

(1998) 01 AHC CK 0073
In the Allahabad High Court
Case No : Writ Petition No. 8819 of 1990

Dr. Kumari Nazma Bano

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 22-01-1998

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(11)

Citation : (1998) 2 AWC 877 : (1998) 3 UPLBEC 2111

Hon'ble Judges : Dr. Maithli Sharan, J;A.N. Gupta, J

Bench : Division Bench

Advocate : S. Kant and H.C. Singh, for the Appellant; S. Mirza, Umesh Chandra, S.C. Imam Rizvi and H.C. Singh, Advs and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Dr. Maithli Sharan, J.—The petitioner, claiming herself to be a full-fledged Lecturer of Asian Culture in Shia Degree College, Lucknow (opposite party No. 3), has invoked the extraordinary powers of this Court under Article 226 of the Constitution of India for seeking suitable order, direction or writ in the nature of mandamus, commanding the opposite party No. 1, the State of Uttar Pradesh, to pay the balance scale of pay to her, and further commanding the opposite parties to decide her representations, contained in Annexures-5 and 6, and not to re-advertise the post of Lecturer for the subject of Asian Culture in the Shia Degree College, Lucknow.

2. The factual matrix of this petition lies in a narrow compass. The petitioner has averred that in April, 1988 the post of Lecturer in the subject of Asian Culture was advertised by opposite party No. 3, Shia Degree College, Lucknow and she applied in response to the said advertisement ; several candidates were interviewed by the selection committee constituted under the relevant provisions of the U. P. State Universities Act, 1973 (hereinafter referred to as the "Act"). The petitioner was found suitable for the said post and, consequently, the selection committee recommended her name for the appointment as a Lecturer

in Asian Culture. As required under the Act, the opposite parties No. 3 and 4 sent the matter of the said selection for approval to the University. It has been averred by the petitioner that under the provisions of Section 31 (11) of the Act, her candidature was deemed to have been approved by the Vice-Chancellor of Lucknow University because latter's disapproval was not conveyed within the required period of one month, Her case is that she made several representations to the opposite parties for payment of her regular pay in the scale of Lecturer but they have not cared to decide them ; and. instead, they were again going to re-advertise the post of Lecturer for the subject of Asian Culture. On the basis of the abovementioned averments the petitioner has sought for the reliefs mentioned above.

3. The opposite parties No. 3 and 4, i.e., Shia Degree College and its Committee of Management, as well as the Vice-Chancellor of Lucknow University, opposite party No. 5 denied the averments made by the petitioner. They have categorically denied the factum that the Vice-Chancellor had not disapproved, within the required period of one month, the alleged selection of the petitioner as Lecturer of Asian Culture in the Shia Degree College, Lucknow.

4. The basis of the petitioner's case, thus hinges only on the interpretation of the provisions of Section 31 (11) of the Act, and the learned counsel for the petitioner has vehemently argued that since the Vice-Chancellor had not conveyed his disapproval of the selection of the petitioner to the post of Asian Culture in Shia Degree College, he would be deemed to have approved of the proposal sent in this regard by the College. On the other hand, the learned counsel appearing for the opposite parties has contended that in view of the factual date available on record, the provisions of the proviso engrafted u/s 31 (11) (c) would not be attracted in this case.

5. For the sake of convenience, it would be worthwhile to reproduce here the relevant provisions of the Act as under :

31. Appointment of Teachers :

"(a) (11) (a) No teacher recommended by the Selection Committee shall be appointed by the Management of an affiliated or associated college (other than a college maintained exclusively by the State Government) unless prior approval of the Vice-Chancellor has been obtained.

(b) The Management shall, as soon as possible, after the meeting of the Selection Committee, submit the recommendations of the Committee, along with other relevant documents to the Vice-Chancellor for approval.

