
(1973) 07 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 163 of 1973

Dr. H.N. Bhargava

APPELLANT

Vs

University of Sagar and Another

RESPONDENT

Date of Decision : 09-07-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Sagar University Act, 1946 — Section 30

Citation : AIR 1974 MP 40 : (1978) ILR (MP) 43 : (1974) JLJ 100 : (1973) 18 MPLJ 977

Hon'ble Judges : P.K. Tare, C.J;M.L. Malik, J

Bench : Division Bench

Advocate : R.S. Dabir, K. Rao and O.P. Namdeo, for the Appellant; B.L. Seth, for No. 1, Y.S. Dharmadhikari and D.M. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

Malik, J.

This is a petition under Articles 226 and 227 of the Constitution praying that the resolution dated the 18th February, 1973, passed by the Executive Council of the University of Sagar appointing Dr. R. S, Saini (respondent No. 2) as professor of Zoology (Annexure "B") be quashed.

The relevant facts may be stated. Dr. H. N. Bhargava, the petitioner, and Dr. Saini, the respondent No. 2, are in the teaching staff of the University of Sagar. Dr. Bhargava was the senior Reader and Head of the department of Zoology and Dr. Saini was the Reader in the same department when the post of Professor was advertised in August, 1971. Both applied for the post. There were three more applicants. The selection and appointment of the teachers of the University was then governed by Section 47-A of the University of Sagar Act. 1946 (Central Provinces and Berar Act No. XVI of 1946) which now stands repealed by the Madhya Pradesh Vishwavidyalaya Adhiniyam. 1973 (Act No. 22 of 1973). The new Act came into force on the 5th May, 1973.

Section 47-A of the old Act may be reproduced below.

"47-A. (1) No person shall be appointed-

(i) as a Professor. Reader. Assistant Professor or Lecturer, or

(ii) to any other teaching post of the University paid by the University: except on the recommendation of Committee of Selection constituted in accordance with Sub-section (2).

(2) The members of the Committee of Selection shall be.-

(i) The Vice-Chancellor --. Chairman.

(ii) Head of the University Department in the concerned subject, if he is a Professor, provided that when the selection is made for the Post of Professor, the Head of Faculty concerned.....Member.

(iii) One expert in the subject to be nominated by the Academic Council, Member.

(iv) Three eminent educationists not Connected with the University, one of whom, at least is an expert in the Subject, nominated by the Chancellor Member.

(v) The Chairman of the State Public Service Commission, or a member of the State Public Service Commission nominated by him. ... Member.

(3) The Committee shall investigate the merits of the various candidates, including any eminent person who may not have applied, and shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts arranged in the order of merit.

(4) Out of the persons so recommended under Sub-section (3), the Executive Council shall make the final selection;

Provided that, where the Executive Council proposes to make the appointment otherwise than, in accordance with the order of merit arranged by the Committee, the Executive Council shall record its reasons in writing and submit its proposals for the sanction of the Chancellor."

The five applicants including the petitioner and the respondent No. 2 were interviewed by the Committee of Selection and the Committee instead of recommending a panel of names in order of merit, recommended the name of Dr. Saini alone to the Executive Council. The Executive Council by its resolution dated the 19th December. 1971, resolved that the recommendation of the Executive Council be not accepted as its acceptance would lead to administrative and disciplinary complications. Dr, Saini challenged the resolution dated the 19th December. 1971, in the Writ Petition M. P. 25 of 1972 (Dr. Ramsingh Saini v. The University of Sagar) Annexure "A" is the order in that writ petition. The petition was allowed, the resolution of the Executive Council refusing to appoint Dr. Saini

as the professor was quashed. The order is dated 5-2-1973, reported in 1974 Lab IC 20.

The Executive Council of the University in its meeting held on the 18th February, 1973, considered the Judgment of the High Court delivered in Miscellaneous Petition No. 25 of 1972 and resolved that Dr. Saini be appointed as Professor of Zoology. This is the impugned resolution which is sought to be struck down as illegal, and in contravention of Statute No. 21-AA framed u/s 30 of the University of Sagar Act 1946. The petitioner also prays that a writ of prohibition restraining Dr. Saini to assume office of the Professor or writ of quo warrantum in case he has resumed office, may be issued.

Statute No. 21-AA may be usefully re-produced:

"Section 31 (aa) "The mode of appointment of the teachers of the University paid by the University."

