

(2017) 04 AHC CK 0208
In the Allahabad High Court
Case No : 21386 of 1998

Dr. Ram Sevak Dubey

APPELLANT

Vs

University of Allahabad & others

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Constitution of India, Article 226 -
Uttar Pradesh State Universities Act, 1973, — Section 31, Section 68, Section 44,
Section 31(1), Section 31(3)(b), Section 31(3)(c)

Citation : (2017) 04 AHC CK 0208

Hon'ble Judges : Sudhir Agarwal, Kaushal Jayendra Thaker

Bench : Division Bench

Advocate : Ashok Khare, G.K.Singh, Pradeep Upadhyay, Siddharth Khare, A.B.L. Gaur, Ankit Saran, Gautam Baghel, Piyush Shukla, V.K. Singh

Final Decision : Allowed

Judgement

1. Pursuant to Court's order dated 16.08.2016 Mr. Rattan Lal Hangloo, Vice Chancellor, University of Allahabad is present and has produced photostat copies of documents which are taken on record but when called upon to produce original record none could be produced, and he states that whatever record is there i.e. only photostat copies and original is not available.

2. We have heard counsel for parties.

3. This writ petition under Article 226 of Constitution of India has been filed by Dr. Ram Sevak Dubey, working as Lecturer (Sanskrit) in Sanskrit Department of Allahabad University (hereinafter referred to as the "AU") challenging order dated 29.05.1998 (Annexure 4 to writ petition) issued by Registrar, AU, communicating to respondent 3 that Vice Chancellor of AU has regularised him as Lecturer in Department of Sanskrit, in pay scale of Rs. 2200-4000 w.e.f. 01.04.1989, in purported compliance of this Court's order dated 03.08.1995 passed in Writ Petition no. 8664 of 1993 (Dr. Sudha Kumar and others Vs University of Allahabad).

4. Facts in brief, as pleaded in the writ petition, are as under:-

5. AU was governed by provisions of U.P. State Universities Act, 1973 (hereinafter referred to as the "U.P. Act 1973") and first statute framed therein during the period with which we are concerned. Subsequently it has been made Central University and now governed by Allahabad University Act, 2000. Vide Advertisement no. 1/95, certain vacancies of Lecturers, Readers, Professors in various departments of AU were advertised for making direct recruitment. It included one post of Lecturer, Reader and Professor, each, in Sanskrit Department. Petitioner duly qualified for appointment for the post of Lecturer (Sanskrit), being Master in Arts in Sanskrit as also a Doctorate degree in Sanskrit, applied and through a selection committee constituted under Section 31 of U.P. Act 1973, was recommended for appointment to the post of Lecturer (Sanskrit). The said recommendation of selection committee were approved by Executive Council of AU in its meeting dated 23.06.1996 and vide appointment order of same date i.e. 23.06.1996, petitioner was appointed as Lecturer in Department of Sanskrit in general category, on probation for a period of one year, in the pay scale of Rs. 2200-4000.

6. Petitioner was subsequently confirmed on the said post by Executive Council's resolution dated 28.02.1998 on completion of one year probation. It was communicated to petitioner by Registrar's letter dated 30.03.1998. Subsequently petitioner came to know that respondent 3, by order dated 29.05.1998 was regularised as Lecturer (Sanskrit) in Department of Sanskrit, w.e.f. 01.04.1989, by Vice Chancellor though neither any decision in this regard was taken by Executive Council nor vacancy of Lecturer in Sanskrit was ever advertised whereagainst respondent 3 was appointed nor any process of recruitment was undergone by respondent 3, for appointment as Lecturer, in any capacity, which could have been regularised by impugned order dated 29.05.1998

7. Petitioner made enquiry and came to know that AU started certain correspondence courses and for that purpose established an Institute of Correspondence Course and Continuing Education. Respondent 3 was appointed as "Lesson Writer" on 08.12.1985. The said appointment was made without any process of selection under U.P. Act 1973 and without advertisement of vacancy etc. Initial appointment of respondent 3 was till 30.06.1986. Appointment was made by Director, Institute of Correspondence Course and Continuing Education (hereinafter referred to as "ICCCE") on payment of honorarium of Rs. 500/- per month. The said appointment was challenged by one Rameshwar Prasad Tripathi through a petition filed under Section 68 of U.P. Act 1973 before Chancellor, AU. One of the ground of challenge was that respondent 3 was not selected by any statutory selection committee under the provisions of U.P. Act 1973. Appointment was made on account of fact that maternal uncle, Ganga Prasad Pandey of respondent 3 was a member of Executive Council and he actually participated in the process of selection. Brother-in-law of Ganga Prasad Pandey i.e. Shyam Kumar Pandey who was also member of Executive Council, both were

