

(2017) 05 AHC CK 0095

In the Allahabad High Court

Case No : 52518 of 2014, 30787 of 2016, 32883 of 2016

Dr. Mahendra Shankar Singh, & Anr.

APPELLANT

Vs

Union Of India, & Ors.

RESPONDENT

Date of Decision : 18-05-2017

Acts Referred:

[University of Allahabad Act, 2005](#), [Section 44\(3\)](#), [Section 44\(3\)](#), [Section 45\(2\)](#), [Section 45\(2\)](#), [Section 5\(d\)](#), [Section 5\(d\)](#) - Statutes, Ordinances and Regulations to be published in the Official Gazette and to be laid before Parliament - Transitional provisions - Effect of incorporation of Allahabad University. On and from the appointed day

Citation : (2017) 05 AHC CK 0095

Hon'ble Judges : Amreshwar Pratap Sahi, Daya Shankar Tripathi

Bench : Division Bench

Advocate : Manu Khare, Ram Gopal Tripathi, Vivek Kumar Singh, Alok Ranjan, Neeraj Tripathi

Judgement

1. These three writ petitions pertain to the engagement of Guest Faculties / Guest Lecturers in the Allahabad University, Allahabad (for short the University), which is a central University. The dispute relates to two Guest Faculties. The petitioners herein are in the department of Geography of the said University. They claim that they were engaged as Guest Faculties in the year 1995 and are continuing since then. It appears that on account of non-selection against the available vacant sanctioned posts, the University engaged Guest Faculties in order to meet the exigencies of the University.

2. The University attained the status of a Central University and according to Section 5(d) of the University of Allahabad Act, 2005, the status of employment and the tenure etc of the services of any person employed by the University was to continue unless terminated or the terms and conditions are altered by the Statutes and Ordinance. Section 5 (d) of the aforesaid Act is extracted herein below:

(d) every person employed by the University of Allahabad immediately before the appointed day shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the University in accordance with the term of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the University of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees:

Provided further that every person employed before the appointed day, pending the execution of a contract under section 34, shall be deemed to have been appointed in accordance with the provisions of this Act and the Statutes:

Provided also that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of the University of Allahabad in any law for the time being in force, or in any instrument or other document, shall be construed as a reference respectively to the Vice-Chancellor and the Pro-Vice-Chancellor of the University;

3. Section 44 (3) of the Act empowers the framing of the Statutes, Ordinances and Regulations including the power to give retrospective effect to the same. It is also provided in sub section (2) of Section 45 of the Act that till such time, Ordinances are not made in terms of section 29, the Statutes, Ordinances framed under the earlier provisions prior to the grant of status of a Central University was to continue in so far as they are not inconsistent with the provisions of the aforesaid Act.

4. In relation to the instant dispute, pertaining to the continuance and status of Guest Faculties / Lecturers, it would be apt to mention that in the year 2006 Ordinance XLIV was framed captioned as "Part-time Lecturer and Guest Faculty" Ordinance.

5. For the purpose of present controversy, Clause 6 of Ordinance XLIV in its entirety is extracted herein-below:

6(a) : For the purpose of this Ordinance, the term "Guest Faculty" means persons engaged for instructional purposes on contractual basis, for a period not exceeding one academic year, by an academic unit, i.e. a Department under a Faculty, other than a Faculty constituted by a University College admitted to the privileges of the University, a University Institute, an independent Center or a School, or by an institution admitted to the privileges of the University.

Explanation

1. Persons engaged as Guest Faculty under the provisions of this Ordinance shall not be entitled to the status or privileges or Visiting Professors, Visiting Fellows, or Visiting Lecturers, invited for participation in academic work, under any scheme or, or approved by, the University Grants Commission or of any other national funding agency:

2 The persons engaged or invited for imparting instruction in any Department, University Institute, independent Centre or Constituent College, as Guest or Visiting Lecturers or Faculty, by whatsoever designation they may be called shall not be entitled to be designated or regarded as Part-time Lecturers.

