

(1997) 03 AHC CK 0147

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10497 of 1992

Divya Bhatt

APPELLANT

Vs

Director of Education (Higher Education), U.P. Allahabad & Ors.

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 60C, 68A

Citation : (1997) 03 AHC CK 0147

Hon'ble Judges : R.R.K. Trivedi, J and M.L. Singhal, J

Final Decision : Dismissed

Judgement

R. R. K. Irivedi and M.L. Singhal, JJ.—This petition has been filed against order dated 3rd January, 1992 passed by the Director of Education (Higher Education), U.R, Allahabad by which he directed that the petitioner Smt. Divya Bhatt shall not be paid salary for the period 27th August, 1982 to 4th March, 1984 and from 25784 to 5885 and from 27th July, 1984 to 5th August, 1985 and 25th July, 1986 to 18th September, 1991. It is stated that during the aforesaid periods the petitioner remained absent from duty and did not work on the post.

2. Facts giving rise to this petition are that the petitioner is serving as a lecturer of the subject political science in Kamla Arya Mahavidyalaya, Mirzapur, which is affiliated to Poorwanchal University. The petitioner proceeded on leave for three days from 22nd July, 1986 to 25th July, 1986. However, she further applied for a medical leave for the period 25th July, 1986 to 25th August, 1986. This leave application of the petitioner was rejected by the Management doubting the genuineness of the medical certificate which was sent alongwith the application. As the petitioner did not join before 25th August, 1986, the Management by a letter dated 27th September, 1986 sought approval from the ViceChancellor for terminating the petitioner from service. In this letter management Created the petitioner as relieved of the job in law as she failed to join in spite of the order rejecting her application which was communicated to her. It was also stated in the letter that the petitioner is not a fit person to be allowed to joir the post

again.

3. A copy of the aforesaid order was ? sent to the petitioner also. On knowing the action taken by the Management petitioner also filed representations before the ViceChancellor, the first representation was of the dated 3rd December, 1986 which is Annexure 9 to the writ petition. By this representation the petitioner prayed that she should also be permitted opportunity to place her case before the ViceChancellor. It was also prayed that the Management of the College may be directed not to harass the petitioner. A second representation was made on 101090 which is Annexure 10 to the writ petition. By means of this representation, the petitioner prayed that she should be allowed to work on her post and the Management may be directed to pay the arrears of salary to the petitioner. The ViceChancellor, however, could pass the order on 18th September, 1991. He refused to accord approval sought by the Management and passed order that the Committee of Management has illegally passed order dated 27th September, 1986 terminating the petitioner from service. It was also directed that she should be allowed to assume charge of her post immediately and she shall be deemed to be in continuous service since 1980. In pursuance of the aforesaid order the petitioner joined the post and started working from 28th September, 1991.

4. After joining service, the petitioner claimed payment of the arrears of salary. It appears that the Management agreed to pay arrears of salary and submitted the bills. The Director of Education, however, passed order dated 3rd January, 1992 directing not to pay salary to the petitioner for the certain period as mentioned above, aggrieved by which this petition has been filed.

5. We have also perused the relevant records. There is no dispute that before passing the impugned order the petitioner was not given any opportunity of hearing and the order of the Director of Education is liable to be quashed on the short ground. However, during" the arguments learned counsel for the petitioner placed before us provisions of Section 68A of U.P. State Universities Act, 1973 (hereinafter referred to an Act) which provides that where the ViceChancellor has not approved the proposed order of punishment passed by the Committee of Management or where an order of suspension of such teacher has been stayed, revoked or modified by the ViceChancellor in accordance with the provisions of this Act and the management has committed default in paying the salary of such teacher which became due to him in consequence of the ViceChancellor's order, the ViceChancellor may pass an order, requiring the Management to pay the amount of salary as may be specified in the order and during the period of suspension, may also require the management to pay the suspension allowance at the rate of onehalf of the salary payable, if the said amount has not been paid. The provision has also been made in Section 68A to ensure implementation of the order passed by the ViceChancellor. Learned Counsel for the petitioner has submitted that in fact salary was not paid to the petitioner, as a consequence that she was treated to be terminated from service by the Management by the

