

(2003) 08 AHC CK 0228

In the Allahabad High Court

Case No : C.M.W.P. No's. 11804 of 1991 and 16275 of 1999

Dr. (Smt.) Shashi Bala Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Constitution of India, 1950 — Article 16

Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (2003) 6 AWC 5592

Hon'ble Judges : Umeshwar Pandey, J; A.K. Yog, J

Bench : Division Bench

Advocate : U.S.M. Tripathi, P.C. Srivastava, Shailendra and S.L. Yadav, for the Appellant; A.K. Mishra and S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Shashi Bala/Petitioner represented by Shri Shailendra, Advocate; State of U.P., Director of Education (H.E.) and District Inspector of Schools, Deoria, Respondents No. 1, 2 and 3 represented by standing counsel, Committee of Management Madan Mohan Malviya Post Graduate Degree College, Respondent No. 4, represented by Sri A. K. Mishra, Advocate.

2. Both the writ petitions, noted above, are being heard together since they emerge from common facts and a dispute between the same parties.

3. Madan Mohan Malviya Post Graduate Degree College, Bhatpar Rani, district Deoria, is an affiliated College of Gorakhpur University, governed by the provisions of U.P. State Universities Act, 1973 (called "Act, 1973"), First Statute, Ordinances and Regulations of the University framed under Act, 1973 and U.P. Higher Education Service Commission Act and Rules framed thereunder. Subject of Ancient History was initially granted, provisional affiliation in the college for running postgraduate classes in the said subject. Consequently, in June, 1981 three posts of lecturers were advertised and several candidates applied against it. Eligible candidates, including the Petitioner were called for interview. Selection

Committee on the basis of interview recommended names of five candidates in the panel for appointment on aforesaid three posts of lecturers.

4. It is not disputed, that in the said panel name of the Petitioner, Dr. (Smt.) Shashi Bala Srivastava was at serial No. 1.

5. Paras 3 and 4 of writ petition, not controverted by any of the Respondents, read:

3. That a Selection Committee was duly constituted which made unanimous recommendation on 8.9.1981 for the appointment of three lecturers in the order of priority as under:

(i) Dr. (Smt.) Shashi Bala Srivastava;

(ii) Mr. Alok Mani Tripathi;

(iii) Mr. Surendra Nath Singh;

(iv) Dr. Amar Nath Tripathi;

(v) Mr. Prem Kumar Mishra.

4. That it is clear that the Petitioner Dr. (Smt.) Shashi Bala Srivastava was placed at Serial No. 1 in the priority list recommended by the Selection Committee."

Committee of Management of the college forwarded relevant papers to the University for seeking approval of the Vice-Chancellor.

6. Vice-Chancellor of the University, accorded approval, modifying the order of preference provided by the Selection Committee, vide order dated December 7, 1981 (Annexure-1 to the writ petition).

7. Vice-Chancellor, while agreed with recommendation of Selection Committee in favour of Petitioner's name at Serial No. 1; placed Sri Amar Nath Tripathi at Serial No. 2 (instead of Serial No. 4). Sri Alok Mani Tripathi (who was at Serial No. 2) was brought down to Serial No. 3; Sri Surendra Nath Singh, candidate at Serial No. 3 came down to Serial No. 4 last chance being offered appointment against available three posts.

8. The Petitioner pleads that in spite of all statutory essential ingredients being fulfilled for making appointment, the Management of the college illegally and arbitrarily withheld appointment letter; she ran from pillar to post and approached all concerned authorities but to no avail. The Petitioner complains that Management allowed Alok Mani Tripathi and Dr. Amar Nath Tripathi (placed at Serial Nos. 2 and 3 by the Vice-Chancellor), to join the college. Surendra Nath Singh, (brought down from Serial No. 3 to Serial No. 4, by the Vice-Chancellor) and the Petitioner were prevented and not allowed to join the college.

9. Surendra Nath Singh and the present Petitioner filed representations before Chancellor u/s 68 of Act, 1973. The Chancellor, by means of order dated May 18,

1983, allowed Petitioner's representation, Annexure-2 to the writ petition. In pursuance to the said order of the Chancellor, Petitioner again filed representations before the Management and the University authorities vide letters dated 27.6.1983, 17.8.1983, 13.2.1984, 15.6.1985, 3.9.1985, 12.9.1989 and 2.9.1990 (Annexures-3 to 9 to the writ petition).

