
(2003) 03 AHC CK 0207
In the Allahabad High Court
Case No : C.M.W.P. No. 52402 of 2002

Kamla Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12, 13,
13(1), 13(3), 13(4)

Citation : (2003) 5 AWC 4423

Hon'ble Judges : S.R. Alam, J; O.P. Srivastava, J

Bench : Division Bench

Advocate : P.S. Baghel and T.P. Singh, for the Appellant; Ashok Khare and S.C., for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam, J.—By means of this petition under Article 226 of the Constitution of India, the Petitioner has, inter alia, prayed for issuance of a writ of mandamus commanding the Respondent No. 4 Committee of Management, Jagat Taran Girls Degree College, Allahabad to issue a letter of appointment to her as Principal of the institution in question and permit her to join on the said post forthwith.

2. Heard Sri T. P. Singh, learned Counsel for the Petitioner. Sri Ashok Khare, learned Counsel has appeared for Respondent No. 4. Learned standing counsel has appeared on behalf of Respondent Nos. 1 to 3.

3. It appears that the post of Principal of the institution in question was advertised through the University Services Commission vide advertisement No. 25 of 1998, dated 13.8.1998. A copy of the advertisement is annexed as Annexure-1 to the writ petition. The Petitioner pursuant to the aforesaid advertisement applied for the same. Thereafter, the Commission prepared a list of the successful candidates and sent it to the Director of Education wherein the name of the Petitioner finds place at serial No. 2 of general list. Consequently,

the Director of Education vide its letter dated 4.3.2002 intimated the Committee of Management and asked it to issue letter of appointment to the Petitioner within a period of 30 days.

4. It is contended that in spite of the aforesaid order of the Director of Education, letter of appointment was not issued to the Petitioner. The Director of Education again twice vide letters dated 18.4.2002 and 24.9.2002, asked the Committee of Management to issue letter of appointment, inspite of that the Petitioner has not been given appointment without there being any reason for denying such appointment. It is vehemently contended that the Petitioner having been found suitable and her name being recommended by the Commission, the Committee of Management has no option but to appoint her. It is also argued that Dr. (Smt.) Ratna Chatterji who is working as ad hoc Principal of the institution also applied in terms of advertisement No. 25/98 and also appeared before the Commission, but she was not found suitable, hence her name was not recommended by the Commission, but she is still continuing as ad hoc Principal of the institution which is improper and contrary to law.

5. On the other hand, Sri Ashok Khare, learned senior counsel appearing for Respondent No. 4, Committee of Management, submitted that since the matter regarding appointment on the post of Principal was sub-judice before this Court in Writ Petition Nos. 9295 of 1995 and 8137 of 1995, the recommendation of the Commission in favour of the Petitioner could not be acted upon and this fact was communicated to the Petitioner vide letter dated 18.4.2002.

6. We have considered the submissions made on behalf of the parties. It is not in dispute that the Petitioner's name has been recommended by the Commission for appointment as Principal of the institution in question. It is also not in dispute that the select list dated 18.4.2001, prepared by the Commission is still valid and till date, no fresh recommendation has been made by the Commission. The Respondents have not filed counter-affidavit disclosing any justifiable reason for not issuing the letter of appointment pursuant to the recommendation made by the Commission. The only submission as noted above, made on behalf of the Committee of Management, is the pendency of the aforesaid two writ petitions wherein the challenge was in respect of appointment to the post of Principal. The aforesaid two writ petitions have already been dismissed as infructuous vide order dated 11.2.2003, and, therefore, now there appears to be no reason for denying the letter of appointment to the Petitioner pursuant to the recommendation of the Commission.

7. We are of the view that once the Commission prepares the select list and recommends the names of candidates after due selection and the recommendation being accepted by the Director pursuant thereto, the Committee of Management is intimated under Sub-section (3) of Section 13 of the U.P. Higher Education Service Commission Act (for short "the Act") for the appointment against the vacancy intimated under Sub-section (2) of Section 12 of the Act, the Committee of Management cannot deny the appointment to a

selected candidate in the absence of any cogent and justifiable reason. The recommendation of the Commission under Sub-section (2) of Section 13 and intimation by the Director under Sub-section (3) of Section 13 is binding on the Committee of Management.

8. Sub-section (1) of Section 14 of the Act provides that the Committee of Management shall, within a period of one month from the date of receipt of intimation under Sub-section (3) or Sub-section (4) or Sub-section (5) of Section 13, issue appointment letter to the person whose name has been intimated. Sub-section (2) of Section 14 further provides that in the event the selected candidate fails to join the post within the time allowed in the appointment letter or within such extended time as the Committee of Management may allow in this behalf, or where such person is otherwise not available for appointment, the Director shall on the request of the Committee of Management, intimate fresh name from the list sent by the Commission under Sub-section (1) of Section 13 in the manner prescribed. Section 14 is extracted herein below:

14. Duty of Management.-(1) The management shall, within a period of one month from the date of receipt of intimation under Sub-section (3) or Sub-section (4) or Sub-section (5) of Section 13, issue appointment letter to the person whose name has been intimated.

(2) Where the person referred to in Sub-section (1) fails to join the post within the time allowed in the appointment letter or within such extended time as the management may allow in this behalf, or where such person is otherwise not available for appointment, the Director shall, on the request of the management intimate fresh name from the list sent by the Commission under Sub-section (1) of Section 13 in the manner prescribed.

Therefore, it is the duty of the Committee of Management to issue letter of appointment to the candidate whose name has been intimated under Sub-section (3) or Sub-section (4) or Sub-section (5) of Section 13 of the Act within a period of one month.

9. In the instant case, the Committee of Management has not given any explanation for not issuing the letter of appointment to the Petitioner despite the order of the Director. Admittedly, there is no regular Principal in the institution since 20.1.1995, as Dr. (Smt.) Krishna Malik, who was the permanent Principal of the college expired on 20.1.1995 and since, then the ad hoc arrangement is still continuing, although a period of about 8 years have elapsed. Even after recommendation of the Commission, the appointment of regular Principal has not been made. The ad hoc arrangement is made on account of exigencies or for a particular purpose and for a particular period and, therefore, cannot be allowed to continue for an indefinite period. In the case in hand, since the post of Principal became vacant on account of death of the regular Principal Dr. (Smt.) Krishna Malik and the recommendation of the Commission takes considerable time, therefore, the ad hoc arrangement was made. But after receipt of

recommendation from the Commission, there is no reason to continue with ad hoc arrangement.

10. Besides that, it is not in the interest of the institution to continue with ad hoc arrangement of the office of the head of the institution for a long period of time as it will be pernicious for the institution and also violative of Articles 14 and 16 of the Constitution. Continuance of ad hoc arrangement for an indefinite period is deprecated by the Apex Court. The Hon"ble Apex Court in the case of Rattanlal and Ors. v. State of Haryana and Ors. AIR 1987 SC 478, observed that the policy of ad hocism followed by the State Government for a long period has led to breach of Articles 14 and 16 of the Constitution and such situation cannot be permitted to last any more.

11. Therefore, having considered the submissions made on behalf of the parties and in the facts of the case, we are of the view that the writ petition deserves to be allowed.

12. In the result, the writ petition succeeds and is allowed. The Respondent No. 4 is directed to issue letter of appointment to the Petitioner for the post of Principal forthwith. There shall, however, be no order as to costs.