instrumental, and participated in selection of respondent 3. When Chancellor sought comments from AU, it informed that appointment of respondent 3 has been terminated on 30.06.1986. In view thereof petition/representation made before Chancellor under Section 68 of U.P. Act 1973, rendered infructuous, and it was rejected by Chancellor vide communication dated 28.08.1986 (Annexure 7 to the writ petition).

8. Respondent 3, however was reengaged to work in "ICCCE" on account of his close relations to members of Executive Council. It appears that in 1996, respondent 3 sought permission from Head of Sanskrit Department to allow him to take some Sanskrit classes but it was declined vide letter dated 03.01.1996 by Head, Department of Sanskrit stating that Sanskrit classes in the Department can be taken only by teachers appointed in the Department. He further said that whenever there is any shortage of teachers the Department's Research Students, Associate Students, Pool Officers are allowed to take classes but respondent 3 not being anyone otherwise cannot be permitted.

9. Respondent 3 submitted a joining letter dated 30.05.1998 to the Head, Department of Sanskrit, AU stating that pursuant to regularisation order dated 29.05.1998 he is submitting his joining on 30.05.1998 with retrospective effect from 01.04.1989. The Head, Sanskrit Department did not accept said joining. He enquired from Registrar, AU vide letter (Annexure 10 to the writ petition) stating that there existed no vacancy on 01.04.1989 or even the date when respondent 3 submitted joining i.e. 30.05.1998 hence it should be clarified as to the post whereagainst respondent 3 can be allowed to join in the Department of Sanskrit and until it is clarified, it will not be possible to provide duty to respondent 3 in Department of Sanskrit.

10. It is also pleaded that on 09.10.1994, respondent 3 had filed a representation before Vice Chancellor, AU claiming benefit of Section 31 (3) (b) and Section 31 (3) (c) of Act 1973 against a post of Lecturer in Sanskrit Department of AU which was rejected by Vice Chancellor vide order dated 07.01.1995. Thereafter respondent 3 filed a Reference petition before Chancellor which was also rejected by Chancellor vide order dated 16.06.1996. The said order of Chancellor was not challenged by respondent 3 and it became final.

11. Further it is said that respondent 3 along with four other "Lesson Writers" of Institute of "ICCCE" had filed Writ Petition no. 20833 of 1992 in this Court seeking a mandamus to AU to award status of "Lecturer" to them and regularise their service as "Lecturer" in pursuance of Ordinance 44 of 1992 and pay salary in the grade admissible to Lecturers working in AU. The said writ petition was disposed of by a Division Bench vide order dated 21.05.1992 directing respondent 4 i.e. Executive Council (in the aforesaid writ petition) to consider case of those petitioners for regularisation in accordance with law.

12. Pursuant thereto Executive Council in its meeting dated 17.11.1992 resolved to constitute a three member committee which comprised Professor U.N. Gupta,

the then Pro Vice Chancellor, Professor Ram Singh and Ganga Prasad Pandey. The sub-committee submitted report dated 25.11.1992 and operative part of its recommendation in para 9 reads as under:-

"With regard to regularisation of the services of five petitioners under State Ordinance dated 22.11.1991, the Committee finds that the appointment of the five lecturers was made under ad advertisement as required under the U.P. State Universities Act and the ordinance for the Institute of Correspondence Course. The selections were made by Adhoc selection committee in which Vice Chancellor, Director of Institute Dean Arts and Commerce, the nominees of Advisory Committee, and one professor of the subject concerned as expert, had participated. The recommendations were placed before the Executive Council of the University which had approved the appointments. The Committee finds that this procedure was similar to the procedure which has been adopted by the University for making the appointments of 17 Ad-hoc lecturers whose services were regularised under the said ordinance dated 22.11.1991.

