

(2005) 03 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 2820, 6609 of 1997, 25980 of 2001 and 21926 of 2003

Committee of Management, Udit Narain Post Graduate College

APPELLANT

Vs

Regional Higher Education Officer and Others

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 66

Citation : (2005) 5 AWC 5019 : (2005) 3 ESC 1729

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare, S.D. Shukla, A.C. Srivastava, Ajay Sonker and Mukesh Kumar, for the Appellant; H.C. Singh, Dinesh Dwivedi, A.S. Srivastava, Anupam Kumar and S.C., for the Respondent

Judgement

Sunil Ambwani, J.—Heard Sri Ashok Khare, Senior Advocate assisted by Sri A.C. Srivastava for petitioner in Writ Petition No. 2820 of 1997, which is treated as the leading writ petition and Sri T.P. Singh, Senior Advocate assisted by Sri H.C. Singh for respondents 4, 5 and 6. Learned standing counsel appears for States respondents.

2. The Committee of Management Udit Narain Post Graduate College Padrauna, through its Manager Shri Ratanjit Pratap Narain singh has, in writ petition No. 2820 of 1997, prayed for quashing an order dated 5.12.1996 (Annexure No. 17 to the writ petition) passed by Regional Higher Education Officer, Gorakhpur by which he has declared the appointments of respondents 4, 5 and promotion of respondent no. 6 as Clerk, Assistant Librarian and Clerk by promotion, respectively in the College to be valid. In Writ Petition No. 21926 of 2003, the same Committee of Management through its Manager Sri Ratanjit Pratap Narain Singh has prayed for quashing the order dated 21.3.2003 passed by Regional Higher Education Officer, Gorakhpur (Annexure No. 11 to the writ petition) by which he has approved the payment of salary to Vijay Kumar Singh.

3. In Writ Petition No. 6609 of 1997, Sri Vijay Shankar Lal Srivastava and Sri Kamlesh Pratap Singh, who were appointed as Librarian and Assistant Clerk in place of the aforesaid respondents, have prayed for regular monthly salary and in the fourth writ petition namely writ petition No. 25980 of 2001 Sri Brij Bhushan Singh the promotee Clerk has prayed for direction to quash the order dated 15.6.2001 (Annexure No. 22 to the writ petition) passed by Regional Higher Education Officer, Gorakhpur approving the salary of Kamlesh Pratap Singh w.e.f. 1.6.2001 and further for a direction to allow him to work and to pay arrears of salary from September, 1995 till the decision of the writ petition.

4. The dispute between committee of Management started from elections held on 20.12.1991 and thereafter 24.3.1992 in which Sri Ratanjit Pratap Narain Singh was elected as Manager. His signatures were attested on 25.3.1992. The Writ Petition No. 868/1992 & 1161/1992 were disposed for on 12.4.1993 directing the petitioners to make representation to the Vice Chancellor. A Special Appeal against the order was allowed on 19.8.1993 and both the writ petitions were dismissed. Sri Ratanjit Pratap Narain Singh was declared as Manager of the institution. A SLP was dismissed by the Supreme Court and thus litigation between the committee of Management came to an end and became final.

5. The second dispute was with regard to the appointment of the Principal of the College Sri Ramdeo Ojha, who was recommended for appointment by U.P. Higher Education Service Commission, and had assumed charge on 30.3.1992. He was not allowed to function. The writ petition filed by the Officiating Principal was dismissed on 19.9.1995, and that Sri Ramdeo Ojha joined on 30.3.1992, concluding the litigation with regard to the post of principal.

6. During the pendency of these disputes, the respondents 4, 5 and 6 were appointed by the then Committee of Management as Clerk, Assistant Librarian and Clerk by promotion. Their appointments were approved for payment of salary in March 1992. The Regional Higher Education Officer, however, revoking the approval was set aside. The Special Appeal No. 2678/19996 was filed, which was allowed on 21.8.19996. Relevant portion of the order in Special Appeal is quoted as below:

"Even assuming that the District Magistrate was sent the information that on a particular date he is to participate in the selection or nominate any person to participate in such selection and if he failed to perform his duty as provided in the statute and the bye-laws of the committee of management, the selection held in his absence cannot be held to be valid. In case he fails to discharge his duty it is only the Vice President who under the bye-laws can preside over the meeting and perform his duty on the basis of delegation of power by the President to him. The Manager of the college has not been entrusted with any power under the bye-laws or under the provisions of the statute to participate in the selection committee. The Regional Higher Education Officer did not consider these aspects of the matter. The petitioner-respondents can claim of appointment only when they establish that their selection was made by a duly constituted

selection committee as provided under statute 25.06 of the first statute of the Gorakhpur University.

