
(2011) 04 AHC CK 0037

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3575 of 2011

Dr. Vinay Shankar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Uttar Pradesh State Universities Act, 1973 — Section 31, 31(5), 31(8), 66, 68

Citation : (2011) 5 ADJ 545 : (2011) 4 AWC 4168

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri R.N. Singh, Senior Advocate assisted by Shri G.K. Singh for the Petitioner. Learned Standing Counsel appears for the State Respondents. Shri Neeraj Tripathi appears for Chancellor, Mahatma Gandhi Kashi Vidyapeeth, Varanasi. Shri Ajit Kumar Singh appears for the University.

2. All the Petitioners are working as Readers in the Commerce Department, Mahatma Gandhi Kashi Vidyapeeth, Varanasi. By this writ petition they have prayed for setting aside the order dated 23/28th December, 2010 passed by the Chancellor, Mahatma Gandhi Kashi Vidyapeeth, Varanasi, in so far as it relates to the Petitioners and by which he has accepted the disagreement of the Executive Council of the University to the selections of the Petitioners as Professors under the Career Advancement Scheme (in short CAS). The Executive Council found that the selection committee did not meet for consideration of promotion of the Petitioners under the CAS, nor a request was made to nominate the subject experts from the panel of experts by the then Vice Chancellor from the Chancellor. The Vice Chancellor unauthorisedly used the panel sent for promotion of Dr. Kripa Shankar Jaiswal for considering the promotions of the Petitioners under the CAS.

3. The Chancellor has by the impugned order dated 23/28.12.2010, accepted the

disagreement and has cancelled the selections.

4. Mahatma Gandhi Kashi Vidyapeeth, Varanasi (the University) is governed by the provisions of the UP State Universities Act, 1973 (in short, the Act) and the Statutes and Ordinances framed thereunder. A notice was issued on 15.6.2007 inviting applications from teachers eligible for being considered for promotion under the CAS.

5. It is stated by the Petitioners that a letter was sent by the Registrar of the University to the Chancellor of the University for nominating a panel of experts for participating in the selection proceedings. The Chancellor by his order dated 19.1.2007 recommended a panel of experts from various Departments of the University including the Department of Commerce.

6. The University also issued an advertisement No. 2 of 2006 for appointment on a large number of posts of Lecturers, Readers and Professors by direct recruitment followed by advertisement No. 6 of 2006 to the same effect. The selection committee met from 09.9.2007 to 24.9.2007.

7. By the order of the Chancellor dated 26.9.2007 the Vice Chancellor was restrained from convening any meeting of the selection committee. In a Writ Petition No. 45934 of 2007 the High Court by its Judgment dated 04.10.2007 held that once the process of interviews have commenced, the Chancellor does not have powers to issue telephonic orders to stop the selection process. The High Court directed the University to proceed with the selection making it open to the Chancellor to pass appropriate reasoned orders, if sufficient reasons were available to warrant such an action.

8. The Chancellor issued an order on 14.12.2007 again restraining the Vice Chancellor to undertake any proceedings for appointment on teaching and non-teaching post. The Vice Chancellor was going to retire on 31.12.2007. This order was again challenged in the High Court by Dr. Vinay Shankar Singh and 13 others in Writ Petition No. 63914 of 2007. The High Court by its interim order dated 20.12.2007 stayed the operation of the order dated 14.12.2007 until further orders. The Chancellor again issued an order on 19.12.2007 directing the Vice Chancellor not to place the recommendation made by the selection committees before the Executive Council for consideration. The Executive Council in its meeting dated 24.12.2007 after considering various orders passed by this Court and the Chancellor from time to time was of the view that it was fully competent to consider the matter but decided to wait for the decisions in Writ Petition Nos. 897 of 2008; 14220 of 2008 and 12703 of 2008, which were decided on 07.1.2008; 14.3.2008 and 05.3.2008 respectively with observations, that there is no presumption that a person will not act fairly prior to his retirement. The Executive Council was directed to take appropriate decision on the recommendations of the selection committees and to implement them without taking leave of the Court.

