
(1996) 07 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 13522 of 1990

Dr. Ali Athar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 13(2), 15

Citation : (1996) 07 AHC CK 0019

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner was selected by the U.P. Higher Education Service Commission (hereinafter referred to as the Commission) as a Principal and a list containing his name was sent by the Commission to the Committee of Management of Badri Vishal College, Farrukhabad (hereinafter referred to as the College) for appointment. The Committee of Management, however, did not issue any appointment letter. It has been stated by the Petitioner in paragraph 16 of the writ petition that he thereafter filed an appeal on May 10, 1989 by registered post to the Director, Higher Education, U.P. (hereinafter referred to as the Director) but no action has been taken by the Director. The Commission has issued another advertisement on November 30, 1989 inviting applications for appointment to the post of Principal of the College. Petitioner filed this writ petition, challenging the said advertisement, so far as it relates the selection of Principal of the College. This Court did not grant any interim order, with the result that the Commission selected Dr. N. C. Agarwal as the Principal and sent a list containing his name to the College, pursuant to which Dr. Agarwal was appointed as the Principal in 1990.

2. The Management has filed counter affidavit and the Petitioner has filed rejoinder affidavit in reply thereto. We have heard the learned Counsel for the

parties.

3. This writ petition has to be dismissed for two reasons:

(i) Sub-section (2) of Section 13 of the U.P. Higher Education Service Commission Act, 1980 (hereinafter referred to as the Act), which has fixed the life span of the list containing the names of the candidates selected by the Commission, is as under:

13. Recommendations of Commission. (2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission." According to the above provision, the list is to remain valid till the new list is received from the Commission. The Commission communicated the list containing the name of the Petitioner for appointment as Principal by letter dated May 28, 1985. Pursuant to the said letter, the Committee of Management did not appoint the Petitioner and the Director also did not take any action in this regard u/s 15 of the Act. It appears that in pursuance of the fresh notification of the vacancy, the Commission issued another advertisement on November 30, 1989 inviting applications for the post of the Principal. Pursuant to the said advertisement, the selection process was initiated by the Commission and Dr. N. C. Agarwal was selected and a list containing his name was sent by the Commission to the College. Dr. Agarwal was accordingly appointed as Principal. The list containing the name of the Petitioner sent by the Commission in 1985 was thus superseded and came to an end in 1990 when another list containing the name of Dr. N. C. Agarwal was received by the Management of the College. A person is entitled to be appointed till the list containing his name is in force. Once such a list has ceased to exist, writ of mandamus cannot be issued by this Court to appoint the person whose name was included in the superseded list.

(ii) The selection of Dr. N. C. Agarwal and his appointment by the Management as Principal of the College has not been challenged before this Court. Dr. Agarwal has also not been Impleaded as a party to this writ petition. No order can be passed by this Court, which will affect a person, who is not before the Court.

4. This writ petition is accordingly dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.