

(1978) 04 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2252 of 1977

Devendra Dutta Tewari

APPELLANT

Vs

Chancellor, Sampurnan and Sanskrit Vishwavidyalay, Varanasi
and others

RESPONDENT

Date of Decision : 04-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 31(8)(a)
Uttar Pradesh Universities Statutes (Age of Superannuation, Scale of pay and
Qualifications of Teachers) Ordinance, 1975 — Status 9(2)

Citation : (1978) 04 AHC CK 0056

Hon'ble Judges : K.N.Singh, J and S.D.Agarwala, J

Final Decision : Dismissed

Judgement

S.D. Agarwala, J.

Sampurnanand Sanskrit Vishwavidyalay, Varanasi is a University governed by the provisions of the State Universities Act, 1973. Under the provisions of the U.P. State Universities Act, 1973, hereinafter referred to as the Act, the State Government framed U.P. Universities Statutes (Age of Superannuation, Scales of Pay and Qualifications of Teachers), 1975. These Statutes came into effect from August 1, 1975. A post of a Professor of Education fell vacant in the said University on November 2, 1975. The post was advertised in the various newspapers. In the advertisement qualifications for the said post were given including a preferential qualification, namely, that the candidate concerned must possess a Master's degree in Sanskrit and must have the capacity to teach Education in Sanskrit medium.

In pursuance of the advertisement issued by the University the petitioner applied for the said post. Other candidates also applied. A Selection Committee was constituted. The meeting of the Selection Committee was held on July 2, 1976 consisting of professor Karunapati Tripathi, ViceChancellor, Dr. Atma Nand Misra, expert, Sri Janki Prasad Singh expert. Dr. K.G. Desai, expert, and Sri

Bishwambar Nath Tripathi, the Registrar. The Selection Committee, after interviewing the various candidates, found the petitioners as the only candidate suitable for the post of Professor of Education. The Selection Committee further relaxed the qualification in regard to the petitioner as provided by the Ordinances of the University requiring a candidate to have Master's degree in Sanskrit.

The matter was thereafter placed before the meeting of the Executive Council held on July 29, 1976. The Government Council passed a resolution that the question of the appointment of the petitioner may be referred to the Chancellor of the University for his decision under Section 31 (8) subclause (a) of the Act. The Chancellor's office by its letter dated April 5, 1977 informed the Vice-Chancellor that the Chancellor was pleased not to approve the proposal of the appointment of Sri D.D. Tewari on the post of Professor of Education as he did not fulfil the prescribed qualifications. The petitioner filed a representation to the Chancellor for the review of his decision. The Chancellor by his order dated November 7, 1977 rejected the representation of the petitioner. The petitioner has now challenged the orders of the Chancellor dated November 7, 1977 and April 5, 1977 as well as the resolution of the Executive Council dated July 29, 1976 by means of the present petition under Article 226 of the Constitution of India.

Counsel for the petitioner has raised two contentions before us. The first contention raised by the counsel for the petitioner is that the reference to the Chancellor was incompetent as under Section 31 (8) (a1) of the Act the matter could be referred to the Chancellor only when the Executive Council does not agree with the recommendation made by the Selection Committee and as there was no such disagreement the question of reference did not arise. The second, contention raised on behalf of the petitioner is that the qualification in regard to the holding of a Master's degree in Sanskrit could be relaxed by the Selection Committee and the view taken by the Chancellor that the said qualification could not be relaxed is manifestly erroneous and against the very provision of the Ordinances themselves.

Section 31, subclause (8) of the Act is as follows:

"In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision shall be final."

Section 31 of the Act lays down the manner in which the appointments of the teachers of the Universities shall be made. On a perusal of the provisions of Section 31 it is clear that in case the recommendations of the Selection Committee are accepted by the Executive Council it is not necessary to refer the matter to the Chancellor. It is only when the Executive Council does not agree with the recommendations of the Selection Committee that the Executive Council has to refer the matter to the Chancellor. Therefore, the reference to the

Chancellor would be competent only if the Executive Council does not agree with the recommendations of the Selection Committee. The Executive Council has further to refer the matter along with the reasons for such disagreement.

On July 2, 1976 the meeting of the Selection Committee took place. The recommendations of the Selection Committee were placed in the meeting of the Executive Council held, on July 29, 1976. The resolution is Annexure IV to the petition. On a reading of the said resolution it is clear that the Executive Council did not record any disagreement with the recommendations made by the Selection Committee. In the resolution there are no reasons given for any disagreement. Thus both the conditions precedent necessary for referring the matter to the Chancellor are absent in the instant case. In the circumstances the reference made to the Chancellor was wholly incompetent.

In regard to the second contention the learned Standing Counsel on behalf of the respondents has vehemently contended before us that under Statute 9, subclause (2) of the U.P. Universities Statutes (Age of Superannuation, Scales of Pay Qualifications of Teachers), 1975 the candidate in addition to the qualifications prescribed in subclause (1) of Statute 9 should further possess any other qualifications as laid down in the Ordinances of the University concerned. His contention is that the qualifications as laid down in the Ordinances has to be fulfilled by the candidate and there is no power given to a Selection Committee to exempt a qualification laid down in the Ordinances.

On July 2, 1976, as stated above, the meeting of the Selection Committee took place and the Selection Committee, after the interview, found the petitioner alone to be a suitable candidate for appointment to the post of professor of Education. In regard to the preferential Qualifications mentioned in the Ordinances of the University the Selection Committee, after considering the qualifications and other research experience of the petitioner in extenso, thought it fit to relax the said preferential qualification as required under the Ordinances of the University. Under the Ordinances of the University, Selection Committee is invested with the power to exempt any of the qualifications laid down in the Ordinances of the University. This very power was exercised by the Selection Committee in the instant case.

Statute 9. subclause (2) of the Statutes mentioned above is to be following effect:

"In addition, a candidate for appointment to the post of Reader or professor shall fulfil any other Qualification laid down in the Ordinance of the University concerned."

While interpreting this provision it cannot be held that only a part of the Ordinance is to remain effective and not the other part in regard to the power of relaxation of the said qualification. The applicability of the Ordinance has to be as a whole and not in part. If the power has been given under the Ordinance to relax the qualifications, Statute 9, subclause (2) does not take away that power

from the Selection Committee. Reading Statute 9. subclause (2). along with the Ordinances we are of the opinion that the Selection Committee had the power to relax the qualifications laid down in the. Ordinances of the University. It is not disputed that the Selection Committee had relaxed the qualifications laid down in the Statute of the University.

In view of the above discussion we hold that reference to Chancellor was not competent and the Chancellor had no authority to disapprove the petitioners selection. The Chancellor further erred in holding the petitioner ineligible for appointment. As already discussed the petitioner fulfilled all the necessary qualifications and the Selection Committee acted within its jurisdiction in relaxing the preferential qualification relating to Master's degree in Sanskrit, The recommendation of the Selection was not in violation of any provision of the U.P. State Universities Act or Statutes framed thereunder. The Executive Council acted illegally in referring the matter to the Chancellor, it failed to take final decision on the recommendation of the Selection Committee. It is, therefore, necessary that the recommendation of the Selection Committee is considered by the Executive Council at an early date.

In the result, we allow the petition and quash the orders dated April 5, 1977, and November 7, 1977, passed by the Chancellor, Sampurnanand Sanskrit Vishwavidyalay, Varanasi, and the resolution of the Executive Council of the University dated July 29, 1976, and we further direct that the recommendation of the Selection Committee in regard to the petitioner's appointment should be placed before the Executive Council for consideration at the earliest possible opportunity. Parties are directed to bear their own costs.