

(1996) 05 AHC CK 0163
In the Allahabad High Court
Case No : C.M.W.P. No. 8192 of 1995

Dinesh Mishra and Another

APPELLANT

Vs

Director of Education (Higher Education) and Others

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 13, 13(1)

Citation : (1996) 05 AHC CK 0163

Hon'ble Judges : S. Rafat Alam, J; R.A. Sharma, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Whether the Petitioners are entitled to salary in terms of the order dated 24.8.1991 passed by the Director of Higher Education U.P., is the only question involved in this writ petition.

2. Petitioners are the Lecturers in Shri Bafrang Degree College (hereinafter referred to as the College) which is affiliated to the Purvanchal University, Jaunpur (hereinafter referred to as the University), having been appointed on 1.4.1975 and 6/2.1976 respectively. The Government of U.P. by order dated 7.1.1989 revised the pay scale of teachers of degree colleges with effect from 1.1.1986 prescribing three pay scales for Lecturers:

(a) Rs. 2200-4000 (Ordinary Grade) (b) Rs. 3000-5000 (Senior Grade) (c) Rs. 3700-5700 (Selection Grade)

The Government order has provided for grant of senior and Selection Grade pay scales to those Lecturers who satisfy the conditions laid down therein, one of which is completion of satisfactory service for certain specified years to be adjudged by a Screening Committee constituted in accordance with its paragraph 11(b) according to which such a committee is to consist of:

- (1) Director of Higher Education U.P. (hereinafter referred to as the Director) or his nominee--Chairman;
- (2) Two experts of the subject to be nominated by the Vice-Chancellor;
- (3) Head of the management or his nominee; and
- (4) Principal of the College--Member/Convener.

Paragraph 17 (2) of the said order provides that Screening Committee shall meet atleast once in every year and if Member-convener (Principal) does not convene the meeting within the aforesaid period, the Director shall convene it. According to paragraph 17 (3), majority of the total membership of the Screening Committee shall form quorum, but the presence of the Chairman and atleast one expert is necessary.

3. Although new pay scales were sanctioned by the Government by order dated 7.1.1989 and the Director has nominated his nominee and the Vice-Chancellor has nominated the experts, but the Principal of the College did not convene the meeting of the Screening Committee for considering the question of grant of senior and selection Grades to the teachers of the College inspite of the request made to him from time to time. In view of the inaction on the part of the Principal in convening the meeting of the Screening Committee, the Authorised Controller, who was acting as the management of the College in view of the supersession of the Committee of Management, asked the Principal by letter dated 12.3.1991 to convene the meeting of the Committee. A copy of this letter was also sent by the Authorised Controller to the Director for taking appropriate action in the matter. But neither the Principal nor the Director took any step for convening the "meeting. There being complete inaction on the part of the Principal and no response from the Director in this regard, the Vice-Chancellor of the University by letter dated 30.4.1991 appointed Sri Avadhesh Pathak, Head of the Department of Hindi in the College, to convene the meeting of the Screening Committee. The meeting of the Screening Committee was accordingly convened and held which was presided over by the nominee of the Director as Chairman. Experts nominated by the Vice-Chancellor also participated in the meeting. The Committee passed a resolution recommending the grant of senior and selection grade to the teachers of the College including the Petitioners. On the basis of the recommendation of the Screening Committee, the Director by order dated 24.2.1991 sanctioned the senior and selection grades of pay scales to the teachers of the College. According to the Director's order, Petitioner No. 1 has been sanctioned senior scale of Rs. 3000-5000 with effect from 1.1.1986 and selection Grade of Rs. 3700-5700 with effect from 1.4.1991. Petitioner No. 2 has also been sanctioned senior scale of Rs. 3000-5000 with effect from 1.1.1986 and selection Grade of Rs. 3700-5700 with effect from 6.2.1989.

