
(2004) 02 AHC CK 0112
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 12256 and 48958 of 2003

Birendra Bahadur Singh; Devendra Joshi	APPELLANT
Vs	
Chancellor, Allahabad University & Ors.	RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

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

Citation : (2004) 02 AHC CK 0112

Hon'ble Judges : M.Katju, J and Poonam Srivastava, J

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.
2. The writ petitions have been filed for quashing the order dated 1122003 issued by the Chancellor, Allahabad University, Allahabad (Annexure 10 to the writ petition) whereby the reference petition under Section 68 of the U.P. State Universities Act, 1973 (hereinafter referred to as the Act) for regularisation as lecturer in the Department of Photography of Allahabad University, Allahabad under Section 31 (3) (b) of the Act was rejected. The petitioner had previously filed a writ petition No. 26897 of 2002 challenging the order dated 8th June, 2002 passed by the Executive Council of the Allahabad University which was dismissed on the ground of alternative remedy of making reference to the Chancellor vide order dated 1872002. The petitioner has not challenged the order dated 862002 in the present writ petition.
3. Counter and rejoinder affidavits have been exchanged between the parties and are on record. The two writ petitions involve common points and hence both the writ petitions are being decided finally by common judgment.
4. The facts of the case are that the Allahabad University started a diploma course of Photography which was being taught by a number of lecturers including Sri Himanshu Tiwari, the present incharge of the Photography Department. The University started a vocational course of Photography in the year 199596 and the

petitioner alongwith one Dr. Shikha Chauhan was engaged for teaching Photography to B.A. and B.Sc. classes. The petitioner possess the qualification of diploma in Photography from Allahabad University. The appointment letter was issued on 7121998 appointing the petitioner Birendra Bahadur Singh as guest lecturer in pursuance to the order of ViceChancellor dated 28111998 (Annexure 4 to the writ petition) and petitioner has been teaching as guest lecturer continuously since the date of his appointment. The petitioner Devendra Joshi was appointed on 672001. The post of lecturer in Photography in the University has not been sanctioned and as such it was resolved in the meeting of a Committee constituted for implementation of the vocational course in the University held on 341996 to make guest lecturers. The minutes of the meeting has been annexed as Annexure CA2 to the counteraffidavit. A perusal of Annexure CA2 reveals that the Committee took into account a letter dated 911996 of Mr. G.N. Kholiya, Joint Secretary, U.P. Government, Lucknow and pending formal approval for appointment of the staff it was resolved that the education in vocational course would be imparted by inviting part time/visiting guest lecturers to be paid Rs. 60100 per lecture. At present it has been admitted by the University that the guest lecturers are being paid Rs. 100 per lecture subject to maximum to Rs. 5,000 per month.

5. The petitioner has annexed the proceedings of a meeting of Committee constituted by ViceChancellor to suggest qualification of the teachers in Photography which was held on 14122000. The proceedings of the meeting has been annexed as Annexure 6 to the writ petition which was attended by Dr. H.R. Singh, Dean Faculty of Science, Pro. G.K. Pandey, Head of the Physics Department and Sri Himanshu Tiwari, Teacher Incharge Photography. The members of the Committee were in agreement that there is no post graduate degree in Photography anywhere in India and it is only in USA, England, Germany where the post graduate degree D. Phil and D.Sc. in photography is available. It was also mentioned in the proceedings that under graduate degree is at 3 or 4 places in India at Orissa, Rohelkhand University (Bareilly), Agra and Gwaliyar and also photography has not yet been included in the NET conducted by UGC. A perusal of the proceedings also show that it has been clearly recorded therein that ever since photography has been introduced as a subject, it is being taught by guest lecturers who have obtained diploma in photography from this University. Sri Himanshu Tiwari a members of the said Committee and also Incharge of the Photography department since 1977 is also a diploma holder and has earned reputation in his field. In the end the Committee decided that a person to be appointed to teach photography must be an Artist of higher excellence in the field with excellent work in different branches of the subject and teaching experience of at least 5 years at under graduate level. The Committee concluded that in view of the proceedings and decision the present guest faculty to be continued to teach photography and payment be made as per rules. It has further been resolved, in the meantime, that efforts be made to write to the UGC and other places where the subjects are being taught for information regarding

qualification of teacher in photography.

6. The admitted position is that the petitioner is teaching photography in the University since the year 1995 i.e. from the date of his appointment and it has been stated in the writ petition that also he is performing other duties such as invigilation and paper setting etc. It has further been contended in paragraph 14 of the writ petition that the petitioner has been allotted approximately 50 periods in a week whereas the regular teacher of the University is supposed to take only 18 periods in a week as per norms of the UGC. This fact has been denied in paragraph 14 of the counteraffidavit.

