

(2016) 01 AHC CK 0258

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 48442 of 2013

Dr. Vijendra Kumar Tomar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 35(2)

Citation : (2016) 2 UPLBEC 969

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Faizan Ahmad, S.F.A. Naqvi and Siddharth Khare, Advocates, Irshad Ali, Advocate, for the Appellant; Syed Farman Ahmad Naqvi, C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

M.C. Tripathi, J. (Oral) - The petitioner (Dr. Vijendra Kumar Tomar) in Writ-A No.48442 of 2013 has prayed for direction to the respondents to allow him to work as Principal of Krishak Post Graduate College, Mawana, Meerut (in short "the Institution") pursuant to the direction issued by Hon"ble Supreme Court in Civil Appeal No.4584 of 2013 and further direction to the respondents not to make any appointment pursuant to Advertisement dated 17.08.2013 and 31.08.2013 till the petitioner joins on the post of Principal in the institution.

2. The petitioners (Committee of Management & Anr.) in Writ-A No.415 of 2016 have prayed for quashing the order dated 06.10.2015 passed by respondent no.2 and further prayed for direction to restrain the respondents not to compel the petitioners-Committee of Management to permit joining of respondent no.4 (petitioner in connected Writ Petition No.48442 of 2013) in the college in question.

3. As facts of both the writ petitions are interconnected, they are being decided by this common judgment.

4. Brief facts giving rise to the Writ Petition No.48442 of 2013 are that the petitioner is a regularly appointed Principal of Krishak Post Graduate College, Mawana, Meerut (in short "the institution") and his services had been confirmed on the post of Principal w.e.f. 27.03.2004.

5. Some controversy with regard to placement of various Principals have been raised before the Division Bench of this Court and the Court came to conclusion that the basis of appointment of the petitioner and other similar situated persons was in clear violation of Section 13 of the U.P. Higher Education Service Commissioner Act, 1980 and as such the same was set aside.

6. The said judgment was challenged by the petitioner and other similarly affected persons before Hon"ble the Apex Court and Hon"ble the Apex Court after hearing all the parties and after considering the facts and circumstances as well as laws applicable upon the controversy came to the conclusion that the report of the District Magistrate, which was termed as fact finding report and was made basis of passing of order by the High Court could not have been relied upon by the State Government for directing cancellation of placement of the petitioner and other similarly affected persons in the college in question and consequently all the authorities had acted illegally by terminating services of the petitioners. It was also held by Hon"ble Supreme Court that the record produced before it does not show that the petitioner was directly involved in his placement in the particular college. It was also held that question whether the petitioners' placement in the particular college was contrary to the statute and whether his place was subsequently changed for extraneous consideration could not have been decided without supplying each one of them copy of the enquiry report and without giving any effective opportunity to controvert the finding recorded by the District Magistrate, who has submitted the report. The said report could not have been relied upon and the same amounted to violation of principle of natural justice for not providing adequate opportunity of hearing before passing an order which amounted to civil consequences. Consequently, the judgments of Division Bench of this Court were set aside and the appeals were allowed on 09.05.2013. The operative portion of the judgment of Hon"ble Apex Court dated 09.05.2013 is quoted as under:-

"In the result, the appeals are allowed. The impugned orders are set aside. The termination of the appellants' services is declared illegal and quashed. They shall be deemed to be continuing on the posts of Principals, subject to the following riders:-

(i) If the Management of the particular college has initiated any disciplinary action against any of the appellants for the misconduct committed during the course of service then this order shall not operate as a bar to the taking of final decision in the matter.

(ii) The Director shall be free to relocate or change the placement of the appellants in accordance with the relevant statutory provisions and the order

passed by this Court shall not operate as an impediment in the taking of appropriate action by the Director."

7. In pursuance of the judgment of Hon"ble Apex Court, the petitioner immediately approached the respondent no.4 by moving application along with judgment of Hon"ble Apex Court requesting to allow him to join in the college. But till date in spite of running from pillar to post for seeking joining on the post of Principal in the institution in question, no consideration is being made by the respondents.

