
(2007) 12 AHC CK 0007
In the Allahabad High Court

Dr. Narendra Kumar Pandey and Another	APPELLANT
Vs	
Chancellor, Lucknow University and Others	RESPONDENT

Date of Decision : 18-12-2007

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(4), 31(8)(a)

Citation : (2008) 2 AWC 1990

Hon'ble Judges : Rajiv Sharma, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant and Rajiv Sharma, JJ.—This writ petition by two persons, who were participants in the selection proceedings held by the Lucknow University for appointment on the post of Professor in the subject of Experimental Solid State Physics in the Department of Physics, Lucknow University, Lucknow, wherein the respondent No. 4 was also one of the candidates considered for appointment, challenge the two orders passed by the Chancellor, viz., one passed on a reference u/s 31(8)(a) of the State Universities Act, 1973 (hereinafter referred to as the "Act") and the other passed on the representation preferred by the petitioners u/s 68 of the Act. All the three persons, namely, the two petitioners and respondent No. 4 were working as Reader in the Department of Physics.

2. The Selection Committee u/s 31(4) of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as the "Act" for the sake of brevity) was constituted. Three experts were nominated by the Chancellor. The Selection Committee interviewed eight candidates but recommended only one candidate, namely, Dr. (Mrs.) Poonam Tandon, respondent No. 4. The Selection Committee stated as under:

After considering the academic record, research, publications, teaching experience as also experience of research supervision, and overall performance of the candidates at the interview, the Committee resolved to recommend the

following for appointment to the post of one Professor of Physics (Specialization in Experimental Solid State Physics) (Unreserved).

3. When the matter was placed before the Executive Council, the Executive Council expressed disagreement with the recommendations of the Selection Committee as question regarding eligibility/possession of necessary qualification by the respondent No. 4 for being appointed as Professor in the subject of Physics (Experimental Solid State Physics) was raised. The Vice-Chancellor made an effort to convince the Executive Council that the respondent No. 4 was fully eligible and she possessed all the qualifications, but finally the Executive Council decided that the matter be referred to the Chancellor u/s 31(8)(a) of the Act. The resolution passed by the Executive Council is on record, which shows that a couple of members viz. Prof. T.P. Pandiya, Prof. Nishit Kumar Rai, Sri Srinivasa Tiwari and Dr. Vibha Awasthi raised the objection that respondent No. 4 did not possess the requisite qualification. Finally, the Executive Council did not accept the recommendation of the Selection Committee and referred the matter to the Chancellor as aforesaid.

4. The Chancellor, while considering the said reference, first delved upon the question as to whether there was any disagreement to the recommendation made by the Selection Committee by the Executive Council as unless there was a disagreement, Section 31(8)(a) of the Act, could not be attracted and then addressed himself on the question of eligibility of respondent No. 4.

5. A perusal of the order passed by the Chancellor shows that he has recorded his opinion about non-applicability of the provisions of Section 31(8)(a) of the Act in the instant case as according to him the aforesaid provision would only be attracted when there is a clear and specific disagreement of the Executive Council to the recommendations made by the Selection Committee and such specific disagreement of the Executive Council is not present in this case, as only certain members were of the view that the respondent No. 4 was not possessed of the requisite qualifications.

6. After recording the aforesaid finding, the Chancellor ought to have referred the matter back to the Executive Council for consideration since in absence of any disagreement, the reference made u/s 31(8)(a) of the Act was found by him as incompetent, leaving it open on the part of the Executive Council to decide and take further action. But the Chancellor instead of sending the matter back to the Executive Council made observations with respect to the eligibility of respondent No. 4 also, but while doing so, the Chancellor did not enter into the question of possession of requisite qualifications by the respondent No. 4 himself and only relied upon the fact that her name was recommended by the experts and the Vice-chancellor, who is also the subject expert, gave his view in her favour, therefore, the respondent No. 4 was fully possessed of the requisite qualifications.

