
(2002) 04 AHC CK 0158
In the Allahabad High Court
Case No : C.M.W.P. No. 32830 of 1993

Dr. Satyendra Singh	Vs	APPELLANT
Director of Education (Higher Education) and Others		RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 13(4)

Citation : (2002) 3 AWC 1981 : (2002) 3 UPLBEC 2434

Hon'ble Judges : S.P. Srivastava, J;D.R. Choudhary, J

Bench : Division Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant; Govind Krishna, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned counsel for the petitioner as well as the learned counsel representing the respondents.

2. Perused the record.

The facts, in brief, shorn of details and necessary for the disposal of this writ petition, lie in a narrow compass. In the proceedings for the selection and appointment of Principal in accordance with the provisions contained in Section 12 of the Uttar Pradesh Higher Education Services Commission Act, 1980, the petitioner had given his preference for various colleges. During the period of the validity of the list referred to in sub-clause (2) of Section 13 of the said Act, a vacancy in the post of Principal of Durga Dutt Chunnilal Khakdelwal Postgraduate College, Maunath Bhanjan had come into existence. The petitioner submitted an application to the Director for changing the preference given by him and requesting that he may be granted appointment on the post of Principal of the aforesaid College Instead of Ram Swarup Gram Udyog Postgraduate College, Pukhrayan, Kanpur Dehat. It appears that the representation of the petitioner was kept pending for a long time without any orders with the result that the

petitioner had to approach this Court by means of Misc. Writ Petition No, 30080 of 1993, which was heard and disposed of vide the judgment and order dated 29.6.1993, whereunder this Court observing that the question whether the petitioner could be posted and appointed to the said college may be taken into consideration by the Director of Education, issued a direction requiring the Director of Education (Higher Education), U. P., Allahabad, to decide the representation of the petitioner after giving an opportunity of hearing to him and the Committee of Management of Ram Swarup Gram Udyog Post Graduate College, Pukhrayan, Kanpur Dehat and also the Committee of Management of college at Maunath Bharijan, Mau. By the aforesaid order, this Court required the Director to pass a reasoned order after disposing of the representation within a period of six weeks from the date of filing of a certified copy of the said order along with copy of the writ petition and that too after affording opportunity of hearing to the petitioner.

3. The Director of Education (Higher Education) vide the impugned order had rejected the representation of the petitioner.

4. Feeling, aggrieved, the petitioner has now approached this Court seeking redress praying for the quashing of the aforesaid order and for the issuance of a direction requiring the respondent authority to appoint him on the post of Principal Durga Dutt Chunnilal Khandelwal Post Graduate College, Maunath Bhanjan, Mau.

5. From the record, it appears that from the office of the Director (Higher Education), a letter was issued on 21.7.1983. pursuant to the aforesaid direction issued vide the order passed by this Court. This letter was issued under the signature of the Assistant Director of Education requiring the petitioner to appear in his chamber and present his case along with copy of his representations dated 15.6.1993 as well as 21.6.1993. It may be noticed that in the aforesaid letter dated 21.7.1993, the date, which had been fixed, for the appearance of the petitioner was 5th August, 1993. The petitioner submitted his submissions in writing in support of his case vide his memo dated 5.8.1993. A copy of this memo has been filed as Annexure-11 to the writ petition. These written submissions are addressed not only to the Director of Higher Education but also to the Deputy Director of Education. In the aforesaid written submissions, the petitioner had asserted that he was the original resident of Lalganj, district Azamgarh, which was a district situated nearby the district of Maunath Bhanjan, Mau and from that place he could successfully discharge his family responsibilities and also look after his dependents, who were studying In the Degree College of Purvanchal Viswavidyalaya, Jaunpur. It was further asserted that the father of the petitioner, who had retired from the post of Principal, had become of advanced age and was ailing and weak, therefore, it would be necessary to allot Maunath Bhanjan, Mau to him so that he may look after his father.

