
(1996) 08 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 10948 of 1989

Dr. Kushal Pal Singh

APPELLANT

Vs

Director of Higher Education and Others

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12(1),
12(2), 16, 16(1)
Uttar Pradesh State Universities Act, 1973 — Section 31

Citation : (1996) 08 AHC CK 0014

Hon'ble Judges : R.A. Sharma, J;Kundan Singh, J

Bench : Division Bench

Advocate : R.G. Padia, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—After the retirement of certain teachers of Deo Nagri Degree College, Meerut (hereinafter referred to as the College), vacancies were notified to the U.P. Higher Education Service Commission (hereinafter referred to as the Commission), constituted under U.P. Higher Education Service Commission Act, 1980 (hereinafter referred to as the Act). As the Commission failed to recommend suitable candidate, the College Management decided to appoint the teachers on ad hoc basis u/s 16 of the Act. Accordingly, vacancies were notified by the Management and a Selection Committee was constituted for selecting the suitable teachers. Petitioner and others applied for the post of Lecturer in the College and also appeared before the Selection Committee; but they were not found suitable and, therefore, they were not appointed as Lecturers u/s 16 of the Act on ad hoc. basis. However, the Management appointed the Petitioner with effect from 15.10.1986, as a stop-gap arrangement on a fixed remuneration of Rs. 700 per month, which was accepted by him. The Petitioner continued to work up to 21.3.1987. The Management again permitted the Petitioner to work as part-time Lecturer with effect from 12.9.1988 on a consolidated salary of Rs. 800 per month. He continued to work up to 4.5.1989 when his service was again

dispensed with by order dated 4.5.1989, passed by the Principal of the College. Being aggrieved by it, he has filed this writ petition.

2. The contention of the learned Counsel for the Petitioner is that the Principal of the College has no Jurisdiction to terminate the service of the Petitioner, as the Petitioner was appointed by the Management of the College. This submission, although attractive, cannot be accepted. Before the enforcement of the Act, the appointment of teachers in Degree Colleges used to be made by the Management of the Colleges on the recommendation of the Selection Committee constituted u/s 31 of the U.P. Universities Act, 1973, but after the enforcement of the Act no teacher can be appointed by the Management in Degree Colleges except on the recommendation of the Commission. This is clear from Section 12 (1) of the Act, which is reproduced below:

12. Procedure for appointment of teachers.--(1) Every appointment as a teacher of any College shall be made by the management in accordance with the provisions of this Act and every appointment made in contravention thereof shall be void.

Section 16 of the Act, however, makes an exception by providing for ad hoc appointment of the teachers by the Management, if the Commission has not recommended the name of suitable candidate within the time specified therein. Section 16 (1), being relevant, is reproduced below:

16. Appointment of ad hoc teachers.--(1) Where the management has notified a vacancy to the Commission in accordance with Sub-section (2) of Section 12, and the Commission fails to recommend the names of suitable candidates in accordance with Sub-section (1) of that section within three months from the date of such notification, the management may appoint a teacher on purely ad hoc basis from amongst the persons holding qualification prescribed therefore.

3. It is admitted that the appointment of the Petitioner was not u/s 16. In fact, he was not found suitable for ad hoc appointment u/s 16 of the Act by the Selection Committee. There is no other provision authorising the appointment of a part-time or an ad hoc teacher. The Petitioner's appointment thus was not only not in accordance with law but was also contrary to it. The freedom of the College Management to appoint any person as a teacher is no more there after the enforcement of the Act. Petitioner's appointment was, therefore, absolutely without Jurisdiction. That being the position, this Court cannot issue writ of mandamus to set aside the order passed by the Principal, because if we set aside that order, it will result in restoration of an illegal order of appointment of the Petitioner. In this connection, reference may be made to *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, wherein it was laid down as under:

In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order it

would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samiti. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

4. This writ petition is accordingly dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.