
(1990) 09 AHC CK 0001
In the Allahabad High Court
Case No : Writ Petition No. 10092 of 1989

Dr. Avnish Chandra

APPELLANT

Vs

Chancellor, Rohil Khand University and Others

RESPONDENT

Date of Decision : 15-09-1990

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 16

Uttar Pradesh State Universities Act, 1973 — Section 12(1), 12(2), 16, 16(1), 30

Citation : (1991) 1 AWC 582

Hon'ble Judges : K.K. Birla, J

Bench : Single Bench

Advocate : S.K. Kalia and P.K. Tewari, for the Appellant; Brijesh Kumar and Ashok Kumar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

K.K. Birla, J.—This writ petition has been filed for quashing the order of the Chancellor of the Rohil Khand University allowing the reference u/s 68 of the Universities Act preferred by Km. Chandna Das Respondent No. 4.

2. In brief, a post of Lecturer in Zoology in Hindu College Moradabad, (hereinafter referred as the College) as associate College of the Rohil Khand University, fell vacant and an ad hoc appointment was to be made u/s 16 of the U.P. Higher Education Service Commission Act, 1980 (hereinafter referred as the Act). The post was advertised. Dr. Avinash Chandra, the Petitioner and Km. Chandna Das were also candidates for the post. The Selection Committee placed the Respondent No. 4 at SI. No. 1 and the Petitioner at SI. No. 2. According to the Petitioner the Respondent No. 4 did not fulfill the essential qualification required to appointment as a Lecturer. He made a representation to the Managing Committee of the College. The Managing Committee appointed the Petitioner vide order dated 12-10-88. The approval for this appointment was given by the Vice-Chancellor vide order dated 15th October, 1988. Being aggrieved against this order, Km. Chandna Das, Respondent No. 4 preferred a

reference u/s 68 of the Universities Act to the Chancellor. By the impugned order this reference was allowed. The Chancellor set-aside the approval accorded by the Vice-Chancellor in favour of the Petitioner and ordered the Respondent No. 4 to be appointed on the post. Being aggrieved Dr. Avinash Chandra has filed this petition.

3. The impugned order has been challenged on various grounds. Before entering into the merits of the case the relevant provisions involved in this case may be cited:

Section 16(1) of the U.P. Universities Act provides that where the management has notified a vacancy to the Commission in accordance with Sub-section (2) of Section 12, and the Commission fails to recommend the names of suitable candidates in accordance with Sub-section (1) of that section within three months from the date of such notification, the management may appoint a teacher on purely ad hoc basis from amongst the persons holding qualification prescribed therefore.

Section 30 of the Act provides that the provisions of this Act, shall have effect notwithstanding anything to the contrary contained in the Uttar Pradesh State Universities Act, 1973 or the Statutes or Ordinances made there under.

The relevant portion of the Statutes 10.01 is as under:

(1) In the case of any college affiliated to the University, the following shall be the minimum qualifications for the post of a Lecturer in the Faculties of Arts, Commerce and Science, namely:

(a) a consistently good academic record (that is to say, the overall record of all assessments, throughout the academic career of a candidate) with first or high second class (that is to say, with an aggregate of more than 54 percent marks) Master's degree in the subject concerned or equivalent degree of a foreign University in such subject; and

(b) M. Phil degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate or independent research work.

(2) if a candidate possessing the qualification specified in Sub-clause (b) of Clause (1) is not available or is not considered suitable the management of college may, on the recommendation of the Selection Committee, appoint a candidate possessing consistently good academic record on the condition that he will have to attain the qualifications referred to in that Sub-clause within a period of five years from the date of his appointment

4. The comparative qualifications of the Petitioner and Respondent No. 4 are given in para 4 of the petition which shows that the percentage of marks obtained by the Respondent No. 4 in Intermediate, B.Sc. and M.Sc. was much higher than the marks obtained by the Petitioner. However, the Petitioner was awarded Ph.D in 1984, had also published research papers in different Indian