Accordingly the Committee recommends that the services of these five petitioners should also be regularised under the same ordinance." (emphasis added)

13. Executive Council did not take any decision on the said report whatever. These five persons namely Dr. Smt. Sudha Kumar, Dr. Srikant Misra, Dr. Smt. Katayani, Dr. Smt. Suniti Pandey and Dr. Amiya Kumar Misra (respondent 3) showing their designation as Lecturer in different departments namely Ancient History, Philosophy, Hindi, Ancient History and Sanskrit, respectively, filed Writ Petition no. 8664 of 1993 seeking following reliefs:-

"(i) a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to implement the report of the Sub-committee dated 25.11.1992 submitted under the authority of Executive Council and award the consequential reliefs.

(ii) a writ, order or direction in the nature of mandamus commanding the respondent to regularise the services of the petitioners in pursuance of ordinance 44 of 1992."

(emphasis added)

14. During pendency of aforesaid writ petition Executive Council took a decision on 24.12.1993 to give pay scale to those five petitioners including respondent 3, as Lecturer, w.e.f. 21.05.1992 i.e. the date when Writ Petition no. 20883 of 1992 was decided. Those five petitioners however claimed regularisation w.e.f. 01.04.1989. Court allowed writ petition vide judgment dated 03.08.1995 directing to give benefit of regularisation to these five petitioners w.e.f. 01.04.1989. The aforesaid order was passed in absence of counsel for AU. Thereafter it appears that AU filed an application for recall of judgment dated 03.08.1995 but the said application was rejected by order dated 30.08.1996. As

a result thereof, respondent 3 started getting salary in the scale of Rs. 2200-4000 from ICCCE.

15. Further, when selection for the post of Lecturer was made pursuant to Advertisement no. 1 of 1995, respondent 3 challenged the same in Writ Petition no. 19421 of 1996 and an interim order was passed by this Court on 17.06.1996 providing that selection proceeding shall be subject to final order passed in the writ petition.

16. Petitioner has challenged impugned order on the ground that respondent 3 was never appointed in Sanskrit Department against the post of Lecturer in any manner either as stop gap arrangement, temporary or officiating etc. hence, question of his regularisation on the post of Lecturer in Department of Sanskrit is patently illegal.

17. A counter affidavit has been filed on behalf of respondents no. 1 and 2 sworn by Govind Prasad, Legal Assistant, (AU). Defence taken therein is that sub-committee of Executive Council submitted report for regularisation of five teachers including respondent 3 and the said report was accepted by Executive Council in its meeting dated 28.09.1993. With regard to status of ICCCE, it is said that it is governed under Section 44 of Act 1973 which provides that University may establish one or more Institution to organise and conduct teaching and research in any subject. AU established ICCCE under the aforesaid provision and framed Ordinance vide Chapter 34 of University to deal with the matter of correspondence course. It says that "Correspondence Course will be administered by an Institution of Correspondence Course and Continuing Education which will be an integral part of the University."

18. Ordinance 8 provides that required qualification and procedure of selection and appointment of teachers of Correspondence Course will be the same as that for the regular teaching staff of University. It further says that staff of Correspondence Course will be borne on the strength of respective University department. However, "Lesson Writer", Translator and "Evaluator" are not teachers. Respondent 3 was "Lecturer" and not "Lesson Writer" as stated by petitioner. He was appointed in December 1986 as Lecturer and after insertion of Section 31(C) of Act No. 1 of 1992 when he claimed regularisation, this Court vide order dated 31.05.1992 directed to consider his case for regularisation in accordance with law, pursuant where to Sub-Committee constituted by Executive Council submitted report in his favour and that was accepted by Executive Council. Representation made by Rameshwar Prasad Tripathi under Section 68 is not disputed but with regard to respondent 3 it is said that he was appointed as "Lecturer" in December 1986 and since then he is continuously working. The impugned order of regularisation was issued since after rejection of recall application filed by AU on 30.08.1996, when nothing was done by AU, respondent 3 filed Contempt Petition No. 2018 of 1998 wherein an order was passed on 10.02.1998 pursuant where to impugned order of regularisation was issued.

19. The constitution of sub-committee is admitted but it is said that AU had no knowledge about relationship of respondent 3 with any member of Sub-Committee. AU claimed to have complied Court's order dated 03.08.1995, 30.08.1996 and 10.02.1998. Respondent 3 and other four teachers were appointed as "Lecturer" after facing due selection committee appointed initially in ICCCE and have been regularised subsequently in respective departments of AU.

