
(2006) 11 AHC CK 0135

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24478 of 2004

Ganesh Prasad Misra

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 50(6)

Citation : (2006) 11 AHC CK 0135

Hon'ble Judges : B.S.Chauhan, J and Dilip Gupta, J

Final Decision : Dismissed

Judgement

1. This writ petition has been filed for quashing the orders dated 26th June, 2004 and 30th June, 2004 passed by the Smt. Bhagirathi Trust Adarsh Sanskrit Mahavidyalaya Chunar, Mirzapur (hereinafter referred to as the "College") and for a direction upon the respondents not to interfere with the working of the petitioner as the Principal of the College run by the aforesaid Trust.

2. The College is a Post Graduate College affiliated to the Sampooranand Vishwavidyalaya (hereinafter referred to as the "University") and is governed by the provisions of the U.P. State Universities Act, 1973 and the First Statutes framed thereunder. The petitioner was working as the Principal of the College and the age of superannuation was 60 years. The date of birth of the petitioner is 5th June, 1944 and, therefore, he was to retire on 30th June, 2004 under Statute 16.24 of the said Statutes of the University. This is what had been intimated to the petitioner by the communication dated 30th June, 2004. The contention of the petitioner is that the Government Order dated 4th February, 2004 was issued under the provisions of Section 50 (6) of the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act") by which a direction was issued to the Universities to amend the Statutes of the University by enhancing the age of superannuation from 60 years to 62 years within a period of 30 days and, therefore, in terms of the said Government Order, the petitioner should not be made to retire on 30th June, 2004 but he should be continued up to 30th June,

2006.

3. A supplementary counteraffidavit has been filed by the University in which it has been stated that pursuant to the issuance of the Government Order dated 4th February, 2004 the Executive Council of the University in its meeting held on 1st March, 2004 amended the First Statutes of the University by enhancing the age of retirement and the said amendment was intimated to the Secretary, Higher Education by the letter dated 3rd June, 2004. It has also been stated in the said supplementary counteraffidavit that the assent of the Chancellor had not been taken since the amendment had been incorporated pursuant to the Government Order dated 4th February, 2004.

4. In order to appreciate the contention advanced by the learned Counsel for the petitioner it is necessary to refer to Section 50 of the Act and the same is quoted below :

Section 50. Statutes how made. The First Statutes of the University shall be made by the State Government by notification in the Gazette and in the case of any existing University, for so long as the First Statutes are not so made, the Statutes as in force immediately before the commencement of this Act, insofar as they are not inconsistent with the provisions of this Act, shall, subject to such adaptations and modifications whether by way of repeal, amendment or addition as may be necessary or expedient, as the State Government may, by notification in the Gazette provide, continue in force, and any such adaptation or modification shall not be called in question.

(1A) The State Government may, by notification in the Gazette amend whether by way of addition, substitution or omission, the First Statutes at any time [up to December 31, 1990] and any such amendment may be retrospective to a date not earlier than the date of such commencement.

(1B) Until the First Statutes of the Purvanchal University are made under this section, the Statutes of the University of Gorakhpur, as in force immediately before the establishment of the said University shall apply to it subject to such adaptations and modifications as the State Government may, by notification, provide.

(2) The Executive Council may, at any time [after December 31, 1990] make new or additional Statutes or may amend or repeal the Statutes referred to in subsection (1) or subsection (1A).

(3) The Executive Council shall not propose the draft of any Statute affecting the status, power or constitution of any authority of the University until such authority has been given an opportunity of expressing its opinion upon the proposal and any opinion so expressed shall be in writing and shall be submitted to the Chancellor.

(4) Every new Statute or addition to a Statute or any amendment or repeal of Statute shall be submitted to the Chancellor who may assent to it or withhold his

assent therefrom or remit it to the Executive Council for further consideration.

(5) A Statute passed by the Executive Council shall have effect from the date it is assented to by the Chancellor or from such later date as may be specified by him.

