
(2001) 05 AHC CK 0175
In the Allahabad High Court
Case No : C.M.W.P. No. 25312 of 1999

Dr. Naresh Chander Sharma

APPELLANT

Vs

Chancellor, M.J.P. Rohilkhand University, Bareilly and others

RESPONDENT

Date of Decision : 02-05-2001

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 21(6), 21(8), 25, 68

Citation : (2001) AWC 1643 : (2001) LabIC 3516 : (2001) 2 UPLBEC 1356

Hon'ble Judges : R.B. Misra, J;M. Katju, J

Bench : Division Bench

Advocate : Govind Saran and G.D. Misra, for the Appellant; Pradeep Kumar, V.K. Rai and P.N. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certtorari to quash the impugned order dated 24.5.1999 Annexure-1 and the letter dated 25.5.1999 Annexure-15 to the writ petition.

2. We have heard the learned counsel for the parties.

3. It is alleged that in pursuance of the advertisement dated 8.6.1997 copy of which is Annexure-2 to the writ petition, a post of Professor in Bio-Technology in Plant Science in M.J.P. Rohilkhand University (hereinafter referred to as "the University") was advertised. In paragraph 5 of the petition. It is alleged that on 22.1.1998, a meeting was held at University Grant Commission (hereinafter called as "the U.G.C."). New Delhi in which a decision was taken for creation of a post of Professor in Bio-Technology in the University. True copy of the minutes of the meeting of the U.G.C. is Annexure-3 to the petition. According to the rules of the U.G.C. when the U.G.C. approves the creation of a post in the University, it pays salary to the teacher for five years but approval has to be taken from the State Government because after the aforesaid period of five years, the U.G.C. stops paying the salary and it becomes the liability of the State Government to

pay salary thereafter. It is alleged in paragraph 7 of the petition that the State Government Issued a G.O. dated 23.7.1994 that after the completion of the plan period. the State Government will take over the liability for payment of salary. True copy of the G.O. dated 23.7.1994 is Annexure-5 to the writ petition.

4. It appears that on 9.2.1998. the Selection Committee met for selection on the post of Professor in Bio Technology in the Department of Bio-Chemistry and recommended the name of the petitioner for the aforesaid post. In paragraph 9 of the petition, it is alleged that the Executive Council of the University held a meeting on 12.2.1998 and was of the view that in view of the declaration of Lok Sabha election, it would not be proper to open the recommendation made by the Selection Committee. Hence the Executive Council constituted a subcommittee u/s 21 (8) of the U. P. State Universities Act (called "Act" hereinafter). True copy of the minutes of the Executive Council dated 12.2.1998 is Annexure-6 to the petition. In paragraph 10 of the petition, it is alleged that the subcommittee approved the name of the petitioner and hence the petitioner was appointed on the post of Professor in Bio-Technology on 29.5.1998. True copy of the appointment order is Annexure-7 to the writ petition.

5. It appears that a representation dated 3.2.1998 was made by one Dr. A. K. Jaitly, Reader in the Department of Plant Science of the University to the Chancellor u/s 68 of the "Act" against the selection and appointment of the petitioner. True copy of this representation is Annexure-8 to the writ petition. In paragraph 19 of the petition, it is alleged that one Dr. V. P. Singh, Professor in Plant Science also made a representation dated 10.3.1998 to the Chancellor u/s 68 of the Act against the petitioner's appointment. True copy of the representation is Annexure-9 to the writ petition. The University submitted a reply to these representations vide Annexures-10 and 11 to the writ petition and also submitted another reply vide Annexure-12. The petitioner gave replies to the representation vide Annexures-13 and 14 to the writ petition.

6. Thereafter the Chancellor passed the impugned order dated 24.5.1999 vide Annexure-1 to the writ petition and this was communicated to the petitioner by the Registrar of the University by the letter dated 25.5.1999 vide Annexure-15 to the writ petition. Being aggrieved, this writ petition has been filed before this Court.