6. The Director, after affording the opportunity to the management of both the

Institutions as required by the order of this Court and taking into consideration the written submission submitted by the petitioner, disposed of his representation vide his order dated 13.8.1993. In the aforesaid order, the Director had observed that the Management of Durga Dutt Chunnilal Khandelwal Post Graduate College, Maunath Bhanjan, Mau was not agreeable to take the petitioner as Principal and the Manager had requested to get the vacancy in the post of Principal advertised and requisition had been sent to the Commission to do so. The management of the college had adopted this course in order to ensure that the suitable and meritorious person may be available for holding the post of Principal of that College. The Director took into consideration the facts relied upon by the petitioner in support of his claim for the change of college. The Director was, however of the opinion that under the provisions of the Uttar Pradesh Higher Education Services Commission Act, 1980, the appointment had to be made taking into account the merit as the basis and not on the basis of personal convenience or family problems. The director had also taken into consideration the case of the Management of Ram Swarup Gram Udyog Post Graduate College, Pukhrayan, Kanpur Dehat where the petitioner had been posted. The management had its own grievance against the posting of the petitioner in the college at Pukhrayan and while bringing it to the notice of the director that inspite of repeated opportunity, the petitioner had not turned up to join the post, it was also pointed out that there were various complaints against him. In support of this assertion, the management of the institution of Ram Swaroop Gram Udyog Post Graduate College Pukhrayan, Kanpur Dehat, placed reliance upon the report of the Collector, Ghazipur, which indicated that the petitioner had misused the college fund and the students' fund, which was a very serious matter. In fact, the Collector, Ghazipur, had expressed the view that the petitioner was not suitable for appointment in any educational Institution or holding any post of responsibility.

7. It may be observed that so far as the report of the Collector is concerned, that could not supersede the recommendation of the Commission, which is a statutory body. The Director did not act upon the report of Collector and the effort of the Management of Ram Swarup Gram Udyog Post Graduate College, Kanpur Dehat not to take the petitioner as Principal of the College at Kanpur Dehat failed as the Director did not disturb the posting of the petitioner in that college. The objections of the Management of Ram Swarup Gram Udyog Post Graduate College, Pukhrayan, Kanpur Dehat, were rejected. The Director did not accept the representation of the petitioner for the change of the college and the alteration in respect of preference given in the beginning and maintained the posting of the petitioner at Ram Swarup Gram Udyog Post Graduate College, Pukhrayan, Kanpur Dehat. His representation was thus rejected. With the rejection of the representation of the petitioner, the claim of the Management of Ram Swarup Gram Udyog Post Graduate College, Pukhrayan, Kanpur Dehat, for posting of any other person in place of petitioner was also rejected.

8. Before proceeding further, it may be noticed at this stage that the provision

contained in Section 13 (4) of the Uttar Pradesh Higher Education Services Commission Act, 1980 Is to the following effect :

"13(1).....

(2)

(3)

(4) Where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in Sub-section (2) and such vacancy has not been notified to the Commission under Sub-section (3) of Section 12, the Director may intimate to the management the name of a candidate from such list for appointment in such vacancy.

(5).....

(6)"

9. The provisions contained in Section 13 (4) of the Act, as noticed here-in-above, vests the Director with the discretionary jurisdiction to intimate to the management of the college where the vacancy had occurred, the name of a candidate from select list for appointment against such vacancy.

10. The word "may" has been some time understood in the imperative sense as "shall" but ordinarily, it indicates a choice of action and not a command. In the present context, there does not appear to be any reason to assume that it has been used in its extraordinary meaning.

11. The learned counsel for the petitioner has strenuously urged that the respondent-authority has acted in a manifestly illegal manner in passing the impugned order without following the direction issued by this Court vide its judgment and order dated 29.6.1993. What has been contended is that this Court in its aforesaid order had given a clear direction to the respondent authority to decide the representation of the petitioner after affording him an opportunity of being heard but while deciding the representation, the respondent-authority did not afford any opportunity of hearing to the petitioner. In this connection, it has also been urged that the petitioner was required to appear before the Assistant Director, Higher Education. The Director, of Education, however, did not afford the petitioner any opportunity of appearing before him and from this, the learned counsel for the petitioner tried to infer that no opportunity of hearing was provided to the petitioner.

