

(1976) 02 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5746 of 1971

Ganesh Shankar Dwivedi

APPELLANT

Vs

Vice-Chancellor, Kanpur University and others

RESPONDENT

Date of Decision : 25-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Kanpur and Meerut Universities Act, 1965 — Section 26(4)

Citation : (1976) 02 AHC CK 0032

Hon'ble Judges : K.N.Singh, J

Final Decision : Allowed

Judgement

K.N. Singh, J.

Janta Mahavidyalaya, Ajitmal, district Etawah, is a Degree College affiliated to the Kanpur University. Petitioner and some other persons were selected for appointment as Lecturers by a Selection Committee constituted under the KanpurMeerut University's Act, 1965. The Management of the College forwarded papers to the ViceChancellor for obtaining his approval as contemplated by subsection (4) of Section 26 of the Act. The Registrar by his letter dated February 16, 1971, informed the principal of the Mahavidyalaya that the ViceChancellor disapproved the selection made by the Selection Committee and the appointments made there under on the ground that a member of the Selection Committee was not given intimation of the date of the meeting of the Committee. The ViceChancellor directed the management to hold fresh selection in accordance with the provisions of the Act and the statutes framed there under. Thereafter the management by its letter dated March 20, 1971, (Annexure VI to the petition) informed the petitioner that since the petitioner's appointment was disapproved his services would be no longer required after April 30, 1971. The petitioner as well as the "Management both made representation to the ViceChancellor for recalling the order of disapproval. The ViceChancellor by his letter dated April 26, 1971, informed the principal of the Vidyalaya that the petitioner's appointment was disapproved as he had no good academic record

and also on the ground of defective service of notice on a member of the Selection Committee. Aggrieved, the petitioner approached this Court challenging the order of the ViceChancellor disapproving the petitioner's appointment.

Learned counsel for the petitioner urged that the ViceChancellor had no jurisdiction to disapprove the petitioner's appointment as he had not obtained the concurrence of the Executive Committee before disapproving the petitioner's appointment. Section 26 of the Act contains provision for appointment of teachers in the University as well as in the affiliated Colleges. Subsection (4) of Section 26 lays down that no teacher shall be appointed substantively or temporarily or in officiating capacity lasting for more than six months unless the appointment is reported by the Management to the ViceChancellor within fifteen days from the date of appointment along with all connected papers. The continuance of the appointment shall be subject to the approval of the ViceChancellor who may either approve the appointment or disapprove the same with the concurrence of the Executive Council of the University. In case the appointment is disapproved the services of the teacher shall be terminated as soon as may be possible. It is significant to note that the ViceChancellor need not consult any one in approving the appointment but if he is of the opinion that the appointment should be disapproved he cannot exercise that power unless he obtains concurrence of the Executive Council of the University. The expression "concurrence" indicates that the ViceChancellor's proposal to disapprove the appointment of the teacher should be considered by the Executive Council and it should agree with that proposal. In case the Executive Council does not agree with the proposal of disapproval it would not be open to the ViceChancellor to disapprove the appointment of the teacher. Concurrence means prior consent, it is quite different with Consultation. The power of ViceChancellor to disapprove any appointment is circumscribed by the condition of obtaining concurrence of the Executive Council. If concurrence is not obtained the order of disapproval issued by the ViceChancellor would be in contravention of subsection (4) of Section 26 of the Act. The legislature intended that in case of disapproval the ViceChancellor should not be the final authority, instead he must obtain the concurrence of the Executive Council which normally consists of persons having high academic qualifications. The legislature considered it necessary to place this restriction in order to avoid arbitrary exercise of power. This provision is mandatory in nature, its noncompliance would vitiate the order of disapproval.

It is admitted on behalf of the University that the term of the Executive Council of the Kanpur University expired on March 9, 1971, thereafter it was reconstituted on May 6, 1971. The Executive Council of the University was not functioning during the period between March 10, 1971, to May 6, 1971. On the own assertion of the University as contained in paragraph 28 of the affidavit of the Registrar Sri S.B.B.B. Singh, it is clear that the Executive Council of the University was in existence on February 26, 1971, when the principal of Janta Maha Vidyalaya informed the petitioner that his appointment had been disapproved by the ViceChancellor. The representations made by the petitioner

as well as by the Management were rejected by the ViceChancellor and intimation to that effect was given to the principal of the College by his letter dated April 26, 1971. There is no dispute that on April 26, 1971 the Executive Council was not functioning, but that does not remove the illegality committed by the ViceChancellor in disapproving the petitioner's appointment without obtaining the concurrence of the Executive Council. On, the admitted facts the petitioner's appointment was disapproved before February 16, 1971. There is further no dispute that the concurrence of the University's Executive Council was not obtained before disapproving the petitioner's appointment. The contention that concurrence was not obtained because the Executive Council was not functioning is apparently incorrect. The averments contained in the counteraffidavit of the Registrar would show that the Executive Council was in existence till March 6, 1971. Admittedly, the petitioner's appointment as teacher in the college was disapproved by the ViceChancellor in February, 1971 and the management issued a letter to the petitioner on March 20, 1971, intimating him that his services would stand terminated with effect from April 30, 1971. The order passed on April 26, 1971, merely rejected the petitioner's representation. In the circumstances the order of the Vice Chancellor was issued in violation of the mandatory provisions of subsection (4) of Section 26 of the Act.

Sri S.D. Agarwal, learned counsel appearing for the University, contended that the petitioner is not entitled to any relief of reinstatement because the Managing Committee is not a statutory body. He further urged that if the petitioner is reinstated the management of the College will have to pay a sufficient amount of money as arrears of pay to the petitioner. It is noteworthy that the management of the College even though impleaded as a respondent has not chosen to contest the petition. It appears that the management is fully satisfied with the petitioner's work and conduct in the College. The management was forced to terminate the petitioner's services on account of disapproval of his appointment by the ViceChancellor. The ViceChancellor is a statutory authority and any order passed by him in contravention of the Act is amendable to writ jurisdiction under Article 226 of the Constitution. In substance the petitioner has sought relief against the ViceChancellor and not against the Managing Committee. Since the Managing Committee has not contested the petitioner's claim it is not open to the University to take up the stand that the management will suffer if the petition is allowed.

In view of the above discussion the petition succeeds and is accordingly allowed. The order of the ViceChancellor disapproving the petitioner's appointment is quashed. The petitioner is entitled to his costs.