8. However, the respondent no.3 vide letter dated 25.06.2013 directed the respondent no.4 i.e. Committee of Management to immediately allow the petitioner to join on the post of Principal pursuant to the direction of Hon"ble Apex Court. But in spite of the said direction, the petitioner is not being given joining by the respondent no.4. Several malafides have also been alleged against the respondent no.4. It is submitted that rest of the respondents instead of directing the respondent no.4 to follow the law and to comply the clear cut direction of Hon"ble Apex Court are sitting tight over the matter and nothing concrete is being done by the respondents.

While entertaining the Writ Petition No.48442 of 2013, the Court had passed the following interim order on 10.09.2013:-

"Learned counsel for the petitioner submitted that despite the direction given by the Hon"ble Supreme Court in Civil Appeal No.4584 of 2013, the respondent no.4 is not permitting the petitioner to work as Principal.

Learned Standing Counsel appears on behalf of respondent nos.1, 2 and 3.

Issue notice to the respondent no.4 returnable at an early date. The petitioner may take steps to serve the respondent no.4 by registered post.

List in the week commencing 07.10.2013. As an interim measure, respondent no.4 is directed to allow the petitioner to work or show cause by the next date fixed."

Thereafter, the Vice Chancellor of Chaudhary Charan Singh University, Meerut (in short "the University") considering the entire spectrum of the matter along with judgment passed by Hon"ble Apex Court and the interim order dated 10.09.2013 passed by this Court in Writ-A No.48442 of 2013 had passed a detailed order on 30.06.2015, the operative portion of which is quoted as below:-

"In the above-mentioned circumstances and facts, I hold the view that the order of the Hon"ble Supreme Court of India, dated 09.05.2013, passed in Special Leave Petition No.16485/2011 as well as interim order of the Hon"ble High Court dated 10.09.2013 passed in Writ Petition No.48442/2013 are still effective in the matter. The Resolution of the Managing Committee dated 12.06.2009 has become void under the provisions of sub-section (2) of Section-35 of the Act."

Therefore, I hereby affirm that the status of Dr. Vijendra Kumar Tomar is that of

the Principal of Krishak (P.G.) college, Mawana (Meerut). However, the Managing Committee of the college has liberty to enquire into the so-called irregularities allegedly committed by Dr. Tomar, if it deems fit.

In compliance of the aforesaid two orders dated 10.09.2013 and 30.06.2015, the order dated 06.10.2015 has been passed by the Director of Education (Higher Education) U.P. Allahabad with following observations:-

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9. The aforesaid order dated 06.10.2015 has been challenged in connected Writ Petition No.415 of 2016 by the Committee of Management on the ground that it had been passed without affording any opportunity to the petitioner i.e. Committee of Management. Against the order dated 30.06.2015 passed by the Vice Chancellor, Chaudhary Charan Singh University, Meerut also, a petition under Section 68 of the U.P. State Universities Act, 1973 had been filed before the Chancellor/Government, wherein notices have been issued and the same is pending consideration. So far as interim order dated 10.09.2013 passed by this Court is concerned, it is submitted that the direction was to allow the Principal to work or show cause by the next date. The petitioner-Committee of Management had replied to the show cause by filing counter affidavit and as such there is no non-compliance of the order of the High Court. The respondent no.4 i.e. Dr. Vijendra Kumar Tomar (petitioner in connected writ petition) had been found involved in fraudulent exercise in obtaining the appointment on the post of Principal of the college as well as in financial irregularities and in this regard he has also been chargesheeted in a criminal case. The respondent no.4 was absent from the college for a long period of time and in between he had attained the age of superannuation on 13.7.2015, as such the impugned order is not sustainable and is liable to be set aside.

10. It is also averred in Writ Petition No.415 of 2016 that the respondent no.4 i.e. Dr. Vijendra Kumar Tomar (petitioner in connected writ petition) was appointed as Principal of Krishak Post Graduate College, Mawana District Meerut in the year 2003. The working of the respondent no.4 was wholly unsatisfactory and there existed serious allegations of misconduct against him. On the basis of aforesaid allegation, the Committee of Management placed the respondent no.4 under suspension and initiated departmental proceedings against him. Despite requisite notice the respondent no.4 did not participate in the enquiry proceedings. The enquiry committee submitted an enquiry report dated 26.04.2009 holding the respondent no.4 guilty of the several allegations against him. The said enquiry report was considered in a meeting of the Committee of Management held on 12.06.2009 in which a decision was taken for dismissing the respondent no.4 from service. Based upon the aforesaid decision a notice dated 13.06.2009 was issued to respondent no.4. All the papers pertaining to the aforesaid proceedings were forwarded to the Vice Chancellor of the Chaudhary Charan Singh University, Meerut for approval envisaged under Section 35 (2) of the U.P. State Universities Act, 1973.

