
(2001) 02 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Petition No. 522/99

Kailash Sajoniya

APPELLANT

Vs

Registrar, D.A.V.V. and Others

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Citation : (2001) 5 MPHT 460 : (2002) 3 MPLJ 163

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Judgement

J.G. Chitre, J.

The petitioner assails the order of appointment of respondent No. 3 as "Producer" as employee of Devi Ahilya Vishva Vidhyalaya, R.N.T Marg, Indore, (hereinafter referred to as "University" for convenience). Mainly the said appointment has been assailed on two grounds.- (i) that improper and suspicious practice has been followed by respondent Nos. 1 and 2 for appointing respondent No. 3 on contract basis for a period of 90 days and the said appointment-assignment was continued for a period of three years by renewing such contractual relations (ii) that the respondent No. 3 did not hold the necessary qualifications which are required for even appointing a lecturer on temporary/ad hoc basis.

Respondent Nos. 1 and 2 justified the orders passed in context with such contractual appointment of respondent No. 3 on occasions or for said period of three years. Mainly it was contended that the appointment on contractual basis or otherwise of respondent No. 3 cannot be categorised as an appointment to the post of lecturer on temporary or ad hoc basis and, therefore, the necessary things which are required to be ascertained prior to appointment can not be applied for the present case. Secondly, the respondents are required to make such arrangements for the purpose of keeping the pace with demand of time so far as the administrative urgency is concerned. In addition to that it has been contended that the petitioner never held such qualifications and he did not apply

for such a post when such contractual appointments were made by respondent Nos. 1 and 2.

Respondent No. 3 contended for justifying her appointment that she did hold all necessary qualifications when she was assigned such job or duty on contractual basis initially and when she has been appointed, she did hold such qualifications. In addition to that she contended that she has been interviewed lawfully and her appointment on contractual basis or otherwise is totally lawful.

University Grants Commission adopted the averments averred by respondents Nos. 1 and 2 as quoted above.

Shri Yadava appearing for the petitioner with Mr. Bohra demonstrated as to how the University was bound to follow the Regulation No. 17 which is at Annexure P-1 and it was necessary for University to advertise the said post by publishing an advertisement in that context in a leading local news paper. Not only that but to notify it to the Employment Exchange and to affix a notice in that context on the Notice Board of University and all colleges affiliated to the University and teaching the subject at P.G. level. Shri Yadava submitted that respondent No. 3 did not have the necessary qualifications which were necessary for appointing her on temporary or ad hoc basis and, therefore, the initial appointment on contractual basis was not only bad in law but was suspicious also, causing adverse effect on the interest of the petitioner and other similarly situated persons. He submitted that there has to be a fair play in appointing the persons in the University. This is sum and substance of the criticism levelled by Shri Yadava for the petitioner. Shri Bagadia instructed by Shri D. Chhabra submitted that the post to which respondent No. 3 was initially appointed on contractual basis does not fall in the category of the lecturer and, therefore, it was not necessary for the University to follow the instructions embodied in Regulation 17. Apart from that Shri Bagadia submitted that there are no instructions available anywhere with the respondents to guide them for meeting the need of the time and the urgency. He submitted that a fair action has been taken by the respondents for the purpose of meeting the urgent need to stand-up to the demand of administration which is in the interest of students at large and, therefore, the respondents have committed no wrong which can be redressed, as prayed by the petitioner, by quashing the appointment of respondent No. 3. In addition to that Shri Bagadia submitted that after the initial appointments the University sought permission from the U.G.C. and such permission has been sanctioned and, thereafter the process has been followed by the University for appointment of an appropriate person to the post. He submitted that the petitioner had applied for such post and after scrutiny made by appropriate Committee appointed in accordance with the Rules framed in that context, the Committee found that the petitioner was not qualified for being appointed to the said post. Shri Bagadia submitted that there is no need of quashing the order appointing respondent No. 3 because by following the appropriate procedure she has been now appointed to the post of Producer. This is sum and substance of

the submissions advanced by him for respondent Nos. 1 and 2.

Mrs. Bhargava narrated how respondent No. 3 is having the galaxy of qualifications justifying her appointment to the post of Producer. She pointed out that respondent No. 3 holds Master's degree in Communication, P.G. Diploma in Journalism and in addition to that she filmed the documentaries for Door Darshan, the National Media for spreading the communication and up-grading the knowledge of Indian citizens. She submitted that the respondent No. 3 has acquired the training in recognized institution which is situated at Pune for Film Division of India. Apart from that, she submitted that she has been now appointed by a process of interview which is consistent with all Rules and Regulations which are ratified by UGC. She submitted that the petitioner is a defeated candidate and therefore, the petition should also be dismissed.

Shri B.G. Nema reiterated the stand taken by respondent Nos. 1 and 2 and submitted that the U.G.C. has done its duty in the context that the sanction for relaxation was sought by respondent Nos. 1 and 2 and the U.G.C. had granted the same and, therefore, nothing remains to be done by respondent No. 4.

Caesar's wife should be above suspicion and the University which is doing noble work of teaching young generation of India has to be above board and above all in its acts. Otherwise, there would be a crack to the strong belief of the citizens at large in respect of the functioning of the University. Therefore, University is obliged to do every act in accordance with the Rules framed by it and if necessary, the Rules should have been approved by the U.G.C. That has to be done and it had to be shown that it has been done consistently with the requirements of the Rules. There may be the need of urgency consistent with demand of administration but even then, all necessary precautions are to be taken for the purpose of obtaining all Rules - approved from U.G.C. by appropriate mode of communication and this is necessary when there are no Rules for guidance. It is true that University cannot be perplexed by paraplegia caused by defects. But in such cases also the University should be circumspect and should think well and at least reasonably in advance and should try to get rules approved by competent authority by using quick mean of communication.

