
(2006) 09 AHC CK 0263
In the Allahabad High Court

Dr. Rajesh Kumar Mishra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31, 31(3)(c)

Citation : (2006) 10 ADJ 417

Hon'ble Judges : V.C. Misra, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Petitioner's case is that he should be appointed on substantive post as under newly amended Section 31(3)(c) of U.P. State Universities Act, 1973. Such amended Section says as follows:

In Section 31 of the Uttar Pradesh State Universities Act, 1973, in Sub-section (3) for Clause (c) the following clause shall be substituted namely -

(c) Any teacher of the University who was appointed as lecturer/part time lecturer on or before December 31, 1997 without reference to the Selection Committee by way of a short term or part time arrangement in accordance with the provisions for the time being in force for such appointment may be given substantive appointment by the Executive Counsel, if any, substantive vacancy of the same cadre and grade in the same department is available if such teacher:

(i) is serving as such on December 31, 1997 continuously since such dated appointment by way of short term/part time arrangement,

(ii) possessed the qualification required for regular appointment to the post under the provisions of the relevant Statutes in force on the date of the substantive appointment,

(iii) has been found suitable for regular appointment by the Executive Council.

A teacher appointed by way of short term/part time arrangement as aforesaid who does not get a substantive appointment under this clause shall cease to hold such post on such date as the Executive Council may specify.

2. From the above-amended Section it appears that two conditions are necessary to be considered, first as to whether he was appointed as part time lecturer on or before 31st December 1997 and secondly as to whether he has been found suitable for regular appointment by the Executive Council.

3. The petitioner's case is that 11 candidates have already been considered by the Executive Council for regular appointment, who are according to him, are similarly placed but in spite of making several representations, his case has not been considered by the Executive Council. According to us, Executive Council is a body and not an individual person so the selection process made by the Executive Council in any event, should not normally be interfered with by the Court.

4. A supplementary affidavit has been filed by the petitioner by annexing the candidatures of the 11 candidates. The petitioner wants to get regularization on the post of lecturer in Sanskrit. One of the candidates, Dr. (Smt.) Madhu Satya Dev has been considered for regularization. She was the Research Associate from the period 11.01.1992 to 11.01.2000. The petitioner contended that he has working experience and his candidature is supported by two documents, being Annexures-3 and 4 to the writ petition, issued by the Head of Department of Sanskrit and Prakrit Languages and the Registrar of the respondents-University.

5. Learned Counsel appearing for the respondents-University contended before this Court that the petitioner is neither a Research Fellow nor a Research Associate as per Statute 10.02 of the Gorakhpur University First Statute, 1977.

6. The said Statute is quoted hereunder:

10.02: Teachers of the University shall be appointed in the subjects on whole time basis in the scales of pay approved by the State Government. (Sections 31 and 49(d).

Provided that part time lecturers may be appointed in subjects in which, in the opinion of academic council such lecturers are required in the interest of teaching or for other reasons. Such part time lecturers may receive salary ordinarily not exceeding one-half of the initial salary of the scale for the post to which they are appointed. Persons working as Research Fellows or as Research Assistants may be called upon to act as part time lecturers.

7. From the last para of aforesaid proviso, it appears that the Research Fellows and Research Assistants may be called upon to act as part time lecturers but the petitioner has neither shown any appointment letter nor any documents to establish that he was Research Fellow or Research Assistant. The University Grants Commission Certificate is available as Annexure-1, which is in respect of Junior Research Fellow (JRF), therefore, Junior Research Fellows may not be

equated with Research Fellows and Research Assistants to come within the zone of consideration.

8. Having so, we do not find any reason to interfere with the matter at all because the Executive Council has considered for the purposes of working as teacher being Research Fellows or Research Assistants.

9. Mr. P.N. Saxena, Senior Advocate, learned Counsel for the petitioner repeatedly contended that Junior Research Fellow is similarly placed as to that of the Research Fellow and Research Assistant. But mere submission cannot suffice the cause unless it is backed by available law before the Court.

10. However, since we are not convinced with the aforesaid submissions, therefore, we cannot pass any affirmative order in favour of the petitioner. Thus, the writ petition stands dismissed. In any event the order or dismissal will not preclude the petitioner from making his representation, if any, by establishing the fact that the Junior Research Fellow is equal to Research Fellow and Research Assistant for the purposes of consideration to be called upon by the Executive Council for regularization of service. In the event any such representation is made, the authority concerned will consider the same and take a decision after affording fullest opportunity of hearing to the petitioner by passing a reasoned and speaking order in accordance with law as expeditiously as possible.

11. No order is passed as to costs.