10. The Petitioner finally succeeded in her long struggle when Management issued appointment letter dated January 16, 1990, Annexure-11 to the writ petition.

11. The Petitioner, thereafter, filed representation dated 18.8.1990/ Annexure-12 to the petition before the District Inspector of Schools for payment of salary with effect from January 16, 1990 to July, 1990, Annexure-12 to the writ petition.

12. Again a protracted correspondence took place. Petitioner approached higher authorities, including Directorate of Higher Education and requested for payment of salary in accordance with law. Reference may be made to the letters dated 5.9.1990 and 4.10.1990, Annexures-13 and 14 to the petition.

13. The District Inspector of Schools vide letter dated 3.12.1990 asked the Management to submit papers and relevant record (Annexure-15 to the petition). The District Inspector of Schools vide letter dated 28.1.1991, addressed to the manager of the college, (Annexure-17 to the writ petition) directed the management to take steps for ensuring payment of salary. The District Inspector of Schools, however, vide impugned order dated March 11, 1991 (Annexure-19 to the writ petition) held that Petitioner Dr. (Smt.) Shashi Bala Srivastava could not be paid salary in absence of a post.

14. The Petitioner being aggrieved, filed Writ Petition No. 11804 of 1991 before this Court and this Court passed an interim order dated 18.4.1991, relevant extract of it reads:

"... The District Inspector of Schools, Deoria is directed to make payment of salary and other dues permissible under law to the Petitioner within three months from the date of receipt of a certified copy of this order for the period commencing from the date when she joined the service."

15. The relevant extract of para 3 of the counter-affidavit filed on behalf of Respondents 1, 2 and 3 reads:

"3. That Madan Mohan Malviya Post Graduate Degree College, Bhatpar Rani, district Deoria is aided institution affiliated to Gorakhpur University the post of lecturer of ancient history was advertised by the college, the selection proceedings were conducted by the institution. The name of Dr. (Smt.) Shashi Bala Srivastava was recommended by the Selection Committee at serial No. 1 in the order of priority and the name of Sri Amar Nath Tripathi was placed at serial No. 2. This order of priority was also recommended by the Vice-Chancellor, Gorakhpur University but the management of the institution ignoring the priority offered appointment to Sri Amar Nath Tripathi whose name was recommended at

serial No. 2. Feeling aggrieved by that Dr. (Smt.) Shashi Bala Srivastava, the Petitioner approached the Chancellor of the University. The reference was called by his Excellency Chancellor and accordingly a direction was given to offer appointment of Dr. (Smt.) Shashi Bala Srivastava. It is reported that Dr. (Smt.) Shashi Bala Srivastava has resumed work with effect from 16.1.1990 since there is only one post of lecturer of ancient history sanctioned in the institution on which one Sri Amar Nath Tripathi was offered appointment and is continued to be paid his salary. There is no additional post of lecturer of ancient history in the institution. In the circumstances the payment of salary of Dr. (Smt.) Shashi Bala Srivastava is not being made. Since one payment against one post is already being made to Sri Amar Nath Tripathi and absence of any additional sanctioned post does not lie in the power of the District Inspector of Schools to make payment of salary under delegated power given to him by Regional Deputy Director for payment of salary to the teacher of degree college. Rest of the allegation do not relate to District Inspector of Schools."

16. In reply thereto the Petitioner vide para 3 of her rejoinder affidavit asserted-"in any circumstances,-Amar Nath Tripathi could not be allowed to be absorbed against first sanctioned post. Absorption of Mr. Tripathi against the single sanctioned post was illegal and being aggrieved against the said, Petitioner filed the present writ petition.

17. The Committee of Management in para 3 of the counter-affidavit, sworn by Sri Bhartendu Misra admits that-"as a matter of fact, the Petitioner who was placed at serial No. 1 was issued letter of appointment vide order No. 4710, dated 9.12.1981 which was duly sent through registered post to the Petitioner. After expiry of more than 25 days time from the date of issuance of the letter of appointment, when the Petitioner did not join, another order No. 4732 dated 3.1.1982 was sent to the Petitioner intimating her that in case she failed to join within a period of one week then it will be treated that she is not interested in accepting the appointment and she herself will be solely responsible for it. Despite the reminder issued to the Petitioner, since she did not turn up in the institution the Committee of Management treated that she is not interested in joining the post. The letter of appointment dated 9.12.1981 and reminder letter dated 3.1.1982 are enclosed as Annexures 1 and 2 respectively to this counter-affidavit."