The learned Single Judge found that the petitioner-respondents were not afforded any opportunity of hearing and respondent no. 5 could not review/recall the order without affording any opportunity of hearing. But while setting aside the order, it was necessary that he should have remitted the matter for consideration by the Regional Higher Education Officer in accordance with law. As regards petitioner-respondent No. 5, he was claiming appointment on the basis of his right of promotion. He was being appointed in a leave vacancy which later on became a permanent vacancy. Para 26.06 of the statute provides for selection of the candidates but there is no such provision of appointment by promotion. The right of petitioner No. 3 was to be considered independently.

In the result, the Special Appeal is allowed and the matter is remitted to the Regional Higher Education Officer, respondent No. 5, to consider whether the selection of the respondents 1 and 2 was valid and further whether the claim of respondent No. 3 to be promoted to higher grade was justified. Respondent No. 5 shall decide the matter keeping in view the the observations made above and in accordance with law within three months from the date of production of certified copy of this order before him, after giving an opportunity of hearing to the petitioner-respondents and respondents Nos. 7 and 8 and such other persons who may be effected by the order.

There shall be no order as to costs.

Dt. 21.8.1996 Sd/-D.P. Mahpatra Sd/- Sudhir Narain

7. In pursuance of this order, the Regional Higher Education Officer issued notices to all the petitioners, the Management and officers and passed impugned order dated 6.12.1996. By this order, he has found that the appointments of respondents 4, 5 and 6 were valid and they are entitled to payment of salary from the date of their appointments. In substance, the Regional Higher Education Officer has found that the selection committee was validly constituted and that the selection committee was validly constituted and that the absence of District Magistrate was not of any consequence as he was never present in any of the previous meetings. He has, however, not accepted the fact that the Manager was delegated with the authority by the District Magistrate. The Basic Shiksha Adhikari was officiating as District Inspector of Schools, and that the then officiating Principals was present. The constitution of Selection Committee, according to the Regional Higher Education Officer, was proper and in accordance with Para (ii) of the Ist Statute of the Gorakhpur University.

8. Sri Ashok Khare, Senior Advocate submits that the Regional Higher Education Officer traveled beyond the mandate of the judgment of the Division Bench. He was not required to find out whether the selection could be made in the absence of Member of the Committee as provided by the Statute. The Division Bench had specifically held that if the District. Magistrate has failed to discharge the duties,

the Vice President under the Bye-laws could preside over the meeting. The Manager of the College was not entrusted with any of the powers under the bye laws and Statute to participate in the meeting of Selection Committee. Sri Ashok Khare submits that the presence of the stranger in the meeting namely the Manager, who was not found to be validly elected, vitiated the entire proceedings and that now since it has been found that the Officiating Principal also had no right to function, the selections do not stand the test of law. Sri Ashok Khare further submits that Section 66 of the U.P. State Universities Act, 1973 (in short, the Act) does not help the respondent inasmuch as the curative powers of Section 66 of the Act are not applicable in respect of the selection committees of the Degree Colleges. Section 66 is only applicable to the Universities. He submits that the District Inspector of Schools and the District Employment Officer were members of the committee, but they were not present. The signature of Basic Shiksha Adhikari were obtained subsequently in a place left blank by the Selection Committee. He submits that all the appointments are de hors the statutory provision of law and cannot be sustained.

9. Sri Ashok Khare also relied upon the judgments of this Court that in Degree Colleges there is no provision of promotion of Class IV employees to Class III Posts and thus the promotion of Sri Prabhu Nath was not valid.

10. Sri T.P. Singh, Senior Advocate, on the other hand, submits that in special Appeal the entire matter was left open to the Regional Higher Education Officer. The District Magistrate had never attended any meeting and was always absent and thus his presence was not required and that the presence of the Manager, who was not a stranger, did not vitiate the proceeding. The office of District Inspector of Schools was looked after by the Basic Shiksha Adhikari and that the presence of two persons were sufficient for the purpose of selections. He further submits that at the relevant point of time the Manager and the Principal were working under orders of this Court and selection made by them cannot be held to be bad in law.

