

(2011) 01 AHC CK 0274

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24627 of 2009

Dr. Vinay Kumar Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226
National Council for Teacher Education Act, 1993 — Section 14, 15
Universities Act, 1973 — Section 68, 8(1), 8(4)

Citation : (2011) 2 ADJ 838

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Sunil Ambwani and Jayashree Tiwari, JJ.

1 We have heard Shri Shailendra, learned Counsel for the Petitioner. Learned Standing Counsel appears for the State Respondents. Shri B.D. Mandhyan, Sr. Advocate assisted by Shri Satish Mandhyan appears for the University.

2 The Petitioner is serving as Professor in the Department of Commerce, Deen Dayal Upadhyay, Gorakhpur University, Gorakhpur. He was appointed as Coordinator of B. Ed. Examination by the University for the period upto 17.5.2008. By this writ petition he has prayed for directions to set aside the exparte enquiry report dated 12.12.2007 and suspension order dated 26.4.2009. He has also prayed for a writ of mandamus directing the Respondents to complete the enquiry u/s 8(1) of the U.P. State Universities Act, 1973, and to proceed for enquiry u/s 8(4) only, if anything is found against him. He has also made prayer to direct the Respondents to verify whether any complaint in the form of affidavit exists and whether any prima facie case exists with regard to irregularities in B. Ed. examination.

3 The writ petition was filed on 8th May, 2009. The matter was heard and was

directed to be put up for further arguments on 30.6.2009 and was adjourned on 3.7.2009. In the meantime, the Executive Council by its recommendations dated 28.6.2009 communicated to the Petitioner by order dated 30.6.2009, decided to dismiss the Petitioner from service. The Vice Chancellor by his order dated 30.6.2009 has dismissed the Petitioner from service.

4 The Petitioner filed an amendment application on 8.7.2009 challenging the order of the Executive Council dismissing him from service and the order of the Vice Chancellor of the University. The amendment application was allowed on 8.10.2009.

5 Shri B.D. Mandhyan has raised objections to the amendment application on various grounds, including the alternative remedy available to the Petitioner against the order of the Vice Chancellor dismissing the Petitioner from service, by making a representation to the Chancellor u/s 68 of the U.P. State Universities Act, 1973.

6. Shri Shailendra, learned Counsel for the Petitioner submits that the impugned order was passed, when the Petitioner was working on the post of Professor in the Department of Commerce. He had initially challenged the disciplinary proceedings initiated against him on an exparte fact finding enquiry and on which he was suspended on 26.4.2009. A first information report was lodged against him on 24.5.2009 and charge sheet was filed on 22.4.2009 by relying upon same preliminary enquiry report. After exchange of affidavits in the writ petition challenging the suspension order, the Court had fixed 30.6.2009 for further hearing. Shri Shailendra submits that taking advantage of the vacations of the Court the Acting Vice Chancellor (the Commissioner of the Division) completed all the proceedings within three or four days, as claimed. The disciplinary enquiry proceeded exparte on 26.6.2009, and on which an exparte report dated 27.6.2009 was submitted. The meeting of the Executive Council was convened on 28.6.2009 in which six new members inducted on 27.6.2009, participated. The agenda of the meeting was not circulated and on the same day on 28.6.2009 the Executive Council considered the report of the Disciplinary Committee, to remove the Petitioner, and passed a resolution to dismiss the Petitioner. The Vice Chancellor passed the order of dismissal on the third day on 30.6.2009.

7. The Petitioner was the Coordinator of B. Ed. Examination. A complaint was made by one Shri Durga Prasad, the Ex-President, Bahujan Samaj Party, Gorakhpur in respect of large scale irregularities of the conduct of the B. Ed. Examination in the affiliated colleges. The Petitioner had worked as Coordinator, a post on which he was appointed, on temporary arrangement upto 17.5.2008. It was alleged in the complaint addressed to the Chief Minister that in respect of admissions of B. Ed. course of the years 2005-06 and 2006-07 the High Court has given an eye opening judgment. The Examination Controller had got all the answer books of the B. Ed. Examination of the colleges running self-finance course, from only two examiners and in which they had taken Rs. 25-30 lacs for giving good marks to the students. 81% students passed in First Class, whereas

the students of self-finance courses are not as meritorious, as the students of the University and aided colleges, admitted on merit. The then Vice Chancellor and the Examination Controller earned crores of rupees in the examinations in which the University has given overdraft of Rs. 6 crores. In the scrutiny of marks the Examination Controller, with the Coordinator in the year 2005-06 increased the marks of 1500 students and at some place 6 marks given to the students, were made 66. The students were required to shelve out Rs. 10,000/-each for increase of marks and in this manner they earned lacs of rupees. They had, thereafter, got the answer books burnt, whereas the answer books with increased marks in scrutiny are preserved for atleast two years. In the year 2006-07 the racket reached to its zenith in which the number of marks of 4000 students were increased by accepting money.