The mode of communication is growing and it can not be said that University is not equipped with computerised system. It must have been having the facility of internet communication. Same must be with the office of U.G.C. also. Exchange of communication by that mode would be also sufficient enough to meet the urgent needs which are necessary to be taken care of, for the purpose of administration and for the need of the students who are to be taught, coached and brought up in training.

Shri Bagadia submitted that on account of absence of Rules for the purpose of meeting such urgencies, University respondent Nos. 1 and 2 was required to follow the steps which they thought fit, to stand up to the situation and,

therefore, respondent No. 3 was appointed on contractual basis. Prima facie, this submission appears to be attractive and appears to be exonerating the University but if deep probe is applied, the shallowness of the reasoning is exposed. Shri Yadava submitted that this system of renewing the contract and contractual appointment of respondent No. 3 is continued for a period of three years and here sounds an alarm. Here the situation is improper and unjust and that necessitates, this court to speak further in this order and that makes this court to come to a conclusion that like Caesar's wife, the University should have been above suspicion and should have demonstrated that it is so.

Firstly, there was no difficulty for the University to publish an advertisement for advertising the post of Producer. For that purpose there was no difficulty with the University. The respondent Nos. 1 and 2 should have tried to get the Rules in that context approved from appropriate forum within the word of University by following a legal procedure which has been indicated by the Rules, bye-laws and other necessary requirements. It was not difficult for the University to issue publication in that context to other colleges affiliated to the University for affixing the publication on the Notice Board of each college. Besides that, it was not difficult for the University or respondent Nos. 1 and 2 to affix a notification to that effect on the Notice Board of the University which should have been affixed at conspicuous place of the University premises. Unfortunately it seems that it has not been done and that resulted in petitioner harbouring a grievance which has been echoed by him by this petition.

At least before the renewing the first contract it was incumbent on respondent Nos. 1 and 2 to make a prayer to the U.G.C. for the purpose of relaxing the necessary qualification. But unfortunately it has not been done and it had again resulted in the grievance to the petitioner. Smt. Bhargava submitted that respondent No. 3 has undergone a process of interview and, therefore, now she should not be frustrated. If all precautions had been taken earlier there could not have been as apprehension in the mind of respondent No. 3 of being frustrated. This is also not proper.

It is never late to mend. Shri Bagadia submitted that there is availability of guiding Rule for making short term ad hoc appointments for the posts in various cadres. He submitted that it is the common experience with many institutions that the persons in administration are required to make immediate arrangements for the purpose of standing up to the demand of the time and administration. They are obliged to take some steps for the purpose of doing justice to the need of the situation and to the need of the person for whom those institutions have been constituted or brought in existence.

If it is so, then respondent Nos. 1 and 2 and all other necessary bodies entrusted with the duty and obligation of framing Rules Bye-laws and Guide-lines the guidance of the persons functioning for the University Devi Ahilya Vishwa Vidhyalaya (which has been indicated in this order as -"University" should have taken immediate steps for the purpose of making the Rules for such short-term

ad hoc appointments. Calling a person or two and assigning them some work for remuneration on contractual basis should be stopped. If it is required to be done as a matter of serious urgency, immediately it is to be approved from the competent authority urgently and it should also act urgently. It unnecessarily gives rise to the misunderstanding not in the minds of the students and staff members but public at large who are interested in seeing that University functions properly and for the larger interest of the society. That also reduces the possibility of grievance lingering in the minds of persons who are likely to be affected by improper, irregular and incorrect actions taken by the University. It is not proper to seek such guidelines from the court, University has to do it properly urgently and legally. Court has to administer justice and not to engage it self in such activities which are act of its jurisdiction and business.

Though a process has been followed and interviews has been taken and in interview respondent No. 3 has been selected, on account of renewal of her contractual assignment for a period of three years, it has become necessary to quash the order of appointment of respondent No. 3 in the larger interest of the University and public at large. University and U.G.C. are hereby directed to make the Rules in that context. Thereafter in accordance with those Rules the advertisement has to be published in local news-paper of wide circulation. The communications in that context has to be sent to all colleges affiliated to the University for affixing the said notification on the Notice Board of each College. In addition to that, it has to be noticed that way on the Notice Board of the University. If necessary, a prayer has to be made to the U.G.C. for relaxing the qualifications, because prima facie it appears that the petitioner and respondent No. 3 are not appropriately qualified for appointment as "Producer" in strict terms. Both have claimed to have experience in that context. A note about such experience has to be taken in the interest of the persons who seek the appointment and in the interest of University who has to perform the requisite job.

Thus, the order appointing respondent No. 3 dated 17-9-97 and 12-9-2000 stands quashed only in respect of appointment of respondent No. 3 as Producer which is the subject matter of controversy in this petition. Other portion of the said order would stand if not tainted with illegalities or infested with illegality. It is made clear that the remuneration paid for the work which has been done by respondent No. 3 in context with earlier assignment be not recovered from her. Let by gone be gone and let University start with a fresh and clean slate in this context. This court passes no order as to the cost keeping in view the agony which may have been in the mind of petitioner and respondent No. 3 and the act which has been committed, steps which have been taken by respondent Nos. 1 and 2 for meeting the urgency as it has been contended by them.

A prayer has been made by Shri Bagadia and Mrs. Bhargava for staying the operation of this judgment and order. The prayer stands rejected because granting such relief would be contrary to the spirit of the judgment and order

deciding this Writ Petition.