11. While the papers were so pending, the respondent no.4-Dr. Vijendra Kumar Tomar had filed a writ petition being Writ Petition No.5835 of 2009 for non-payment of his salary since March, 2008. The writ petition so filed was finally disposed of on 30.04.2009 by a Division Bench with direction to Dr. Vijendra Kumar Tomar to file representation to be considered and decided by the Director

of Education (Higher Education). In pursuance to the aforesaid order the Director of Education (Higher Education) examined the representation of Dr. Vijendra Kumar Tomar and rejected the same vide order dated 26.11.2009. The order dated 26.11.2009 had attained finality and the same has not been challenged by Dr. Vijendra Kumar Tomar in any proceedings whatsoever.

12. During the pendency of the aforesaid proceedings, Writ Petition No.59399 of 2005 (Dr. Vijendra Kumar Tomar v. State of U.P. & Ors.) was filed against an order of the State Government dated 29.07.2005 and the order of the Director of Education (Higher Education) dated 06.08.2005, whereby the Committee of Management was directed to cancel the appointment of Dr. Vijendra Kumar Tomar on account of cancellation of the placement order dated 24.03.2003, where Dr. Vijendra Kumar Tomar had been recommended for appointment as Principal of Krishak Degree College, Mawana, Distt. Meerut. The said writ petition was dismissed vide order dated 20.05.2011. The said order has been challenged before the Hon''ble Apex Court being Civil Appeal No.4586 of 2013, which was allowed on 09.05.2013, the reference of which has been mentioned in the preceding paragraphs.

13. The contention of the Committee of Management is that while passing the judgment dated 09.05.2013 Hon''ble Supreme Court took care to specify that if the management of any particular college has initiated disciplinary action against any of the appellant for misconduct committed during the course of service, then the order dated 09.05.2013 would not operate as a bar in final decision being taken in the matter.

14. It is submitted that Dr. Vijendra Kumar Tomar has succeeded in obtaining an order of the Regional Higher Education Officer, Meerut dated 25.06.2013 in the absence of full facts before the Regional Higher Education Officer. However, the said order dated 25.06.2013 stands superseded by the subsequent order of Regional Higher Education Officer, Meerut dated 19.08.2013.

15. The question of grant of approval was decided by the Vice Chancellor, C.C.S. University, Meerut vide order dated 30.06.2015 and the proposal of the termination was disapproved. The Committee of Management filed reference under Section 68 of the U.P. State Universities Act, 1973 before the Chancellor/ Governor Uttar Pradesh, Lucknow challenging the order of the Vice Chancellor dated 30.06.2015, which is pending consideration.

16. Heard rival submissions and perused the record.

17. After perusal of the record, it is apparent that the petitioner's appointment has been upheld by the Hon''ble Apex Court after hearing all the parties and after considering the facts and circumstances as well as laws applicable upon the controversy. It was also held by Hon''ble the Apex Court that the record produced before it does not show that the petitioner was directly involved in his placement in the particular college.

18. The Committee of Management had initiated departmental proceedings against Dr. Vijendra Kumar Tomar on serious allegations of misconduct and on the basis of enquiry report dated 26.04.2009 held Dr. Vijendra Kumar Tomar guilty of the several allegations against him. On the basis of the said enquiry report dated 26.04.2009 the Committee of Management in its meeting held on 12.06.2009 had decided to dismiss Dr. Vijendra Kumar Tomar from service and the papers were forwarded to the Vice Chancellor of Chaudhary Charan Singh University, Meerut for approval. The question of grant of approval was decided by the Vice Chancellor and he had rejected the same vide order dated 30.06.2015 and the proposal of the termination was disapproved. Once the proposal of the termination was not accepted by the Vice Chancellor, then the termination order of Dr. Vijendra Kumar Tomar dated 12.06.2009 stands annulled.