(b) Engagement of Guest Faculty may be made in the following circumstances -

(i) where there is a vacancy in an approved post of teacher;

(ii) where persons having professional expertise in specialized subject or fields are required to be associated for strengthening or supplementing regular instruction;

(iii) where special instructional programmes have to be organized for students or

(iv) where the workload for an approved course of study does not justify the appointment of a whole-time regular teacher throughout the academic year.

(c) The following persons may be considered for purposes of engagement as Guest Faculty.

(i) a retired teacher of an institution of higher education;

(ii) a serving teacher of an institution of higher education, who is eligible under the rules of such institution to undertake the engagement; or

(iii) a person with professional expertise and experience in specialized subject or field.

(d) The engagement of Guest Faculty shall be on such honorarium determined on per Lecture basis and subject to such maximum monthly limit, as may be laid down by the University Grants Commission for Guest Teachers.

(e) Where the persons specified in serial numbers (i) and (ii) of sub-clause (c) are not available, a person fulfilling the qualifications for appointment as Lecturer may be engaged as Guest Faculty on such honorarium as may be approved by the University Grants Commission for such cases.

(f) A person engaged as Guest Faculty shall not be assigned administrative duties, such as those connected with admission or examinations, in the academic unit concerned, and shall not be entitled to claim any benefit or credit for such duties performed voluntarily, or on separate remuneration;

Provided that such persons shall be called upon to perform duties related to

continuous assessment and project work of the students of the course of study concerned:

Provided further that such person shall not serve as an examiner for any course of study, except if he fulfils the qualification for appointment as examiner.

(g) The procedure for the engagement of Guest Faculty, and the format of the contract admissible to persons engaged as such, shall be prescribed by the Vice-Chancellor and reported to the Executive Council.

(h) The engagement of Guest Faculty shall not continue beyond the terminal date for instruction for the course of study cornered, or for the special instructional programme concerned, if any academic year.

Provided that where a person, referred to in sub-clause (c) engaged, in the prescribed manner, by an academic unit as Guest Faculty in an academic year continues to be eligible for such engagement, he may be re-engaged as such by such academic unit for the immediately subsequent academic year, without recourse to the procedure specified under the provisions of sub-clause (g), but such re-engagement without recourse to the said procedure, shall not be permissible beyond three consecutive academic years.

6. The petitioners contend that they continued but they were sought to be replaced and were also denied the benefit of regularization that led them to file these writ petitions as well as earlier an writ petition pertaining to regularization.

7. Having noticed the aforesaid facts, we had passed the following order Yesterday i.e. 17.5.2017 considering the said claim of the petitioner and chronological events that have led to the claim made by the petitioners for their continuance and payment of salary.

"Sri Vivek Kumar Singh and Sri Yanendra Pandey, Advocates holding brief of Sri Neeraj Tripathi, learned counsel for respondent-University have put in appearance in these petitions.

Heard Sri Manu Khare, learned counsel for the petitioners in all the three writ petitions.

Having heard learned counsel for the petitioners, what we find is that the petitioner was continuing as a Guest Lecturer and he sought to get his claim for regularization considered on the said post as a Guest Lecturer in the subject of Geography in the respondent-University. The claim was rejected by the High Court and the writ petition was dismissed.

Taking a clue therefrom, the University proceeded to dispense the services of the petitioners even as a Guest Lecturer on the alleged ground of the dismissal of the said writ petition.

This disengagement and a further advertisement for a fresh engagement led to the filing of Writ Petition No. 52518 of 2014. On 25th September, 2014. An

interim order was passed by this Court staying any further fresh recruitment of Guest Lecturer in the subject of Geography by the University. Time was granted to the respondent to file counter affidavit, whereafter on 12th December, 2014, the discontinuance of the petitioner by the order dated 12th June, 2014 was stayed. In spite of these orders, the petitioner was not allowed to continue nor received salary.

In respect thereof, a fresh advertisement was made by the respondent to engage a Guest Lecturer in Geography that was challenged by the petitioner in Writ Petition No. 30787 of 2016 and again an interim order was passed on 19.07.2016 restraining the University from holding a fresh selection. The said writ petition has been connected with the first writ petition.

Again, the respondent-University has proceeded to re-advertise the post of Guest Lecturer in the same subject which became subject matter of a third Writ Petition No. 32883 of 2016.