(6) Notwithstanding anything contained in the foregoing subsection the State Government may in order to implement any decision taken by it in the interest of learning, teaching or research or for the benefit of teachers, students or other staff or on the basis of any suggestion or recommendation of the University Grants Commission or the State or National Education Policy with regard to the qualifications of the teachers, require the Executive Council to make new or additional Statutes or amend or repeal the Statutes referred to in subsection (1) or subsection (1A) within a specified time and if the Executive Council fails to comply with such requirement the State Government may, with the assent of the Chancellor, make new or additional Statutes or amend or repeal the Statutes referred to in subsection (1) or subsection (1A).

(7) The Executive Council shall have no power to amend or repeal the Statutes made by the State Government under subsection (6) or to make new or additional Statutes inconsistent with such Statutes.?

5. Fortunately for us, a contention similar to that raised in this petition was resolved by this Court in Writ Petition No. 34649 of 2004, Prof. (Smt.) Adesh Agarwal v. Din Dayal Upadhyay Gorakhpur University, Gorakhpur & Ors., which was decided on 1252005. The Court observed as follows :

?However, before proceeding further with the matter we may deal with the legal arguments raised on behalf of the University. According to the University an amendment made by the Executive Council in the Statutes would not require the assent of the Chancellor in cases where the amendment has been made pursuant to the directions issued by the State Government requiring the Executive Council to amend the Statutes. In support of this plea the University has placed reliance upon a decision dated 2321999 of a Division Bench of this Court in Writ Petition No. 32515 of 1995, Dr. Anirudh Prasad v. Chancellor, University of Gorakhpur & Ors.. We have examined the decision carefully. For appreciating why the said decision is no longer good law, it is necessary to examine the history of Section 50 of the Act. Under the said Section 50 (as originally enacted) the first Statutes were made by the State Government and could be amended by the State Government till 3111987. This date of 3111987 was subsequently extended to 31121990. But after that last date, i.e., 31121990 that power of amendment stood transferred to the Executive Council and the State Government after that date had no power to amend the Statutes. However, by a further amendment made in 1994 new subsections (6) and (7) were added to Section 50 of the Act.

The said 1994 amendment provided an exception to the earlier scheme of Section 50, by again granting power to the State Government to require the Executive Council to amend the Statutes and, failing obedience by the Executive Council of such direction, to amend the Statutes directly. That is why the

subsection (6) of Section 50 opens with the words "Notwithstanding anything in the foregoing subsection....." This reason for the said opening words needed to be stated here because these opening words have been heavily relied upon in the decision of "Dr. Anirudh Prasad" (supra).

In 1998 a further amendment was made by the U.P. Act No. 9 of 1998 whereby it was provided that if the Executive Council failed to amend the Statutes according to the directions of the State Government the State Government could itself amend the Statutes of any State University but only with the assent of the Chancellor.

Thus, we find that if the Executive Council of its own wants to make any amendment to the First Statutes, the assent of the Chancellor is required. And, as the law in Section 50(6) stands after 1998 amendment, if the State Government decides to amend the Statutes directly, due to failure of Executive Council to abide the direction for amendment, again the assent of the Chancellor is required. Simply put the contention of the University is that "neither University nor Government can amend without consent of Chancellor, but University can amend on request of Government without the consent of Chancellor."

In view of this situation we are unable to accept the submission of the University that an amendment to the First Statutes made by the Executive Council pursuant to the suggestion or direction of the State Government under Section 50(6) does not require the assent of the Chancellor because quite obviously such an interpretation would be contrary to the legislative intent of the Chancellor having the final say in such matters.

6. We respectfully agree with the views expressed in the aforesaid Division Bench and, therefore, the contention of the University that the assent of the Chancellor was not required to be taken for amending Statutes 16.24 of the First Statutes of the University cannot be accepted. The petitioner is, therefore, not entitled to any relief.

7. The writ petition is, accordingly, dismissed.