19. As per the order dated 30.06.2015 passed by the Vice Chancellor of the University, this much is reflected that the Secretary, Managing Committee of the institution had proceeded to dismiss the services of Dr. Tomar as Principal of the college in pursuance to the Resolution No.4 dated 12.06.2009. This is also reflected from the record in question that the Managing Committee of the college kept on suspending the services of the Principal again and again, for example they suspended him in 2006, 2007 and 2008 and all the suspension orders were stayed by the then Vice Chancellor of the University. The Vice Chancellor of the University while passing the impugned order has taken note that the order of dismissal of Dr. Tomar as Principal of the college is passed without following the relevant provisions of the U.P. State Universities Act, 1973 (in short "the Act of 1973"). Sub-Section (2) of Section 35 of the Act of 1973, which is applicable in the present matter, reads as under:-

"Every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall, before it is communicated to him, be reported to the Vice-Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor."

20. As per Sub-section (2) of Section 18 of the Act of 1973, the Principal is also teacher, therefore, the aforesaid provision would also be applicable in case of the Principal.

21. Even while filing the writ petition, the Committee has not brought on record to indicate or to controvert that at any point of time any request had been made from the Vice Chancellor to accord approval but on the contrary while passing the order the Vice Chancellor of the University has specifically stated that the Managing Committee had not submitted any documents/papers pertaining to the resolution of Managing Committee dated 12.06.2009, enquiry report, notices issued to Dr. Tomar for seeking approval of the Vice Chancellor under Section 35 (2) of the Act.

22. The Director of Higher Education, U.P. vide his letter dated 06.08.2005 had informed to the Management of the College that the appointment of Dr. Tomar

was in violation to the provisions of Section 13 of the U.P. Higher Education Service Commission Act (in short "the Act") and his services should be dispensed with immediately. Aggrieved with the said order, Dr. Tomar had proceeded to challenge the same by means of Writ Petition No.59399 of 2005 and this Court vide order dated 06.07.2005 had passed an interim order in favour of Dr. Tomar. Finally the writ petition was dismissed vide order dated 20.05.2011. Thereafter, Dr. Tomar had filed Special Leave Petition No.16485 of 2011 before Hon"ble the Apex Court, which was allowed vide order dated 09.05.2013. This much is also reflected that in compliance of the order passed by Hon"ble Apex Court, the Director, Higher Education, U.P. vide letter dated 08.07.2013 had made direction to the Managing Committee in favour of Dr. Tomar, the relevant portion of which is reproduced as under:-

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23. It appears from the record that in spite of the order passed by Hon"ble the Apex Court dated 9.5.2013, the Managing Committee of the institution did not comply the order passed by Hon"ble Apex Court dated 09.05.2013 as well as the order passed by the Director dated 08.07.2013.

24. Consequently, again Dr. Tomar was compelled to approach this Court by means of Writ Petition No.48442 of 2013 and the Division Bench vide order dated 10.09.2013 had proceeded to pass the interim order directing the respondent no.4 i.e. Committee of Management to allow Dr. Tomar to work or show cause by the next date fixed.

25. Once the resolution of the Managing Committee dated 12.06.2009 was passed in the teeth of provisions of Section 35 (2) of the Act and vide order dated 30.06.2015 the said resolution was disapproved by the Vice Chancellor, though the Committee has proceeded to challenge the order passed by the Vice Chancellor under Section 68 of the Act of 1973 before the Chancellor, where the notices had been issued, the same has no bearing in the matter. Once Hon"ble the Apex Court has set aside the order passed by the Division Bench and held that the appointment of Dr. Vijendra Kumar Tomar as a Principal of the institution was valid, then so far as the appointment of Dr. Vijendra Kumar Tomar is concerned, the same has attained finality.

26. Once the resolution dated 12.06.2009 regarding dismissal of Dr. Tomar passed by the Managing Committee in violation to the provisions contained in Section 35 (2) of the Act of 1973 and the same has been disapproved by the Vice Chancellor vide order dated 30.06.2015, this Court is of the view that the appointment of Dr. Vijendra Kumar Tomar as Principal of the institution is a valid appointment and as such he is entitled for all consequential benefits as Principal of the institution. No doubt this has been brought on record that he has already attained the age of superannuation on 13.07.2015, therefore, at this stage, he

cannot be reinstated as Principal of the institution. However, he would be entitled for all consequential benefits since his appointment and till the age of his superannuation.

