
(1996) 11 AHC CK 0126
In the Allahabad High Court
Case No : C.M.W.P. No. 4639 of 1991

Dr. Sudha Jaiswal

APPELLANT

Vs

Director of Education (Higher Education) and Others

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

State Universities (Amendment) Act, 1975 — Section 60A, 60B, 60C, 60D, 60E
Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12(1), 16, 31C
Uttar Pradesh State Universities Act, 1973 — Section 13, 15, 16(1), 2, 2(18)

Citation : (1996) 11 AHC CK 0126

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : R.G. Padia and Ashok Khare, for the Appellant; Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Whether two Petitioners, namely, Dr. Sudha Jaiswal and Smt Tripti Banerji are entitled to receive salary as Lecturers in a Degree College, known as Rajarshi Tandon Mahila Mahavidyalaya, Allahabad, affiliated to Allahabad University, Allahabad from the Government of U.P.? is the question involved in these writ petitions. The answer to the said question depends on the decision of another question as to whether the Petitioners have been appointed to the sanctioned posts. The facts relevant for resolving the controversy in these writ petitions are given below.

2. By a letter of the Registrar of the Allahabad University (hereinafter referred to as the University) dated 31.3.1975 the decision of the Executive Council of the University, taken at its meeting held on 17.3.1975, granting permission to five colleges including Rajarshi Tandon Mahila Mahavidyalaya (hereinafter referred to as the College) to open under-graduate classes in Arts on certain terms and conditions was communicated. The Academic Council of the University at its meeting held on 20.5.1975 assigned eight subjects including Economics and

Music (Vocal and Instrumental) to the College for undergraduate classes. This resolution of the Academic Council was approved by the Executive Council vide its resolution No. 180 dated 15.7.1975. According to the letter of the Registrar dated 19.9.1975, the State Government approved the allocation of six out of eight subjects only. In 1979 the College advertised the posts of Lecturers in the sanctioned subjects, inviting applications from eligible candidates. Both the Petitioners, who applied pursuant to the said advertisement, were appointed as Lecturers in Economics and Music on ad hoc basis by the Management of the College on 1.8.1981. With effect from 21.8.1981 the U.P. Higher Education Service Commission Act, 1980 (hereinafter referred to as the Commission Act), which prohibits appointment of teachers in a Degree College by the Management of the College except on the recommendation of U.P. Higher Education Service Commission (hereinafter referred to as the Commission) was enforced. The Commission issued an advertisement on 16.10.1983 inviting applications for the posts of Lecturers in the sanctioned subjects in the College, but in view of the Government Orders regarding consideration of the proposal for regularisation of the service of ad hoc teachers, no candidate was selected by the Commission. The Management, therefore, vide letter dated 7.10.1985 appointed the Petitioners as ad hoc Lecturers in Economics and Music for the period upto 30.6.1986 or till the date names of the candidates selected by the Commission are received, whichever is earlier, u/s 16 of the Commission Act, which enables the Management to make ad hoc appointment of teachers if the Commission does not recommend the names of suitable candidates within the specified period. The said appointment letter contains a condition for payment of the salary to the Petitioners only on the approval of their appointment by the Vice-Chancellor and the Government. As the Petitioners were not paid salary of Lecturers by the Government, they filed Writ Petition Nos. 4639 of 1991 and 3304 of 1991 before this Court for writ of mandamus directing the Respondents to pay them salary from month to month as and when it falls due. Prayer for arrears of salary with effect from 1.3.1984 was also made.