order dated 27986. The dispute of salary could only be examined by the ViceChancellor and not by the Deputy Director of Education. According to learned counsel for the petitioner Section 68A of the Act is a special provision dealing with payment of salary for the period of suspension and period of dismissal, removal or termination pending for approval before the ViceChancellor and such a dispute could only sent to the ViceChancellor to decide in accordance with the provisions contained in Section 68A.

6. Shri Ashok Bhooshan, learned counsel appearing for the Management and learned Standing Counsel on the other hand have submitted that from the perusal of the order dated 18th September, 1991 passed by the ViceChancellor, it is clear that no order for payment of salary has been made and the petitioner is not entitled for payment of salary on the basis of the said order. It has also been submitted that the ViceChancellor cannot be requested to review or revise his order in which he has not given any specific direction for payment of salary to the petitioner. The provisions of Section 68A could be invoked only when the right to receive arrears of salary flows from the order passed by the ViceChancellor and not otherwise. It has also been submitted that under Section 60C of the Act, the Director of Education was fully competent to pass order, after having given an opportunity of hearing to the petitioner and in the circumstances, the matter should be sent back to the Director of Education for passing order in accordance with law.

7. We have thoroughly considered the rival submissions made by the learned counsel for the parties. However, in our opinion, as the dispute about payment of salary is confined to the period 25th July, 1986 to 18th September, 1991 during which the Management was treating the petitioner out of job and the allegation is that she was not allowed to join her post, the matter necessarily falls within the area of Section 68A of the Act. A perusal of the order passed by the ViceChancellor also shows that the order was passed after the matter was got enquired into by a committee. The report of the Committee is also part of the record, wherein it has been stated that the petitioner was not allowed to join the post, though she approached the Management and the Principal several times. In the order of the Vicechancellor also it has been stated that the petitioner was trying to assume the charge of the post but the Principal and the Management did not allow her to do so. In these facts and circumstances, the order of the ViceChancellor that the petitioner shall be deemed to be in continuous service right from 1980 also gives her right to receive payment of salary in normal course.

8. For the aforesaid reasons, in our opinion the matter requires reexamination by the ViceChancellor under Section 68A of the Act. Under Section 60C of the Act the Deputy Director of Education could give directions in other cases which are not connected with dismissal, removal or suspension where an order of approval is not required. In the circumstances, in our opinion, this matter should be sent to the ViceChancellor, Purvanchal University, Jaunpur for passing a fresh order

with regard to the salary only in terms of Section 68A of the Act, after giving an opportunity of hearing to the petitioner and the Management and the State also. We make it clear that other questions shall not be open to be raised or argued.

9. For the reasons stated above, this petition is partly allowed. The order dated 3rd January, 1992 passed by the Director of Education (Annexure 16 to the writ petition) is quashed to the extent it directs that salary for the period 25th July, 1986 to 18th September, 1991 shall not be paid to the petitioner. It shall be open to the petitioner to make a representation before the ViceChancellor, Purvanchal University, Jaunpur under Section 68A for necessary orders with regard to the payment of salary for the period 25th July, 1986 to 18th September, 1991. The representation filed by the petitioner shall be considered and decided in accordance with law after giving an opportunity of hearing to the parties mentioned above. We are also making it clear that we have not expressed our opinion this way or that way and the order shall be passed by the ViceChancellor in accordance with law on the basis of the material filed before him. As the matter is pending since 1986 we further direct that the decision shall be taken by the ViceChancellor within six months from the date of receipt of an application from petitioner alongwith a certified copy of the order of this Court.

10. Let a copy of this order be supplied to the learned counsel for the parties within a week on payment of usual charges.