20. Petitioner in the rejoinder affidavit had reiterated the facts stated in the writ petition. It has further said that under the provisions of Act 1973, unless a person is appointed on a "teaching post" cannot claim to be a part of teaching staff of University and anything provided in the Ordinance will not over ride provisions of Act 1973. Respondent 3 was never appointed as "Lecturer" after following procedure of selection and appointment under Act 1973. Appointment in Institute is not treated as appointment in Department which is defined under Statute 7.03 of First Statute of AU and AU has never treated the same.

21. A counter affidavit has also been filed by respondent 3 claiming his appointment as Lecturer in the ICCCE in 1986 and consequential benefits under Section 31 (3) (c) of Act 1973 but no letter of appointment of respondent 3 appointing him as "Lecturer" in Sanskrit has been placed on record along with counter affidavit.

22. Petitioner has filed rejoinder affidavit in reply to counter affidavit of respondent 3 also in which his stand taken in writ petition and in the rejoinder affidavit filed in reply to counter affidavit of respondents 1 and 2 has been reiterated. Hence we are not repeating the same.

23. A supplementary affidavit has also been filed by petitioner placing on record a letter dated 05.06.1998 of Registrar, AU informing the then Head, Sanskrit Department that respondent 3 be allowed to join in compliance of Court's order dated 03.08.1995 and 10.02.1998 and AU is requesting State Government to separately create post in the circumstances. Head, Sanskrit Department, AU again sent letter dated 01.07.1998 requiring Registrar to inform about post whereagainst respondent 3 can be allowed to join and assign duty in Department until a post is created by Government.

24. We may also put on record that this writ petition was entertained on 10.07.1998 and an interim order was passed. Relevant extract thereof, reads as under:-

"In the meantime while in all other respects the impugned order dated 20.05.1998 shall be implemented but that part of it by which respondent no. 3 has been asked to be included as lecturer in the department of Sanskrit and further he has been asked to report for duty to the Head of the Department of Sanskrit shall remain stayed till 15th August, 1998 unless this order is vacated or modified earlier." (emphasis added)

25. A supplementary counter affidavit sworn on 27.05.2012 has been filed by

respondent 3 alleging that petitioners own appointment was not valid having been made against post reserved for Scheduled Caste.

26. Petitioner through an affidavit sworn on 06.09.1998 has also placed on record, report submitted by Sri U.N. Gupta, Pro-Vice Chancellor on 07.12.1993 stating that respondents 3 and 4 others are entitled for regularisation as Lecturer in ICCCE. This Sub-committee was constituted under Executive Council's resolution dated 28.09.1993.

27. When this matter came before this Court for hearing we enquired from counsel for respondent, whether respondent 3 was ever appointed as Lecturer (Sanskrit) in Sanskrit Department, in any capacity i.e. daily wage, casual, stop gap, adhoc or officiating etc., and if so, place such letter of appointment before this Court. We passed following order on 16.08.2016:-

"In this matter, regularization of respondent no.3 as a Lecturer (Sanskrit) in Sanskrit Department is under challenge.

Repeatedly, this Court has been making query from learned counsel appearing for University and respondent no.3 as to when respondent no.3 was appointed as Lecturer (Sanskrit) in Sanskrit Department pursuant thereto he was subsequently regularized by means of impugned order, but such order has not been shown to this Court till date. Even today, after wasting more than twenty minutes, no such order could have been shown.

Let respondent no.2, Vice Chancellor, University of Allahabad, Allahabad be present in person before this Court on 22.08.2016 along with relevant record of respondent no.3 to show as to when before regularization as a Lecturer (Sanskrit), respondent no.3 was appointed in any capacity viz. daily wage or casual or stop gap or ad hoc or officiating or whatever terminology may be used, as Lecturer (Sanskrit) in Sanskrit Department."

List on 22.08.2016.

28. Pursuant thereto, respondent 3 has filed supplementary counter affidavit sworn on 21.08.2016, filed as Annexure 2, a copy of letter dated 26.12.1986 issued by Director informing him that he has been appointed as honorary teacher in ICCCE on honorarium of Rs. 1000/- per month pursuant to proposal dated 30.11.1986 made by Advisory Committee of ICCCE which has been accepted by Executive Council (AU) on 22.12.1986. The aforesaid appointment was purely temporary and till regular appointment is made. Thereafter another letter was issued by Director on 17.07.1989 informing respondent 3 that pursuant to Advisory Committee of ICCCE recommendation 30.04.1989, respondent 3 is appointed as part time "adhoc Lecturer" w.e.f. 01.01.1989 on a fixed pay of Rs. 1100/- per month and other allowances payable accordingly. The letter dated 30.04.1989 have also been filed as Annexure 2 to the counter affidavit filed by respondent 3.

