

(1995) 11 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 14737 of 1995

Dr. B.G. Yadav

APPELLANT

Vs

Vice-Chancellor, Chandra Shekhar Azad Krishi Evam
Prodyogic Vishwavidyalaya and Others

RESPONDENT

Date of Decision : 23-11-1995

Acts Referred:

Uttar Pradesh Krishi Evam Prodyogik Vishavidyalaya Adhiniyam, 1958 — Section 17(4), 2
Uttar Pradesh State Universities Act, 1973 — Section 2(14), 31A

Citation : (1995) 11 AHC CK 0117

Hon'ble Judges : R.K. Mahajan, J;R. Dayal, J

Bench : Division Bench

Advocate : H.B. Singh and A.K. Misra, for the Appellant; Anil Yadav, Pradeep Kumar and Ramesh Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

R. Dayal, J.—The Petitioner, Dr. B.G. Yadav, was appointed temporarily on the post of Dean, College of Agricultural Engineering and Technology, Etawah under the Chandra Shekhar Azad University of Agriculture and Technology, Kanpur vide order dated 24-12-1994 issued by the Administrative Officer of the University on the terms and conditions mentioned therein. Term No. (3) provides that the appointment shall be for two years in the first instance from the date of Joining the post which may be extended at the discretion of the competent authority. Failure to complete the above period of two years to the satisfaction of the competent authority, will render him liable to be discharged from service. This appointment was made after the post had been advertised and the Petitioner had been interviewed, with the approval of the Vice-Chancellor. The Petitioner was required to Join by 7th January, 1995. The Petitioner sought extension of time for joining several times and extensions were accordingly granted. Last extension was granted to him vide order dated 24.3.1995 upto 25.4.1995. By the impugned order dated 29.3.1995, the Chancellor of the University cancelled the

advertisement and selection made which were the bases for the appointment order dated 24.12.1994. The cancellation order was passed on the representations made by Dr. T.C. Misra, Dr. Suraj Bhan and Dr. D.K. Shukla separately, on the ground that the period of appointment had not been specified under the Statutes as contemplated u/s 17(4) of The Uttar Pradesh Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam, 1958 (hereinafter referred to as the Act).

2. We have heard learned Counsel, Sri A.K. Misra, for the Petitioner, and Sri A.K. Yadav for Respondent Nos. 1 to 3, Sri Pradeep Kumar for Respondent No. 4 and Sri Ramesh Upadhyay for Respondent No. 5.

3. The Vice-Chancellor, Chandra Shekhar Azad Krishi Evam Prodyogik Vishwavidyalaya, Kanpur has been impleaded as Respondent No. 1, Board of Management as Respondent No. 2, Administrative Officer as Respondent No. 3, Chancellor as Respondent No. 4 and Dr. T.C. Misra as Respondent No. 5.

4. This writ petition has been filed to seek quashing of the impugned order dated 29.3.1995. The Petitioner has alleged that his appointment had been made in accordance with the provisions contained in Section 17(4) of the Act and those of Chapter XIII of the Statutes which do not specify any period for the Dean of a Faculty and in the absence of such specification, the law applicable in the case of other employees would be applicable to the Petitioner. The Impugned order is also challenged on the ground that it was passed in violation of the principles of natural justice, as no opportunity was afforded to the Petitioner of being heard.

5. One counter affidavit has been filed on behalf of Respondent Nos. 1 to 3 and another on behalf of Respondent No. 5. These Respondents have sought to justify the impugned order on the ground that the order passed on 24.12.1994 was in violation of Section 17(4) of the Act.

6. Only two points arise for decision; one is whether the appointment order dated 24.12.1994 was in accordance with Section 17(4) of the Act which admittedly governed the appointment and, the other whether the impugned order dated 29.3.1995 is vitiated because of having been passed without an opportunity of hearing having been afforded to the Petitioner.

7. As regards the first point, Section 17(4) of the Act reads as under:

(4) There shall be a Dean of each Faculty who shall be chosen in such manner and for such period as may be prescribed.