3. The Commission Act was amended by U.P. Act No. 2 of 1992, whereby Section 31C was added, which provides for regularisation of ad hoc appointments made after 3.1.1984 but not later than 30.6.1991. The service of the Petitioners was regularised under the said provision, which was communicated to them by the letter dated 20.6.1992. But the Director, Higher Education, U.P. (hereinafter referred to as the Director) vide his letter dated 3.10.1992 refused to pay salary to the Petitioners even after regularisation of their service on the ground that they have been appointed to the posts available under the conditions of affiliation and, therefore, it is the Management's liability to pay them salary, because those posts have not been approved by the departments for payment of salary. The Petitioners, therefore, filed two more Writ Petition Nos. 45780 of 1992 and 1354 of 1993 for writ of mandamus directing the State Government to pay them salary from month to month including the arrears with effect from 20.6.1992 on which date their service was regularised. Prayer for quashing the letter dated

3.10.1992, whereby the Director declined the payment of salary to the Petitioners, has also been made.

4. Parties have exchanged affidavits. We have heard Sri Ashok Khare, learned Counsel for the Petitioners and Sri Rakesh Dwivedi, learned Additional Advocate General for the Respondents.

5. Sri Ashok Khare, learned Counsel for the Petitioners has made three submissions in support of the writ petitions, namely, (i) as a consequences of grant of affiliation, vide letter dated 31.3.1975 of the University to the College with permission to start under-graduate classes in Arts, one post of Lecturer in each sanctioned subject stood automatically sanctioned by the Vice-Chancellor by necessary implications and it was not necessary to seek fresh sanction for creation of the posts of Lecturers in those subjects from the Vice-Chancellor or the Director; (ii) after the enforcement of the Commission Act the approval of the Vice-Chancellor u/s 60A (vi) of the State Universities Act, 1973 (hereinafter referred to as the Universities Act) is not required for making appointment of a Lecturer in the College; and (iii) in any case after the regularisation of the service of the Petitioners u/s 31C of the Commission Act the Petitioners are entitled to the salary from the Government. Sri Rakesh Dwivedi, apart from disputing the aforesaid contentions, has submitted that the posts of Lecturers in the subjects in which the Petitioners have been appointed have never been sanctioned either by the Vice-Chancellor before 1.4.1975 or thereafter by the Director and unless the appointment is made in a sanctioned post the Government is not obliged to pay the salary in view of the provisions contained in Chapter XI-A of the Universities Act.

6. Point Nos. 1 & 2 raised by Sri Khare, are interlinked with each other and are, therefore, being dealt with together.

7. The Registrar vide his letter dated 31.3.1975 informed the College that the Executive Council of the University at its meeting held on 17.3.1975 has resolved to grant permission to the College to open under-graduate classes in Arts on certain terms and conditions, such as, separate building of six rooms of minimum area 20" x 20" equipped with electric fitting, fan and furnitures and separate room for Principal, leonine for the teachers and library with books, in a separate premises with separate outlet on road, sufficient financial provisions for payment of salary of the teachers and staff. Condition No. 5, on which strong reliance has been placed by Sri Khare and also the condition No. 6, which is relied upon by Sri Rakesh Dwivedi are reproduced below:

5. That qualified teaching staff including the Principal is employed in terms of the U.P. State Universities Act, 1972, and Statutes and Ordinances and as desired by the Academic Council of the Allahabad University by July. 1975.

6. That the Finance Officer of the Allahabad University should examine the endorsement and income of your Institution and feel satisfied that separate endorsements have been also made for running the undergraduate classes.

In terms of condition No. 6 you are requested to furnish the necessary papers wherein endorsements and income are entered for the satisfaction of the Finance Officer, so that further necessary steps may be taken in the matter. You are also requested to let us know if your Management is willing to abide by the above terms and conditions so that further necessary action in the matter may be taken. Please treat this as Most urgent.

As per condition No. 6 the Finance Officer of the University was required to inspect and examine the institution, its income and other papers and submit the report regarding the satisfaction of those conditions so as to enable the University to take further necessary steps in the matter. By the same condition the College was also required to let the University know whether its Management is willing to abide by those conditions. It was just a conditional permission to be effective and implemented only after further action in the matter is taken by the University on fulfillment of the conditions. Even the subjects for under-graduate classes were not sanctioned by the University or its Vice-Chancellor till 31.3.1975. It was only by the resolution dated 19.7.1975 that the College was informed for the first time by the University regarding the sanction of the subjects for under-graduate classes. There is nothing on the record to show that the posts of Lecturers in the sanctioned subjects were created with the permission of the Vice-Chancellor till 31.3.1975. Under law a teacher can be appointed to a sanctioned post. The aforesaid condition No. 5 contained in the letter dated 31.3.1975 of the Registrar cannot be taken to mean that appointment can be made even if the posts have not been sanctioned.