8. The examinations were subjected to judicial scrutiny of the Court. In Writ Petition No. 14587 of 2007, Pradeep Kumar Tripathi v. State of U.P. and Ors. Hon"ble Mr. Justice Arun Tandon by his judgment dated 23.5.2007 passed a detailed order as follows:

The facts of the present case depicts that a mockery has been made of the statutory provisions applicable by the Vice Chancellor, Controller of the Examinations as well as by the institutions while granting admissions to the students much in excess of the permissible intake permitted under the order of recognition issued by the National Council for Teacher Education in accordance with the provisions of the National Council for Teacher Education Act, 1993 as well as in the appearance in the University examinations and qua declaration of their results.

From Annexure-2 of the affidavit filed by the Vice Chancellor of the University it is admitted that six degree colleges affiliated to the said University, which had the recognition for an intake of 100 students only from National Council for Teacher Education, had granted admissions to the students in the B. Ed. Course much in excess of the permitted intake. The document records that Vidyarthi Degree College, Kushinagar has admitted 159 students, Veer Bahadur Singh Mahavidyalaya, Gorakhpur has admitted 149 students, Prabha Devi Mahavidyalaya, Sant Kabirnagar has admitted 217 students, Chaudhary Mahavir Prasad Memorial Mahavidyalaya, Siddharthnagar has admitted 277 students, Kisan Mahavidyalaya, Kushinagar has admitted 107 students and Sant Andrews College, Gorakhpur has admitted 146 students (while stand of the college is that it has admitted 126 students).

Various interim orders have been obtained from this Court where under the students admitted in the course were permitted to appear in the examinations to be conducted by the Gorakhpur University on writ petition filed by the management of the institutions.

It is admitted to the counsel for the University that out of number of students, who had appeared as regular students in the B. Ed. Course from the aforesaid

colleges, result of 100 students each have been declared in respect of Vidyarthi Degree College, Veer Bahadur Singh Mahavidyalaya, Gorakhpur and Kisan Mahavidyalaya, Kushinagar, while in respect of Prabha Devi Degree College result of 144 students has been declared. While in respect of Sant Andrews College, Gorakhpur it has been stated that result of 126 students has been declared. Qua Chaudhary Mahavir Prasad Memorial Degree College it is stated that result of 102 students have been declared (100 regular and 2 Ex-students).

There is also a dispute with regard to number of candidates whose result have been declared in respect of Veer Bahadur Singh Purvanchal University, Jaunpur which according to the counsel for the Petitioner is 101 in place of 100 as stated by the Vice Chancellor.

Following issues arise for consideration before this Court.

(a) Whether any college having been permitted an intake of 100 students by National Council for Teacher Education can admit students beyond the intake permitted.

(b) Whether the University in the facts of the case had colluded with the institutions in violating the law with impunity by creating a situation where under the institutions have admitted the students much in excess of their sanctioned strength.

(c) Whether the University is legally competent to hold examinations of students admitted in various institutions in excess of the sanctioned strength.

(d) How the students admitted in excess of the sanctioned strength are to be compensated for the fraud which has been played by the University and the colleges.

(e) What action is required to be taken by the State Authorities against the officers of the University as well against the management of the institutions, who have created such a mistake.

So far as the first issue is concerned, the National Council for Teacher Education Act, 1993 has been framed for regulating and monitoring the teachers education through out the country. It is an Act of Parliament. The Hon"ble Supreme Court of India in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, has clarified that the law of the Parliament is all persuasive and any State Act contrary will have to give way to the said Act of Parliament.

It is not in dispute that the National Council for Teacher Education not only grants recognition to the institutions, it also lays down the maximum number of intake of students to which a particular institution is entitled.

It is not in dispute that under the letters of recognition granted by the National Council for Teacher Education in favour of these institutions it is specifically mentioned that an intake of 100 students would be permissible. It is on this

letter of recognition that the University, which is the examining body, has to grant affiliation to the degree colleges within its jurisdiction. Reference Section 14 read with Section 15 of the National Council for Teacher Education Act, 1993.

From the aforesaid statutory provisions only one logical consequence follows i. e. no excess student beyond the permitted intake can be admitted by any college recognized by the National Council for Teacher Education. Admission beyond the permitted intake would be void and such students cannot appear in the University examinations nor their results can be declared.

It is, therefore, held that in no case the colleges could have admitted students in excess of the permitted intake of 100 and therefore the college as well as the University, which has permitted such excess intake, are equally to be blamed.

