
(2000) 02 AHC CK 0140
In the Allahabad High Court
Case No : C.M.W.P. No. 21242 of 1999

Dr. Sharad Kumar Singh Chauhan

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 21-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1982 —
Section 16

Citation : (2000) 2 AWC 1212 : (2000) 1 UPLBEC 864

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Head learned counsel for the parties.

2. The petitioner is challenging the impugned order of the Director of Higher Education, U.P. dated 4.5.1999 Annexure-19 to the writ petition. In that order, it has been mentioned that the Manager of Saraswati Maha Vidyalaya, Hathras, has informed that the petitioner was never appointed as lecturer in Chemistry on ad hoc basis in the institution in question. The Regional Higher Education Officer also made an enquiry in this connection and he also accepted the version of the Manager.

3. The petitioner alleged that he was appointed as ad hoc lecturer in Chemistry by appointment letter dated 5.11.1991 Annexure-1 to the writ petition. In paragraph 4 of the petition. it is alleged that a certificate has been given by the Head of Department of Chemistry regarding the working of the petitioner as lecturer in Chemistry. Subsequently, an Ordinance was issued for regularizing the service of ad hoc lecturers vide Annexure-4 to the writ petition. In paragraph 6 of the petition it is alleged that since the papers for regularizing the petitioner were not sent by the Management, the petitioner wrote a letter to the respondent No.

1 on 11.6.1997 vide Annexure-5 to the writ petition. Thereafter the petitioner wrote a letter to the principal and Secretary of the Management vide Annexures-6 and 7 to the writ petition. He also made a representation to the Director of Education vide Annexure-8 to the writ petition. In paragraph 9 of the writ petition, it is stated that the Director asked the Manager and Principal to submit the relevant papers regarding the petitioner's appointment vide Annexure-9 to the writ petition. The Director of Higher Education vide letter dated 27.1.1998 appointed the Regional Higher Education Officer. Agra as Enquiry Officer vide Annexure-10. In paragraph 11 it is stated that the Regional Higher Education Officer submitted a report in favour of the petitioner vide Annexure 11. In paragraph 12 of the petition, it is stated that the petitioner was found suitable for regularisation by the Selection Committee and an order dated 6.3.1998 was issued vide Annexure-12. However, it is stated in paragraph 13 of the petition that since the orders were not issued by the institution, the petitioner approached the Principal and Manager and he wrote a letter to the Director of Education dated 14.5.1998 vide Annexure-13 to the writ petition. He also submitted a letter to the Minister vide Annexure-14. He also submitted further representations vide Annexures-15 to 17 to the writ petition.

4. In paragraph 17 of the writ petition, it is stated that on 31.10.1998 a letter was issued by the Government to the Director of Higher Education that the petitioner's service has been regularised on 6.3.1998 but the institution is not issuing necessary orders in this connection vide Annexure-18 to the writ petition. However, instead of regularizing the petitioner, the Director of Higher Education issued the impugned letter dated 4.5.1999 cancelling the regularisation of the petitioner's appointment vide Annexure-19 to the writ petition. It is stated in paragraph 23 of the writ petition that the petitioner has been made victim by the management as he failed to grease the palm of the Manager. It is further stated that no opportunity of hearing was given to the petitioner before passing the impugned order.

5. A counter-affidavit has been filed by the Principal of the institution. in paragraph 3 of the same, it is stated that the order dated 4.5.1999 of the Director of Higher Education cancelling the petitioner's regularisation was rightly passed. In paragraph 4 of the counter- affidavit-it is stated the appointment letter dated 5.11.1991 is forged as the Secretary of the management stated that he never issued the alleged appointment letter dated 5.11.1991 vide Annexure-C.A. 1 to the counter-affidavit. In paragraph 5 of the counter-affidavit, it is stated that no joining report was given by the petitioner nor any question arose about the petitioner's joining as he was never appointed as claimed. In paragraph 6 of the counter-affidavit, it is stated that the Head of the Department of Chemistry informed the deponent that he never issued any certificate to the petitioner. In paragraph 10 of the counter-affidavit, it is stated that no such telegram as mentioned in paragraph 9 of the petition is traceable in the college record. In paragraph 12 of the counter-affidavit, it is stated that after receiving the order dated 6.3.1998. the Manager sent a telegram on 29.4.1998 to the

Director of Higher Education informing him that the petitioner was never appointed as ad hoc lecturer in Chemistry and no papers were sent by the college for his regularisation vide Annexure-C.A. 3 to the counter-affidavit. In paragraph 13 of the counter-affidavit, it is stated that the petitioner got his service regularised on the basis of a forged appointment letter and false representations.

6. A supplementary counter-affidavit has also been filed by the Principal and in paragraph 5 of the same it is stated that the petitioner was firstly appointed as part time lecturer vide letter dated 31.1.1992 on monthly payment of Rs. 700. This appointment was up to 30.4.1992 but as the course was not completed, hence the petitioner was asked to work till 15.5.1992. The letter dated 31.1.1992 has been received by the petitioner himself. True copies of the letters are Annexure-S.C.A. 1 to S.C.A. 4.

7. A counter-affidavit has also been filed by the Joint Director of Higher Education on behalf of respondent Nos. 1 to 4. In paragraph 3 (f) of the same, it has been stated that the alleged appointment letter dated 5.11.1991 is forged. True copy of the enquiry report is Annexure-C.A. 3. In paragraph 3 (i) it is stated that the petitioner was never appointed on ad hoc basis u/s 16 of the U.P. Higher Education Commission Act. He only worked on contractual basis for a short period. The respondents have relied on the decision of this Court in Santosh Kumar Singh v. State of U.P. 1996 (1) ESC 173, where it has been held that where the appointment is illegal it cannot be regularised and it was rightly cancelled.

8. On the facts of the present case we are of the opinion that the petitioner was never given appointment under the rules but was given a purely contractual appointment as an internal arrangement by the college of its own, and that too for a very short period, hence on that basis the petitioner cannot claim any right. We also have no reason to disbelieve the version of the respondents that the alleged appointment letter dated 5.11.1991 was forged. In the circumstances, this is not a fit case for interference under Article 226 of the Constitution. The petition is accordingly dismissed.