12. In the aforesaid connection, the learned counsel for the petitioner has further urged that the expression an "opportunity of hearing" as used in the judgment and order of this Court dated 29.6.1993 implied the affording of an opportunity of personal hearing to the petitioner before taking a decision on his representation. Since the Director had afforded no personal hearing, it is urged that the impugned order passed by him disposing of the representation is vitiated in law and is not at all sustainable.

13. The learned standing counsel, on the other hand, has urged that the expression "hearing" does not necessarily mean personal hearing. The petitioner could make oral submissions as well as submissions in writing. In the present case, the petitioner, it is pointed out, had given his submissions in writing for consideration by the Director of Education, (Higher Education). His written submissions were given by the petitioner on 5.8.1993. His contention is that since the petitioner himself had given his written submissions and had placed his version for consideration of the Director of Higher Education in writing and the aforesaid written submission had actually been considered in quite detail by the concerned authority, the direction issued by the Court stood fully complied with and It cannot be said that hearing had not been afforded to the petitioner or that he was in any manner prejudiced.

14. We have given our anxious consideration to the aforesaid rival submissions of the counsel for the parties.

15. The question as to whether hearing necessarily involved affording of opportunity of personal hearing or opportunity to give written submissions/representation setting forth the version of the aggrieved party is a substantial compliance of affording of opportunity of hearing had been the subject-matter of various decisions of the Apex Court.

16. In its decision in the case of Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), the Apex Court had observed that it is no doubt the principle of natural Justice that a quasi-judicial Tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. However, it was further observed that such an opportunity need not necessarily be by personal hearing. It can be by written representation. It was further observed that whether the said opportunity should be by a written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the Tribunal.

17. In its decision in the case of State of Assam and Another Vs. Gauhati Municipal Board, , the decision of the High Court that omission to give an opportunity of oral hearing violated the principles of natural justice, was reversed by the Apex Court holding that the opportunity to submit an explanation was sufficient.

18. In another decision in the case of State Bank of Patiala v. Mahendra Kumar Singhal 1994 (2) SCO 463 , the Apex Court had Indicated that no rule could be brought to its notice, which required the appellant to grant a personal hearing. It was further indicated that the rule of natural justice does not necessarily in all cases confer a right of audience, as indicated in the earlier decision of the Apex Court in the case of F.N. Roy Vs. Collector of Customs, Calcutta, In its decision in this case, the Apex Court had observed that there is no rule of natural justice that at every stage, a person is entitled to a personal hearing.

19. It seems to us that the aforesaid principle can be safely applied to the present case. In the present case, the petitioner had been afforded an opportunity to submit his representation and place all the materials sought to be relied upon in support of his claim. Such an opportunity sufficiently met the requirement of observance of the principles of natural justice. An opportunity to show cause by representation amounts to an effective opportunity of hearing. In fact, this opportunity was availed of by the petitioner as he had submitted detailed written submissions in support of this case for consideration of the Director.

20. In the present case, the petitioner had given his version and the facts in support of his case, in quite detail, in his written submissions, which he had filed for consideration of the Director of Higher Education on 5.8.1993. As has already been noticed hereinabove, the submissions had been considered by the Director of Education and were rejected. The petitioner, in the circumstances, could not be held to have been prejudiced at all. Moreover, in the facts and circumstances of the present case, we are of the considered view that it is not open to the petitioner now to come forward with the case that he was not given any opportunity of hearing or that the impugned order is vitiated in law on account of omission to afford an opportunity of personal hearing to the petitioner by the concerned authority, specially, when there had neither made any request in this regard nor there was any direction requiring the respondent-authority to provide a personal audience to the petitioner.

21. We are clearly of the opinion that the duty to hear does not necessarily mean affording of personal hearing or audience, and an aggrieved party may be heard orally or through its medium of written representation ensuring that no prejudice is caused.

