
(1985) 04 AHC CK 0005
In the Allahabad High Court
Case No : Writ Petition No. 6622 of 1983

Dr. P.D. Shukla and Others

APPELLANT

Vs

Chancellor, Lucknow University and Others

RESPONDENT

Date of Decision : 03-04-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Uttar Pradesh State Universities Act, 1973 — Section 21(6), 31(8), 68

Citation : (1985) 04 AHC CK 0005

Hon'ble Judges : K.N. Goyal, J

Bench : Single Bench

Advocate : P.N. Mathur and Anurag Srivastava, for the Appellant; B.M.N. Kochar, A.N. Varma, Umesh Chandra, Krishan Chandra, R.N. Trivedi, T. Punwani, Raj Singh and A.P. Varma, for the Respondent

Judgement

K.N. Goyal, J.—The Petitioners were selected by a Selection Committee for appointment as Readers in the Hindi Department of the Lucknow University. The Selection Committee prepared a panel of seven names in order of preference and the Petitioners were placed at the first five places in that panel. The selection committee added that "other candidates did not fare well at the interview and appeared to have shallow knowledge in their subject". The Executive Council considered this recommendation and accepted it in so far as the appointment of the five Petitioners was concerned, but did not approve of the part of the rider to the effect that person other than the seven candidates included in the panel "appeared to have shallow knowledge in their subject". Thereafter, opposite-party No. 4 who was one of the candidates not included in the panel by the Selection Committee made a representation u/s 68 of the U.P. State Universities Act (for short, the Act) to the Chancellor. That representation was allowed by the Chancellor who set aside all the five appointments and directed the selection process to be initiated afresh. Aggrieved by this order, Annexure 3, the Petitioners filed this writ petition.

2. During the pendency of the petition, the Petitioner No. 4 got an appointment

as Reader under a general scheme of personal promotion and as such he withdrew from the petition. Admittedly, opposite-party No. 4 has also same been appointed as Reader under the same scheme of personal promotion. Opposite-party No. 4 continues, however, to contest the petition as it has been pointed out on her behalf that despite her promotion under the same scheme she continues to be aggrieved by the selection of the Petitioners for two reasons. One is that if the Petitioners' selection were to stand they would become senior to her. Secondly, her promotion under the scheme of personal promotion from the post of lecturer to the post of reader would place her in a position of relative disadvantage as against the Petitioners. For a person can get personal promotion in his career only once; which implies that the Petitioners appointed as readers through regular selection will be entitled to personal promotion to the next higher post of professor in due course while she having come through personal promotion to the post of reader will not get a similar chance when her turn comes.

3. I have heard learned Counsel for the parties.

4. The Chancellor's order discloses the following grounds on which he has been pleased to set aside the selection of the Petitioner :

(a) That in view of the disagreement of the Executive Council in respect of remark made by the Selection Committee about candidates other than seven empanelled by it, the case should have been referred to him u/s 31(8) of the Act.

(b) The names of the members of the Selection Committee had got leaked out in the newspapers and as such the opposite-party No. 4 could have entertained a reasonable apprehension against the impartiality of the Selection Committee as the experts could have been approached and influenced.

(c) This, apart from other circumstances, created room for suspicion that the recommendation of the Selection Committee was arbitrary and biased. Other circumstances were that the opposite-party No. 4 had a brilliant academic record which was far superior to the Petitioners' and yet the Selection Committee had thought fit to make a sweeping remark against her along with the rest that they appeared to have shallow knowledge in their subject.

(d) Two of the five posts had not been created prior to the decision of the Executive Council approving the Petitioners' appointment though they were created later. Such creation could not have the retrospective effect of validating the appointments.

(e) In another matter relating to the Arabic Department the Executive council had not approved appointments to posts which had not been duly created and was thus guilty of discrimination in approving the appointments (of the Petitioners) in respect of Hindi Department although the circumstances were similar.

(f) As the Selection Committee and the Executive Council had not indicated

which candidate was to be appointed against which particular post, the selection had to be quashed as a whole and not in respect of only two posts which were not duly created,

5. Taking the first ground first, it relates to the application of Section 31(8). In this case, as mentioned at the very outset, the Executive Council had accepted the recommendation of the Selection Committee in respect of appointments to all the five posts. There was thus not even a partial disagreement. The mere fact that the Executive council considered it fit to delete part of the remarks passed by the Selection Committee against the candidates not selected did not amount to disagreement within the meaning of clause of Section 31(8). The relevant words of this clause are:

In the case of appointment of a teacher of a 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 along with the reasons Of such disagreement, and his decision shall be final.