8. It was the responsibility of the College Management to pay salary to teachers and employees of the College till the insertion of Chapter XIA, consisting of Sections 60A to 60H in the Universities Act in 1975. Under the said Chapter the Government has taken over the responsibility for payment of the salary to the teachers, who were appointed to the sanctioned posts in those Degree Colleges, which have been affiliated to or recognised by any University and for the time being receiving maintenance grant from it. The Commission Act does not define the word "teacher" but in view of the provisions contained in Section 2 (g) of the definition given in the Universities Act has been adopted. Section 2 (18) of the Universities Act defines "teacher" as under:

2. Definitions.--In this Act, unless the context otherwise requires:

(18) "teacher" means a person employed for imparting instruction or guiding or conducting research in the University or in an Institute or in a constituent, affiliated or associated college and includes a Principal or Director;

However in Section 60A of Chapter XIA of the Universities Act under which the Government has taken over liability for payment of salaries of the teachers of the Degree Colleges, the definition of "teacher" is different. Section 60A (vi), which defines "teacher" is as under:

60A (vi). "Teacher", in relation to a college means a teacher in respect of whose

employment maintenance grant was being paid by the State Government during the financial year 1974-75, or who is employed with the approval of the Vice-Chancellor of the University concerned:

(a) to a post created, before April 1, 1975, with the permission of the Vice-Chancellor concerned; or

(b) to a post created, after March 31, 1975, with the permission of the Director of Education (Higher Education).

For the purpose of enforcing the claim for payment of salary against the State Government definition of the "teacher" given in Section 60A (vi) is relevant. According to the said section a teacher must satisfy two conditions before he can claim salary from the Government, namely, (i) in respect of his employment maintenance grant was paid by the State Government during the financial year 1974-75; or he was appointed to a post created before April 1, 1975 with the permission of the Vice-Chancellor or to a post created after March 31, 1975 with the permission of the Director; and (ii) his appointment was with the approval of the Vice-Chancellor of the University concerned.

9. In the instant case, it is admitted that maintenance grant was not paid by the State Government during the financial year 1974-75. In fact the College was brought on the grant-in-aid list of the State Government vide letter dated 2.2.1985 with effect from March, 1984. Therefore, the Petitioners have to satisfy that they were appointed to posts created with the permission of the Vice-Chancellor or the Director, as the case may be.

10. A post could have been created before April 1, 1975 with the permission of the Vice-Chancellor of the University concerned. But if a post has not been created with the permission of the Vice-Chancellor before April 1, 1975, the permission of the Director is required thereafter for creation of the post. Even if it is presumed that the post of Lecturer can be created by implication, regarding which we express no opinion, such a presumption cannot be drawn till the subjects for teaching in the College are sanctioned. In the instant case the subjects were not sanctioned till 31.3.1975. The Academic Council vide its resolution dated 20.5.1975 assigned eight subjects for under-graduate classes to the College. This resolution of the Academic Council was approved by the Executive Council on 19.7.1975. The State Government, however, approved only six subjects including Economics and Music for the College. Therefore, the subjects came to be sanctioned for the first time only on 19.7.1975. Till then no presumption of creation of posts can be drawn presuming such a presumption is permissible under law. But in view of the provisions of Section 60A (vi) of the Universities Act the Vice-Chancellor does not have any power to sanction the creation of posts after 31.3.1975. Such a power vests in the Director. Therefore, the contention of the learned Counsel for the Petitioners that at least the one post in each sanctioned subject should be deemed to have been sanctioned by the Vice-Chancellor, cannot be accepted.