9. The Executive Council met on 09.4.2008 and found that since four months

have already passed, it was not competent to take any decision and thus the matter should be referred to the Chancellor u/s 31(8)(a) of the Act.

10. The Chancellor by his order dated 07.7.2008 sent the entire matter back to the Executive Council for its consideration. The Executive Council in its meeting dated 05.8.2008 did not take any decision on the recommendations of the selection committees. It decided to wait for permission of the High Court to proceed in the matter.

11. The Writ Petition No. 63914 of 2007 was finally disposed of by the High Court on 05.4.2010 with the directions to the Executive Council to take decisions on the recommendations of the selection committee on merits. The Executive Council in its meeting dated 26.5.2010 decided to refer all the recommendations to the Chancellor u/s 31(8)(a) of the Act.

12. So far as Petitioners are concerned, the Executive Council recorded its disagreement with the selections on the ground that the selection committees were not constituted for promotions of the Petitioners from the post of Reader to Professor in the Commerce Department under CAS. The selection committee did not get the names of the subject experts from the Chancellor and used the subject experts nominated for the selection for promotion of Dr. Kripa Shankar Jaiswal from the post of Reader to Professor. In the meeting of the selection committee dated 21.11.2007, the Petitioner's promotion could not be considered. By the impugned order dated 23/28th December, 2010 the Chancellor had accepted the disagreement of the Executive Council.

13. Shri R.N. Singh, learned Counsel for the Petitioners submits that all the three Petitioners were eligible for consideration for promotions and that a panel for promotion from the post of Reader to Professor sent by the Chancellor was already in existence. The Vice Chancellor was, therefore, fully justified in directing the selection committee to consider the promotion of the Petitioners from the post of Reader to Professor in the Commerce Department. The experts drawn from the panel prepared by the Chancellor considered and recommended the Petitioners for promotion.

14. Shri R.N. Singh submits that the Chancellor has acted grossly arbitrary and illegal in recording the findings that the Vice Chancellor did not take permission of the Chancellor for promotions of the Petitioners from Readers to Professors under the CAS nor any request was made for a panel of subject experts from his office. The panel prepared and forwarded by the Chancellor for appointment on the post of Readers and Professors can be used for specific purpose. It could not be used for any other purpose and thus the recommendations of the selections were cancelled.

15. Shri R.N. Singh submits that the Chancellor has manifestly erred in law in coming to the conclusion that the panel was nominated only for consideration of the claim of Dr. Kripa Shankar Jaiswal for promotion on the post of Readers to Professors and that it could not be utilized for considering claim of promotion of

other similarly placed teachers of the University. The letter of the Chancellor nowhere provided that the panel is only valid for the claim of Dr. Kripa Shankar Jaiswal. The Chancellor has accepted the disagreement of the Executive Council mechanically. It is clear case of non-application of mind. He submits that Section 66 of the Act provides that no act or proceeding of any authority or body or committee of the University shall be invalid by reason of any vacancy or defect in the constitution of committee and that some persons, who have taken part in the proceedings, are not entitled to do so.

16. In *Dr. Mohd. Suhail v. Chancellor, University of Allahabad and Ors.* (1994) 2 UPLBEC 787 this Court had held that the proceedings of the selection committee cannot be invalidated merely by reason of any irregularity in constitution of the selection committee. He has also relied upon Judgment in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, in which it was held in paragraphs 24, 25, 26, 27, 28 and 29 read as follows:

