

(2004) 02 AHC CK 0250

In the Allahabad High Court

Case No : C.M.W.P. No's. 12256 and 48958 of 2003

Briendra Bahadur Singh

APPELLANT

Vs

Chancellor, Allahabad University and Others

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 31, 31(1), 31(10), 31(3), 31(4)

Citation : (2004) 5 AWC 4459

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

Bench : Division Bench

Advocate : Satyawan Srivastava and Arti Raje, for the Appellant; Neeraj Tripathi, R.G. Tripathi and P.S. Baghel, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and Poonam Srivastava, JJ.—Heard learned Counsel for the parties.

2. The writ petitions have been filed for quashing the order dated 11.2.2003 issued by the Chancellor, Allahabad University, Allahabad, (Annexure-10 to the writ petition) whereby the reference petition u/s 68 of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as the Act) for regularisation as lecturer in the Department of Photography of Allahabad University, Allahabad u/s 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 18.7.2002. The Petitioner has not challenged the order dated 8.6.2002 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 1995-96 and the Petitioner along with 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 7.12.1998 appointing the Petitioner Birendra Bahadur Singh as guest lecturer in pursuance to the order of Vice Chancellor dated 28.11.1998 (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 6.7.2001. 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 3.4.1996 to invite guest lecturers. The minutes of the meeting has been annexed as Annexure-C.A. 2 to the counter-affidavit. A perusal of Annexure-C.A. 2 reveals that the committee took into account a letter dated 9.1.1996 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. 60-100-per lecture. At present it has been admitted by the University that the guest lecturers are being paid Rs. 100 per lecturer subject to maximum of Rs. 5,000, per month.

5. The Petitioner has annexed the proceedings of a meeting of Committee constituted by Vice Chancellor to suggest qualification of the teachers in Photography which was held on 14.12.2000. 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 U.S.A., England, Germany where the post graduate degree D. Phil and D. Sc. in photography is available. It was also mentioned in the proceedings that undergraduate degree is at 3 or 4 places in India at Orissa, Rohelkhand University (Bareilly), Agra and Gwalior and also photography has not yet been included in the NET conducted by U.G.C. 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 member 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 undergraduate 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 U.G.C. 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 also been stated in the writ petition that 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 U.G.C. This fact has been denied in paragraph 14 of the counter-affidavit.

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 17.9.2001 addressed to the Vice Chancellor of the Allahabad University praying for regularisation of his service as lecturer in photography which was rejected. Thereafter a reference petition u/s 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 along with one Dr. Shikha Chauhan had filed representation to the Vice Chancellor on 17.9.2001 praying for their regularisation as lecturers in photography on the post which were lying vacant in the department since long. Thereafter a reference petition u/s 68 of the Act was filed before the Chancellor of the University. The Senior Legal Advisor of the Chancellor sent a letter No. E-4987/GS dated 15.10.2001 to the Vice Chancellor, 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 4.5.2002 rejected the claim of regularisation.

8. The Petitioner along with Dr. Shikha Chauhan jointly filed a representation dated 17.6.2002 addressed to the Vice Chancellor, University of Allahabad praying for regularisation and equal pay for equal work. The representation dated 17.6.2002 has been annexed as Annexure-7 to the writ petition. No action was taken on the said representation and Petitioner along with Dr. Shikha Chauhan filed a joint Writ Petition No. 26897 of 2002, Dr. Shikha Chauhan and two ors. v. University of Allahabad, through its Registrar, challenging the validity of the aforesaid resolution No. 23.4 dated 4.5.2002 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 Vice Chancellor and as such the Petitioner did not possess any legal right for regularisation u/s 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 ors.* in Writ Petition No. 52001 of 2000 decided on 22.5.2002. 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 order dated 17.7.2003 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 Anr. v. State of U.P. and anr.* Writ Petition No. 37014 of 1999 and *Km. Renu Tiwari and Ors. v. Director Higher Education and ors.* Writ Petition No. 27683 of 1993, the Court deprecated the practice of the authorities in continuing with the lecturers on temporary/ad hoc basis and hence it is contended that the Petitioner is entitled for the benefit of regularisation u/s 31(3)(b) of the Act.

10. The learned Counsel for the Respondent 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 Vice Chancellor 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. 60-100 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 VI 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 Vice Chancellor as required u/s 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 Vice Chancellor, 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 U.G.C. relaxed the requirement of the NET, in case the teachers possess P.H.D. degree. She was given regularisation u/s 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 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 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.

12. 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 u/s 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 Vice-Chancellor 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 Vice-Chancellor 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.

13. In the present case, neither any expert was nominated by the Vice-Chancellor 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 u/s 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 Vice-Chancellor 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.

14. 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 regularisation is liable to be rejected on this ground alone.

15. In the present case the Petitioner has not challenged the order of the Executive Council dated 4.5.2002 against which he has approached the Chancellor u/s 68 of the Act. The claim of regularisation of the Petitioner was rejected and the minutes are on record as Annexure-C.A.-3 to the counter-affidavit. 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 Petitioners' 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 regularisation u/s 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. 22.11.1991 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., 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.

16. Similar were the facts before this Court in the case of Dr. Alok Kumar Singh

and Others Vs. State of U.P. and Others, and Sanjay Kumar Singh and others Vs. 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 regularised.

17. The aforesaid decisions were given by this Court following the principles laid down by the Apex Court in P.P. Rastogi and Others Vs. Pravesh Soti and Others, . 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 regularise the incumbent u/s 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 regularise him on the post of lecturer in photography. Learned Counsel for the Petitioner has placed reliance on the decision in Uchch Shiksha Uva Kalyan Samiti and Anr. v. State of U.P. and anr. Writ Petition No. 37014 of 1999 and Km. Renu Tiwari and Ors. v. Director Higher Education and ors. 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 ad hoc basis for a long time, is not tenable as the Petitioner is not continuing on ad hoc basis but is only on contract basis and that too without there being a sanctioned post. In fact even if Petitioners were on ad hoc 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 regularising the Petitioner on the said post only because he is teaching as a guest lecturer since a considerable long time. This Court has no power under Article 226 to create a post.

18. 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.