7. The question for determination before the Chancellor was twofold. First, whether there was a disagreement with the recommendation of the Selection

Committee by the Executive Council and if so, the qualification and eligibility of respondent No. 4 was to be considered independently by the Chancellor, being the "expert of experts" and secondly, if there was no disagreement, as aforesaid then the matter had to go back to the Executive Council for further action.

8. Learned counsel for the parties, namely, S/Sri Sandeep Dixit for the petitioner, Devendra Arora for the Chancellor, I.B. Singh for the Lucknow University and Prashant Chandra assisted by K.D. Nag for respondent No. 4 agree that in view of the resolution of the Executive Council, there cannot be any two opinions that there was a disagreement of the Executive Council against the recommendations of the Selection Committee which also stands concluded by the fact that the Executive Council did pass the resolution for forwarding the same to the Chancellor u/s 31(8)(a), instead of accepting the recommendations of the Selection Committee. Section 31(8)(a) of the Act, which reads as under, does not speak of disagreement of individual members or the resistance by individual members in accepting the recommendations of the Selection Committee, but disagreement of the Executive Council as a body to the recommendation of the Selection Committee:

In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor alongwith the reasons of such disagreement, and his decision shall be final:

provided that if the Executive Council does not take a decision on the recommendations of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.

9. The views which are expressed by the members in a meeting of the Executive Council where recommendations of the Selection Committee are being considered for being accepted are simply the deliberations where each and every member is free to express his opinion and raise his voice. It is the ultimate resolution which is passed by the Executive Council, decides as to whether the recommendations have been accepted or there has been any disagreement or they have been rejected. If after deliberations, in the meeting of the Executive Council it was decided that the matter be referred to the Chancellor u/s 31(8)(a) of the Act, there cannot be any third conclusion except that the Executive Council did not agree with the recommendations made by the Selection Committee.

10. The instant resolution says that rFkkfi] v/;{k egksn; }kjk fLFkfr Li"V djus ds mijkUr Hkh ifj"kn~ }kjk iz"uxr p;u lfefr dh laLrqfr;kas dks mRrj izns"k jkT; fo"fof|ky; vf/kfu;e dh /kkjk 31?8??d? ds izkfo/kkuuqlkj egkefge dqykf/kifr egksn; ds fopkjkFkZ ,oa fu.kZ;kFkZ lanfHkZr djus dk fu.kZ; fy;k x;k A

11. The aforesaid resolution clearly speaks that the decision was taken by the Executive Council to refer the matter to the Chancellor u/s 31(8)(a) of the Act and, therefore, the view expressed by the Chancellor that there was no specific

disagreement cannot be said to be correct appreciation of the resolution of the Executive Council dated 19.10.2006.

12. We have already observed that if the Chancellor was of the view that there was no disagreement and the reference made u/s 31(8)(a) of the Act was not a competent reference, the matter should have been referred back to the Executive Council where the Executive Council would have considered the issue and had taken a fresh decision but having not done so, the Chancellor apparently entered into the question of qualifications of the respondent No. 4.

13. In deciding the question of eligibility of respondent No. 4, her qualifications, achievements and published papers, etc. were not taken into consideration and as a matter of fact, the Chancellor only relied upon the fact that since the experts have recommended her name including the Vice-Chancellor, who is also the expert on the subject of Experimental Solid State Physics, therefore, she is possessed of the requisite qualification.

14. It would be appropriate to observe that the Chancellor was obliged to look into the qualifications of respondent No. 4 and record a finding of his own that the respondent No. 4 possessed the requisite qualifications after looking into her qualification and the requirement as per the statutes. Merely on the basis of the recommendations made by the experts or merely because the Vice-Chancellor is said to be a scholar of the same subject, whose personal view could not have been taken as final pronouncement on the subject, no finding with respect to the possession of requisite qualifications by the respondent No. 4 could have been recorded.

