

(1994) 10 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 18877 of 1990

Dr. Kamla Kant Tiwari

APPELLANT

Vs

U.P. Higher Education Service Commission and Others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Uttar Pradesh Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 — Regulation 5, 6
Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12(1), 12(2), 13, 13(3), 15

Citation : (1996) AWC 56 Supp

Hon'ble Judges : S.S. Sodhi, C.J.;G.P. Mathur, J

Bench : Division Bench

Advocate : Yatindra Singh and Vikram Nath, for the Appellant; K.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, C.J. and G.P. Mathur, J.—The post of Principal of V. S. D. College, Kanpur, which is a recognized and aided Post-graduate College affiliated to Kanpur University, fell vacant in February, 1989. The vacancy was notified to U.P. Higher Education Services Commission (hereinafter referred to as the Commission) which was advertised in due course. The six Petitioners of writ petition No. 18877 of 1990 and Respondent No. 5 Kamla Kant Tiwari (Dr. Tiwari in brief) made applications. The Commission after holding interview declared the result on May 28, 1990 and Dr. Tiwari was selected. Thereafter on June 4, 1990, the Commission sent an intimation that Dr. Tiwari had been selected for the post of Principal. Writ petition No. 18877 of 1990 has been filed by six teachers of the College for quashing of the recommendation made by the Commission on June 4, 1990. In spite of the recommendation made by the Commission, the Committee of Management of the College did not issue appointment letter to Dr. Tiwari and consequently he has filed writ petition No. 9256 of 1992 praying that the Director of Higher Education be commanded to ensure his appointment as Principal in the

College. In this petition an interim order was passed by a learned single Judge on April 10, 1992 directing the Committee of Management of the College to permit Dr. Tiwari to join as Principal of the College. Feeling aggrieved by this direction, the Committee of Management has filed Special Appeal No. 149 of 1993. Since the controversy involved in the three cases are interconnected, they are being disposed by a common order.

2. Sri R. N. Singh, who has appeared on behalf of the Petitioners in Writ Petition No. 18877 of 1990 has assailed the selection of Dr. Tiwari on the ground that the educational qualifications and experience of all the six writ Petitioners was far superior to him. He has submitted that Dr. Tiwari had got Ph. D. degree in the year 1989 and had published only four papers while Petitioner No. 2 Dr. Ram Sahai had been awarded Ph. D. degree in 1968 and had published sixty five papers which were published in Journals of international repute and had also written a book. Similarly, Petitioner No. 1 Dr. Girija Shanker Dubey is a highly qualified person with excellent academic record having secured First Division throughout his career. It is also urged that Dr. Tiwari had no administrative experience and being younger in age and having lesser experience as teacher than thirty five other teachers of V. S. S. D. College, which is second biggest Post Graduate College affiliated to University of Kanpur, he would not be able to function effectively as a Principal thereof. According to the learned Counsel, the recommendation made by the Commission is wholly illegal as candidature of highly deserving persons was overlooked and a wholly inexperienced and substandard person has been selected.

3. The U.P. Higher Education Services Commission Act, 1980 (U.P. Act No. 16 of 1980) was enacted by the State Legislature to establish a Service Commission for the selection of teachers for appointment to the colleges affiliated to or recognized by University and for matter connected therewith or incidental thereto. Section 4 provides that the Commission shall consist of a Chairman and not less than two and not more than four other Members to be appointed by the State Government. Sub-section (2) of Section 4 provides that no person shall be qualified for appointment as Chairman or Member unless he is or has been a person occupying a position of eminence in public life or in Judicial, or administrative service or a Vice Chancellor or Professor in any University or a Principal of a College for a period of not less than ten years or a Teacher of a College for not less than fifteen years. Section 5 provides that every Member shall hold office for a term of three years and no person shall be a Member of the Commission for more than two consecutive terms. These provisions show that the Commission consists of persons who are well versed in the field of education or have held position of eminence in public life or in Judicial or administrative service. Regulation 5 of U.P. Higher Education Service Commission (Procedure and Conduct of Business) Regulations, 1993 provides that Chairman shall constitute an Interview Board comprising three Experts and at least two Members. Regulation 6 provides that the Commission shall prepare a panel of Experts for the selection of a principal and a separate subject-wise panel for

selection of teachers. The Experts for selection of teachers will be expert in the subject for which a teacher has to be selected. The manner of selection of teachers and Principal is laid down in U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 and Regulation 6 provides that no candidate shall be recommended unless atleast one expert concurs with the selection. A scrutiny of the provisions of the Act and Regulations framed thereunder would show that Legislature has taken extreme care to ensure that not only the Commission consists of eminent persons and those who have sufficiently long experience in the academic field but also that a fair and impartial selection is made without being influenced by any extraneous consideration. It is not in dispute that the candidature of the writ Petitioners and that of Dr. Tiwari was considered by the Commission and thereafter the latter has been selected.

4. The writ Petitioners assail the recommendation made by the U.P. Higher Education Services Commission for his selection as Principal of the College. The grounds on which this Court can interfere with the selection made by a body of experts are very limited. In the *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , it was held as follows in para 13 of the reports:

Boards of Appointments to the post of teachers are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. If there is no allegation about mala fides against the experts who constituted the Board, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be.