24. In the light of those considerations, we revert to the central issue, that is with regard to the nature of the Chancellor's power u/s 31(8)(a). It may be noted that the Chancellor is one of the three authorities in the Statutory Scheme for selecting and appointing the best among the eligible candidates in the academic field. The Chancellor is not an appellate authority in matters of appointment. He is asked to take a decision, because the Executive Council who is the appointing authority has no power to reject the recommendation of the Selection Committee and take a decision deviating therefrom. The Chancellor's decision is called for when the Executive Council disagrees with the recommendation of the Selection Committee. What is referred to the Chancellor u/s 31(8)(a) of the Act, is therefore, not a dispute between the Selection Committee and the Executive Council on any issue. Nor it is a dispute between two rival candidates on any controversy. What is referred to the Chancellor is the recommendation of the Selection Committee with the opinion, if any, recorded thereon by the Executive Council. In fact, even without any opinion of the Executive Council, the matter stands automatically remitted to the Chancellor if the Executive Council delays its decision on the recommendation of the Selection Committee. The proviso to Section 31(8)(a) provides for this contingency. It reads:

Section 31(8)(a) xxxx

Proviso : Provided that if the Executive Council does not take a decision on the recommendation of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.

25. The matter thus goes to the Chancellor for decision since the Executive Council could not take a decision on the recommendation of the Selection Committee. The Chancellor in the circumstances has to examine whether the recommendation of the Selection Committee should be accepted or not. If any

opinion by way of disagreement has been recorded by the Executive Council on that recommendation, the Chancellor has also to consider it. He must take a decision as to who should be appointed. It is indeed a decision with regard to appointment of a particular person or persons in the light of the recommendation and opinion if any, of the two statutory authorities. Such a decision appears to be of an administrative character much the same way as the decision of the Executive Council with regard to appointment.

26. In matters relating to public employment whether by promotion or direct recruitment, only requirement to be complied with is the mandate of Articles 14 and 16 of the Constitution. There shall be equality of opportunity and no discrimination only on "ground of religion, race, caste, sex, descent, place of birth or residence or any of them. The eligible candidate has a right to have his case considered in accordance with law. In the instant case, that requirement has been complied with by the Selection Committee. There is no further right with the candidates to make representation to the Executive Council and much less to the Chancellor. Reference however, was made to the observation of this Court in *G. Sarana Vs. University of Lucknow and Others*, While dismissing the writ petition challenging the recommendation made by the Selection Committee of the Lucknow University for appointment of a candidate as Professor, it was observed that "the aggrieved candidate has remedy by way of representation to the Executive Council and an application for reference u/s 68 of the Act to the Chancellor". We have carefully perused the decision and that observation. We find that it is of little assistance to the present case. We are concerned with the scope of Section 31(8)(a) of the Act which was not considered in that case. Apart from that, Section 31 confers no such right to make representation to the Executive Council or to the Chancellor against the recommendation of the Selection Committee. There is no provision in the Section for hearing any candidate or the Executive Council. There is also no provision for receiving evidence. The material in respect of every candidate has already been collected and collated by the Selection Committee. Every material is on the record and the Chancellor has no power to take further evidence. The Chancellor is authorised to take a decision and he must take it on the available records since the Executive Council has not taken a decision on the recommendation of the Selection Committee. The decision of the Chancellor in the exercise of this Statutory function does not, in our opinion, expressly or impliedly require the application of the principles of natural justice. See also the observations of *R.S. Dass Ors. Vs. Union of India (UOI) and Others*,

27. It has been argued that the order of the Chancellor becomes final and binding which is one of the features of judicial power. It is true that the conclusiveness of the decision without the need for confirmation or adoption by any other authority is generally regarded as one of the features of judicial power. But it must be added that the order made by a statutory authority even if it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive

is not, by itself a decisive factor to hold that the power is judicial. Prof. De Smith makes a similar point in his book "Judicial Review of Administrative Action" (4th Edition p. 82).