15. It may be taken note of that whenever the question regarding the possession of the essential requisite qualifications in respect of a teacher, who has been recommended for appointment by Selection Committee comes before the Chancellor either on reference made u/s 31(8)(a) of the Act or by means of representation made u/s 68 of the Act, the Chancellor is legally obliged to deal on the issue and record his own finding by giving reasons either holding that recommended candidate did possess requisite qualification or not. The Chancellor has to look into the material on record, the prescribed qualifications and the qualifications of the incumbent in question and may take such assistance as may be required for the purpose from the statutes or otherwise to reach the aforesaid conclusion. The requirement of deciding the issue of qualifications would have to be considered in both eventualities, namely, either when a reference is made u/s 31(8)(a) by the Executive Council or a representation is made by the aggrieved person u/s 68 of the Act.

16. In the instant case, we have already observed that the Chancellor did not address himself on the question as to whether the respondent No. 4 was having requisite qualifications for being appointed on the post of Professor in Experimental Solid State Physics.

17. The Chancellor after dealing with the reference in the manner aforesaid also

issued a direction to the Vice-Chancellor to give appointment to the respondent No. 4. In this regard, it has been submitted by the petitioners that even after the decision of the Chancellor, the appointment could not have been given by the Vice-Chancellor himself, without placing the matter before the Executive Council, who is the appointing authority of the teachers u/s 31(1) of the Act and no resolution of the Executive Council was passed for issuing an appointment order to the respondent No. 4 but the respondent No. 4 has been allowed to join as Professor.

18. Curiously enough when the petitioner made a representation u/s 68 of the Act, they being aggrieved persons, the said representation was also rejected by the Chancellor on the ground that the matter has already been considered u/s 31(8)(a) of the Act and the order passed therein has become final, therefore, representation made u/s 68 of the Act is not maintainable.

19. We again find no merit in this reason for rejecting the representation u/s 68 of the Act. If an appointment is given to any teacher in the University by the Executive Council on acceptance of the recommendations made by the Selection Committee or appointment is made by the Executive Council after a reference made to the Chancellor u/s 31(8)(a) of the Act, the rights of those persons who felt dissatisfied with the selection made and appointment given would not stand divested of their right to challenge, merely because in one case the appointment has been given in pursuance of the opinion expressed by the Chancellor u/s 31(8)(a) of the Act. It is the appointment of the selected candidate, which is challenged u/s 68 of the Act and of course while judging its validity, the recommendation of the Selection Committee is also to be scrutinized. In both situations, the appointment is made by the Executive Council and the aggrieved person would have a right to challenge the same u/s 68 of the Act.

20. However, in the instant case, since the matter is referred back to the Chancellor to decide the reference u/s 31(8)(a) of the Act afresh, we though quash the order passed on the representation made u/s 68 of the Act but this representation loses all significance in view of the fact that the order passed by the Chancellor may again be open to legal recourse as may be permissible under law.

21. We, therefore, are of the considered opinion that the matter requires re-consideration by the Chancellor treating it to be a reference u/s 31(8)(a) of the Act, as we find that there was a disagreement in terms of the aforesaid provision of the Executive Council with the recommendations made by the Selection Committee.

22. The finding recorded by the Chancellor, namely, holding that there is no specific disagreement of the Executive Council with the recommendation of the Selection Committee on one hand and thereafter recording a finding about the eligibility of the respondent No. 4 reflect the obvious self-contradictory stands taken by him. So far as the eligibility/possession of the requisite qualification of

respondent No. 4 is concerned, the same would have to be considered by the Chancellor in accordance with Rules. If any party is aggrieved, he/she would be at liberty to challenge the action so taken as may be permissible under Rules.

23. keeping in mind the facts and circumstances of the case, we are of the view that the matter should be reconsidered by the Chancellor, expeditiously, for which, we expect that a period of four weeks would be sufficient for the Chancellor to decide the reference from the date of receipt of a certified copy of this order. Subject to the aforesaid observations and directions, the writ petition is allowed. The order passed by the Chancellor u/s 31(8)(a) of the Act dated 13.3.2007 and the order passed on the representation made u/s 68 of the Act dated 4.7.2007, are hereby quashed.