(1) All vacancies in teaching posts of the University (except those to be filled by promotion as Provided for under Sub-section (aaa) of Section 31) shall be duly advertised and all applications will be placed before the Committee of Selection as provided for under Sub-section (2) of Section 47-A of the University of Saugar Amendment Act 1965.

(2) If no appointment is made to a post within one year from the date of the nomination by the Selection Committee then the post shall be re-advertised before making an appointment as provided for under (1) above."

It is an admitted Position that appointment has been made to the post more than a year after the date of nomination by the Selection Committee and that the Post was not re-advertised. The nomination of the Selection Committee is dated the 4th December, 1971. Period of one year expired on 3-12-1972 and the appointment came to be made on the 18th February 1973, Statute No. 21-AA was completely overlooked. Appointment of Dr. Saini was made in violation of the provisions of the Statute. All that we need consider is how do the respondents justify the order of appointment.

The first contention of the respondent University before us is that the order of appointment was the only proper order in the light of the judgment delivered in Miscellaneous Petition No. 25 of 1972. Dr. Saini could not be penalised if his writ petition remained pending in the High Court for more than a year. If the Executive Council had arbitrarily refused to accept the recommendation when in all fairness it should have been accepted, the only proper course after the judgment was to restore him to the position of advantage which the acceptance of the recommendation would permit.

We regret to say that the Executive Council either misunderstood the import of the judgment or deliberately created complications by misreading and misinterpreting it. In paras. 9 and 10 of the order (Annexure "A") their Lordships made the following observations:

"9. As regards the argument that the petition has become infructuous because the recommendation of the Selection Committee has by now lapsed after the expiry of one year, it is true that under Statute 21-AA recommendations of the Selection Committee lapses after expiry of one year, but when this petition was filed one year had not expired. Moreover, if the resolution of the Executive Council (Annexure B) is allowed to stand, that would come in the way of the petitioner if and when he is again selected by the Selection Committee when the post is advertised. We do not, therefore, think that the petition has become infructuous.

Coming to the argument that no legal right of the petitioner has been infringed, our opinion is that as a candidate recommended by the Selection Committee the petitioner has a right to see that the power of the Executive Council in accepting or declining to accept the re-commendation is properly exercised. This limited right of the petitioner flows from the terms of Section 47-A. The petitioner cannot certainly be declared to have been appointed. But to the limited extent indicated above he is entitled to ventilate his grievance in this Court."

The meaning is clear, expressed in very plain language, that on the date their Lordships were passing the order the recommendations of the Selection Committee had lapsed (since one year had expired from the date of the nomination by the Selection Committee) and that under the provisions of Statute 21-AA, the post was required to be re-advertised. Their Lordships observed that though the petitioner (respondent No. 2 here) could not be declared to have been appointed, yet his petition had not become infructuous. In the event he was recommended again by the Selection Committee, the reasonings adopted by the Executive Council as contained in the resolution Annexure "B" (in the present petition it is document No. 5) should not prevail against him.

The suggestion was that action could not be taken by the Executive Council on a lapsed recommendation; it was obligatory to follow the provisions of Statute No. 21-AA and make appointment after a fresh advertisement.

Prof. S. B. Saksena Dean, Faculty of Science, who was one of the members of the Executive Council, did point out to the other members that the import of the judgment was to freshly advertise the post. The misunderstanding if there was any could be removed by obtaining legal advice. Be that as it may, we could dispose of the matter on a simple ground that the earlier Bench had given a decision on merits that Statute No. 21-AA was attracted on the lapse of one year after the recommendations were made by the Selection Committee: and that the matter did not require reconsideration. Yet we permitted the matter to be thrashed out again.

The learned counsel for the University argued that Statute 21-AA was a procedural law and, therefore, directory. Though the statute prescribed the manner in which and the time within which the appointments have to be made, rigid adherence to the statutory prescriptions were likely to cause injustice and

inconvenience, as had happened in the present case A talented professor was available but on account of technicalities of procedure, he could not be appointed if the provisions were rigidly adhered to. In such circumstances, prescriptions of the statute should be treated as directory. The appointment made on the recommendation that had lapsed, should yet be treated as valid appointment. The recommendation was made on the basis of comparative merit by a body of experts: and the learned counsel says it should not become meaningless because it was not acted upon within the prescribed period.

We are not disposed to accept this argument. If statute 21-AA is a procedural law, so is Section 47-A of the Act. It also lays down the procedure how a selection committee should be constituted and in what manner it should recommend a panel. What is to be seen is whether the object of the enactment would be defeated by holding the provisions directory.