(c) The Vice-Chancellor, if he is satisfied that the candidate recommended by the Selection Committee does not possess the minimum qualifications or experience prescribed, or that the procedure laid down in the Act for the Selection of the teacher has not been followed, shall convey to the Management his disapproval:

Provided that if the Vice-Chancellor does not convey his disapproval within a

period of one month from the date of receipt of the documents referred to in clause (b), or does not send to the Management any intimation in connection therewith, he shall be deemed to have approved of the proposal."

6. The above provisions enjoin the Management to submit the recommendation of the Selection Committee along with other documents to the Vice-Chancellor for approval. Thereafter, if the Vice-Chancellor finds himself satisfied on the grounds indicated in clause (c), he shall convey his disapproval to the Management. The proviso engrafted to this provision goes to indicate that in case Vice-Chancellor does not convey his disapproval within a period of one month from the date of the receipt of the documents required to be furnished under clause (b) or does not send to the Management any intimation in that connection, it would be deemed that he has approved the proposal.

7. Learned counsel appearing for the petitioner has, relying on a single Bench decision of this Court in *Avadh. Bihari Pandey v. Chancellor, University of Gorakhpur*. 1986 UPLBEC 710 contended that the provisions of the abovementioned proviso engrafted u/s 31 (11) (c) of the Act would be attracted in the instant case and since the Vice-Chancellor had not conveyed his disapproval within the required period of one month, he would be deemed to have approved the proposal sent by the Management of the Shia Degree College in regard to the selection of the petitioner for the post of Lecturer of Asian Culture. We are afraid, the facts of the case relied upon by the learned counsel are different from the facts of the Instant case in which it is but clear that the decision was taken by the Vice-Chancellor in this regard within the required period of one month and the candidature of the petitioner was disapproved. In the instant case. It is pertinent to note that the proviso to Section 31 (11) (c) would come into play only when the Vice-Chancellor does not send to the Management any intimation in regard to the approval. In the instant case the Management Committee of the Shia Degree College through its resolution No. 3 approved the recommendation of the Selection Committee on 3.7.1988. and, thereafter, submitted the recommendation of the same to the Vice-Chancellor which was received by the latter's office on 18.7.1988. Afterwards the Assistant Registrar, within a period of one month, through Letter No. 15283, dated 12.8.1988 (Annexure-No. 2 to the counter-affidavit of opposite parties No. 3 and 4) on behalf of Vice-Chancellor, sent another intimation to the Management through Principal asking it to furnish the copies of the advertisement and the resolution of the Management Committee, and in response to the said letter, required papers were sent through Letter No. 930/B.F./III-88, dated 16.8.1989 (Annexure No. 3 to the counter-affidavit of opposite parties No. 3 and 4). Further, in continuation of the above mentioned query, the Registrar, Lucknow University through his Letter No. 17808, dated 6.8.1988 again required from the College duly attested copies of the certificates and testimonials of the petitioner which were furnished by it through Letter No. 870/A/BT/III, dated 7.10.1988. as is evident from Annexure-No. 1 to the counter-affidavit of opposite parties No. 3 and 4, On 13.1.1989 this confidential letter (Annexure No. 1 to the counter-

affidavit) was sent by the Assistant Registrar of the University to the Principal of the Shia Degree College, Lucknow conveying the disapproval of the Vice-Chancellor regarding the selection of the petitioner to the post of Lecturer in Asian Culture of the College. The details of the basis of the disapproval were clearly dilated in the said letter of disapproval sent by the University.

8. The abovementioned chronological data of the facts of this petition does go to indicate that the deeming provision engrafted in the proviso appended to Section 31 (11) (c) would not be attracted in this case because of the obvious fact that the Vice-Chancellor did not base his decision merely on the receipt of the documents referred to in clause (a) of Section 31 (11) of the Act, but, instead he did send to the Management an intimation in connection therewith, and did require the College to send other details and the documents on which the decision of the Vice-Chancellor rested. Thus, under these circumstances, it is but clear that the selection of the petitioner to the said post of Lecturer was disapproved by the Vice-Chancellor, and hence she cannot base her claim for the said post. Consequently, this petition is hereby dismissed.