintained. Thus, the order of the Chancellor dated 11.1.1997 has also been challenged in this petition.

8. We have heard Sri B. D. Mandhyan, learned counsel appearing for petitioner, Shri Pankaj Mittal appearing for respondents Nos. 2 and 3 and Sri R. N. Singh for respondent No. 4.

9. Learned counsel for the petitioner has submitted that the order dated

12.4.1994, passed by the Division Bench of this Court has become final between the parties. This Court held petitioner eligible for appointment on regular basis in terms of Section 31 (3) (c) of the Act. The Division Bench after expressing the aforesaid view left it to the respondent University to complete the formalities of appointment. However, the University illegally rejected the claim of petitioner on the ground that petitioner was not found suitable. The impugned order dated 13.9.1994 of the University has been set aside by the Chancellor. However, the matter has again been sent back to the University for consideration by the executive council. Learned counsel invited our attention to the order of this Court passed on 21.9.1994 which was to the following effect :

"Heard counsel for the petitioner and the University. The main question raised by the petitioner is that no reason is assigned in the order contained in Annexure-7 dated 13.9.1994. In other words, it is not discernible from this order on the face of it as to what were the reasons which weighed with the authorities in rejecting the case of the petitioner for his regularization on the post. The University shall file an affidavit to this effect stating the reasons behind the impugned order."

10. Learned counsel has submitted that in response to the aforesaid order, on behalf of respondents Nos. 2 and 3. Shri Nand Ram Verma filed counter-affidavit dated 30.7.1995. However, in this counter-affidavit, no reasons have been disclosed on which basis petitioner was not found suitable for the post. Learned counsel has submitted that petitioner served the University as lecturer in Physics from 1.8.1989 to 31.1.1992. i.e., for 2-1/2 years, but nothing was found against his work and conduct. As against it, on 20.9.1991 Head of the Physics Department Basic Science Institute, Agra University, gave certificate to the petitioner which is Annexure-2 to the writ petition. The certificate is to the following effect :

"This is to certify that Shri Bhanu Prakash Singh is working as a part time lecturer in this Department for last 2-1/2 years. I know him for the last four years or so as he has been working for M.Phil and Ph.D. degrees under my supervision. He is an intelligent, hard working and sincere man. I am very much impressed by his extraordinary performance in the development of our laboratory for M.Sc. and P.G. Diploma Electronics. He has designed more than twenty experiments of graduate and post-graduate level. He understands the subject well with good technical skill.

I wish him all success in life."

11. Learned counsel has submitted that petitioner relied on this certificate issued by the head of the department of Physics in para 7 of the writ petition which has not been denied in para 10 of the counter-affidavit of Nand Ram Verma. Learned counsel has submitted that the claim of the petitioner was illegally rejected on the basis of nonexistent facts. Petitioner is being deprived of his appointment on regular basis for the last five years on one pretext or the other only to accommodate respondent No. 4 who has no right to continue on the post after

the claim of petitioner was accepted by the Division Bench. Learned counsel has submitted that in the facts and circumstances of the case, the Chancellor was not justified in sending the matter back to the University.

12. With regard to appointment of respondent No. 4, learned counsel has invited our attention to the direction of Hon'ble Supreme Court contained in the order dated 20.1.1993 wherein it was made clear that whatever steps are taken hereafter, shall be subject to final result in the main case. The appointment of respondent No. 4 was thus subject to result of the writ petition which was also mentioned in the order of appointment passed in his favour which is Annexure-9 to the writ petition. It is submitted that respondent No. 4 was thus aware from the very beginning that his appointment is subject to the result of the writ petition. However, the Chancellor failed to consider this important aspect of the matter and wrongly held that it is not necessary to determine the legality of the appointment of respondent No. 4. Learned counsel has submitted that petitioner has already suffered for a long time and he has serious apprehension that if the matter is sent to the University, they will again pass orders to circumvent the orders of this Court and delay the appointment of petitioner on regular basis. It has been submitted that to serve the ends of justice, the Court may now give clear direction for appointment of petitioner on regular basis for which he has already been found entitled by earlier orders.

