
(2013) 11 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52242 of 2013

Dr. Harendra Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 29

Citation : (2013) 10 ADJ 174 : (2013) 101 ALR 652 : (2014) 3 AWC 2507 :
(2013) 4 UPLBEC 3204

Hon'ble Judges : Rajes Kumar, J; Mahesh Chandra Tripathi, J

Bench : Division Bench

Advocate : Faizan Ahmad and S.F.A. Naqvi, for the Appellant; Anurag Khanna, for the Respondent

Final Decision : Disposed Of

Judgement

Rajes Kumar, J.—Heard Sri S.F.A. Naqvi, learned counsel for the petitioners, Sri Anurag Khanna, learned counsel appearing on behalf of respondent Nos. 2, 3, 4 and 5 and Sri Y.K. Yadav, learned Standing Counsel, appearing on behalf of respondent No. 1. The petitioners, claim themselves to be the members of the Board of Studies in Education of Chaudhary Charan Singh University, Meerut (hereinafter referred to as the "University"). The University is being governed by the provisions of the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act"). The University has its own statute approved by the Chancellor and the State Government.

2. By means of the present petition, the petitioners pray for quashing of the order dated 24th August, 2013, passed by the Respondent Nos. 2, 3, 4 and 5 and further seeking a mandamus to the respondents not to interfere in the functioning of the Board of Studies and the list of the Board of Examiners recommended and appointed by the Board of Studies in its meeting held on 19th August, 2013.

3. The order impugned in the present petition has been passed on the letter written by the Convener of Board of Studies to the Vice Chancellor and the noting made therein, approved by the Respondent Nos. 2, 3, 4 and 5. It would be useful to refer the said noting, impugned in the present petition:

Matter discussed on 24.8.13 at 12:30 Noon and after looking at earlier and latest rules passed by the committees/bodies, it is finally resolved for this year (2013) that: Since the seniority list could not be prepared, despite efforts by the University, so the senior most teacher of the department in all S.F. Colleges (having experience of five years approved experience) shall act as convener of the Board of examiners (i.e. no examiner shall come from outside the (examiner) institution).

4. Learned counsel for the petitioners submitted that Examination Committee of the University is being constituted under the provisions of the Ordinance and has a power to supervise, generally all examination of the University, including moderation and tabulation etc. as provided u/s 29 of the Act. The Board of Studies has been constituted to finalise the list of the Examiners. As per the order dated 17th August, 2013, the respondent No. 2 has constituted a Board of Studies in Education for Academic Session 2012-13, consisting of eleven members. The Board of Studies conducted the meeting on 19th August, 2013, wherein a list of Examiners for conducting the B.Ed. Practical Examinations for the Session 2012-13 was prepared and submitted for approval of the University. Copy of the proceeding of the meeting of the Board of Studies is Annexure-2 to the writ petition. The Board of Studies recommended and appointed the Board of Examiners, which included three Examiners for each College from and amongst the seniority list of teachers of the Faculty of Education provided by the University as per Rules of the University. The seniority list of the Teachers of Faculty of Education as existed on 1st of July, 2013 is Annexure-3. The Convener of the Board of Studies submitted proceedings of the meeting of the Board of Studies dated 19th August, 2013 for approval of the Vice Chancellor, who called upon the Pro-Vice Chancellor, Dean, Faculty of Education and the Registrar to discuss the matter. Despite submission of the seniority list of the Teachers of the Faculty of Education, as existed on 1st July, 2013, the aforesaid impugned order has been passed, which according to learned counsel for the petitioners is contrary to Section 29(2)(d) of the Act.

5. The submission of the learned counsel for the petitioners is that the teachers of the self-financing Colleges are not the permanent teachers and no trust can be deposed on them and in case if the order dated 24th August, 2013 is implemented, it may jeopardise the sanctity, quality and impartiality of the long tested examination system of the University. It is further submitted that not only the teachers of the self-financing colleges, having five years experience, have been made as the Examiners, but they have also been made as Convener of the Board of the Examiners, putting a further restriction that no Convener shall come from outside the Institution. It is submitted that the self-financing Colleges

employ teachers on contractual basis for a stipulated period of three or five years. Such teachers do not owe any responsibility and no trust can be deposited in them.

6. A counter-affidavit has been filed by the respondents. In paragraph-6 of the counter-affidavit, the reason for taking the impugned decision has been explained, which is being reproduced hereinbelow:

6. The contents of para 10 of the writ petition are not admitted in the form stated. In reply it is submitted that number of Government and Government Aided Institutions affiliated to the University are a total of 09 in number and the number of Self Financed Institutions affiliated to the University are 303 in number. The number of Teachers employed in the above said Government and Government Aided Institutions are a total of 54 in number. The list of which has already been annexed as Annexure 3 to the writ petition. It is not possible to conduct and manage the oral exams for the students of the 309 Self Financed Institutions only with the 54 Teachers employed in the Government and Government Aided Institutions and thus the Examination Committee in its meeting dated 22.8.2012 as per Item No. 3 decided that due to paucity of Teachers employed in the B.Ed. course, the large number of students studying in the affiliated institutions and also considering the representations received from the Teachers employed in the Self Financed Institutions and also considering the provisions of Government Order dated 23.8.2011 (which has been annexed as Annexure 7 to the writ petition), It was decided by consensus that those Teachers of the Self Financed Institutions who have been employed and have a minimum experience of 05 years in teaching and who have previously done evaluation of the answer books, be chosen as Examiners for practical examination as well as Evaluators for the B.Ed. answer books. In this regard the Dean, Faculty of Education gave his permission to appoint the Teachers of Self Financed Institution who have minimum 05 years teaching experience as Examiners for practical examination. A copy of the minutes of the meeting of the Examination Committee dated 22.8.2012 is being enclosed herewith and marked as Annexure CA-1 to this affidavit. In the minutes of the meeting Item No. 3 is relevant for the purposes of the present case.

In this regard it will also be pertinent to bring to the notice of this Hon''ble Court that till now even in the internal exams of the Self Financed Institutions the Teachers from the Government and Government Aided Institutions acted as Examiners whereas for internal examinations the Examiner should belong to the same institution as the students. It will also not be out of place to mention here that for other courses running in the Self Financed Institutions the Head of Department or Senior Teacher of the Faculty act as internal examiner. That due to increase in number of institutions and the decrease in the number of Teachers in the Government and Government Aided Institutions the Examination Committee took the decision that the Head of Department or the Senior Teacher of the Faculty of the Self Financed Institutions having a minimum 05 years

experience in teaching would be appointed to act as internal examiner. That apart from internal examiner two external examiners would also be named from the list of Teachers employed in the Government and Government Aided Institutions. Hence the resolution passed by the answering Respondent-University (annexed as Annexure 4 to the writ petition) was rightly passed.

7. The copy of the minutes dated 22nd August, 2012 has also been annexed alongwith the counter-affidavit.

8. Sri Anurag Khanna, learned counsel for the University submitted that Section 29 of the Act provides Examination Committee, which has all the supervisory power to conduct the examinations of the University. List of the members of the Examination Committee made by the Board of Studies is not conclusive and is subject to scrutiny. He further submitted that sub-clause (a) of Section 29(2) of the Act provides power to appoint Examiners and Moderators and, if necessary, to remove them and, therefore, the Examination Committee has full power to engage other teachers to facilitate, to properly conduct the examination. If it has done so, it cannot be held to be illegal. It is further submitted that the Examiners, whose names are recommended in the list of seniority have not been excluded from being appointed as the Examiners and they will remain as the Examiner for conducting the Practical Examination, over and above the Examiners mentioned in the list of teachers of the self-financing Colleges, having five years experience, who have been engaged as the Examiners. Therefore, the Examiners, whose names are in the seniority list of the Examiners as proposed by the Board of Studies may not have any grievance.

9. To the submission of learned counsel for the respondents, learned counsel for the petitioners submitted that u/s 29(d) of the Act, it is the exclusive power of the Board of Studies to propose the names of the Examiners, which ofcourse is subject to scrutiny by the Examination Committee, but by the impugned order such power has been taken away. He further submitted that the teachers of the self-financing College have not only been appointed as the Examiners, but they have also been appointed as the Convener by the Board of Examination to conduct the Practical Examination, which will amount to circumventing the power of the Board of Studies and further it may lead to large scale irregularities and malpractice. In case if the Examination Committee is of the view that the number of the Examiners mentioned in the list is not sufficient to conduct the Practical Examination, having regard to the number of the Colleges and the Students, it may ask the Board of Studies to examine the names of the teachers of the self-financing Colleges, having prescribed requisite qualification, but by the impugned order, the power of the Board of Studies has been circumvented, which is against the law.

10. We have considered rival submissions.

11. It would be appropriate to refer Section 29 of the Act, which reads as under:

29. Examinations Committee.--(1) There shall be an Examinations Committee in

the University, the constitution of which shall be as may be provided for in the Ordinances.

(2) Except as provided in sub-section (2) of Section 42, the Committee shall supervise generally all examinations of the University, including moderation, and tabulation, and perform the following other functions, namely--

(a) to appoint examiners and moderators and, if necessary, to remove them;

(b) to review from time to time the results of University examinations and submission of reports thereon to the Academic Council;

(c) to make recommendations to the Academic Council for the improvement of the examination system;

(d) to scrutinise the list of examiners proposed by the Board of Studies, finalise the same and declare the result of the University.

(3) The Examinations Committee may appoint such number of sub-committees as it thinks fit, and in particular may delegate to any one or more persons or sub-committees the power to deal with and decided cases relating to the use of unfair means by the examinees.

(4) Notwithstanding anything contained in this Act, it shall be lawful for an Examinations Committee or, as the case may be, for a sub-committee or any person to whom the Examinations Committee has delegated its power in this behalf under sub-section (3), to debar an examinee from future examinations of the University, if in its or his opinion, such examinee is guilty of using unfair means at any such examination.