11. The fact that there was no sanctioned posts of Lecturers in Economics and Music in the College is also clear from the correspondence exchanged between the College Management and the Director. The Manager of the College requested the Director more than once for creation of the posts of Lecturers in Economics and Music after relaxing the requirement of minimum number of students for sanction of such posts. The Director by his letter dated 17.3.1986 informed the College that the relaxation regarding the requirement of minimum number of students for sanction of posts of Lecturers has been granted by the Government only in those cases where the teachers have been appointed in accordance with law with the permission of the competent authority and as the Petitioners' appointments have not been made with the permission of the competent authority, the relaxation cannot be granted. The Manager of the College by his letter dated 3.4.1986 again requested the Director to create the posts of Lecturers in Economics and Music after relaxing the requirement of minimum number of students. In that letter it was further mentioned that as the posts have not been created so far, no appointment has been made but certain persons approved by the Managing Committee of the College are teaching students on payment of conveyance charges only.

12. It is thus, clear that no posts of Lecturers were created in the College with the approval of the Vice-Chancellor upto 31.3.1975. It is also apparent that the Director has also not sanctioned the creation of any such posts after 31.3.1975. Therefore, the Petitioners cannot be treated to be the teachers within the meaning of Section 60A (vi) of the Universities Act. The Government is, therefore, under no obligation to pay them salary even after their appointments on ad hoc basis in 1985. A Division Bench of this Court in *Ashfaq Ahmad v. State of U.P. and Ors.* 1989 (2) UPLBEC 617, has held that the liability of the State Government to pay the salary under Chapter XI-A of the Universities Act is attracted only if the teachers satisfy the conditions laid down in Section 60A (vi). In the instant case the Petitioners do not satisfy those conditions, because they were not appointed to the posts created with the permission of the competent authority.

13. Three decisions, namely, (i) *Udai Bhan Rai v. State of U.P. and Ors.* 1994 (1) UPLBEC 210 (SC); (ii) *Bal Krishna Mathur v. D.I.O.S., Moradabad and Ors.* Writ Petition No. 16961 of 1988, decided on 11.4.1989 and (iii) *Committee of Management, Krishak Inter College, Basti and Anr. v. Director of Education and Ors.* Writ Petition No. 7802 of 1989, decided on 31.1.1991. which have been relied upon by the learned Counsel for the Petitioners, relate to Intermediate colleges, wherein the provisions are different. That apart, these cases are of no help to the Petitioners. In *Udai Bhan Rai v. State of U.P. and Ors.* (supra) Supreme Court held that the order not granting approval in the ground that the post did not exist was based on erroneous premises, because in the counter-affidavit filed by the Deputy Director of Education, it was specifically stated that the post was in existence in July, 1974 when the institution was raised to an Intermediate College. The decision of the learned single Judge in *Committee of*

Management, Krishak Inter College, Basti and Anr. v. Director of Education and Ors. (supra) is also distinguishable, because in that case the learned Judge held that the posts of teachers are already sanctioned and the parties were labouring under some misapprehension. In the case of Bal Krishna Mathur v. D.I.O.S., Moradabad and Ors. (supra) a High School was upgraded to the status of Intermediate College and this Court held that the post of the Principal comes along with the institution and, therefore, the question of creating a fresh post of Principal for the Intermediate College does not arise. The first condition precedent laid down by Section 60A (vi) of the Universities Act, therefore, is not satisfied by the Petitioners.

14. As regards the second condition u/s 60A (vi), it is true that the requirement is that the teacher should be appointed with the approval of the Vice-Chancellor of the concerned University. Chapter XIA, which contains Section 60A was inserted in the Universities Act in 1975. At that time the appointment of teachers in the Degree Colleges used to be made by the Management on the recommendation of the Selection Committee in accordance with Section 31 of the Universities Act. But in view of the provisions of Section 31 (11) of the same Act, no such appointment could have been made without prior approval of the Vice-Chancellor of the University to which the college was affiliated. Therefore, a condition was incorporated in Section 60A (vi) requiring the employment of the teacher with the approval of the Vice-Chancellor. However, in 1980 the Commission Act was enacted prohibiting the Management from making any appointment of teacher except in the recommendation of the Commission. After enforcement of the Commission Act all appointments of teachers in Degree Colleges have to be made under and in accordance with the said Act. This is clear from Section 12(1) of the Commission Act, which is as under:

12. Procedure for appointment of teachers.--(1) Every appointment as a teacher of any college shall be made by the Management in accordance with the provisions of this Act and every appointment made in contravention thereof shall be void.