6. Here the Executive council having agreed with the appointments of all the five persons, there was nothing which could be referred to the Chancellor and on which the Chancellor could take a decision within the meaning of this clause. The additional words contained in the minutes of the Selection Committee were superfluous and if the Executive council decided to delete them this did not amount to disagreement within the meaning of the said clause.

7. Sri R.N. Trivedi, learned Counsel for opposite-party No. 4, has, however, contended that the expunged portion of the remarks contained the Committee's reason for non-selection of the opposite party and if this reason disappeared then her non-selection would become arbitrary. But dearly the Executive council did not think so, for if it had taken this view of the matter it could not agree with the recommendation of the Selection Committee placing the Petitioners against the first five places in preference to the rejected candidates.

8. The second point is about leakage of names of the members of the Selection Committee in the newspapers. The composition of the Selection Committee, except for the experts, is provided in the Act itself. The Vice-Chancellor and the Head of the Department are ex officio members, and the Vice-Chancellor is ex officio Chairman of the Committee. Only the experts' names are as a matter of convention and in the fitness of things, though there is no legal requirement to that effect, kept secret. Secrets ought to be well kept, though, deplorably, too often they are not. If the names of the experts did get leaked out, it is no doubt an unfortunate development, and it is necessary for the authorities to take suitable safeguards for preventing such leakage in future. But the mere fact that the names had leaked out cannot make the continuance of the experts on the Selection Committee illegal. So far as the question of possibility of approach and influencing is concerned, the Vice-Chancellor and the Head of the Department were likely to be known to the candidates, at any rate, to those candidates who

were already serving in the University, which includes the Petitioners as well as opposite-party No. 4. A selection cannot be held to be bad merely on the basis of a possibility of approach. There is not a whisper in the impugned order that the experts were actually approached or influenced or that they were in any manner biased in favor of either of the Petitioners or against opposite-party No. 4. The mere circumstance of leakage of their names cannot lead to the suspicion that the recommendation of the Selection Committee was arbitrary or biased.

9. It has also been observed in the impugned order that because opposite-party No. 4 had a brilliant academic record which was far superior to that of the candidates who were selected and because a sweeping remark had been made against other candidates who were not selected (which included the opposite-party No. 4) that their knowledge of the subject was shallow, the recommendation of the Selection Committee could be suspected to be arbitrary. Now, opposite-party No. 4 did surely have a brilliant academic record, as observed by the Chancellor, and that record may well be superior to that of the candidates selected, but it was for the Selection Committee to have made a comparative assessment of the candidates on the basis not merely of the academic record but also of viva voce, experience, capacity of communication, etc. But a mere comparative reassessment of the academic record of the candidates, as it stood in cold print, by the Chancellor cannot justify a suspicion of arbitrariness or bias against the Selection Committee who had the additional advantage of interviewing the candidates in the light of their own expert knowledge and of considering the said other factors as well. That apart, a mere suspicion is not legally sufficient for holding an act of a statutory authority to be arbitrary. A positive finding of bias or male fide of arbitrariness is required before a selection can be held to be void as contrary to statute. The Chancellor has not suggested in his order that any of the Petitioners did not fulfill the statutory qualifications. Learned Counsel for opposite-party No. 4 has no doubt tried to show that Petitioner No. 5 did not have a good academic record as he had secured a third division in his B.A. The expression "good academic record" occurring in Statute No. 11.02 is, however, not very specific, and as neither the experts nor the Chancellor have held any Petitioner to be unqualified it is not open to this Court to entertain these plea.