29. There is another counter affidavit to supplementary affidavit which has been

filed by respondent 3 sworn on 29.03.2006 stating that he passed M.A. (Sanskrit) in First Division in 1982 and got Doctorate Degree from AU in Arts in 1992.

30. A supplementary affidavit sworn on 29.03.2016 as also been filed by respondent 3 placing on record this Court's orders dated 03.08.1995, 30.08.1996, Registrar AU letters dated 29.05.1998 and 07.11.2015 whereby one Dr. Suniti Pandey has been promoted as Professor in Department of Ancient History, Culture and Archaeology under the Career Advancement Scheme and office order dated 25.02.2016 issued by Registrar showing promotion of several teachers as Professors which included Dr. Katyayani Singh.

31. On behalf of University also a supplementary counter affidavit sworn by Sri Ashish Rastogi, Joint Registrar, AU on 27.05.2016 has been filed placing on record Ordinance Chapter 34, Executive Council's resolution dated 11.12.2003, Registrar's letter dated 07.06.2006 sent to State Government and Time Table of Sanskrit Department of 1994-95 to show that certain classes were taken by respondent 3 at that time.

32. It is in this backdrop, this Court has to examine and adjudicate validity, legality and correctness of order dated 29.05.1998.

33. One fact is very evident that respondent 3 was never appointed on the post of Lecturer in the Department of Sanskrit, AU, at any point of time in any capacity like ad-hoc, temporary, short term, officiating etc. The only order which has been passed to induct him in Sanskrit Department for the first time, is impugned order dated 29.05.1998.

34. Prior to it, it appears that respondent 3 was engaged in ICCCE sometime in 1985 and the said appointment came to an end on 30.06.1986. This is evident from Annexure 7 to the writ petition which is letter dated 28.08.1986 sent by Secretary, of Chancellor to one Rameshwar Prasad Tripathi, in reference to representation dated 31.12.1985. This letter also shows that dispute raised by Rameshwar Prasad Tripathi was in regard to selection and appointment of respondent 3 as "Lecturer" in Sanskrit in ICCCE. Thereafter the documents placed on record by respondent 3 show that he was appointed as honorary "Teacher" on a monthly honorarium of Rs. 1000/- per month, pursuant to proposal of Advisory Committee dated 30.11.1986 in ICCCE.

35. We required University to produce original documents of aforesaid appointment but Mr. Rattan Lal Hangloo, Vice Chancellor, AU personally appeared and stated that only photocopies of some letters are available which are placed already before Court and original documents are not available at all.

36. Photocopy of letter dated 26.12.1986 filed as Annexure 2 to supplementary counter affidavit of respondent 3 shows that same was issued by Yogendra Pratap Singh, Director, mentioning name of respondent 3 as Amiya Kumar Mishra, Address- 1-56, Baghambari but thereafter there is an addition of words

"Pravakta (Sanskrit Vibhag), Daraganj Allahabad".

37. When we enquired from learned counsel for respondent 3 that his appointment was in ICCCE, then why Lecturer, Sanskrit Department was mentioned and that too subsequently to which he stated that it was in accordance with provisions of Chapter 14 of Ordinance which provides that appointment shall be against strength of respective department of University. We also enquired as to what was the occasion for issue of letter dated 17.08.1989 appointing respondent 3 again w.e.f. 01.01.1989 as part time ad-hoc Lecturer in ICCCE to which no specific reply could be given by learned counsel for respondent 3 or University.

38. Now we propose to examine first, whether appointment of respondent 3 was ever made against strength of Sanskrit Department of AU at any point of time as ad-hoc, part time or otherwise so as to justify regularisation in Sanskrit Department by impugned order.

Relevant statute- a bird eye view

39. In purported exercise of power under Section 44 of Act 1973, Ordinances, Chapter 14, have been made by AU. Section 44 reads as under:-

"Institutes:- The University may establish one or more Institutes to organise and conduct teaching and research in any subject."