As per provisions of Section 13 of the Commission Act the Management has to appoint teacher, whose names are intimated by the Director to it from the list of the selected candidates sent by the Commission and if it fails to do so action can be taken against it u/s 15. Section 30 of the Commission Act has given overriding effect to it by laying down that its provision shall have effect notwithstanding anything contained to the contrary in the Universities Act, Statutes or Ordinances framed thereunder. The provision of Section 31 of the Universities Act, so far as, they relate to permanent/substantive appointment of teachers will, therefore, not be applicable. Neither Section 13 nor any other provision of the Commission Act requires approval of the Vice-Chancellor for appointment of the teachers. A Division Bench of this Court in Kumari Madhu Chauhan v. District Inspector of Schools and Ors. 1988 UPLBEC 397, while dealing with the question as to whether approval of the Vice-Chancellor is

required in making ad hoc appointment of the teachers in the college, has held that no such approval is necessary. The relevant extract from the said judgment is reproduced below:

In the above provision there is no mention of the Vice-Chancellor or any other authority mentioned in the U.P. State Universities Act or the Statutes framed thereunder. The power u/s 16 (1) has been given only to the Management. Section 30 of the Act provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in the Uttar Pradesh State Universities Act, 1973 or the Statutes or Ordinances made thereunder. In view of this provision it appears that the Vice-Chancellor does not have any say in the matter of ad hoc appointment covered by Section 16 (1).

Therefore, the approval of the Vice-Chancellor is not required in making appointment of the teachers in the Degree Colleges. Although the Petitioners succeed on the second point; but they have failed on the first point raised on their behalf because they were not appointed to sanction posts. Hence Writ Petition Nos. 4639 of 1991 and 3304 of 1991 have got to be dismissed.

15. The petition, however, becomes different after the regularisation of the service of the Petitioners u/s 31C of the Commission Act. Sub-sections (1) and (2) of Section 31C, being relevant in this connection, are reproduced below:

31C. Regularisation of other ad hoc appointments.--

(1) Any teacher, other than a Principal who:

(a) was appointed on ad hoc basis after January 3, 1984 but not later than June 30, 1991 on a post:

(i) which after its due creation was never filled earlier, or

(ii) which after its due creation was filled earlier and after its falling vacant, permission to fill it was contained from the Director; or

(iii) which came into being in pursuance of the terms of new affiliation or recognition granted to the College and has been continuously serving the college from the date of such ad hoc appointment up to the date of commencement of the Uttar Pradesh Higher Education Service Commission (Amendment) Act, 1992;

(b) was so appointed after three months of the notification to the Commission under Sub-section (1) of Section 16 as it stood before its omission by the Act referred to in Clause (a), or if appointed within such period, no recommendation was made by the Commission within such period;

(c) possessed on the date of such commencement, the qualifications required for regular appointment to the post under the provisions of the relevant statutes in force on the date of such ad hoc appointment;

(d) is not related to any member of the Management or the Principal, of the College concerned in the manner mentioned in the explanation to Section 20 of

the Uttar Pradesh State Universities Act, 1973;

(e) has been found suitable for regular appointment by a Selection Committee constituted under Sub-section (2); may be given substantive appointment by the management of the college, if any substantive vacancy of the same cadre and grade in the same department is available on the date of commencement of the Act referred to in Clause (a).