Section 2(f) of the Act states as under:

(f) "Prescribed" (with its cognate expressions) means prescribed by the Statutes.

8. Section 17(4) read with Section 2(f) of the Act stipulates that Dean of each Faculty has to be chosen in such manner as may be prescribed by the Statutes. Furthermore, Dean has to be appointed for such period as may be prescribed by the Statutes. Admittedly, the Statutes have not made any provision as regards the period for which a Dean may be chosen. It is submitted on behalf of the

Petitioner that since no period has been prescribed for the office of the Dean, a Dean should continue upto the age of superannuation like any other employee of the University. On the other hand, it has been submitted on behalf of the Respondents that the appointment could be made u/s 17(4) of the Act only for such period as might be prescribed by the Statutes and so long as such period was not prescribed, Section 17(4) was incapable of being acted upon. Dr Bal Krishna Agarwal Vs. State of U.P. and Others, , promotion of Respondent Nos. 4 and 5 had been made to the post of Professor u/s 31A of Uttar Pradesh State Universities Act, 1973 on 9.11.1984. u/s 31A, such promotion could be made from amongst Lecturers and Readers who had been substantively appointed and who had put "in such length of service and possesses such qualifications as may be prescribed." The length of service and qualifications were prescribed by the Statutes only on 21.2.1985. In that case, promotion of Respondents No. 4 and 5 had been challenged. The dispute was only about seniority. It was held that in view of the provisions contained in Section 31A and Section 2(14) of the Act, there is no escape from the conclusion that Respondents No. 4 and 5 could not be given promotion under the personal promotion scheme till the" necessary provisions prescribing the length of service and the qualifications of such promotion were made in the Statutes and since this was done by notification dated 21.2.1985, promotion under the personal promotion scheme could not be made prior to 21.2.1985.

9. In Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, , the relevant rule was silent as to the guidelines on the basis of which suitability of the candidates was to be adjudged. So the members constituting the Selection Board, by a majority decision, resolved to determine the suitability on the basis of confidential character rolls of the candidates who were already employed. It was held that the Selection Board does not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard under the rules made under Article 309. It is basically the function of the rule-making authority to provide the basis for selection. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.

10. A bare perusal of Section 17(4) of the Act would show that legislative intention was not to make the period of appointment of a Dean to continue till the date of superannuation like other employees of the University. It has to be for such period as may be prescribed in the Statutes. The question of prescription of the period is of legislative character. Until the period is prescribed by the Statutes, Section 17(4) is incapable of being implemented. As such, the appointment order dated 24.12.1994 was not in accordance with the statutory provisions of Section 17(4) and, therefore, the impugned order dated 29.3.1995 whereby the order dated 24.12.1994 was cancelled does not suffer from any illegality or irregularity.

11. The learned Counsel for the Petitioner has referred to an order dated

30.8.1991 (Annexure 11) whereby the previous Chancellor had taken a contrary view in similar matter. In our view, that order did not have any binding force on his successor and there was perfect Justification for taking the contrary view.

12. As regards violation of the principles of natural justice, learned Counsel for the Petitioner has referred to S.L. Kapoor Vs. Jagmohan and Others, , where it was held that an opportunity should be given to a Municipal Committee before an order of its supersession is passed. However, it was pointed out in paragraph No. 24.

24. As we said earlier where on the admitted or indisputable facts, only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the Judgment under appeal.

13. We have already held that the order dated 24.12.1994 was not in accordance with statutory provisions. As such on indisputable facts, only one conclusion was possible and the impugned order is in accord with that conclusion.

14. Further, the impugned order dated 29.3.1995 is not directed specifically against the Petitioner. By the impugned order what has been done is quashing the advertisement and the selection made for the post of Dean with the further direction to the University that after prescribing the period for the post of Dean under the University Statutes, selection should be made after further advertisement. We are of the view that this order of the Chancellor should be implemented.

15. In the result, the petition is dismissed. There will be no orders as to cost.