11. Sri T.P. Singh further submits that there was no dispute regarding the existing vacancies to which after due advertisement, the application were invited in which 15 applicants participated for the post of Lab Assistant and 30 for post of Routing Grade Clerks. The then Manager; the Principal and the Basic Shiksha Adhikari had prepared the select list. The non-participation District Magistrate did not vitiate the proceedings; the curative powers of Section 66 of the Act validated the selections. Statute 25.06 (i) of the First Statute of the University provide for the constitution of the Selection Committee. There may be exigencies on account of which all members may not have participated and some members may later be found to be incompetent. This, however, will not vitiate the proceedings vide *Ishwar Chandra v. Salyanarian Sinha and Ors.*, AIR 72 SC 1812; *University of Allahabad v. Amrit Chandre Tripathi* AIR 1987 SC 57; *Dr. N.D. Tahiliani v. Dr. R.P. Mishra*, 1987 ALJ 860. Section 66 provides for validating the appointments rather than making them invalid for any defect in the constitution of selection

committee. He has also relied upon judgments in *Dr. Mohd. Sohail v. Chancellor, University of Allahabad* 1994 (24) ALR 26 and *Prabhu Narain Saxena v. Chancellor, Agra University, Agra* ALR 2000 (40) 728.

12. In the present case, we are concerned with the constitution of selection committee of Clerk and Librarian of a degree colleges, which have been specifically dealt with under the Statutes made under the U.P. State Universities Act 1973. Section 66 of the Act is applicable to any authority or body or committee of the University., It does not take into account the degree colleges. In the present case, I find that the Division Bench in Special Appeal had specifically directed the Regional Higher Education Officer to consider the fact whether the non-participation of the District Magistrate and in his absence the Vice President under the bye laws. And the presence of the Manager of the College had vitiated the selections. I find that the Regional Higher Education Officer has grossly erred in law in holding that the District Magistrate was customarily absent and thus the presence of the Principal and the Basic Shiksha Adhikari officiating as District Inspector of Schools was sufficient and that the presence of the Manager did not vitiate the proceedings. In the present case, none of the persons present in the meeting of the selection committee were competent and thus it is not a case of just a defect in the constitution of the committee. The District Magistrate or the Vice President of the Committee of Management was not present, the Manager had nothing to do with these proceedings and had taken an active part in the selections. The District Inspector of Schools and the District Employment Officer were not present. The Officiating Principle was thus the only person, as a member of the selection committee under the Statute who was competent to attend the proceeding. The selection therefore, cannot be said to be valid at all.

13. In *Ishwar Chandra (supra)*, one of the members of the selection committee for appointment as Vice Chancellor was not present for some reasons. The Supreme Court held that in such situation the meeting does not become illegal. In *Amrit Chandra Tripathi (supra)*, the issue was with regard to powers of the academic council overruling the decision of the admissions committee. In *Dr. M.D. Tahiliani (supra)* the appointments were made by the Vice Chancellor in the absence of the examination committee and in *Dr. Mohd. Sohail (supra)* the scope of Section 66 in the matters of selection of professors of the Universities was under consideration. The decisions do not support the respondents. Similarly in *Prabhu Narain Saxena (supra)*, the selection was challenged on the ground that the Vice Chancellor had not given his approval to the names or the three experts, who had participated in the selection committee. Since it was found that these names were subsequently approved by Vice Chancellor. The selection per se were not vitiated unless there was some other grounds that the selections were held with ulterior motive and was biased.

14. In the present case, both the Manager and Principal were subsequently found to be usurping the office and thus their presence in the absence of the District

Magistrate, District Inspector of Schools and the aDistrict Employment Officer cannot be said to be a mere irregularity in the selections. So far as the promotion of Sri Prabhu Nath is connected, it has been held by the Court in Arun Kumar Srivastava v. Assistant Deputy Director of Education, U.P. Allahabad (Writ Petition No. 10025 of 1987) in the matter of Kulbhasker Degree College, Allahabad that the post of Routine Grade can only be filled by direct recruitment and not by promotion. The judgment was affirmed in Special Appeal No. 524 of 1995 decided on 30.8.1995.

15. For the aforesaid reasons, I find that the conclusion drawn by Regional Higher Education Officer in his order dated 6.12.1996 cannot be sustained. The selections were not valid. Consequently the order of Regional Higher Education Officer dated 6.12.1996 is set aside. The writ petitions No. 2820 of 1997 and 21926 of 2003 are allowed. Writ petition No. 25980 of 2001 is dismissed and writ petition No. 6609 of 1997 is allowed. The petitioners in this writ petition will be entitled to the salary for the period they have actually worked.