27. A Division Bench of this Court in the case of Sri. Pradeep Kumar Mukherjee v. The Managing Committee, Sant Vinoba Degree College, Deoria & Ors., 1984 UPLBEC 183 observed that Section 35 (2) and Section 35 (3) of the University Act read with Statute 17.04 provides security of service to the Teachers and Principals and is meant to frustrate the acts of unscrupulous management to manipulate the letter of resignation of inconvenient Teachers and Principals and to terminate their services by surreptitiously accepting the same without obtaining the approval of the Vice-Chancellor of the University. The Court also observed that the question whether the resignation had been submitted under coercion or duress or whether it had been withdrawn before its acceptance, is a question of fact which can adequately be dealt with by the Vice-Chancellor of the University when the matter is put before him for approval. It was clearly observed that it is the Vice-Chancellor of the University, who is the competent authority to examine the factual disputes. In this view of the matter, we are of the opinion that the Vice Chancellor of the University was the competent authority who could have decided the factual disputes raised by the petitioner. We reproduce the relevant portion of the judgment :-

"The purpose and object of Section 35(2) and (3) is to have effective control over the management of associated colleges and it would be appropriate to construe sub-section (3) in a manner to advance the legislative intent in order to give full effect to the legislative provision. The construction that we have placed on Section 35(3) read with statute 17.04 would ensure security of service of teacher and it would not do any violence to the legislative intent and it would defeat the legislative intent and it would provide opportunity to unscrupulous management to manipulate letter of resignation of inconvenient teachers and to terminate their service by surreptitiously accepting the same without obtaining approval of the Vice-Chancellor. In such a situation the legislative intent would be frustrated, but if the Vice-Chancellor has power to look into take matter while considering the question of genuineness of resignation of a teacher while considering the question of approval no injustice would likely be done. We are, therefore, of the opinion that the construction placed by us would be in public interest. It is admitted between the parties that the management in the instant case did not refer its proposal to accept the petitioner's resignation to the Vice-Chancellor for his approval, instead after accepting the resignation it has prevented the petitioner from continuing in service on the assumption that his service contract stood terminated. In the view taken by us the management's decision to accept the petitioner's resignation amounts to termination of the petitioner's service contract and as such it was obligatory on the management to have obtained approval of the Vice-Chancellor. Since no approval was obtained the management's order accepting the resignation cannot take effect and the petitioner has a right to continue in service till it is dispensed with in accordance

with law."

28. The petitioner (Dr. Tomar) in the present case is on better footing than the petitioner in the aforesaid case as in the aforesaid case the petitioner himself is said to have submitted his resignation. But in the present case the petitioner was dismissed from service without approval of the Vice Chancellor, which is apparently against the provisions of Section 35 (2) of the Act of 1973. As per the language of Section 35 (2) the decision in this regard cannot even be communicated to the petitioner without prior approval of the Vice Chancellor, but in the present case the same has not only been communicated but even implemented by the Committee of Management of the institution without approval.

29. It is very unfortunate that the Committee of Management, in spite of clear cut directions of Hon"ble Supreme Court; the order of the Vice Chancellor of the University disapproving the termination dated 30.06.2015; the order dated 06.10.2015 passed by the Director of Education (Higher Education) U.P., Allahabad, has not given joining to the petitioner and he was compelled to attain the age of superannuation. The Committee of Management was adopting one or other tactics not to appoint the petitioner on the post of Principal in the college in question. Once the resolution of the Committee of Management dismissing the services of Dr. Tomar was not approved by the Vice Chancellor under Section 35 (2) of the Act of 1973, the same has become nullity and would have no bearing in the eyes of law.

30. In view of above, the Writ Petition No.48442 of 2013 is allowed and the Writ Petition No.415 of 2016 is dismissed. The respondents are directed to accord all consequential benefits to Dr. Vijendra Kumar Tomar since his appointment till the age of his superannuation. So far as the prayer for direction to the respondents not to make any appointment pursuant to Advertisement dated 17.08.2013 and 31.08.2013 till the petitioner joins on the post of Principal in the institution is concerned, the same has become infructuous as the petitioner has retired.