
(1997) 08 AHC CK 0066
In the Allahabad High Court
Case No : C.M.W.P. No. 26734 of 1997

Dr. Mahant Pd. Kushwaha

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12, 12(1), 16, 30, 31A

Citation : (1998) 1 AWC 310

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

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—In view of the retirement of the regular Principal of Baba Raghavdas Bhagwanddas Post-Graduate College, Ashram Barhaj, district Deoria (hereinafter referred to as the college) on 30.6.1991, the Committee of Management of the college appointed the petitioner, who is a lecturer in the college, as officiating Principal with effect from 1.7.1991. Although the petitioner was appointed as officiating Principal but he was not paid the salary of the Principal. He, therefore, filed Writ Petition No. 27497 of 1993 before this Court, which was disposed of on 15.3.1993, giving liberty to him to make representation to the Director, U. P. Higher Education in that connection. The petitioner claims to have made a representation before the Director ; but no order appears to have been passed for payment of salary of the post of Principal. He also made a representation before the Chancellor of the University, praying for regularisation of his service as Principal of the college. This representation, according to the petitioner, has not been disposed of. He has, therefore, filed this writ petition, seeking writ of mandamus, directing the respondents to regularise his service on the post of Principal of the college in terms of the Government Orders dated 1.10.1994 and 14.11.1996, whereby the service of Km. Madhu

Bhatnagar, the Principal of another college, was regularised. Appropriate prayer for payment of salary of the post of Principal has also been made.

2. We have heard the learned counsel for the petitioner. This writ petition lacks merit and has got to be dismissed for the reasons given hereunder.

Earlier the appointments of teachers and Principals in affiliated Degree and Post-Graduate Colleges used to be made by the Selection Committee constituted in accordance with the U. P. State Universities Act, 1973 (hereinafter referred to as the Universities Act). In 1980 the State of U. P. enacted the U. P. Higher Education Services Commission Act (hereinafter referred to as the Act), providing for appointment of teachers and the Principal in the affiliated colleges by the management of colleges on the recommendation of the U. P. Higher Education Service Commission (hereinafter referred to as the Commission). Subsection (1) of Section 12 of the Act, which is reproduced below, has prohibited any other mode of appointment of teachers and Principal in the colleges :

"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."

The Act had also provided for ad hoc appointment of teachers u/s 16 and Removal of Difficulties Orders, issued u/s 31A of the Act. Section 16 has now been repealed by U. P. Act No. 2 of 1992 and Removal of Difficulties Orders, issued in 1982 and 1983 have expired in 1983 and 1984 respectively, because the life of each of those orders was one year only. As the managements of the colleges have made large number of ad hoc appointments u/s 16 and the Removal of Difficulties Orders, promulgated u/s 31A of the Act, the State Legislature amended the Act by adding Sections 31B and 31C, providing for regularisation of service of ad hoc teachers other than Principal in the affiliated colleges. Section 31B provides for regularisation of service of ad hoc teachers appointed on or before January 3, 1984 against substantive vacancy in accordance with the U. P. Higher Education Services Commission (Removal of Difficulties Order), 1982 or the U. P. Higher Education Services Commission (Removal of Difficulties Order), 1983. Section 31C contains the provisions for regularisation of service of ad hoc teachers other than a Principal appointed after January 3, 1984, but not later than June 30, 1991 in an affiliated college.

3. As Sections 31B and 31C have provided for regularisation of service of ad hoc teachers only and have expressly excluded the Principal from the benefit of regularisation, the petitioner is not entitled to regularisation of his service as a Principal. A Division Bench of this Court in *Indra Pal Singh v. State of U. P. and others* 1995 (1) UPLBEC 54, after considering the relevant statutory provisions and the case law, has held that the ad hoc Principal is not entitled to regularisation of service as both Sections 31B and 31C have expressly excluded the Principal from the benefit of regularisation. This Court also upheld the validity

of Section 31C.

4. The Act being self-contained code in this regard, the petitioner does not have any right to seek regularisation of his service as officiating Principal. Section 30 has given overriding effect to the Act notwithstanding anything contained in the Universities Act or Statute and Ordinance made thereunder. The Chancellor and the Government have no part to play in this regard. Regularisation of service dehors the Act is not permissible. In J. and J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., , the Supreme Court, in this connection, has laid down as under :

"It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law. Having made the rules the executive cannot fall back upon its general power under Article 162 to regularise the ad hoc appointments under the Rules. Rule 9 (3) empowers only to relax the qualification of age in particular exigencies which cannot be called in aid to relax the rules of recruitment. To tide over unforeseen exigencies, power to make ad hoc appointments may be visualised as envisaged by Explanation-b to Rule 4 but it expressly states that by virtue of such appointment, the ad hoc appointee does not become member of the service. The rule prescribes direct recruitment/promotion by selection as the mode of recruitment which would be done only by P.S.C. or promotion committee duly constituted and by no other body. Therefore, ad hoc employee should be replaced as expeditiously as possible by direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules."

In Khagesh Kumar and others v. Inspector General of Registration and others (1996) 1 UPLBEC 23, Supreme Court has held that as in the State of U. P. the provisions with regard to regularisation have been made in the Rules, "the petitioners can claim regularisation only if they satisfy the requirements of the said provisions."

5. The learned counsel for the petitioner has, however, submitted that as the Chancellor has, vide order dated 1.10.1994, directed for regularisation of the service of Km. Madhu Bhatnagar as Principal of Arya Kanya Maha Vidyalaya, Almora, the petitioner is also entitled to the same benefit and the Chancellor is, therefore, bound to pass similar order for regularisation of his service. This submission is devoid of merit. The petitioner cannot get his service regularised as Principal on the basis of parity, because the Act does not permit regularisation of service of a Principal. Writ of mandamus can be issued to the Government to do that which it is bound to do under the law. No mandamus can be issued to the Government to pass a wrong order. Passing of a wrong order earlier by the Government will also not justify this Court to compel the Government to commit

as similar mistake again.

6. There is also no adequate material on the record to show under what circumstances the service of Km. Madhu Bhatnagar as a Principal has been regularised. From the perusal of the order dated 1.10.1994 (Annexure 5 to the writ petition), passed by the Govern or/Chancellor, it appears that her service has been regularised with effect from 1.8.1980. It may be that she was appointed on 1.8.1980 as ad hoc/officiating Principal. The Act came into force on August 20, 1981. Her appointment as a Principal of the college appears to have been made before the Act came into force. It is, however, not necessary for this Court to express any opinion regarding the appointment and regularisation of the service of Km. Madhu Bhatnagar as Principal of a college, because neither the same is under challenge nor is there any relevant material placed on the record to enable this Court to reach any conclusion. That apart, regularisation of service of Km. Madhu Bhatnagar will not be a ground to direct the Chancellor or the Government to regularise the service of the petitioner also, because under law they have no power to pass such an order.

7. For the reasons given above, this writ petition is dismissed.