
(2000) 05 AHC CK 0157
In the Allahabad High Court
Case No : C.M.W.P. No. 18525 of 2000

Dr. Sushil Prakash Gupta

APPELLANT

Vs

Executive Council, University of Allahabad and others

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh State Universities Act, 1973 — Section 2(18), 21, 31, 68

Citation : (2000) 3 AWC 1989 : (2000) AWC 1989 : (2000) 3 UPLBEC 2466

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

Bench : Division Bench

Advocate : V.K. Singh and G.K. Singh, for the Appellant; P. Padia and R.G. Padia, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the Impugned resolution dated 9.3.2000 passed by the Executive Council of Allahabad University vide Annexure-12 to the petition, and the orders dated 10.3.2000 and 11.3.2000 passed by the Registrar vide Annexures-13 and 14 to the writ petition.

2. We have heard Sri R. N. Singh learned counsel for the petitioner and Dr. R. G. Padia learned counsel for the respondents.

3. The petitioner is the Director of the Institute of Correspondence Courses and Continuing Education (hereinafter referred to as the Institute). The University of Allahabad established it after obtaining prior sanction from the University Grants Commission. The University framed Ordinances relating to the Institute which are contained in Chapter XXXV of the University Calendar vide Annexure-1 to the writ petition.

4. It is alleged in paragraph 7 of the writ petition that the Institute was established in the year 1976 and is continuing since then. It is alleged in

paragraph 8 of the petition that the Vice-Chancellor of the University wanted to abolish the Institute to help the establishment of Rajarshi Purushottam Das Tandon Open University. In paragraph 10 of the petition, it is stated that in pursuance of this design the Registrar of the University issued a communication restraining the petitioner from taking admissions in the Institute in B.A. Part-1 and B.Com. Part-I for the session 1999-2000. Aggrieved the petitioner filed a writ petition No. 29309 of 1999 which was dismissed by a learned single Judge by means of judgment dated 5.10.1999 vide Annexure-8 to the petition. Aggrieved the petitioner filed a Special Appeal No. 1170 of 1999 in this Court in which the following Interim order was passed :

"Heard learned counsels for the parties at some length. On the facts and circumstances of the case we pass an interim order that the Director of the Institute can make admissions for the B.A. and B.Com. First year classes in the Correspondence course subject to the supervisory control of the Vice-Chancellor who will ensure that no admissions are done illegally or arbitrarily. However, this order will be subject to the final decision of the Special Appeal. The Director will continue in service till further orders."

5. Ultimately the Special Appeal was disposed of by the judgment dated 9.2.2000 vide Annexure-11 to the petition. By that judgment, the petitioner was permitted to file a representation to the Chancellor u/s 68 of the U. P. State Universities Act. and till disposal of the representation, the interim order was to continue. In paragraph 29 of the petition, it is stated that the petitioner filed a representation before the Chancellor on 29.2.2000 which is still pending. In paragraph 30 of the petition, it is stated that the petitioner made admissions in B.A. and B.Com., Part-I for the Session 1999-2000 in pursuance of the interim order of the Division Bench, and this is alleged to have annoyed the respondents. Hence the petitioner has been suspended by the impugned resolution of the Executive Council dated 9.3.2000 vide Annexure-12 to the petition. By the consequential order of the Registrar dated 11.3.2000, he has been directed to hand over the charge and the keys of the Institute to the Convenor of the Committee which has been constituted to manage the Institute vide Annexure-14 to the petition.

6. In paragraph 34 of the petition, it is alleged that the resolution of the Executive Council shows that the petitioner was suspended because he disobeyed some orders of the Vice-Chancellor. The petitioner has alleged in paragraph 35 of the petition that he did not disobey any such order. In paragraph 36 of the petition, it is stated that it is alleged that the petitioner did not pay salary to the employees of the Institution in time. In paragraph 37 of the petition, it is stated that these averments are false and baseless and the impugned resolution is mala fide.

7. In paragraph 40 of the petition. Statute 16.07 (1) of the First Statute of the University has been quoted which is as follows :

"16.07 (1) The Disciplinary Committee referred to in Statute 8.10 may recommend the suspension of a teacher during the pendency or in contemplation of an enquiry into charges against him, on the grounds mentioned in sub-clauses (a) to (c) of clause (1) of Statute 16.04. The order of suspension if passed in contemplation of an enquiry shall cease at the end of four weeks of its operation unless the teacher has in the meantime been communicated the charge or charges on which the enquiry was contemplated."