18. Para 4 of her rejoinder-affidavit, in reply to aforequoted para 3 of the counter-affidavit, reads:

4. That the contents of paragraph No. 3 is denied while para Nos. 7 to 15 of writ petition are reiterated while fact placed by Respondent No. 4, it is clear that authorities are playing fraud, as they are making statement that they issued letter of appointment in favour of Petitioner on 9.12.1981 and on 3.1.1982, issued reminder to the Petitioner providing one week more time for joining of the Petitioner but on the same time they are also claiming appointment of Amar Nath Tripathi on 11.12.1981. Therefore, either the claim of opposite party for issuing

of letters for appointment on 9.12.1981 and 8.1.1982 are incorrect or claim of joining of Amar Nath Tripathi on 11.12.1981 is incorrect, statement is contrary to the Respondent. Management may ask to put an explanation that how both the statements are correct, otherwise averment in para under reply is misconceived and deserves to be rejected..."

19. The admitted position on record ... down to the Petitioner clearly that the Committee of Management had accepted decision of the Selection Committee, and the Vice-Chancellor had approved name of the Petitioner at serial No. 1 in the Panel. There is no doubt that the Committee of Management is guilty of acting arbitrarily playing fraud in withholding appointment letter of Dr. (Smt.) Shashi Bala Srivastava with ulterior motive to give undue advantage to the candidates lower in rank. Otherwise also we find that after the matter was finally decided by the Chancellor, question of validity of appointment of the Petitioner cannot be reopened. It is also to be noted that the Petitioner's name was recommended at serial No. 1 which is not disputed and or at any point of time from any quarter.

20. It is well settled that once Selection Committee recommendation, endorsed by the Committee of Management, was approved by the Vice-Chancellor, nothing remained in substantive law to accomplish factum of appointment, except formality of issuing appointment letter-a ministerial act on the part of the Committee of Management. The Committee of Management had no authority whatsoever to decline or to refuse to appoint the Petitioner. Petitioner being at serial No. 1 and one permanent post of lecturer being available, Petitioner ought to have been allowed to join the post and paid her salary against the same. No objection in law could be taken to it. No one, except the Petitioner, could be allowed to join the said permanent post. Anybody, if manipulated to have joined said post, the same is illegal and void.

21. Objection raised by the District Inspector of Schools for non-payment of salary to the Petitioner on the ground of non-availability of a sanctioned post is perverse, misconceived and against record.

22. It is to be further noted that the District Inspector of Schools passed aforesaid order without affording opportunity of hearing to the Petitioner and thus, being in violation of principles of natural justice is void and non-est.

23. Impugned order dated 11.3.1991, passed by District Inspector of Schools (Annexure-19 to the writ petition) is unsustainable, and therefore, liable to be quashed. Writ petition deserves to be allowed.

24. In the result, a writ in the nature of certiorari, calling for the record of the case and the impugned orders dated 11.3.1991, Annexures-19 and 20 to the writ petition, and all other consequential orders are hereby quashed. We further issue a writ in the nature of mandamus commanding Respondent Nos. 1, 2 and 3, their officers, employees, etc. to ensure payment of salary month by month to the Petitioner giving credit of notional annual increments, revised pay scales (as may

have been enforced from time to time) and also pay all arrears etc. in accordance with law along with 12% p.m. simple interest due with effect from January, 1990 and Rs. 10,000 as costs within three months of receipt of certified copy of this judgment and order.

Facts of Civil Misc. Writ Petition No. 16275 of 1999:

25. The Petitioner was constrained to file above petition claiming benefit of senior scale on the ground of her completing five years services in 1995, which was rejected by the Principal. The Petitioner again represented the matter before Committee of Management, claiming senior scale and submitted reminder again on 27.4.1998. The management of the institution, vide impugned order dated 9.9.1998 (Annexure-1 to the supplementary-affidavit, accepted today) rejected the claim of the Petitioner. The Petitioner also seeks quashing of the impugned order dated 24.2.1998 passed by the Principal of the college refusing selection grade on the ground that Petitioner's Writ Petition No. 16275 of 1999 was pending in the Court. The Petitioner has again in paragraphs 13 and 14 of the present petition, complained of illegal act of not allowing her to join and work in the institution with effect from December, 1981. In para 13 of the writ petition, it is pleaded that: "while on the same time they assisted another candidate who was at serial No. 2 for joining working and payment of salary since 11.12.1981. The Petitioner was entitled to allow joining either with effect from 11.12.1981 or prior to that. As in order of merit, she was above to Dr. Amar Nath Tripathi."