In this writ petition, directions were issued previously to ensure the continuance of the petitioner and payment of salary, on which instructions had been called upon from the respondent-University. Sri Yanendra Pandey submits that the file has been processed and is pending before the Finance Officer for appropriate orders.

Since the dispute involved is a very short matter as per the chronology of events hereinabove, learned counsel pray that the matter may be taken up tomorrow.

Put up tomorrow i.e. on 18.05.2017 in the additional cause list".

8. Sri Vivek Singh, counsel for the University submits that so far as the continuance and payment of salary of the petitioners is concerned, it was required to be processed under the orders of this Court dated 27.4.2017 and 5.5.2017. The same has been done and the matter shall be finalized for release of such payments within 10 days.

9. We are not entering into the issue relating to the extended tenure of the engagement of the petitioners as have been disclosed in all the three writ petitions right from 1995, but the position that emerges upon reading of the Statutes and Ordinance that have been placed before us, we find that Clause 6 of the Ordinance XLIV has been further amended with the deletion of the proviso by Resolution No. 9 of 2016 of the Executive Council dated 20.1.2009 that have been placed before us today by Sri Neeraj Tripathi, learned Additional Advocate General representing the University. The same is extracted herein-below.

Agenda No. 16/09: To consider deletion of provisions as laid down under Ordinance XLIV : Part time Lecturers & Guest Faculty:-

(a) The Ord. XLIV (2) (a) to 5)e) Provides. Appointment to the post of Part time Lecturer.

(b) x x x

3(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) x x x

(f) x x x

(g) x x x

(h) x x x

4 x x x

5.(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) x x x

(b) Further, The Ordinance XLIV 6(b) to 6(h) provides: Engagement of Guest Faculty.

6 (a) x x x

(b) x x x

(c)The following persons may be considered for purposes of engagement as Guest Faculty :

(i) A retired teacher of an institution of higher education.

(ii) a serving teacher of an institution of higher education, who is eligible under the rules of such institution to undertake the engagement; or

(iii) a person with professional expertise and experience in the specialized subject to field.

(d) x x x

(e) x x x

(f) x x x

(g) The procedure for the engagement of Guest Faculty, and the formal of the contract admissible to persons engaged as such, shall be prescribed by the Vice Chancellor and reported to the Executive Counsel.

(h) x x x

"Provided that where a person, referred to in sub-clause (c), engaged, in the prescribed manner, by an academic unit as Guest Faculty in an academic year, continues to be eligible for such engagement, he may be re-engaged as such by such academic unit for the immediately subsequent academic year, without recourse to the procedure specified under the provisions of sub-clause (g), but such re-engagement, without recourse to the said procedure, shall not be permissible beyond three consecutive academic years."

The provision appended as above is creating serious problems to the University. All those Part Time Lecturers and Guest Faculty, who were engaged from session to session basis have started to claim either permanent employment as Faculty member or engagement as Guest Faculty without any interview.

It is recommended that the following provision XLIV quoted below be deleted from the Ordinances.

"Provided that where a person, referred to in sub-clause (c), engaged, in the prescribed manner, by an academic unit as Guest Faculty in an academic year, continues to be eligible for such engagement, he may be re-engaged as such by such academic unit for the University subsequent academic year, without recourse to the procedure specified under the provisions of sub-clause (g), but such re-engagement, without recourse to the said procedure, shall not be permissible beyond three consecutive academic years."

Resolution NO. 09/16

"Resolved that the above provision as laid down under Ordinance XLIV of the First Ordinance of University of Allahabad be deleted and necessary corrections be made in the Ordinances"

10. A combined reading of the aforesaid provisions, therefore, leaves no room for doubt that the life and tenure of the Guest Faculty as on date cannot be allowed to continue beyond the period prescribed therein which is a contractual engagement on honorarium. Clause 6 of the Ordinance XLIV as amended above, therefore, squarely covers the issue and the same has neither been rescinded nor repeated by any authority. To the contrary the same continues to be in force even today.

11. Counsel for the petitioner has urged that this Court has issued directions for payment in such cases relating to payment to which the Guest Faculties were entitled.