28. Taking all these factors into consideration, we would sum up our opinion in this way. The power of the Chancellor u/s 31(8)(a) is purely of administrative character and is not in the nature of judicial or quasi-judicial power. No judicial or quasi judicial duty is imposed on the Chancellor and any reference to judicial duty, seems to be irrelevant in the exercise of his function. The function of the Chancellor is to consider and direct appointment of a candidate on the basis of the relative performance assessed by the Expert Selection Committee and in the light of the opinion, if any, expressed by the Executive Council. His decision nonetheless is a decision on the recommendation of the Selection Committee. Such a power cannot be considered as a quasi judicial power. And we see nothing in that to justify our thinking that it must conform to the principles of natural justice. The contention urged to the contrary is, therefore, unacceptable to us. We also do not agree with the contrary view taken by the High Court in the Full Bench decision in L.N. Mathur Vs. The Chancellor, Lucknow University, Lucknow and Others,

29. The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution. As stated in E.P. Royappa Vs. State of Tamil Nadu and Another, "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch." The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi judicial. See Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Som Raj and others etc. Vs. State of Haryana and others,

17. Shri Ajit Kumar Singh, learned Counsel for the University submits that none of the Petitioners were eligible to be considered for promotion from the post of Reader to Professor under CAS. They had not completed qualifying service of Reader for promotion to the post of Professor. The Vice Chancellor had not obtained the panel for constituting selection committees for CAS for the Petitioners. The then Vice Chancellor had illegally allowed the selection committees to consider Petitioners for promotion. He submits that under the Career Advancement Scheme dated 13.3.2001 for promotion to the post of Reader and Professor, the minimum eligibility criteria is Ph.D. A Reader in the University with a minimum of eight years of service in that grade is eligible to be considered for appointment as a Professor. The eight years of service in that

grade means, in the grade of the Reader and not the day when they became eligible for promotion on the post of Reader.

18. Shri Ajit Kumar Singh submits that all the three Petitioners, namely Dr. Vinay Shanker Singh; Dr. Ashok Kumar Mishra and Dr. Sudhir Kumar Shukla, were appointed as Lecturers in the University on 16.6.1987 and were promoted as Lecturer in Senior Scale on 29.7.1995. They were promoted as Readers on 30.6.2001/01.7.2001. As against them, Dr. Kripa Shankar Jaiswal was appointed as Reader on 27.7.1998, which is the date of his promotion and that only he was eligible as he had completed eight years of service in the grade of Reader on 27.7.2006. The Vice Chancellor used the panel of experts recommended by the Chancellor for promotion of Shri Kripa Shankar Jaiswal illegally for the Petitioners. He submits that only Shri Kripa Shankar Jaiswal was eligible in the Department of Commerce along with 9 other teachers in various other departments for promotion under CAS. The panels were invited from the office of the Chancellor were provided only for these posts and not for the Petitioners. The Chancellor has not committed any error in accepting the disagreement expressed by the Executive Council with the recommendations of the selection committee on the ground that the promotion was not due nor any expert was called for the Petitioners for the selection committee, which is alleged to have selected them for promotion on the post of Professors.

19. Shri R.N. Singh appearing for the Petitioners submits that it was provided under the Career Advancement Scheme of the year 2000 that a lecturer on completing four years of service would be promoted to the post of senior lecturer and a senior lecturer on completing five years of service would be entitled to be granted promotion on the post of Reader. All the Petitioners were granted promotion on the post of lecturer in the senior scale vide order dated 29.7.1995. In the order it was mentioned, that the date, on which they will become eligible to get the senior lecturer, was 16.7.1992. All the Petitioners were granted promotion to the post of reader under the CAS vide order dated 30.6.2001/1.7.2001. The Government Order dated 16.1.2007 amending the Government Order dated 3.5.2001 providing for applicability of the CAS. Previously as per the CAS a person was entitled to receive salary in the next higher grade from the date of his eligibility or 27.7.1997, whichever was later. But the designation (if any) would be given to him from the date of taking over charge. All the Petitioners were entitled to receive Reader's pay scale as per the old scheme w.e.f. 27.7.1998. They were, however, given designation of a Reader only from 1.7.2001, when they actually took over charge as Reader. If the period of 8 years is calculated from that date all the Petitioners became entitled to be granted promotion to the post of Reader w.e.f. 27.7.2006 on completing 8 years of service, which were as such considered for promotion under the CAS and were recommended by the selection committee. The Government Order has become part of the Statute of the University.