(2) The Selection Committee consisting, the following members namely:

(i) a member of the Commission nominated by the Government who shall be the Chairman;

(ii) an officer not below the rank of Special Secretary, to be nominated by the Secretary to the Government of Uttar Pradesh in the Higher Education Department;

(iii) the Director;

shall consider the case of every such ad hoc teacher and on being satisfied about his eligibility in view of the provisions of Sub-section (1), and his work and conduct on the basis of his record, recommend the name to the Management of the college for appointment under Sub-section (1).

The Petitioners' case for regularisation were considered by the Selection Committee constituted under Sub-section (2) of Section 31C and they were found suitable by the said Committee for regular appointment on posts, which came into being in terms of the new affiliation granted to the College by the University. Such a post is referred to in Section 31C(1)(a)(iii). Accordingly the Petitioners have been given substantive appointments in Economics and Music by the Management of the College and have been working as such in the College since then.

16. As the Petitioners have now been appointed u/s 31C in substantive vacancies pursuant to the recommendation of the Selection Committee constituted u/s (2) thereof, their appointments are valid. In view of the provisions contained in Section 60E of the Universities Act, which is quoted below, such an appointee should normally be paid salary by the State Government.

60E. Liability in respect of Salary.--(1) The State Government shall be liable for payment of salaries of teachers and employees of every college due in respect of a period after March 31, 1975;

(2) The State Government may recover any amount in respect of which any liability is incurred by it under Sub-section (1) by attachment of the income from the property belonging to or vested in the college as if that amount were arrears of land revenue due from such college.

(3) Nothing in this section shall be deemed to derogate from the liability of the college for any such dues to the teacher or employees.

It is true that u/s 60A (vi) of the Universities Act teacher can be appointed to a post sanctioned by appropriate authority; but the concerned authority has to pass appropriate order after taking into consideration the relevant facts and circumstances.

17. In the instant case the College was granted affiliation/recognition in 1975 by the Allahabad University and was assigned subjects including Economics and Music for under-graduate classes vide resolution dated 19.7.1975. There is no other affiliation or recognition granted to the College. Petitioners have been given substantive appointment on the recommendation of the Selection Committee constituted u/s 31C (2) of the Commission Act of which Director is one of the members. The said Director is the competent authority to sanction a post after 31.3.1975. When he himself is a party to the selection of the Petitioners, we fail to appreciate as to why he has not passed any order so far regarding creation of posts. The Petitioners were appointed in 1980 on ad hoc basis and have been working since then on conveyance charges for want of sanctioned posts. Whenever, a college is granted recognition/affiliation by the University, it is the duty of the Director to pass appropriate order for creation of posts, otherwise the very purpose of the affiliation will be frustrated. Immediately after the grant of affiliation a college may not have the required number of students for sanction of posts. Therefore, in case of a new college it may not always be appropriate and fair to insist on the strength of students for sanctioning the posts of teachers. The Director has to take the practical aspects also into consideration while considering the question of sanction of posts. In any case, the Director vide his letter dated 17.3.1986 has informed the College that relaxation regarding the strength of students for sanction of posts has been granted only in those cases where teachers have been appointed with the permission of the competent authority. Now the Petitioners have been appointed u/s 31C of the Commission Act by the competent authority and the approval of the Vice-Chancellor or any authority in such a case is not required. It is, therefore, the duty of the Director to consider the matter afresh and pass appropriate order regarding the sanction of posts of Lecturers in Economics and Music in the College.

18. For the reasons given above, Writ Petition Nos. 4639 of 1991 and 3304 of 1991 are dismissed. Writ Petition Nos. 45780 of 1992 and 1354 of 1993 are partly allowed. The Director, Higher Education, U.P. is directed to consider afresh the question relating to sanction of posts of Lecturers in Economics and Music in the College and pass appropriate order in connection therewith within a period of two months from the date of presentation of certified copy of this judgment before him. Petitioners will have the liberty to file fresh representations in this connection along with the certified copy of this judgment before the Director, who will pass appropriate order within the time specified above. In view of the facts and circumstances of the case, there shall be no order as to costs.