40. Ordinances, Chapter 34, provides that University will conduct Correspondence Course in Faculty of Art and Faculty of Commerce for degree in B.A. and B.Com., respectively, to cater for:-

"(a) students who had to discontinue their formal education owing to pecuniary and other circumstances;

(b) students from geographically remote areas;

(c) students who had to discontinue education because of lack of aptitude and motivation but who may later on become motivated;

(d) students who cannot find a seat or do not wish to join a regular college or University Department, although they have the necessary qualifications to pursue higher education, and

(e) individuals who look upon education as a life-time activity and may either like to refresh their knowledge in an existing discipline or to acquire knowledge in a new area."

41. Para 2 says that Correspondence Course will be administered by ICCCE which would be integral part of University. Paras 3,4,5,6,7 and 9 relates to procedure etc. for enrollment/admission of students in Correspondence Course. Para 8 talks of sources of admission and teachers of Correspondence Course and reads as under:-

"The acquired qualifications and the pattern of selection and appointment of teachers of Correspondence Courses will be the same as that for the regular teaching staff of the University departments."

42. Pursuant to the provisions of aforesaid Ordinance, ICCCE was established in AU in 1976. It could start its function till 1978. From the report of sub-committee constituted by Executive Council, AU in its meeting dated 17.11.1992 it is evident that the post sanctioned for the purpose of functioning of ICCCE were as under:-

Name of post	Number of post	Grade
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1. Director	1	Rs. 1500-2500
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2. Readers	4	Rs. 1200-1900
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3. Lecturer	8	Rs. 700-1600
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43. The aforesaid report also says that five posts of Lecturers were advertised and five persons including respondent 3 were appointed in ICCCE but despite order of this Court, no such record showing advertisement/vacancies and selection made by selection committee as contemplated under Section 31 of Act 1973 has been placed before us. It is also evident from report dated 25.11.1992, submitted by sub-committee, that no grant was made available by State Government and therefore, due to financial scarcity only honorarium was paid to the persons appointed in ICCCE and initial amount of honorarium was Rs. 1000/- per month which was raised to Rs. 2000/- per month w.e.f. 01.01.1989 and Rs. 3000/- w.e.f. 01.07.1990. It is also evident from record that Ordinance 34 of Correspondence Course and establishment of ICCCE was approved by State Government vide order dated 04.05.1991, subject to condition that entire course shall be self financed and no financial assistance would be expected from State Government. The syllabus and other teaching work in the Correspondence Course shall be performed with the help of teachers engaged on contractual basis and no full time teacher shall be appointed in the said Institute. Para 8, Ordinance, Chapter 34 reads as under:-

" 8. (a) The required qualifications and the pattern of selection and appointment of teachers of Correspondence Courses will be the same as that for the regular teaching staff of the University departments.

(b) The staff of Correspondence Courses will be borne on the strength of the respective University departments.

11. The Director, Correspondence Courses, may engage such part-time lesson writers/evaluators of scripts as he considers necessary for the speedy disposal of work from time to time. He will be assisted by an Advisory Committee constituted for such purposes in each subject consisting of the Director, Head of the Department, teacher concerned and one more teacher of the subject to be nominated by the Vice-Chancellor in consultation with the Director and the Head

of the Department.

12. The following shall be the rate of remuneration:-

(1) Lessor Writers Rs. 100 per lesson

(2) Translator Rs. 50

(3) Evaluator of Response sheets Rs. 1.50 per sheet

The remuneration for examining the answer-books of the Correspondence Courses examination shall be the same as for University examination.

13. Students of Correspondence Courses including those belonging to Schedule castes and tribes should be entitled to the same concessions, freeship, scholarship, etc. as the regular students of the University."

44. Learned counsel for respondent 3 claimed that regularisation was made pursuant to this Courts order therefore, it is not open to be adjudicated in this petition but we find, in a very conspicuous, circuitous and with mutual cooperation/collusion different things have taken place at different times in a strange manner.