So far as the students, who have been admitted in excess of the strength permitted by the National Council for Teacher Education are concerned, they have no legal authority to appear in any University examinations in respect of the said course. Their admissions are void abinitio, inasmuch as the institutions do not have the permission to admit any student beyond the permitted intake of 100. The Hon"ble Supreme Court in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, and in the case of Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others, has clarified that any sympathy shown to such students, admitted illegally, would be totally misplaced as would result in adversely affecting the entire academic of the University as well as the rules laid down for regulating the same.

In these circumstances this Court can have no sympathy with the students, who have been illegally admitted in excess of the sanctioned strength of 100.

This Court holds that such students, who have appeared in the University examination beyond the sanctioned strength of 100, are not entitled to any relief under Article 226 of the Constitution of India nor their result in respect of the said examination are required to be declared.

This Court may further record that the declaration of the result by the University of students in excess of the permitted intake qua Sant Andrews Degree College, Chaudhary Mahavir Prasad Memorial Degree College and Prabha Devi Degree College and any other institution would also be a nullity and the University shall take all appropriate action to cancel the result of the students so declared passed, after affording opportunity of hearing to them, preferably within four weeks from today.

The last two issues, which remain for consideration, are as to how students, who have been so arbitrarily admitted by the institutions in collusion with the University should be compensated for the loss of their academic session and as to what action should be taken against the University as well as management in respect of the fraud which they had played with the career of the students while directing admission beyond the permitted intake and while holding examination

of such students.

In the opinion of the Court so far as these students are concerned, it would be fair to direct that the institutions shall refund the total fee realized from the students so admitted beyond the sanctioned strength along with interest at the rate of 10% per annum from the date the fee was realized till the date of actual payment. Such refund of the fee must be made within one month from today to the students concerned through bank draft drawn from a nationalized bank.

Over and above the same students shall also be entitled for a some of Rs. 25,000/-(Twenty Five Thousand) each for the loss of one academic year because of such illegal act of the college as well as University. 50% of this amount shall be paid by the University and the other 50% by the college concerned from their own sources within one month through Account Payee Cheque drawn in favour of the students concerned.

So far as the management of the institution and the officers of the University including the Vice Chancellor, the Registrar as well as controller of Examination are concerned, let records of the writ petition along with the order passed to day be placed before the Secretary, Higher Education U.P. Lucknow. The Secretary shall conduct a detail enquiry into the entire episode. The Secretary will ensure that all disciplinary action necessary in the facts of the case is taken and if there are other facts, which may result in criminal liability, suitable action in that regard may also be initiated in that regard. The Secretary shall recommend appropriate action against all found responsible to the authority concerned, competent to take the action.

9. The special appeal No. 530 of 2007 against the order was disposed of on 4.12.2010. The Division Bench did not interfere with the judgment and only gave directions to hear and decide the matter expeditiously. In pursuance to the order of learned Single Judge dated 23.5.2007 the University had to pay Rs. 47 lacs as compensation to the students. The bank drafts were deposited by the University.

10. The Executive Council by its resolution dated 17.5.2008 constituted disciplinary committee of Mr. Justice Giridhar Malviya; Mr. Justice A.L.B. Srivastava and the Acting Vice Chancellor. A High Power Committee was also constituted with five members to fix the criminal liability. It is alleged that the Petitioner requested to the Registrar to provide documents on the basis of which the enquiries were initiated. His requests did not result into giving him the documents on the basis of which first information report was lodged against the Petitioner, Professor Ajay Kumar Srivastava, the Examination Controller as well as Shri Satrugan Singh, the Asstt. Registrar. A charge sheet was filed on 22.4.2009. A Writ Petition No. 46007 of 2008 was disposed of with the directions that the departmental enquiry be proceeded in accordance with law before passing any order contrary to the interest of the Petitioner. The Executive Council by its decision dated 26.4.2009 suspended the Petitioner. The suspension order was challenged in this writ petition.

11. The disciplinary committee was reconstituted by the Acting Vice Chancellor as its Chairman with Shri Vikas Verma, IAS, and Hon'ble Mr. Justice K.D. Sahi (retired) as its members. It is alleged that the Petitioner was neither given the documents nor permission to inspect them. He was not allowed to cross-examine all the witnesses. He could cross-examine only three witnesses. This writ petition against the suspension order was fixed for hearing on 30.6.2009, and in the meantime the disciplinary committee submitted report on 27.6.2009 on which the resolution was passed by the Executive Council on 28.6.2009 accepting the ex parte report and the Petitioner was dismissed by the order of the Vice Chancellor dated 30.6.2009.