7. The claim of the petitioner is that since he is teaching photography since 1995 till the present date and taught for more than 10 months as such as per provisions contained in Section 31(3)(b) of the Act, the petitioner is entitled for a regular appointment in a substantive vacancy. A representation was filed on 1792001 addressed to the ViceChancellor of the Allahabad University praying for regularization of his service as lecturer in photography which was rejected. Thereafter, a reference petition under Section 68 of the Act was filed before the Chancellor which has also been rejected. It has also been brought to the notice of the Court that the petitioner alongwith one Dr. Shikha Chauhan had filed representation to the ViceChancellor on 1792001 praying for their regularization as lecturers in photography on the post which were lying vacant in the department since long. Thereafter, a reference petition under Section 68 of the Act was filed before the Chancellor of the University. The Senior Legal Advisor of the Chancellor sent a letter No. E4987/GS dated 15102001 to the ViceChancellor, Allahabad University, Allahabad directing him to take action in the matter at his own level. The Executive Council of the University vide its resolution No. 23.4 dated 452002 rejected the claim of regularization.

8. The petitioner alongwith Dr. Shikha Chauhan jointly filed a representation dated 1762002 addressed to the ViceChancellor, University of Allahabad praying for regularization and equal pay for equal work. The representation dated 1762002 has been annexed as Annexure 7 to the writ petition. No action was taken on the said representation and petitioner alongwith Dr. Shikha Chauhan filed a joint writ petition No. 26897 of 2002, Dr. Shikha Chauhan and two others v. University of Allahabad, through its Registrar challenging the validity of the aforesaid resolution No. 23.4 dated 452002 passed by the Executive Council of the University. The said writ petition was dismissed on the ground of alternative remedy and consequently a reference petition was filed before the Chancellor which was rejected on the basis of a report forwarded by the University which pointed out that the appointment of the petitioner and two others was not done by a selection committee duly constituted under the Rules (First Statute of the University) and their appointment was only as guest lecturers on the recommendation of Photography Incharge and Deen Faculty which was approved by the ViceChancellor and as such the petitioner did not possess any legal right for regularization under Section 31(3)(b) of the Act.

9. The argument advanced on behalf of the petitioner is that the facts are covered by a Division Bench decision of this Court in the case of *Km. Renu Tiwari v. Director Higher Education*, against which SLP has been rejected and also in the case of *Dr. Sangita Srivastava v. University of Allahabad and others*, in writ petition No. 52001 of 2000 decided on 2252002 [Since reported in 2002(2) LBESR 366 (All)]. The SLP against the said decision was also rejected by the Hon'ble Supreme Court. It has further been contended on behalf of the petitioner that in the case of *Sangita Srivastava* a post was created to accommodate her in pursuance to the decision in the writ petition vide Government letter dated 1772003, a copy of which has been enclosed as Annexure 4 to the rejoinder affidavit. The petitioner's Counsel has argued that the expression guest lecturer is a misnomer and it means the same as a temporary or ad hoc lecturer. In the case of *Uchch Shiksha Uva Kalyan Samiti and another v. State of U.P. and another*, writ petition No. 37014 of 1999 and *Km. Renu Tiwari and others v. Director Higher Education and others*, writ petition No. 27683 of 1993 the Court deprecated the practice of the authorities in continuing with the lecturers on temporary/adhoc basis and hence it is contended that the petitioner is entitled for the benefit of regularization under Section 31 (3) (b) of the Act.

10. The learned Counsel for the respondents has vehemently denied the contention of the petitioner and has argued that there is no post of lecturer sanctioned in the photography department of the University. The ViceChancellor had constituted a committee to introduce new vocational courses and on the basis of said recommendations, pending formal approval, guest lecturers were appointed and remuneration of Rs. 60100 per lecture to maximum of Rs. 5,000 per month was to be paid. It has further been argued that the petitioner's appointment was made on temporary basis and is contractual in nature and also without any advertisement or constitution of selection committee as required under Chapter 6 of the Act. It has been stated that the Section 31(1) provides that appointment of a teacher of an University could only be made on the recommendation of a selection committee and no selection could be made unless advertisement of the vacancy was made. In the present case since the appointment of the petitioner was made without any selection or nomination of any expert of the ViceChancellor as required under Section 31(4)(a) of the Act in our opinion the petitioner has no right to be regularized. The petitioner also does not possess the minimum qualification of Master's degree in photography or Research in the subject but only possess a diploma in photography. As such he is not entitled for any relief claimed by him.

11. We have gone through the writ petition, counter and rejoinder affidavits. In our opinion, the case of the petitioner is distinguishable from that of *Dr. Sangita Srivastava* for the reason that in the case of *Dr. Sangita Srivastava* there was a substantive vacancy in the department of Home Science, on retirement of Mrs. S. Tiwari and Mrs. Rohini Bhatt as well as Reader of the Department Dr. Radha Pant. The post was advertised twice and the petitioner was continuously teaching as

guest lecturer since June 1989, but was being paid only Rs. 5,000 per month. The ViceChancellor, Dean Faculty of Science, the Head of the Department and also Finance Officer of the University had given their concurrence and approval to the appointment of the petitioner and the UGC relaxed the requirement of the NET, in case the teachers possess PHD degree. She was given regularization under Section 31(3) (c) as she was appointed as lecturer before June 30th, 1991 without reference to the selection committee by way of short term arrangement. In the circumstances it was held that she was entitled for the benefit of Section 31 (3) (c) of the Act.