Journal of the Repute and had a teaching experience of about three and a half years. Km. Chandna Das did not possess M. Phil degree or recognised degree beyond the Master's level. It is contended on behalf of the Petitioner that the Respondent No. 4 did not possess the minimum qualification required for the post of Lecturer and as such the Selection Committee acted illegally and arbitrarily in placing her at SI. No. 1 and she could have not been given an ad hoc appointment; that at the most the recommendation of the Selection Committee recommending the Petitioner was illegal and the Managing Committee was fully competent to appoint the Petitioner. It is also contended that as the case was covered u/s 16 of the Act and not u/s 31 of the Universities Act and it was not necessary to seek the approval of the Vice-Chancellor, but even the approval was accorded. Lastly it was contended that no reference u/s 68 of the Universities Act was maintainable to the Chancellor as the appointment made by the Managing Committee was not covered within the ambit of Section 68 of the Universities Act. On the other hand, it is contended on behalf of the Respondent No. 4 that the Selection Committee was a statutory body and as such its recommendations were binding and the Managing Committee could not have superseded its recommendation; that under statutes 10.01 (2) the qualification of M-Phil or so could have been attained after wards as well and as such Respondent No. 4 had the minimum qualification for appointment and the order of the Chancellor was correct in this regard.

5. The Chancellor in the impugned order was of the opinion that the appointment was made u/s 16 of the Act and not u/s 31 of the Universities Act and that the provisions of Section 31 of the Universities Act will not be applicable in the instant case. He however, relied on statutes 10.01 (2) and was of the opinion that the Respondent No. 4 had, therefore, requisite qualification and the recommendation of the Selection Committee should have been accepted. Accordingly he was also of the opinion that there was no occasion for the Managing Committee for sending the papers for approval to the Vice Chancellor u/s 31(8)(b) of the Universities Act and by acting so the Managing Committee acted beyond its statutory jurisdiction. He accordingly, allowed the reference.

6. The affidavits have been exchanged between the parties and the writ petition is being disposed of finally at this stage itself. The learned Counsel for the parties have addressed to this Court at length in support of their respective contentions. I have also perused the material on record.

7. It is not in dispute that the appointment had been made u/s 16 of the Act and not u/s 31 of the Universities Act. The Chancellor has also accepted this in the impugned order as mentioned earlier. That being so, it is clear that it was not necessary for the Managing Committee to seek approval of the Vice-Chancellor. In the case of Km. Madhu Chauhan v. District Inspector of Schools 1988 UP LB EC 397 (DB) point involved in the case before me came up for consideration before the Division Bench in the cited case, in a case of an adhoc appointment of the Lecturer the Selection Committee recommended Smt. Raj Kumar Bajpai for

appointment but the Managing Committee appointed Km. Madhu Chauhan holding her to be fit person to be appointed and holding that Smt. Raj Kumar Bajpai did not fulfil the requisite qualifications for appointment. The Vice-Chancellor disagreed with the decision of the Management and directed to honour the recommendation of the Selection Committee and appoint Smt. Raj Kumar Bajpai. After considering sections 16(1) and 30 of the Act it has been held in the cited case that in view of this provision it appears that the Vice-Chancellor does not have any say in the matter of adhoc appointment covered by Section 16 (I). Accordingly, the Vice-Chancellor's order was quashed. In the instant case as well the recommendation of the Selection Committee has not been accepted by the Managing Committee and the Petitioner was appointed on adhoc basis. In view of the principles laid down in the cited case the Management has every right to do so. Therefore, in my opinion the present case will be covered by the principle laid down in the cited case, and the impugned order deserves to be quashed on this ground alone.