4. Inspite of the order of the Director, the Petitioners and other teachers were not given the salary in the Grades sanctioned to them. The Director accordingly by letter dated 25.10.1991 asked the Authorised Controller of the College to

disburse the teachers' salary in accordance with his order dated 24.8.1991. The Authorised Controller informed the Director by letter dated 25.10.91 that the sanctioned pay scales are not being paid to the teachers on account of the inaction of the Principal. The Principal instead of paying the salary of the teachers in the new pay scales challenged the order of the Vice-Chancellor dated 30.4.1991, whereby Sri Avadhesh Pathak was required to convene the meeting of the Screening Committee, before the Chancellor. The Chancellor by order dated 30.8.1991 set aside the said order dated 30.4.1991 of the Vice-Chancellor. The Chancellor, however, neither set aside the order dated 24.8.1991 passed by the Director sanctioning the senior and selection Grades pay to the teachers nor was it challenged before him. The Principal, however, challenged the aforesaid order of the Director by means of writ petition before this Court which was dismissed on 27.9.1991 holding that the Director has the right to cancel or amend the order in case there is any error in re-fixation of the pay scale. Petitioner therein was accordingly given liberty by this Court to approach the Director in this connection, with the observation that if there is any error in re-fixation of pay, he may pass appropriate order. The Director, however, has not passed any order amending or cancelling his order dated 24.8.1991. The said order of the Director still stands, but even then the sanctioned pay scales have not been paid to the Petitioners and other teachers by the Principal. The Petitioners, therefore, have filed this writ petition for writ of mandamus directing the Respondents to pay them their salary in accordance with the order dated 24.8.1991 of the Director. Further prayer for disbursing the entire arrears of salary has also been made.

5. The Principal of the College, who is Respondent No. 4 to the writ petition, has filed counter-affidavit and Petitioners have filed rejoinder-affidavit in reply thereto. We have heard the learned Counsel for the parties.

6. The contention of the learned Counsel for the Petitioners is that as the order dated 24.8.1991 of the Director is intact, the Respondents are bound to pay the salary to the Petitioners in the sanctioned pay scales. The above plea has been contested on behalf of the Principal on four grounds, viz. (i) only the Principal of the College could have convened the meeting of the Screening Committee and it was not open to the Vice-Chancellor to convene it; (ii) the order of the Vice-Chancellor dated 30.4.1991 nominating Sri Avadhesh Pathak to convene the meeting having been set aside by the Chancellor on 30.8.1991, the meeting of the Screening Committee and the resolution passed thereat as well as order of Director dated 24.8.1991 passed on the recommendation of the Committee have become invalid and cannot be enforced; (iii) the Screening Committee could not have recommended the new pay scales as the Principal did not participate in its meeting; and (iv) the Petitioners are guilty of concealment of facts.

7. The Government order dated 7.1.1989 by which new pay scales have been sanctioned has provided that the Principal of the College will be member-convenor of the Screening Committee and if he does not convene the meeting

within a year, the Director is to convene it. The Government order does not provide for any role in this connection for the Vice-Chancellor of the University. But the validity of the order of the Vice-Chancellor cannot be adjudged merely on the basis of the Government order, because he derives his power primarily from U.P. State Universities Act, 1973 (hereinafter referred to as the Act). By virtue of Section 13 of the Act, the Vice-Chancellor is the principal executive and academic officer of the University and has general supervision and control over the affairs of the University including its affiliated and associate Colleges. Section 13 (1)(a) is reproduced below:

13. Power and duties of the Vice-Chancellor.--(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall:

(a) exercise general supervision and control over the affairs of the University including the constituent colleges and the Institutes maintained by the University and its affiliated and associate colleges.

A person or authority, who has the control and supervisory power over the affairs of an institution or a body, can convene the meeting of the Committee, if he finds that there is inaction in this regard on the part of the convener causing great hardship and loss to several persons. In *Veerpal Singh Vs. Deputy Registrar, Co-operative Societies, Meerut and Others*, , the Supreme Court has held that Chairman of the Federation who is responsible for control and supervision of the Federation, has the power to appoint a Director to record the minutes of the meeting and to discharge the duties of the Secretary, when there is willful absence of the Secretary from the meeting. The Vice-Chancellor being the principal executive and academic officer of the University is under legal obligation to see that the colleges are run and administered in accordance with law and the teachers are paid their salary in the sanctioned pay scales. In the instant case, the Principal slept over the matter for two and half years and did not take any action to convene the meeting of the Screening Committee inspite of the request made to him and the order passed by the Authorised Controller in this connection. It was not the case of simple inaction on the part of the Principal, but there was gross negligence on his part causing irreparable loss to the teachers. Even the Director did not convene the meeting inspite of the letter of the Authorised Controller. Vice-Chancellor was, therefore, duty bound to convene the meeting and no exception can be taken to his order. The first contention of the learned Counsel for the Respondents is, therefore, rejected.