12. Shri Shailendra submits that the entire enquiry was held in contravention to the Rules for holding departmental enquiry. He has alleged malafides against the acting Vice Chancellor and has raised number of grounds including the violation of principle of natural justice.

13. Shri B.D. Mandhyan, Sr. Advocate on the other hand submits that large scale fraud was detected by the Court in which University deposited Rs. 47 lacs as compensation to the students. The Examination Controller was given the charge to conduct examinations. A large number of students (81%) were given First Class marks for which money was taken for awarding higher marks in scrutiny and the copies were destroyed. The Petitioner was not cooperating in the enquiry. He submits that the Petitioner was suspended and enquiry was held. The Petitioner had participated in the enquiry. He filed reply to the charge sheet, and cross-examined three witnesses. His defence was considered in the enquiry by the disciplinary committee including a retired judge of this Court. The Executive Council considering the gravity of the matter decided to dismiss the Petitioner. The Vice Chancellor has passed a detailed reasoned order. The Petitioner, therefore, should avail the remedy of approaching the Chancellor u/s 68 of the U.P. State Universities Act, 1973 before availing the extraordinary remedies of writ jurisdiction.

14. In the present case the admitted facts are that large scale irregularities were detected by the Court in which admissions beyond permissible strength were made and that a large number of students were given first class marks purportedly to secure employment on the basis of quality point marks in B. Ed. Examination. The answer books were subjected to scrutiny, in which the marks were further enhanced. The answer books were quickly destroyed. Prima facie we find that the University proceeded cautiously in first making preliminary enquiry on the complaint and thereafter in constituting a High Level Committee. The Disciplinary Committee including an IAS Officer and retired Judge of this Court gave opportunity to the Petitioner to defend himself. He gave reply to the charges and cross-examined some of the witnesses. The enquiry report was submitted and considered by the Executive Committee. The Petitioner was dismissed from service on the recommendations of the Executive Council, by the Vice Chancellor.

15. Article 226 is not intended, as it was held in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, to circumvent statutory procedures. Where statutory remedies are available or statutory tribunals have been set up, the High Court does not entertain a writ petition. It was held that there are well-known exceptions to entertain petitions under Article 226 of Constitution of India directly without exhausting alternative remedies, namely where the very vires of the statute is in question; or where private or public wrongs are so inextricably mixed up and the prevention of public injuries and the violation of public justice require with recourse may be had to Article 226. *Modern Steel Industries vs. State of U.P.*, (2001) 10 SCC 491 or where the alternative remedy is not effective or adequate.

16. The Courts in India have also developed a principle that an alternative remedy is not an absolute bar to the relief under Article 226. There may be circumstances such as the authority, passing the orders sought to be quashed, had no powers and that the orders are wholly without jurisdiction and where there has been gross violation of principle of natural justice in making an order which affects the civil rights of the parties. The other well-known exceptions are where alternative remedy is too dilatory or difficult for quick relief. *Assistant Collector of Central Excise Vs. Jainson Hosiery Industries*, where any mandatory provision of Constitution has been violated such as Article 265 *Matiullah Sheikh Vs. The State of West Bengal*, where the Act which provides alternative remedy is itself unconstitutional or ultra vires for want of legislative competence *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, where the order is nullity for some defect going to the root of the jurisdiction of the authority *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, where the authority imposing an ultra vires condition (*Tilok Moti Chand v. H.B. Munshi* AIR 1970 SC 894) or where the alternative forum is not competent to grant the relief *Deccan Merchants Co-operative Bank Ltd. Vs. Dalchand Jugraj Jain and Others*, or even in a case where it is likely that the alternative forum would not be in a position to render justice to the cause *T.K. Rangarajan Vs. Government of Tamil Nadu and Others*,

17. In each case the High Court has to satisfy itself before entertaining the writ petition, whether in a given case if any alternative remedy exists, it is equally efficient and adequate. The Petitioner must satisfy the Court that the case on its facts falls within any of the exceptions detailed as above to grant relief. In the present case, we do not find that the Petitioner has been able to make out any exception to circumvent the alternative remedy, which is efficacious and speedy.

18. In the above circumstances, it cannot be said that the order was not passed by the competent authority, or that the principle of natural justice were violated. Further at this stage we are not satisfied from the averments and material produced on record that the order has been passed in mala fide exercise of powers.

19. For the aforesaid reasons, we relegate the Petitioner to the statutory

remedies of filing representation before the Chancellor u/s 68 of the U.P. State Universities Act, 1973. If such a representation is filed, the Chancellor may consider the same on merits and decide the representation as expeditiously as possible. We make it clear that we have not examined the merits of the charges. The discussion of facts in the judgment is only to find out whether any case of interference, without exhausting alternative remedies has been made out.

20. The writ petition is disposed of accordingly.