10. The fourth point about non-existence of any order for creation of the posts does, however, assume importance because the posts were, in fact, created by the Executive Council only about four months after the appointments were made. It is true that all the five posts were advertised before the selection was made. It is indeed not unoften in respect of posts under Government that selections take place in anticipation of sanction of posts, but even in such cases sanction is received at least before actual appointment is made to the post. The Act has vested the power to create posts in the Executive Council after consultation with the Academic Council, vide Sections 21(6) and 25(1). Here, even the Academic Council made its recommendation a couple of weeks after the appointments had been made and the Executive Council resolved to create the posts only a few

months later. It has been pointed out on behalf of the Petitioners that the State Government had given approval for creation of the posts several years back and some persons had actually been working on ad hoc basis against those posts and only formal resolutions of the Academic council and the Executive council for creation of the posts were wanting. So far as the ad hoc appointments are concerned their validity does not appear to have been challenged by any one and it is not in issue in the instant case either. We are concerned only with the validity of these regular appointments. The Government's approval for creation of these posts only implies that from the financial point of view it had no objection to the creation of the posts. But a decision to create the posts was to be taken by the Executive council which according to Section 21(6) was enjoined not to "take any action in regard to the number, qualifications and emoluments of teachers except after considering the advice of the Academic council and the Boards of Faculties concerned." A provision of this kind, couched in negative form, is normally considered mandatory unless a contrary intendment can be spelt out. For emphasis is more easily demonstrated when statute is negative than when it is affirmative. It is true that the consequences of breach of the provision are not spelt out in the statute, and any act in breach thereof may or may not be held to be void in a court of law. But even directory provisions are meant to be complied with, and the Chancellor, who is an internal superior authority of the University and not a court, can, in view of the language of Section 68, interfere even in a case of violation of a directory provision of the Act, the Statutes or the Ordinances. Sri Trivedi has invited my attention to the unreported decision in Dr. R.B. Mathur v. Chancellor, Writ Petition No. 533 of 1963 decided on 22.12.1964 which was affirmed on special Appeal No. 5 of 1965 by a Division Bench on 21.07.1965. In that decision a corresponding provision of the old Lucknow University Act was interpreted. The Chancellor had quashed an appointment because the appointment was not preceded by any resolution of the Academic Council or Executive council laying down the qualifications for the post, which was held to be a mandatory precondition before appointment and his decision was upheld by this Court. The statute refers to "number, qualifications and emoluments" in the same breath, and therefore, according to taught Counsel they should all be treated on par with each other. It is, however, not necessary to deal with this ruling and its implications any further in view of what I have held above, suffice it to say that it goes to support the view taken by me.

11. It was in this context that the Chancellor has been pleased to refer to the contradictory stand of the Executive Council in respect of the Arabic Department posts-though the use of the expression "discrimination" in the impugned order is not quite happy inasmuch as this would not imply any discrimination in the sense the word is used while discussing the fundamental right of equality enshrined in Articles 14 and 16 of the Constitution.

12. Coming to the last point, if for the aforesaid reason the selection for two posts was vitiated for want of valid existence of the posts, the selection of the last two persons in the panel of five approved by the Executive council should

alone have been set aside. The five names were given both by the Selection committee and the Executive council in order of preference. Thus obviously the Petitioners 1 to 3 should not have been made to suffer for any law in regard to the selection of the Petitioners 4 and 5. The last two selections were thus clearly severable because of the order of preference indicated by the Selection Committee and the Executive Council.

13. It is to be noted in this context that Section 68 gives a limited power to the Chancellor to interfere with the decisions of the Selection Committee and the Executive council. The Chancellor has not been given a general appellate or supervisory power to interfere wherever he feels that the decision is not fair or proper or that a fresh selection should be made. He can interfere only where any person has not been duly appointed or where the decision is not in conformity with the Act, or the Statutes or the Ordinances made there under. In this context, the expression "duly" means legally or regularly. Unless some illegality or irregularity or non-conformity with the provisions of the Act, statutes or the Ordinances is made out, the Chancellor is not expected to sit in appeal over the judgments of the Selection Committee and the Executive Council. He does have such a power of re-appraisal of the selection in a case covered by Section 31(8) but not in other cases. As observed earlier, this was clearly not a case to which Section 31(8) could apply. Hence the order, in so far as it sets aside the appointments of Petitioners Nos. 1 to 3 cannot be sustained.

14. In the result, the writ petition is partly allowed, and the Order dated 09.12.1983, annexure 3, to the extent it relates to Petitioners Nos. 1 to 3 only, is hereby quashed. It will stand so far as Petitioners Nos. 4 and 5 are concerned. No Order is, however, made as to costs.