This was reiterated in *Dr. M.C. Gupta v. Dr. A.K. Gupta* 1979 ALJ 251 (SC) and in *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, , wherein the court ruled as follows in para 17 of the report:

While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off, but where a provision of law has to be read and understood. it is not fair to keep the court out.

It is therefore, apparent that this Court cannot interfere with the decision of the Commission unless there has been a breach of a provision of law or there are allegations of mala fides against the Members of the Commission. If the recommendation is made by the Commission keeping in view the relevant rules and regulations and manifest due consideration of all the relevant factors, the court would not interfere with such recommendations. The Petitioners have failed to point out breach of any statutory provisions of law or rules or regulations and in such circumstances it is not possible to quash the selection of Dr. Tiwari

merely on the ground that some other writ Petitioners had better academic career or had published more papers or that they had longer experience of teaching work.

5. Shri R. N. Singh has next urged that the selection made by the Commission was not proper as it did not allocate marks under various heads like academic performance, research work, number of papers published, length of experience, etc. It is not necessary for us to examine this argument in detail as exactly similar contention has been repelled by Supreme Court in *Dr. Keshav Ram Pal v. U.P. Higher Education Services Commission* 1989 UPLBEC 262. It has held that the selection made by the Commission cannot be invalidated merely on the ground of non-allocation of marks under various heads in the interview. Sri Singh also faintly urged that Dr. Tiwari is a relation of the then Education Minister of U.P. and it was on account of his influence that his name was recommended by the Commission. We are not inclined to go into the question of mala fide as neither the necessary foundation for the same has been laid down in the writ petition by making clear averment to that effect nor the concerned persons have been impleaded in their personal capacity. The challenge to the selection of Dr. Tiwari at the instance of the six teachers of the College thus fails.

6. Shri Yatindra Singh, learned Counsel for the Appellant in Special Appeal No. 149 of 1993 has submitted that the direction issued by the learned single Judge to the Committee of Management to permit Dr. Tiwari to Join as Principal of the College cannot be sustained as it is contrary to Section 13 of the Act. In order to appreciate the argument, it will be convenient to reproduce the relevant part of Section 13 as it stood prior to its amendment by U.P. Act No. 2 of 1992 which came into force on November 22, 1991:

13. Recommendation of the Commission.--

(1) The Commission shall, as soon as possible, after the notification of vacancy under Sub-section (2) of Section 12, hold interview (with or without examination) of the candidates, and recommend the name of not more than three candidates for appointment to every post of a teacher, such names shall be arranged in order of preference.

(2) ...

(3) Every recommendation of the Commission under Sub-section (1) or Sub-section (2) shall be valid for a period of one year from the date of such recommendation.

7. Learned Counsel has submitted that though the Commission had recommended the name of Dr. Tiwari on June 4, 1990 but he gave a representation to the Commission on November 20, 1990 stating that he should not be appointed as Principal in V.S.S.D. College, Kanpur and he also appeared before the Committee of Management on January 14, 1991 expressing a desire that he did not wish to join the College. On these facts, the interim direction

issued by the learned single Judge on April 10, 1992 was illegal as the recommendation made by the Commission itself had ceased to be valid after expiry of the period of one year in view of Sub-section (3) of Section 13 of the Act. The affidavits exchanged by the parties, however, show that Dr. Tiwari was throughout making effort to join the college and it was the Committee of Management which was creating resistance and was responsible for not issuing any appointment letter in his favour. In such circumstances, it cannot be held that the recommendation made by the Commission had become invalid on account of expiry of a period of one year. The affidavit filed on behalf of the Appellant in Special Appeal itself mentions that Dr. Tiwari gave an application to the Director of Higher Education on October 5, 1990 u/s 15 of the Act for issuing a direction to the Management to appoint him as Principal on which a show cause notice was issued in November 1990. He also gave a representation with the same prayer to the Commission on November 20, 1990. The Director issued another notice to the Management on July 3, 1991. The averments made by Dr. Tiwari in writ petition No. 9256 of 1992 also show that he was constantly making efforts to join the College and had also approached the Director of Higher Education and the Commission in this regard. We are fully satisfied on facts that there was no inaction on his part and on the contrary it was on account of the defiant attitude of the Committee of Management that he was not allowed to take over and function as Principal. Where a selected candidate is not permitted to join the College on account of some action of the Committee of Management and not on account of any default on his part, it cannot be held that the recommendation made by the Commission has ceased to be valid under Sub-section (3) of Section 13 of the Act. If the contention of Shri Singh is accepted, it would frustrate the very purpose for which the Act was enacted and the Management by their unilateral act would succeed in getting the recommendation made by the Commission ineffective. We are, therefore, of the opinion that the learned single Judge was fully justified in issuing the impugned direction dated April 10, 1992.

8. In the result, writ petition No. 18877 of 1990 and Special Appeal No. 149 of 1993 are dismissed with cost. Writ Petition No. 9256 of 1992 filed by Dr. Kamla Kant Tiwari is allowed with cost and the Committee of Management of V.S.S.D. College, Kanpur is directed to permit him to join the College and function as Principal thereof.