
(2001) 01 AHC CK 0117
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 43148 and 43156 of 2000

Devki Nandan Sharma (Dr.)	Vs	APPELLANT
Director of Education (Higher Education) and Others		RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 4
Uttar Pradesh State Universities Act, 1973 — Section 37(2)

Citation : (2001) 1 UPLBEC 690

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Disposed Of

Judgement

S.R. Singh, J.—These petitions are inter connected in the sense that the orders sought to be quashed in Writ Petition No. 43156 of 2000 is the basis of claim in the other one. Dr. Shiv Shanker Singh, the petitioner in Writ Petition No. 43148 of 2000 seeks issuance of mandamus commanding the third respondent namely the Committee of Management, Mahatma Gandhi Memorial College, Sambhal. District Moradabad to issue appointment letter in his favour on the basis of the order dated 16.8.2000 issued by the Director of Education (Higher Education), U.P., Allahabad. The said order as well as an earlier order dated 13.8.1998 issued in favour of Dr. Shiv Shankar Singh are sought to be quashed in Writ Petition 43156 of 2000 filed by Dr. Devki Nandan Shartna who is working as officiating Principal of Mahatma Gandhi Memorial Post Graduate College, Sambhal Moradabad (in short the College). It was agreed by the learned Counsel appearing for the parties that the averments made by the petitioner in one case may be treated as counter-affidavit in the other. Accordingly counter-affidavits were not invited.

2. It would appear that upon occurrence of vacancy in the post of Principal of the College due to retirement of permanent incumbent Shri B.B.L. Agarwal w.e.f.

30.6.1985 Sri Surendra Kumar Sharma the then senior most teacher in the College, was appointed as officiating Principal. The vacancy in the post of Principal was advertised by the Higher Education Service Commission vide advertisement No. 21 as published in various News Papers. Dr. Shiv Shankar Singh applied for and was selected by the U.P. Higher Education Service Commission, Allahabad for appointment as Principal. The Director of Education accordingly by his letter dated 13.8.1998 directed the Secretary/Manager of the College to issue appointment letter in favour of Dr. Shiv Shankar Singha as per requirement of Section 4(1) of U.P. Higher Education Service Commission Act, 1980. It appears that Surendra Kumar Sharma who was officiating as Principal in the College filed Writ Petition being Civil Misc. Writ Petition No. 27593 of 1998 in which an interim order was passed on 31.8.1998. As a result of the order aforesaid appointment letter could not be issued. Sri Surendra Kumar Sharma, however, retired from service on attaining the age of Superannuation w.e.f. 20.6.2000. The Writ Petition No. 27593 of 1998 filed by Sri Surendra Kumar Sharma came to be dismissed as infructuous on 2.11.2000. The Management, it appears, appointed Dr. Devki Nandan Sharma the third in order of seniority among the teacher of the College as officiating Principal upon retirement of Dr. Surendra Kumar Sharma. The Director of Higher Education issued the order/notice dated 16.8.2000 which is the subject matter of challenge in Writ Petition No. 43156 of 2000 whereby the management was required to issue appointment letter in favour of Dr. Shiv Shankar Singh" forthwith failing which recommendation would be made for appointment of Authorised Controller u/s 57 of the U.P. State Universities Act, 1973.

3. It has been submitted by Shri Ashok Kliare, Senior Advocate appearing for Dr. Devki Nandan Sharma that the College had been given affiliation as Post Graduate College and Dr. Shiv Shankar Singh who has been recommended by the Higher Education Service Commission for appointment to the post of Principal of the College was not eligible and qualified for appointment to the post of Post Graduate College and, in fact, the recommendation dated 13.8.1998 was made by the Commission to the Director of Higher Education pursuant to the advertisement No. 21 of 1995 in which the post of Principal was advertised treating the College as a Degree College. It has been submitted by Sri Ashok Khare, Senior Advocate that since the College had already been given affiliation as Post Graduate College in the year 1992, there was no justification for advertising the vacancy vide advertisement No. 21 in the post of Principal treating the College as a Degree College. Learned Counsel appearing for Dr. Shiv Shankar Singh on the other hand submitted that the College had not been given permanent affiliation as a Post Graduate College and the so-called affiliation given vide order dated August 7, 1992 was a temporary one for imparting education in Hindi and Urdu at Post Graduate level. The temporary affiliation accorded vide order dated 7.8.1992 has although been extended from time to time but the College is yet to be given a permanent affiliation to the level of a Post Graduate College. It has been submitted by the learned Counsel Sri V.K.

Shukla that by order dated 7.8.1992 the privileges of the Degree College were simply "enlarged" within the meaning of Section 37(2) of the U.P. State Universities Act, 1972 and the College is yet to be affiliated as a Post Graduate College.

4. It would appear that the U.P. Higher Education Service Commission has since advertised the vacancy in the post of Principal of the College vide advertisement No. 25 of 2000, being Annexure No. 5 to the Writ Petition No. 43156 of 2000 treating the College as a Post Graduate College. On the facts stated (supra) it would appear that the questions as to whether the grant of temporary affiliation in relation to two subjects namely, Hindi and Urdu, would have the effect of changing the status of the College from the Degree College to the Post Graduate College and in case the temporary affiliation has the effect of changing the status of the College from a Degree College to a Post Graduate College, whether Dr. Shiv Shankar Singh was qualified and eligible for appointment on the post of Principal of the Post-Graduate College have not been adverted to and decided by the Director of Higher Education. In our opinion, the questions need to be adverted to and decided by the Director of Higher Education particularly in view of advertisement No. 25 of 2000 by which the vacancy in the post of Principal of the College has been advertised by the Higher Education Service Commission treating it to be a Post Graduate College. The effect of advertisement on the selection made pursuant to the earlier advertisement No. 21 of 2000 will also have to be examined by the Director of Higher Education. In the circumstances, therefore, we are of the considered view that the matter needs to be remitted to the Director of Higher Education for decision of the controversy after proper self direction to the question aforesaid.

5. Accordingly, the Writ Petitions are disposed of with the direction that the Director of Education (Higher Education), U.P. shall look into the matter with reference to the questions referred to in the body of the judgment and take a decision in accordance with law by passing a reasoned order within a period of two months from the date of production of certified copy of this order. Parties are given liberty to present their view points before the Director of Higher Education by means of representations within a month. Pending such decision the orders dated 13.8.1998 and 18.8.2000 shall be kept in abeyance. The enforceability of these orders shall depend upon the ultimate decision that may be taken by the Director of Higher Education pursuant to this judgment and order.