The meaning and intention behind the statute 21-AA appear to be that the Executive Council should not act on stale recommendations. After an academic session of a year, fresh academicians become available and there is always a better scope for the choice. Those who had applied earlier would be in the field to compete. The purpose of the enactment is not frustrated thereby. That being the position, where a statute confers a power to be exercised on certain conditions, a power inconsistent with those conditions is impliedly negated. The statute here directed the appointment to be made on fresh advertisement and appointment otherwise made could not be valid. No inconvenience or injustice is caused to the respondent No. 2, if he is asked to enter the field of competition once again. He is as much governed by the statute to know that since his appointment could not be made within one year for whatever reason, he has to face the Selection Committee again.

We are not inclined to hold, therefore, that the statute 21-AA was directory. Non-compliance thereof defeated the very purpose of the statute and therefore, the statute should be construed as mandatory. *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, may be read with advantage on interpretation of statutes, whether the word "shall" used in the provision of the Act has connotation, mandatory or directory.

The next contention of the learned counsel for the respondents was that the University of Sagar Act, 1946, having been repealed by the Madhya Pradesh Vishwavidyalaya Adhiniyam. 1973 (Act No. 22 of 1973), all appointments made under the previous Act had been saved u/s 2 (v) of the new Act. The new Act did not make any provision like the one contained in Statute 21-AA of the old Act and, therefore, the provisions of Statute 21-AA being inconsistent with the provisions of the new Act were completely obliterated. There was no like provision to render the appointment earlier made nugatory. No fresh advertisement was now required to be made and the recommendations once made did not become stale on expiry of a year.

In answer to these arguments, the learned counsel for the petitioner contended that Section 2 (iv) of the new Act likewise saved the suits and proceedings instituted by or against the University under the repealed enactment and could be continued. The present petition was filed before the new Act came into force. Besides, the learned counsel argued that what was saved under Clause (v) was an appointment lawfully made, notification lawfully issued, decrees, diplomas and certificates lawfully issued. A degree or diploma surreptitiously or fraudulently obtained under the old Act could anytime be struck down, so also the appointments made unlawfully.

We are disposed to agree with the learned counsel for the petitioner. Where the doing of an act is illegal under a particular provision of an enactment and the provision is repealed by a subsequent enactment, it cannot be held that the act done under the repealed enactment became legal by virtue of the repeal of the provision which rendered the act illegal. *Ram Kristo Mandal and Another Vs. Dhankisto Mandal*, .

It may also be observed that the mere absence of a provision in the repealing Act similar to that contained in the repealed Act was not suggestive of the intention of the legislature to extinguish the liabilities that were incurred under the old Act or terminate the proceedings that were initiated before the law was altered or taken away. Unless the new statute showed an intention either expressly or by necessary implication to put an end to that action, the existing rights and liabilities would not be destroyed or disturbed and would be governed by the repealed Act.

We are in no manner of doubt that the repealed Act does not validate anything unlawfully done under the repealed Act. The action taken under the repealed Act could be continued. The validity of the appointment has to be judged by the law in force at the time of the appointment.

The last contention of the respondents' counsel was that the petitioner had no locus standi to invoke the jurisdiction of this Court under Article 226 of the Constitution. He was a defeated candidate, inferior in merits to the respondent No. 2, and had no chance of success: at any rate he had no subsisting personal right to the post in the protection of which he was personally interested. The learned counsel placed reliance on *Anand Ram Vidha Ram Vs. Regional Transport Authority, Rewa, M.P. and Another*, .

The petitioner is not a mere busybody who seeks to interfere in things which do not concern him. He was the senior Reader and Head of the Department of Zoology. His junior colleague was being selected in preference to him. He was the person prejudicially affected by the act of the authority and if the act was found unlawful and was struck down, he obtained a second chance to compete before, very likely, another independent authority. It could not be said, therefore, that he had no personal interest subsisting for the protection of which he could come to the Court. A second chance to compete was equally a valuable right if it could

lawfully be given.

In the result, therefore, all the contentions raised by the respondents fail. The petition deserves to be allowed. We quash the resolution dated the 18th February, 1973 (Anrxexure "B") appointing Dr. Saini as Professor of Zoology. The University may freshly advertise the post if they desire to fill in the vacancy. The respondent No. 1 shall pay to the petitioner his costs. The respondent No. 2 shall bear his own costs. Counsel's fee Rs. 150/-. The amount of security deposit shall be refunded to the petitioner.