12. From a bare perusal of Section 29(1) of the Act, it appears that the Examination Committee is being constituted under the provisions of the Ordinance. Sub-clause (2) provides that the Examination Committee shall supervise generally all the examinations of the University, therefore, the Examination Committee has the overall supervisory authority to conduct the examination of the University. Under sub-clause (2), further power has been provided. Sub-clause (2)(a) provides to appoint examiners and moderators and, if necessary, to remove them. Sub-section (2)(d) further provides to scrutinise the list of examiners proposed by the Board of Studies, finalise the same and declare the result of the University.

13. We are of the view that clauses (a) and (d) of sub-section (2) of Section 29 of the Act are to be read together. The constitution of the Board of Studies has some purpose. The purpose would be that the Board of Studies, which is being constituted by the Vice Chancellor consisting of eleven members, including the Dean of Education as the Convener, five Experts as the external members, nominated by the Vice Chancellor and five members from the teachers of Education Faculty in order of seniority, may consider the names of the Examiners on the basis of their seniority and experience and approve their names for being

appointed as the Examiners. The object appears to be that the Board of Studies may examine the requisite qualification of the teachers to determine their eligibility and suitability to appoint them as the Examiners and propose their names. Therefore, we are of the view that although clause (a) of sub-section (2) of Section 29 gives power to appoint examiners and moderators and, if necessary, to remove them, but if it is read alongwith clause (d) the position would be that Examination Committee would appoint the Examiners as proposed by the Board of Studies. If the Examination Committee decides to engage the teacher of Self Financing College, their name should be processed/considered and proposed by the Board of studies. Any other view may frustrate the formation of the Board. From the language of clause (d) it is made clear that from clause (d) it is clear that the proposal of names of the Examiners made by the Board of Studies is not final. It is subject to scrutiny by the Examination Committee and it is always open to the Examination committee to exclude the name of any person proposed by the Board of Studies and may also ask the Board of Studies to consider some other names.

14. In view of the above, we are of the view that in case if, having regard to the emergent need, teachers are to be outsourced from the self-financing College as the Examiners, for the purposes of conducting the Practical Examination, there names should be proposed through the Board of Studies.

15. We find from the impugned order that the impugned decision has been taken on the ground that since the seniority list could not be prepared, despite efforts made by the University, so the senior most teacher of the department of the self-financing College shall act as the Convener of the Board, appears to be incorrect. As referred hereinabove, the seniority list has been prepared by the Board of Studies and has been submitted before the Vice Chancellor, therefore, the very basis of taking such decision appear to be incorrect and is not sustainable and liable to be set aside.

16. Now coming to the reasons given in Para-6 of counter-affidavit for passing such order. Such reasons have not been given in the impugned order. Therefore, in the light of reason given in Para-6 matter requires consideration. From perusal of the decision of the Examination Committee, it appears that some complaint has been received about the mal practice on the part of the Examiners being appointed by the University for conducting the Practical Examinations. This is a matter of great concern and has to be dealt with seriously by all means.

17. To maintain the purity, confidentiality of the examinations and to check the mal practices, we direct that the following procedures/directions be taken into account in addition to the procedures, which are being already followed:

(1) The team of the Examiners should be sent to the respective Colleges, as a surprise, without disclosing the names of the Examiners to the College concerned in advance. The Vice Chancellor of the University may prepare the list of name of Examiner to be sent to particular College, secretly and confidentially. Call all the

Examiners to be present in the University in the Morning and thereafter they may be asked to go to the College where they have to take Examination. The team of the Examiners may be indicated the name of the College where they have to go to take Practical Examination only at the time of dispatch of the team.

(2) Further, a procedure may be evolved that the names of the candidates should not be known to the Examiner and the Examiner may not be allowed to ask the name of the Examinee. The Examinee should be examined/assessed in the Practical Examination only on the basis of Code Number allotted to him.

(3) We also see no justification in making the senior most teacher of the department of the self-financing College as the Convener of the Board of Examiner. It may lead to serious consequences which may lead to mal practice.

(4) Teacher of the same College may not be sent to same College as the Examiner.

(5) The team of the Examiners may be asked to give numbers on the date of the Practical Examination itself and the same may be put in a sealed cover.

(6) In case if any of the Examiner discloses his own name to the Examinee or asks the name of the Examinee, he may be debarred to be appointed as Examiner in future.

(7) A Team of Senior Teachers may be constituted to secretly and confidentially watch the whole process of taking examination, which may function under the direct control of the Vice Chancellor and report directly to the Vice Chancellor.

18. The writ petition is, accordingly, disposed of with the direction to the Examination Committee to conduct the examination in the light of the directions given above.

19. Further, the Principal Secretary, Higher Education, Government of U.P., Lucknow is directed to circulate this order to all the Universities covered under the Uttar Pradesh State Universities Act, 1973 to follow the directions given by this Court, hereinabove, while conducting the examinations.

20. The Registrar General of this Court is directed to send a copy of this order to the Principal Secretary, Higher Education, Government of U.P., Lucknow for compliance. The Office is directed to provide a copy of this order to Sri Y.K. Yadav, learned Standing Counsel, for its onward transmission and follow up action.