22. Considering the peculiar facts and circumstances of the present case, we are clearly of the view that the impugned order cannot be held to be vitiated in law on account of its having been passed in violation of principles of natural justice, as claimed, and further that, an effective opportunity had been afforded to the petitioner.

23. The contention of the learned counsel for the petitioner, referred to hereinabove, is totally devoid of any merit and is not at all acceptable.

24. It should not be lost sight of that for considering the question of violation of principles of natural justice, all that has to be seen is, as to whether the concerned authority had acted in a fair manner. There is nothing rigid or mechanical about the principles of natural justice. Whenever, there is a reference to the rules of natural justice, it signifies that the principle and procedure which are to be applied have to be such, which in any particular set of circumstances, are right, just and fair.

25. Natural justice, in fact, refers to fair play in action. It is a concept which has succeeded in keeping the arbitrary action within the limits of preserving the rule

of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the Courts have been circumspect in extending it to situations where it would cause more injustice than justice.

26. It has been next contended that while passing the impugned order, the Director of Education has utilised the material against the petitioner without giving him an opportunity to meet the same. In this connection, it is pointed out that before the Director of Education, a report of the Collector, Ghazipur, had been produced which contained several observations against the petitioner. No opportunity, it is urged, had been afforded by the Director to meet the allegations made in the report of the Collector. Thus, it is urged that it clearly amounted to violation of the principles of natural justice.

27. The learned standing counsel, however, has urged that the aforesaid material had been placed before the Director by the management of the college at Pukharayan at Kanpur in its bid to get the order of the posting of the petitioner in that college recalled so that any other principal may, be made available to that college. This claim was, however, rejected by the Director and the positing of the petitioner in that college remained undisturbed. What has been urged is that the aforesaid material was not utilised against the petitioner and the management, which had placed it before the director in support of its case, not to accept the petitioner as its Principal, could not succeed and the whole purpose of placing the said report had failed as its request was rejected by the director.

28. In the aforesaid circumstances, it is urged that the petitioner cannot be heard to say that he was prejudiced in any manner, or that some material had been utilised against him without affording him an opportunity to lead evidence in rebuttal.

29. So far as the above submission of the learned counsel for the petitioner is concerned, it may be observed that the technical rules of evidence applicable to civil or criminal litigations form no part of the rules of natural justice. However, the principle of natural justice also requires that any person represented at the enquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and deprived of any opportunity to adduce additional material of probative value which, had it been placed before the decision maker might have deterred him from making the finding, even though, it could not be predicated that it would inevitably have had that result. But in the facts and circumstances of the case in hand no such situation can be said to have arisen.

30. What we find from the record is that while the management of the college at Mau Nath Bhanjan was not prepared to accept the petitioner as the Principal of that college and insisted that the vacancy should be filled in accordance with law so that the meritorious person may be available to that college, the management of the Pukharayan college where the petitioner was posted has also tried to get rid of the petitioner and may have made a request that there were adverse report

against him by the District Magistrate, Ghazipur. The provisions contained in the Act contemplate that the selection for the post of Principal has to be on the basis of seniority subject to rejection of unfit. The personal grounds like personal convenience or family circumstances, etc, could not be allowed to give a go-by to the statutory requirement or the rights vesting in the management of an institution to have suitable meritorious person as determined by the Commission. It may be noticed that the management of the college at Mau had already sent the requisition to the Commission in this connection.

31. In the present case, taking into account the totality of the circumstances, the Director was of the view that the place of posting of the petitioner did not require any change. This writ petition had been filed long back in the year 1993. Taking into consideration the grounds on which the petitioner had required for his transfer from one institution to another, at this juncture when about 8 years have already gone by from the date of filing of the writ petition, we are of the view it is not a case which requires intervention of equity at all.

32. This writ petition, in view of what has been indicated hereinabove, is devoid of merit which deserves to be and is hereby dismissed.

33. There shall, however, be no order as to costs.