

(2011) 08 AHC CK 0230

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27460 of 2010

Dr. Smt. Vibha Jain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2011) 7 ADJ 934

Hon'ble Judges : Vineet Saran, J; Ran Vijai Singh, J

Bench : Division Bench

Advocate : A.N. Pandey and Manoj Nigam, for the Appellant;

Final Decision : Allowed

Judgement

1. Petitioner happens to be Lecturer in English in Kunwar R.C. Mahila Mahavidyalaya, Mainpuri, appointed on honorarium. It is contended by learned counsel for the petitioner that, pursuant to the Government Order dated 7.4.1998, the petitioner was appointed on honorarium basis on 15.12.2006 for the session 2006-2007. This appointment was approved by the Director, Higher Education, Allahabad and the petitioner was also paid salary for that session. However, for the session 2007-2008, the vacancy was again advertised and the petitioner was again appointed on the honorarium basis. The committee of management on 10.9.2007 has sent a letter to the Director of Higher Education for approval to the appointment of the petitioner. But, even after several reminders, no order has been passed by the Director, Higher Education. Hence, this writ petition has been filed with the prayer seeking issuance of writ of mandamus directing respondent No. 2 to grant approval to the appointment of the petitioner and permit the petitioner to continue in the aforesaid institution as Lecturer in English till the regularly selected candidate is made available by the U.P. Higher Education Service Commission on the post in question.

2. On 14.5.2010 this Court had granted time to the learned Standing Counsel either to seek instructions, or to file a counter-affidavit by the next date fixed

and the case was ordered to be listed on 27th May, 2010. It is thereafter, the learned Standing Counsel has filed counter-affidavit in December, 2010, in which, stand has been taken that the Government has imposed a ban vide order dated 12.12.2006 on all the appointments, including the appointment of teachers on honorarium basis in non-aided institutions, and since the petitioner's appointment was made during the ban, therefore, approval cannot be granted to the appointment of the petitioner by the Director, Higher Education.

3. The Government Order dated 12.12.2006 imposing ban on appointments has been brought on record as Annexure "C.A. 1" to the counter-affidavit Relevant portion of the same reads as under:

4. From the perusal of the aforesaid Government Order, it transpires that the ban is applicable to the services under the State Government and not beyond that. The Lecturers working in the private Degree/Post Graduate Colleges, of course, are although getting salary from the State exchequer being working in the aided private institutions, but they cannot be put at par with the employees of the State Government, and for that purpose, it cannot be said that they are State Government employees, therefore, the alleged ban order which has been made basis for not approving the appointment of the petitioner is not applicable on the appointment of teachers in the educational institutions run by the private management, where appointing authority happens to be committee of management of the respective institution.

5. We are of the view that the respondent authorities have erred in applying the ban pursuant to the Government Order dated 12.12.2006 on the appointment of the Lecturers, and it appears the said Government Order has been misread and misunderstood by the Director of Higher Education.

6. The learned Standing Counsel appearing for the State respondents has submitted that inspite of the ban order, by now, the Government Order dated 7.4.1998 on the basis of which petitioner's appointment was made, has been repealed in March, 2011. Therefore, the very basis of the petitioner's appointment has gone, and the petitioner's appointment cannot be approved on the basis of the aforesaid Government Order of 1998.

7. We have heard the learned counsel for the parties and after considering their submissions, we find that it is not in dispute that the petitioner's appointment for the session 2007-2008 was made pursuant to the Government Order dated 7.4.1998, and the respondent authority has not considered the appointment of the petitioner for approval, mainly, on the ground of the ban imposed by the State Government on the appointment of teachers.

8. Had the Government Order dated 12.12.2006 imposing the ban on appointments was not taken into consideration, the respondent authorities ought to have considered the question of approval of the petitioner's appointment. There appears to be no other reason mentioned in the counter-affidavit for not considering the case of the petitioner for approval of his appointment.

The argument of the learned Standing Counsel that the aforesaid Government Order has been repealed, therefore, the approval of the petitioner's appointment cannot be considered at present, appears to be fallacious. It is settled law that whenever any statute is repealed, in the repeal order there happens to be saving clause, mentioning therein that all the acts done pursuant to repealed statute are saved and no adverse effect be inflicted by virtue of repeal.

9. Here, in this case the repeal order has not been brought on record. Therefore, it can be safely presumed that the repeal order must contain the saving clause, saving the action done pursuant to the Government Order dated 7.4.1998. Otherwise also, it is contended by the petitioner's counsel that all the part time Lecturers appointed on the strength of Government Order of 1998 are still working where selected candidates from Commission have not been placed or joined.

10. In this view of the matter, there appears to be no legal hindrance in directing the Director of Higher Education to consider the question of approval pursuant to the appointment made on the strength of Government Order of 1998. In view of foregoing discussions, the writ petition succeeds and is allowed. The respondents are directed to consider the question of approval of petitioner's appointment in accordance with the Government Order applicable on the date of the appointment in question within the period of two months from the date of production of certified copy of this order.