8. As regards the second contention, it is true that Vice-Chancellor's order dated 30.4.1991 convening the meeting of the Screening Committee was set aside by the Chancellor on 30.8.1991. But before the Chancellor could pass the order, the meeting of the Screening Committee was converted and held at which resolution recommending the grant of senior and selection grade pay scale was passed on the basis of which the Director has also passed order on 24.8.1991 sanctioning the new pay scale. In the said meeting of the Screening Committee, the experts nominated by the Vice-Chancellor participated and the quorum was also

complete. It was presided over by the Chairman (nominee of the Director). The defect and irregularity in convening the meeting of a body or authority is cured if the person who is competent to convene it participates in it without protest. As the Chairman, who himself was competent to convene the meeting of the Screening Committee, has participated and presided over the said meeting willingly without protest, he shall be deemed to have assented to the convening of the meeting. Doctrine of ratification is applicable to such a case according to which even if the meeting of the Committee has been convened by a person not authorised to do so, it can be ratified subsequently. In this connection reference may be made to Shackleton on the Law and Practice of Meetings (Seventy Edition) relevant extract from which at page 38 is reproduced herein below:

A notice issued by the Secretary without authority is good if subsequently ratified by the Directors:

The Secretary of a company, on the requisition of shareholders, summoned an extraordinary meeting for the purpose of, removing one of the Directors of the company from office. The Plaintiff commenced proceedings for an injunction to prevent the meeting being held on the ground that it had not been lawfully summoned, but after the date of the writ the Directors met and ratified the action of the Secretary. Held, that the notice was good. 24

In *Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI)*, the meeting of the Board of Directors, in which the resolution terminating service of the Plaintiff therein, was passed, was declared to be invalid and inoperative by the Supreme Court as the meeting was not validly convened. But as that resolution was confirmed in the subsequent meeting of the Board of Directors, the Supreme Court held that the order terminating service of the Appellant therein stood ratified. It was further held that "ratification would always relate back to the date of the act ratified", and accordingly, the termination of the service of the Appellant was held valid. In *Re Bailey, Hay & Co. Ltd.* 1971 (3) All ER 693, it was held that defective notice convening the meeting can be cured by subsequent conduct of the party concerned who shall be deemed to have assented to it.

9. Therefore, the order of the Chancellor setting aside the order of Vice Chancellor, whereby the meeting of the Screening Committee was convened, apart from being infructuous and ineffective cannot have the effect of nullifying what has already been done by the Screening Committee and the Director. In any case, the Petitioners, who were the beneficiaries of the resolution passed at the meeting of the Screening Committee, were not impleaded as parties to the representation made before the Chancellor. It is settled that both, the authority/person who has passed the order as well as the person in whose favour the order is passed, are necessary parties. Reference in this connection may be made to *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, . The order of the Chancellor, therefore, is liable to be ignored on this ground also. Hence it cannot have any effect on the resolution passed by the Screening Committee and the order of the Director sanctioning the new pay scale to the

Petitioners. The second submission of the learned Counsel for the Respondents is accordingly rejected.

10. The third plea of the learned Counsel for the Respondents also deserves the same fate. The Government order provided that majority of the members of the Screening Committee shall form the quorum of the meeting. Screening Committee consists of five persons. Therefore, the resolution can be passed at the meeting of the Committee even if the Principal has not participated in it, provided the quorum is complete. In the instant case, it is not disputed that the quorum was complete and the meeting was presided over by the Chairman in which the experts nominated by the Vice-Chancellor also participated. Non-participation by the Principal in the meeting, therefore, cannot render the resolution of the Committee bad.

11. Petitioners filed this writ petition for writ of mandamus directing the Respondents to pay to them the new pay scales in terms of the order of the Director dated 24.8.1991. That order of the Director still stands and has not been modified or cancelled. As long as that order stands, the Petitioners are entitled to the relief on its basis, even if the Principal has convened a new meeting of the Screening Committee. Participation of the Petitioners in the subsequent meeting of the Screening Committee will also not be a ground to dismiss this writ petition, because the minutes of that meeting have not been accepted by the Director. Whether the Director can modify his earlier order on the basis of the minutes of latter meeting is the question regarding which we express no opinion, because no such contingency has arisen. The last plea of the learned Counsel for the Respondents is also rejected.

12. This writ petition is allowed with costs. The Respondents are directed to pay salary to the Petitioners in terms of the order dated 24.8.1991 passed by the Director regularly. The Respondents are further directed to pay the arrears of the salary to the Petitioners on the basis of the order of the Director with Interest at the rate of twelve percent per annum, within a period of three months from the date of presentation of certified copy of this order before them.