20. Shri R.N. Singh further submits that the Executive Council did not disagree

with the recommendations of the Selection Committee on the ground that the Petitioners were not eligible. The Chancellor has not taken this ground into consideration. The University is estopped from taking this plea in the counter affidavit. He submits that an executive order cannot be defended on a ground, which was not considered by the competent authority. A new reason cannot be supplied. He has relied upon the Judgements in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, in submitting that new or fresh reason cannot be supplied to defend an order adverse to the Petitioners.

21. It is not denied that the selection committee was constituted to consider the promotion of Shri Kripa Shankar Jaiswal from Reader to the post of Professor. The Vice Chancellor was required to request the Chancellor for nominating the subject experts from the panel prepared and forwarded by him for each selection. Section 31(5) of the Act does not permit the Vice Chancellor to get the names of the experts nominated from the Chancellor, from out of the panel, for promotion of a particular teacher, and thereafter use the same experts either in the same selections or subsequently for promotion of other teachers. The scheme of the selection for appointment in the Act provided u/s 31(5) of the Act does not provide for using the subject experts nominated for one selection, for other selections. The Chancellor has to be informed about the constitution of the selection committee and for nomination of the subject experts for selection on each post. It is for the Chancellor to decide whether the same subject expert can be used for selection of other teachers.

22. In the present case, the Petitioners were promoted on the post of Reader on the recommendation of the selection committee on 06.3.2001, and its consideration by the Executive Council in its meeting dated 30.6.2001. They joined as Readers on 30.6.2001/01.7.2001. They were not eligible to be considered for promotion as Professors in the year 2006-07. The Executive Council found that there was no nomination of the expert for their promotions by the Chancellor nor it was asked. The experts sent by the Chancellor for promotion of Dr. Kripa Shankar Jaiswal were used for considering the names of the Petitioners. The letter dated 19.1.2007 requesting for nomination of the experts did not include the name of the Petitioners, and there was no nomination of experts for them by the Chancellor.

23. Shri R.N. Singh, learned Counsel for Petitioners submits that by Government Order dated 16.1.2007 circulated by the Registrar of the University on 27.2.2009, amended the Career Advancement Scheme to the following effect:

If an incumbent lecturer/Lecturer in Senior Scale/Lecturer in Selection grade/Reader (Promotion) is found suitable and recommended accordingly for promotion to the next higher Senior Scale/Selection Grade/Reader grade/Professor grade by the duly constituted Screening/Selection Committee at the first instance, the next higher grade and designation would be admissible to him

from the date of eligibility or 27th of July, 1998 whichever is later, amended vide Government Notification No. 121/Seventy-1-2007 (3)/96, dated 16.01.2007.

24. The amendment dated 16.1.2007 provides for the next higher grade and designation to be admissible from the date of eligibility or 27.7.1998, whichever later. The eligibility of the Petitioners as Readers on 27.7.1998 could not have given them a right to be promoted by the Selection Committee, which was neither convened nor met for their selections. As observed by us, all the Petitioners were entitled to receive Reader's pay scale as per the old scheme w.e.f. 27.7.1998. They were given designation of Reader only from 01.7.2001, when they actually took over charge as Reader. The Vice Chancellor utilized the opportunity and requested the Selection Committee constituted for considering promotion of other teachers, for the Petitioners without informing the officer of the Chancellor and calling for the nomination of the subject experts for such selections.

25. Shri R.N. Singh may have a point in submitting that the University cannot defend the decision taken by the Executive Council and the Chancellor on fresh reasons, namely that the Petitioners were not eligible for promotion. We however find that the utilization of the name of the subject experts by the then Chancellor in constituting the selection committee for promotion to the Petitioners, violated the scheme of constitution of selection committed and recommendations, for promotion under the Act. The Vice Chancellor was required to intimate the Chancellor that he is going to constitute a selection committee for promotion of the Petitioners from Readers to Professors under the CAS, and to request him to nominate subject experts from the panel prepared by the Chancellor.

26. We do not find that the Executive Council and the Chancellor have committed any error of law in disagreeing with the recommendation of the Selection Committee.

27. The writ petition is dismissed.