The present case of the petitioner claiming regularization 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 the 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 (10) states:

?No selection for any appointment under this section shall be made except after advertisement of the vacancy in at least three issues of two newspapers having adequate circulation in Uttar Pradesh.?

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. Section 31 (3) (a) is quoted below:

?In the case of teacher of the University other than a Professor, the ViceChancellor in consultation with the Dean of the Faculty and the Head of the Department concerned and an expert nominated by the Chancellor in that behalf and in the case of a teacher of an affiliated or associated college, the Management in consultation with an expert nominated by the ViceChancellor in that behalf may make officiating appointment in a vacancy caused by the grant of leave to an incumbent for a period not exceeding ten months without reference to the Selection Committee, but shall not fill any other vacancy or post likely to last for more than six months without such reference.?

12. In the present case neither any expert was nominated by the ViceChancellor nor was a Selection Committee constituted 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 regularized 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.

13. It is also to be noted that the petitioner does not have the essential requisite qualification of a lecturer. Neither has he done M. Com. nor research in the subject but he only possesses a diploma in photography and as such the requirement of the requisite qualification prescribed under the Statute 11.01 (4) is wanting and hence, the claim of regularization is liable to be rejected on this ground alone.

14. In the present case the petitioner has not challenged the order of the Executive Council dated 452002 against which he has approached the Chancellor under Section 68 of the Act. The claim of regularization of the petitioner was rejected and the minutes are on record as Annexure CA3 to the counteraffidavit. The petitioner did not move any application for amending the prayer and only challenged the order of the Chancellor. 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 had sought regularization 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. Section 31(3)(c) was inserted by the Act No. 1 of 1992 w.e.f. 22111991 and a bare reading of the provision of Section 31(3)(c) makes it clear that the benefit could be given only if he was appointed before June 1991. In the case of Dr. Sangita Srivastava she was appointed before 30th June, 1991 and as such fulfilled the requirement of Section 31(3)(c) of the Act. Her claim was rejected by the Executive Council as she did not possess Ph.D. degree at the relevant time. However, that requirement also stood fulfilled before the final decision was given. A Division Bench of this Court had also struck down the requirement of NET in case a teacher possesses Ph.D. degree. This was laid down by a Division Bench following the decision of Calcutta High Court. Admittedly Dr. Sangita Srivastava was appointed after due selection by a validly constituted Selection Committee and before the cut off date i.e. 3061991 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.

15. Similar were the facts before this Court in the case of Alok Kumar Singh and others v. State of U.P. and others, 2002(2) LBESR 234 (SC) : 2002 (2) ESC 427, and 2000(1) LBESR 975 (All) : UPLBEC 2000 (3) 2249, Dr. Sanjay Kumar Singh

and others v. State of U.P. and others. It has clearly been held in these decisions that the teachers appointed on contract basis cannot claim a right to be regularized.

16. The aforesaid decisions were given by this Court following the principles laid down by the apex Court in P.P. Rastogi and others v. Pravesh Soti and others, 1998(2) LBESR 820 (SC) : 1998 (7) SCC 619. The Apex Court has ruled that since there was no sanctioned post of the lecturer as such the Court cannot direct to create a new post and then regularize the incumbent under Section 31(3)(b). In the present case the petitioner is also claiming for creation of a post as he is teaching photography since the year 1995 and he wants a direction to regularize him on the post of lecturer in photography. Learned Counsel for the petitioner has placed reliance on the decisions in Uchch Shiksha Uva Kalyan Samiti and another v. State of U.P. and another, writ petition No. 37014 of 1999 and Km. Renu Tiwari and others v. Director Higher Education and others, writ petition No. 27683 of 1993. In our opinion, the contention of the learned Counsel for the petitioner that the lecturers cannot be continued on temporary or adhoc basis for a long time, is not tenable as the petitioners not continuing on adhoc basis but is only on contract basis and that too without there being a sanctioned post. In fact even if petitioners were on adhoc basis the position would not be different. At the time of appointment the petitioner had accepted the conditions of service as it existed at the relevant time and continues even today. Since there is no post of lecturer in photography in Allahabad University this Court cannot issue a direction for creating a post and thereafter, regularizing the petitioner on the said post only because he is teaching as a guest lecturer since a considerably long time. This Court has no power under Article 226 to create a post.

17. For the reasons given above the relief claimed in the present writ petitions cannot be granted. The writ petitions are devoid of merits and are dismissed. However, there shall be no order as to costs.