12. In the present peculiar facts of this case, we find that that identical intervention as well as the act of University both taken cumulatively have ensured the continuance of the petitioners as Guest Faculties. Consequently, the petitioners would be entitled to continue and receive salary as Guest Faculties in the Department of Geography, University of Allahabad in the current academic session of the University only.

13. Accordingly, the payment shall be released to the petitioners and they shall be given the said benefits in view of the orders passed by this Court indicated herein above on 27.4.2017 and 5.5.2017.

14. We are extending this benefit to the petitioners on the peculiar facts of this case after having noticed the fact that they have been continued either on account of the orders passed by this Court or otherwise. There are no rights available to the petitioners to claim continuance keeping in view the Statutes and Ordinances quoted here-in-above.

15. The Guest Faculties have virtually become the hosts of the University and have been allowed to hold on for a fairly long period. The absence of permanency of tenure and the standard of selections virtually compromises with the status of a permanent Teacher of a University or for that matter even a degree or post-graduate college, inasmuch if a Teacher is permanently available then there is always a system in existence so as to establish the relationship between the teacher and the taught. This is necessary because the teachers of a University are performing a function, not only of dissemination of knowledge but of the transformation of the entire capacity of a student to establish himself and made known in society as a civilized and educated person. This job through ad hoc salesmanship cannot be achieved unless the teacher has a security of tenure. Selections therefore on a permanent basis against regular vacant posts ought to be the highest priority, the reason being that academic excellence is the first and foremost activity with which the University is concerned. A student enters the University with the expectation of receiving the best from the University to prepare the student for a future life. This important role of the University gets belittled if the teachers themselves are unavailable. It is common knowledge that there are various departments that have been flung open and recognized inviting students to receive education in a multiple variety of subjects. This expectation of receiving the best gets belied when the student fails to find a teacher of his subject.

16. A situation of getting this gap filled up through ad hocism is no solution and is rather unexpected from the point of view of the student and his expectations of achievements in the University. An ad hoc teacher may spend all the time calculating his/her own existence in terms of the tenure of engagement which in turn in all likelihood affects his/her ultimate performance as his/her expectancy of continuance clearly diverts him/her from concentrating on the job for which the Teacher is engaged. These are practical difficulties that multiply the problem of the University and cumulatively results in a heavy decline in the standard of education.

17. This Court is however called upon to interpret the aforesaid provisions for a future guidance for the University and also for the Union of India to issue such directions in order to ensure compliance of the said Ordinance and at the same time also ensure regular engagements against such vacant posts that are available in the University. The reason is that such elongated and liberal

continuance of ad hocism against sanctioned posts without even taking care of the fact that many more vacancies must have come into existence compels the Court to issue appropriate directions. The procedure for engaging Guest Faculties henceforth shall be strictly followed by the University as per Ordinance - XLIV. The University shall ensure that the continuance in violation of the said Ordinance would be avoided. The engagement of Guest Faculties is only in such contingencies as contemplated in Clause - 6 (d) of the Ordinances quoted here-in-above. The engagement of Guest Faculties in the University appears to have been continued indiscriminately much beyond the period as prescribed in the Ordinances. Consequently, the University and the Union of India shall ensure henceforth that regular selections are held timely and promptly against vacant posts. This is necessary because the University is being funded continuously in order to facilitate teaching in the University and it is also realising full fees from all students without providing regular Teachers. This is qualitatively telling upon the performance of teaching in the University. The Guest Faculties therefore should not be regularly resorted to for appointments unless there is a pressing need as per the contingencies contained in the Ordinances referred to here-in-above.

18. We therefore direct the learned Assistant Solicitor General of India (ASGI) for the Union of India to furnish this information through this judgment to the respondent No.1 to ensure completion of selections and appointments against regular vacant posts at the earliest by the respondent-University. Learned Counsel for the University shall also bring this to the notice of the Vice-Chancellor for necessary action to be taken in order to complete selections and hold them in order to avoid any future inconvenience. It is expected that such selections and appointments against vacant posts shall be attempted to be filled up preferably within six months from today so that the cause of the students does not suffer in future.

19. All the three writ petitions are disposed off with the aforesaid directions.