26. Again, para 45, 46 and 47-A of the writ petition read:

45. That in view of these facts and circumstances this Hon'ble Court may take serious cognizance asking the management to provide all benefit to the Petitioner given to preferential treatment against the Respondent No. 5 and she must be treated working against the post got sanctioned one after approval of her appointment by the Vice-Chancellor, she is entitled to the benefit in view of the decision of the Chancellor dated 18.5.1983 and even prior to that, since the approval given by the Vice-Chancellor dated 7.12.1981 as she was not only recommended at serial No. 1 but also approved at the same position by the Vice-Chancellor.

46. That the Committee of Management is guilty of showing disrespect of high degree to decision of His Excellency the Chancellor, Gorakhpur University, Gorakhpur dated 18.5.1983. They are also guilty of violating the order of Vice-Chancellor dated 7.12.1981. They are also guilty of introducing unfair practice in the matter of selection while providing appointment immediately to Respondent No. 5, only because of his being relative to the then manager as well as to the present manager, i.e., for extraneous consideration adversely effecting the career in all respect of the Petitioner.

47A. That it is expedient in the interest of justice and equity that this Hon'ble Court may pass an ad interim order, objection the counter and management to allow selection grade and promotion on the post of Reader to Petitioner treated

his appoint since, 1981 as per order of Vice-Chancellor dated 7.12.1981 and order of Chancellor dated 18.5.1983 or may pass such further order this Hon''ble Court may deem fit in the circumstances of the case otherwise it will cause irreparable injury to the Petitioner.

27. The Petitioner, therefore, prayed for writ of certiorari and also for issuing a writ of mandamus directing the Respondents to provide all benefits, including senior scale as announced by the Government Order dated 7.1.1989 as also the benefit as per Government Order dated 16.2.1999.

28. Learned Counsel for the Petitioner Sri Shailendra, has made a categorical statement before us that the Petitioner (though entitled to all benefits, privileges etc. treating her notionally working on the post at least from the date with effect from 11.12.1991, i.e., prior to joining by candidates at serial Nos. 2 and 3) claim arrears and or monetary gain for the period for which she has not de facto discharged her duties but this Court may accord all other benefits and privileges treating her notionally in continuous service with effect from 11.12.1991.

29. We are of the view that the Petitioner should not be made to suffer for no fault of her and only because of illegal and arbitrary acts of the manager.

30. In the result, we issue a writ, in the nature of certiorari, calling for the record of the case, and quash the impugned order dated 24.2.1998 written by the Manager to the College Principal (Annexure-20 to the Writ Petition No. 11804 of 1991) and letter dated 9.9.1998 written by the manager of the college to the Petitioner (Annexure-1 to the supplementary-affidavit) are hereby quashed.

31. We also issue a writ, in the nature of mandamus directing the Respondents, officers, authorities etc. to treat the Petitioner as deemed appointed with effect from 11.12.1981 till de facto joining the institution on the basis of her appointment letter dated 16.1.1990 (Annexure-12 to the Writ Petition No. 16275 of 1999) and accord all consequential benefits and privileges, except monetary payments, for the period she is notionally treated to be working with effect from 11.12.1981 and continue to pay salary along with all allowances, increments, etc. as may be available time to time for the period Petitioner has de facto worked on the basis of joining in pursuance to the appointment letter dated 16.1.1990. It is made clear that the Petitioner will not be entitled to any monetary benefits for the period she is notionally working. Her notional functioning in the institution with effect from 11.12.1981 is for the purposes of computing seniority, higher scale, annual increments, post retiral benefits etc. Petitioner whose name is at serial No. 1 in select list, shall be treated senior to others in the said select list.

32. Both the writ petitions, details given above, stand allowed.

33. No order as to costs.