8. It has been stressed on behalf of the learned Counsel for the Respondent No. 4 that in the above cited case other provisions were not brought to the notice of the Bench and therefore that order was passed. Reliance has been placed on the observations made in para 9 of the judgment of the cited case which is to the effect that "our attention has not been drawn to any other provision which may justify interference by the Vice-Chancellor in an adhoc appointment made u/s 16(1) of the Act." Certain points have been stressed to distinguish the above cited case. It is contended that the Selection Committee was a statutory body and its recommendation was binding. Reliance has been placed on the U.P. Higher Education Service Commission (Removal of Difficulties) Order, 1983, Clause 3 of which provides for the appointment being made in consultation with an expert, nominated by the Vice-Chancellor. It has been contended that in the Selection Committee also Sri Bhumitra Deo was an expert nominated by the Vice-Chancellor. The Respondent No. 4 while referring to the provision, lost sight of the fact that this order was to remain in force till 3rd January, 1984, only and the appointment in the present case has been made much after words. In the report of the Selection Committee Annexure 5 to the counter affidavit filed by Respondent No. 4 it was provided that the recommendation was subject to the approval of the Vice-Chancellor. As already discussed above no such approval is contemplated u/s 16(1) of the Act. This further clearly goes to show that the Selection Committee made the recommendation purporting to be u/s 31 of the Universities Act a Procedure which was not required to be adopted for appointment of an adhoc Lecturer. Thus, I find no substance in the contention raised on behalf of the Respondent No. 4 that the Selection Committee was a statutory body and its recommendations were binding on the Managing Committee.

9. It was further contended on behalf of the Respondent No. 4 that para 10.01(2) of the statutes gave a discretion regarding the relaxation of the qualification and as such the recommendation of the Selection Committee was proper and the

impugned order directing the Managing Committee to honour that recommendation is proper and should not be interfered with. In view of the case of Km. Madhu Chauhan (supra) the Managing Committee was not bound to accept the recommendation of the Selection Committee.

10. Apart from this on merits too, the Selection Committee has acted arbitrarily and its recommendations can not stand for a moment. Section 16(1) interlaid provides that the Management may appoint a teacher on purely adhoc basis from amongst the persons holding qualifications prescribed therefore. This qualification is provided in the statutes 10.01 already cited above. It is not in dispute that the Respondent No. 4 did not possess the qualification mention in Clause (h) of the aforesaid Sub-clause (1)(See para 4 of W.P. and Para 5 of the CA.) Sub-clause (2) makes an exception where the Management of a College may appoint a candidate though not possessed of the qualifications specified in Sub-clause (b) of Clause 1. If such person will have to attain the qualifications referred to in that Sub-clause within a period of five years from the date of the appointment. The chancellor too has relied on this provisions of relaxation in order to find that the Respondent had the requisite qualification. There is no doubt that the Respondent No. 4 is possessing consistently good academic record. However, even that she could have been so considered only if a candidate possessing qualification of M. Phil degree is not available or is not considered suitable only then the Management of college may, on the recommendation of the Selection Committee appoint a candidate possessing qualifications of provided in Sub-clause (2). In the present case the Petitioner possess all the qualification as contained in Clause (a) and (b) of the Statutes. It is also not in dispute that the Petitioner was placed at SI. No. 2 by the Selection Committee. The Selection Committee's report Annexure, CA-5 does not mention that Sri Avinash Chandra was not suitable candidate. On the other hand it mentions that in case Km. Chandna Das fails to join the post the post shall go in favour of Sri Avinash Chandra. According to the Selection Committee the Petitioner was also suitable candidate. That being so, there was no occasion for the application of Clause (2) of statutes 10.01 (2) in the instant case. It may also be pointed out that in its report the Selection Committee has not mentioned that there was no suitable candidate possessing qualifications as contained in Clause (a) and (b) of the Statutes and therefore, Km. Chandna Das being recommended for appointment on the condition that she attains the requisite qualification within five years. Therefore, in my opinion the Selection Committee had acted arbitrarily and rather illegal in recommending her case and the Managing Committee was not only competent but also justified in appointing the Petitioner on the post.

11. In view of the above discussions, the impugned order of the Chancellor can not be maintained and deserves to be quashed.

12. It has been contended before me that the Petitioner is already working on the post. From the counter affidavit of the Manager of the College also, it is clear

and not disputed that the Petitioner is again working on the post from 2-17-89. He had already been working on the post from 12th October, 1988 and did not work for a short period on account of the impugned order.

13. The petition is allowed. The impugned order dated 25th October, 1989 passed by the Respondent No. 1 is quashed. The Petitioner shall be permitted to continue in the senile till a regularly appointed Lecturer by the Higher Education Services Commission joins the post. He will also be paid his salary by the Respondents Nos. 3 and 5 in accordance with law and with due advertence to the observations made above. No order as to costs.