7. A counter-affidavit has been filed by the University in which it has been stated in paragraph 4 that the cancellation of the petitioner's appointment was valid and after "giving him opportunity of hearing. In paragraph 6. it is stated that the advertisement could be Issued for filling up only the existing post and no post had been created for which the advertisement could be made. In paragraph 7, it is stated that the University was required to forward the proposal to the State Government which had to take a decision whether it would takeover the liability of the post after five years in the non-plan grant, but this was not done. In paragraph 9 of the counter-affidavit, it is stated that the correct facts are contained in G.O. dated 23.7.1994 Annexure-5 to the petition. In paragraph 11.

it is stated that the Committee could only make a recommendation and only the Executive Council could make appointment. In paragraph 28, it is stated that the post of Professor in Bio-Technology had not been created and hence it could not be advertised nor the selection could be made on the post In question and hence, the appointment was illegal and rightly cancelled. In paragraph 32 of the counter-affidavit, it is stated that only after the approval of the Executive Council could the matter be delegated and in the present case the recommendation of the Selection Committee was not placed before the Executive Council.

8. The respondent Nos. 4 and 5 have also filed counter and supplementary counter-affidavits and we have perused the same. It is alleged in paragraph 1 -D of the counter-affidavit of Dr. A. K. Jaitly that the Uttar Pradesh Government and the U.G.C. were necessary parties but they have not been impleaded and hence the petition is not maintainable. In paragraph 2, It is stated that the respondent No. 5 was the eligible candidate. In paragraph 8, it is stated that there did not exist any department named "Applied Plant Science and Plant Biotech". It is alleged in paragraph 9 that the post in question was contrary to the advertisement and against the University statutes. In paragraph 10, it is stated that only an Ordinance can provide for a new subject of study in the department of any faculty but there was no such Ordinance for the post in question. In paragraph 11, it is stated that there was no prior approval of the State Government. In paragraph 21, it is stated that the university cannot hold interview for a post which was never sanctioned by the State Government nor is in existence. In paragraph 22 of the counter-affidavit, it is alleged that the respondent Nos. 2 and 3 admittedly did not forward any proposal for the post through the State Government to the U.G.C. The Vice-Chancellor on his own cannot create a post of Professor without proper sanction of the State Government and proper proposal from the Board of Studies and the Academic Council as required by Section 21 (6) and Section 25 of the Act and Statute 5.05. In paragraph 25, it is stated that the power of appointment of a teacher vests in the Executive Council and cannot be delegated. Statute 3.05 provides delegation to the officers and authority only and not to a Committee. In paragraph 32. It is stated that the whole process of selection was merely an eyewash.

9. A supplementary counter- affidavit (S.C.A.) has also been filed by respondent Nos. 4 and 5. In paragraph 5 of the same, it has been stated that there was no proposal for creation of post of Professor (wrongly mentioned as Reader) in Plant Science. True copy of the letter of the Registrar of the University in this connection is S.C.A. 2. In paragraph 6. it is stated that no proposal of creating the post of Professor [wrongly mentioned as Reader in Plant Science was sent for creation of post before the State Government and the U.G.C., and hence the petitioner's; appointment was illegal.

10. We have also perused the rejoinder-affidavit.

11. From a perusal of the counter and supplementary counter-affidavits, it is evident that there was in fact no post in existence when the advertisement,

Annexure-2 to the petition was issued. In our opinion, unless there is a post in existence, there is no question of advertising the same. Hence, the petitioner's appointment itself was illegal as it was against a non-existent post.

12. Evidently, the petitioner was appointed against U.G.C. post in anticipation that it will come later but the U.G.C. did not create it at the time when he was appointed.

13. Moreover, in our opinion, the State Government must give concurrence to a U.G.C. post because the financial liability after five years has to be taken over by the State Government since U.G.C. assistance ceases after five years. In the present case, it is evident that neither the State Government had given concurrence to the post on which the petitioner was appointed nor even the proposal was sent to the State Government for this purpose.

14. It may be mentioned that under a plan, money is sent by the U.G.C. for a post for five years after which the U.G.C. stops sending money as after five years, the financial liability for the post has to be taken over by the State Government. Hence, unless the State Government gives concurrence for creation of the post, such U.G.C. post cannot be created.

15. The petitioner has not even impleaded the State Government or U.G.C. and hence the petition is liable to be dismissed on this ground also for non-impleading of necessary parties.

16. For the reasons mentioned above, there is no force in this petition and it is accordingly dismissed. The interim order if any is vacated.