13. Learned counsel appearing for respondent No. 4, on the other hand, submitted that the directions given in the earlier writ petition are not binding on him as he was not party in the same and he cannot be deprived of the appointment on the post in question as he was selected by duly constituted selection committee and his appointment has been confirmed by the executive council. Learned counsel for respondent Nos. 2 and 3 submitted that by order dated 12.4.1994, petitioner was only held eligible for the post. In other words, he satisfied the two requirements provided in clause (c) of sub-section (3) of Section 31 of the Act but his suitability was to be judged by the executive council. Learned counsel has submitted that the executive council appointed a Committee which found petitioner unsuitable for the post. Consequently, the impugned order dated 13.9.1994 was passed. It has been submitted that suitability could only be judged by the executive council and the matter has been rightly sent to the executive council by the Chancellor.

14. We have carefully considered the rival submissions of the learned counsel for the parties. It is not disputed that petitioner was found eligible for appointment by this Court by order dated 12.4.1994. The order has become final. The Division Bench after determining the question of eligibility, left it to the University to consider and appoint the petitioner on regular basis as lecturer in Physics. The claim of petitioner was, however, rejected on the ground that he was not found suitable for appointment. In our opinion, judging suitability of petitioner for appointment was not a matter of subjective satisfaction on the part of the University. It ought to have been decided on the basis of the performance of the

petitioner while he was serving for 2-1/2 years in the University and his work and conduct. In spite of the clear direction given by this Court in the order dated 21.9.1994, the University has failed to place before us any such reason on which basis the petitioner could be found unsuitable for the post. In the counter-affidavit, the stand taken is more technical than factual. Contrary to it, the petitioner has relied on a certificate dated 20.9.1991 issued by Head of the Physics Department which has been filed as Annexure-2 to the writ petition. A perusal of this certificate clearly establishes the suitability of the petitioner for appointment on the post in question. This certificate has not been denied by respondent Nos. 2 and 3. In our opinion, as uncontroverted material is already available on record to judge the suitability of the petitioner for the post. It is no longer necessary to send the matter back to the University. The Division Bench while directing the petitioner to approach the Chancellor by order dated 10.4.1996, observed that petitioner has got a strong prima facie case for appointment on regular basis.

15. Considering the entire facts and circumstances of the case. In our opinion, petitioner has successfully made out case for a direction from this Court to respondent Nos. 2 and 3 to appoint him as lecturer in Physics without any further delay. It is necessary in the interest of justice and to avoid delay.

16. Now, coming to the question of appointment of respondent No. 4, there is no doubt about the legal position that if petitioner is found entitled for appointment on the post in question, any step taken by the University, having effect to deprive the petitioner of the benefit of the ultimate order of the Court, shall be a nullity. The direction of Hon''ble Supreme Court in the order dated 20.1.1993 is binding on respondent Nos. 3 and 4. Keeping in view the direction of Hon''ble Supreme Court, the appointment of respondent No. 4 was made conditional and a condition was mentioned in the order of appointment dated 13.4.1993 that his appointment shall be subject to final orders of the High Court in the concerned case. Respondent No. 4 never questioned the condition and he was aware from the very beginning that in case claim of petitioner is accepted, he will have to give way. In our opinion, the said condition is binding on respondent No. 4 and he cannot take shelter of a technical objection that he was not party in the writ petition. It appears that the order of Hon''ble Supreme Court and condition contained in the appointment order dated 13.4.1993 could not be placed before the Chancellor and consequently the Chancellor could not deal with the appointment of respondent No. 4 in appropriate manner.

17. In the facts and circumstances narrated above and the legal position, we have no doubt that the claim of petitioner for appointment on the post in question shall prevail over the appointment of respondent No. 4 made during pendency of the writ petition. The impugned order of Chancellor dated 11.1.1997 cannot be sustained to the extent it runs contrary to this order.

18. For the reasons stated above, this writ petition is allowed. The University is directed to appoint petitioner as lecturer in Physics on regular basis. Respondent

Nos. 2 and 3 shall take necessary steps in this direction and appoint petitioner as early as possible and in any case within a month from the date a copy of this order is filed before them. The order of the Chancellor shall stand quashed to the extent it runs contrary to this order. The appointment of respondent No. 4 shall stand quashed from the date of joining of the petitioner on the post in question. Considering the facts and circumstances, however, there will be no order as to costs.