
(1990) 02 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6784 of 1988

Dr. Satya Narain Singh

APPELLANT

Vs

Chancellor, Kashi Vidyapith Varanasi Raj Bhawan and Another

RESPONDENT

Date of Decision : 14-02-1990

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 13(6), 31(3), 68

Citation : (1990) 1 AWC 506

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Faujdar Rai, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—In 1979 Kashi Vidyapith, Varanasi (herein-after referred to as the University) started evening classes for B.A. in pursuance of the order issued by the Government of U.P. The Vice Chancellor of the University accordingly in 1979 in exercise of powers u/s 13(6) of the State Universities Act (herein-after referred to as the Act) appointed the Petitioner on ad hoc basis as a lecturer in Hindi for evening classes. This appointment was initially for six months, which was extended from time to time. The University vide advertisement published on 25-8-1983 invited applications for a permanent post of lecturer in regular side of the Department of Hindi and a temporary post of lecturer in Hindi for evening classes. The Petitioner applied in pursuance of this advertisement for a post of lecturer in Hindi and a selection committee constituted by the University interviewed all the candidates including the Petitioner. The Petitioner was selected as a temporary lecturer for evening classes and another person was selected for a post of permanent post of lecturer in the regular side of the Department. The Petitioner claimed to have continued thereafter as a lecturer for evening classes. The Government of U.P. however, directed for discontinuance of evening classes after the session 1987-88. The Vice Chancellor in pursuance of the order of the State Govt, passed an order dated 30-7-1987 for continuance of

the Petitioner's appointment upto 30-6-1988. This order of the Vice Chancellor was challenged before the Chancellor u/s 68 of the Act. Representation of the Petitioner before the Chancellor was rejected vide order dated 14-1-1988. The Petitioner has filed this writ petition against the aforesaid two orders of the Vice Chancellor dated 30-6-1987 and that of the Chancellor dated 14-1-1988.

2. Learned Counsel for the Petitioner has challenged the aforesaid orders on the following grounds:

- (i) Petitioner's services have got to be regularised u/s 31(3)(b) of the Act, and.
- (ii) there cannot be any distinction between a teacher appointed for evening classes and a teacher appointed on regular basis for day classes.

3. Section 31(3)(b) of the Act provides for appointment in substantive capacity in the following three circumstances:

When a teacher is appointed after reference to selection committee

- (i) to a temporary post likely to last for more than six months and such post is subsequently converted into permanent post, or
- (ii) to a permanent post in a vacancy caused by grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant, or
- (iii) any post of same cadre or grade is newly created or falls vacant in the same department.

4. In any of the three contingencies referred to above, the University, unless it decides to terminate the service of a teacher after giving him an opportunity to show cause, may appoint him in a substantive capacity without reference to selection committee. The condition precedent for appointing a teacher u/s 31(3)(b) of the Act is that before termination of the service of such a teacher, the vacancy has occurred. If the service has already been terminated and thereafter the vacancy comes into existence, no appointment can be made u/s 31(3)(b). It is clear from the last part of Clause (b) Sub-section (3) of Section 31 of the Act, which requires the termination of the service of the teacher concerned, if he is not to be appointed in substantive capacity. The Petitioner has filed a supplementary affidavit, wherein he has averred that a post of lecturer in Hindi has now been created during the pendency of the writ petition and applications have been invited by the advertisement published in December, 1988 and as such, the Petitioner is entitled to be appointed u/s 31(3)(b) of the Act. After termination of his service, if the vacancy has now been created, same cannot be availed by the Petitioner, and the Petitioner cannot lay any claim over it. In the instant case none of the three contingencies exists, as there was no vacancy available till the Petitioner's tenure came to an end on 30-6-1988.

5. The only averments made by the Petitioner regarding the vacancy are in paragraphs 20 and 21 of the writ petition. In paragraph 20 it has been stated

that on 11-3-1988 the Vice Chancellor appointed two teachers on ad hoc basis u/s 13(6) of the Act. In the counter affidavit, it has been stated that these appointments were for the year 1987-88 by the Vice Chancellor u/s 13(6) of the Act, and these appointments came to an end on 13-5-1988, i.e., before the date on which the Petitioner's appointment came to an end. In paragraph 21 it has been mentioned that the University Grant Commission has recommended a post for a lecturer in Hindi. In the counter affidavit the University has averred that inspite of the recommendation of the University Grant Commission, the State Government has not yet sanctioned that post and till the sanction is granted, the post cannot be said to be in existence. This position has not been disputed by the Petitioner. That apart, the post which has been recommended by the University Grant Commission is for the regular side of the Department and not for evening classes. So far as evening classes are concerned, the whole system has been abolished and the question of continuance of any teacher for evening classes, as such, does not arise.

6. In view of this-position, Section 31(3)(b) of the Act cannot be applied and the Petitioner cannot be appointed in substantive capacity. Termination of the service of the Petitioner with effect from 1-7-1988 cannot be said to be unjustified.

7. Evening classes were permitted by the State Government on the basis of "no profit no loss" and the Government did not sanction any grant for meeting the expenses for these classes. University, as such, appointed the Petitioner and other teachers on fixed salary and the salary is to be paid from the fee collected by it. Teachers so appointed for evening classes were not getting the grade which is permissible to the teachers in the regular side of the Department. As the evening classes were on experiment basis, the same cannot be equated with regular side of the Department. These classes having been abolished by the University in accordance with the order of the State Govt question of continuing the teachers thereafter does not arise.

8. Learned Counsel for the Petitioner has argued that abolition of evening classes were not justified and the action of the University and the Government in doing so was absolutely arbitrary and uncalled for and in this connection reliance has been placed on Dr. Jai Prakash Narain Srivastava v. Director of Higher Education, U.P. at Allahabad 1987 EC 292 It is not necessary for me to go into this question, because the decisions of the University and the Government for discontinuing of the evening classes were neither challenged before the Chancellor nor is there such prayer in the writ petition. The writ petition is, as such, liable to be dismissed.

9. The writ petition, as such, has no merit and is dismissed there will be no orders as to costs.