8. The Disciplinary Committee is constituted under Statute 8.10 which provides that the Executive Council shall constitute a Disciplinary Committee which shall consist of the Vice-Chancellor and two other persons nominated by it. Sub-clause (c) of the aforesaid Statute provides that the Disciplinary Committee shall recommend the suspension of any employee referred to in sub-clause (b) against whom enquiry is pending or in contemplation. Statute 8.11 (3) lays down that the decision or the report of the Disciplinary Committee shall be laid before the Executive Council as early as possible. Photostat copy of the relevant Statute has been annexed as Annexure-15 to the writ petition.

9. Section 2 (18) of the Act defines teacher to include a Director.

10. It has been alleged in paragraph 48 of the petition that till today, no Disciplinary Committee was constituted by the Executive Council. and this fact has not been disputed in paragraph 63 of the counter-affidavit.

11. In our opinion, no teacher, (which includes a Director) can be suspended without recommendation of the Disciplinary Committee. This is evident from the Statute 16.07 as well as Statute 8.11, which provides that the Disciplinary Committee shall recommend the suspension. It is settled law that when a manner of doing something is prescribed, then that thing must be done only in that manner, vide *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, (vide paragraph 25).

12. Learned counsel for the respondents submitted that since the Executive Council has power under Sections 21 and 31 of the Act to make appointment, such power to appoint includes the power to suspend in view of the General Clauses Act. There is no dispute that it is only the Executive Council which can suspend a teacher which includes a Director vide Section 2 (18). However, the question remains as to the manner in which this power of suspension is to be exercised. Since the Statute provides that suspension can be on recommendation of the Disciplinary Committee, in our opinion, no suspension order can be passed by the Executive Council without a recommendation from the Disciplinary Committee. Hence this point is sufficient to allow this writ petition and we are not going into the other points raised by the learned counsel for the petitioner.

13. Learned counsel for respondents. Dr. Padia, submitted that the power to suspend flows out of the power to appoint under Sections 21 and 31 of the Act, and those provisions in the Act do not have any such restriction that the power to suspend can only be exercised on the recommendation of the Disciplinary

Committee. Hence he submitted that the University Statutes, which are only a piece of delegated legislation, cannot control the power under the parent Legislation. We do not agree. In this connection, reference may be made to the Supreme Court decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, in which (in para 10), the following observation of Mr. Justice Frankfurter of the U.S. Supreme Court has been quoted with approval :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed ... This Judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

14. Since the University Statute has prescribed the manner of exercising the power of suspension. It must be exercised only in that manner.

15. In the counter-affidavit various allegations of fact have been made against the petitioner, but we are not going into the same as we are allowing this petition only on the short ground that there was no recommendation of the Disciplinary Committee. If we accept the argument of the learned counsel for the respondents that the Executive Council can suspend without any recommendation of the Disciplinary Committee then it will give the Executive Council power to pick and choose. Whenever the Executive Council is so Inclined, it may call for the report of the Disciplinary Committee and when it is not so inclined, it may not. This, in our opinion, would lead to discrimination, which is violative of Article 14 of the Constitution. Hence we have to accept the contention that in all cases when a teacher (which Includes a Director) is sought to be suspended, there must be a recommendation of the Disciplinary Committee. Dr. R. G. Padia learned counsel for the University submitted that there might be a very urgent case requiring immediate suspension, and hence in such cases, the requirement to obtain the recommendation of the Disciplinary Committee would create difficulties. In our opinion, even if immediate suspension Is called for, this can be done by immediately constituting a Disciplinary Committee and obtaining Its recommendation. The Disciplinary Committee of course has also to hold the enquiry, which may take a longer time, but there is no reason why it cannot make a quick recommendation to suspend a teacher if the situation so requires.

16. Since the Disciplinary Committee made no recommendation for suspending the petitioner, this petition is allowed. The impugned resolution dated 9.3.2000 of the Executive Council and orders of the Registrar dated 10.3.2000 and 11.3.2000 are quashed.

17. However, since we are allowing this petition only on the technical ground that

the Disciplinary Committee's recommendation was not obtained, it is open to the Executive Council to pass a fresh order after obtaining the recommendation of the Disciplinary Committee.