45. Though petitioner claimed that respondent 3 was appointed as Lesson Writer on 08.12.1985 but no such letter of appointment is on record. On the contrary respondent 3 claimed to have been appointed as Lecturer in Sanskrit, after selection in ICCCE and this is evident from Annexure 7 to writ petition which is a letter sent by Secretary to Chancellor to one Rameshwar Prasad Tripathi, Research Scholar (Sanskrit) AU. The said letter shows that recommendation was made by selection committee on 07.12.1985 pursuant where to respondent 3 was appointed as Lecturer (Sanskrit) in ICCCE, and the said appointment came to be terminated on 30.06.1986.

46. Respondent 3 has filed a copy of order dated 26.12.1986 (Annexure 2 to the supplementary counter affidavit sworn on 21.08.2016) to show that pursuant to recommendation dated 30.11.1986 of Advisory Committee, ICCCE, letter of appointment was issued to respondent 3 on 02.12.1986. The said appointment letter was issued without there being any resolution by Executive Council. The Executive Council later passed resolution on 22.12.1986 and thereupon order dated 26.12.1986 was issued in furtherance of earlier appointment letter dated 02.12.1986 appointing respondent 3 as honorary teacher/lecturer in ICCCE on an honorarium of Rs. 1000/- per month. Appointment was purely temporary and to continue till regular selection and appointment in the prescribed pay scale is made. This appointment letter shows respondent 3 as honorary teacher and not against any post. Though it is claimed that aforesaid appointment was made after holding selection as prescribed in U.P. Act, 1973, but no details or documents pertaining to alleged selection are available on record. Even Vice Chancellor has stated before Court, when called upon to produce record, that no such record is available. Further aforesaid appointment letter dated 26.12.2002

was issued by Director ICCCE, AU. Then next appointment letter is dated 17.07.1989 which was issued pursuant to decision of Advisory Council, ICCCE, AU decision dated 30.04.1989.

47. Appointment of Teacher in University could have been made by Executive Council only by virtue by Section 31 (1) of U.P. Act 1973 which reads as under:-

"31(1) Appointment of Teachers- Subject to the provisions of this Act, the teachers of the University and the teacher of an affiliated or associated college (other than a college maintained exclusively by the State Government shall be appointed by the Executive Council of the Management of the affiliated or associated college, as the case may be, on the recommendation of a Selection Committee in the manner hereinafter provided. The Selection Committee shall meet as often as necessary."

48. Thus, alleged appointment of respondent 3 as honorary teacher in ICCCE was not an appointment of a teacher in University having not been made by Executive Council who is appointing authority vide Section 31 (1). The procedure for appointment and constitution of Selection Committee is also provided under Section 31(4). No material has been brought on record either by respondent 3 or even by University to show that selection as contemplated under Section 31(4) was made. An officiating appointment could have been made in view of procedure prescribed under Section 31(3) but there also we do not find any material to show that such procedure was followed. As we have already said that Vice Chancellor was required to produce record in this regard but he clearly stated that no such record is available. It is thus evident that appointment of respondent 3 was made in ICCCE on honorary basis since there was no post or vacancy of Lecturer in the concerned department was available. Even on this aspect that any vacancy or post was available no material has been placed on record either by University or respondent 3.

49. Director, ICCCE appointed respondent 3 as part time adhoc Lecturer in ICCCE w.e.f. 01.01.1989 on a fixed salary of Rs. 1100/- per month. Here also there is nothing on record to show that appointment was made against a post/vacancy available either in Sanskrit department or in ICCCE. Moreover, appointment was purely part time adhoc and on honorarium basis.

50. The factum that respondent 3 has taken some classes in Sanskrit department or not is seriously debated and contested by all the parties but we are of the view that for the purpose of considering the question whether regularisation of respondent 3 as Lecturer in Sanskrit department of AU w.e.f. 01.04.1989 is valid and in accordance with law, the mere fact that he was permitted to take some classes in Sanskrit department would make no difference inasmuch as unless post/vacancy of Lecturer is available on the date from which regularisation is made or even thereafter question of a valid appointment cannot arise.

51. The fact that no vacancy is/was available to respondent 3, for substantive or regular appointment, even on the date impugned order dated 29.05.1998 was

passed regularizing respondent 3 as Lecturer (Sanskrit) w.e.f. 01.04.1989 is writ large from the letter of Head of Sanskrit Department (Annexure 10 to the writ petition) and Registrar, AU, letter dated 05.06.1998 when he has wrote to Head of Sanskrit Department that request to Government is being sent for creation of a post.

52. So far as this Court's orders are concerned, in the writ petitions filed by respondent 3, we have already placed relevant facts to show that Court never adjudicated upon validity of appointment of respondent 3 and various related questions like availability of vacancy, procedure of selection, authority competent to make appointment etc. never came to be considered since there was no such occasion. It cannot be doubted that appointment has not been made in view of procedure prescribed in the statute even on officiating or stop-gap or adhoc basis will not give any right upon incumbent to claim any rider status. The discussion made above leaves no doubt in our mind that respondent 3 was never appointed even on officiating or adhoc basis on the post of Lecturer in Sanskrit department after following procedure prescribed for temporary or adhoc or officiating or what to say substantive appointment and even vacancy on the sanctioned post of Lecturer in Sanskrit department was never available whereagainst respondent 3 could have get regularisation and therefore, order passed by University for regularising respondent 3 w.e.f. 01.04.1989 is patently illegal and in violation of statute hence in nullity.

53. Learned counsel for respondent 3, however contended that when respondent 3 was paid regular salary that was not challenged by petitioner and he has come to this Court only when impugned order regularising respondent 3 w.e.f. 01.04.1989 was issued. When the petitioner had already acquiesced to the appointment of respondent 3 it was not open to petitioner to challenge appointment of respondent 3 by order of regularisation dated 29.05.1998 w.e.f. 01.04.1989.

54. The submission is thoroughly misconceived.

55. Petitioner has not come to this Court assailing appointment of respondent 3 by way of regularisation by impugned order dated 29.05.1998 by seeking a writ of quo warranto or initiating public interest litigation. Whatever payment or salary is made to respondent 3 was not an issue or concern of petitioner hence neither there was any cause of action nor has he rightly pointed out. He find any necessity or occasion to come to this Court but as soon as respondent 3 is regularised and that too with retrospective w.e.f. 01.04.1989 it clearly placed respondent 3 over petitioner in seniority in Sanskrit Department and thereby affecting petitioner's rights adversely given him to challenge the order before this Court.

56. Lastly it is attempted to argue that in any case the initial engagement of respondent 3 can be said to be irregular and since he has continued to work for decades now there is no reason to defeat his initial appointment as illegal so as

not to attract any benefit like regularisation etc.

57. Recently the distinction between term "irregular" and "illegal" appointment has been considered in *State of Jammu Kashmir and others Vs District Bar Association, Bandipora*, 2016 (12) SCALE 534, Court in para 10 has said as under:-

"The third aspect of Umadevi which bears notice is the distinction between an "irregular" and "illegal" appointment. While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. There may be varied circumstances in which an ad hoc or temporary appointment may be made. The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power however stands vitiated if it is found that the exercise undertaken (a) was not in the exigencies of administration; or (b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or (c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides."

58. Suggestion has also come that respondent 3 is duly qualified and he has discharging duties of Lecturer in Sanskrit for the last three decades, if there is any deficiency in the process of his appointment initial or subsequent for that respondent 3 is not responsible and that is an error on the part of University and its authorities as well as appointing authority and hence respondent 3 should not be made to suffer in the form of declaration of regularisation order as illegal.

59. Similar argument was considered recently in *Arbind Kumar Vs State of Jharkhand and others*, 2016 (10) SCALE 310, Court said

"Although the Appellants have pleaded that they are mere victims of irregular or illegal action by the concerned police officials who appointed them to the post of Constable without following the procedure prescribed under the Police Manual and hence deserve sympathy, but we are not persuaded to accept such submission. In our considered view, the beneficiaries cannot blame the appointing authority alone and claim that the illegal appointment should be continued in perpetuity. To accept such plea would amount to giving premium to dishonest and illegal acts in matters of public appointments."

60. In another matter in *Rakesh Kumar Sharma Vs Govt. of NCT of Delhi and others*, 2013 (11) SCC 58, Court Said;

"There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness."

61. In the ultimate result, we find no hesitation in holding impugned order dated

29.05.1998 as illegal and contrary to statute as also law discussed above.

62. Writ petition is allowed. Impugned order dated 29.05.1998 is hereby set aside. Petitioner shall be entitled to cost which we quantify to Rs. 50,000/- against respondent 1. Since it is the mindless action and orders issued by University and its authorities which has forced petitioner to indulge in this litigation. Therefore, petitioner is liable to be paid compensatory cost towards him and punitive cost to University as directed above.