
(1992) 06 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14932 of 1992

Kumari Kusum Rawat

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 16-06-1992

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 31C, 31C(1), 31C(2), 61C

Citation : (1992) 3 AWC 1678

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Birendra Kumar Srivastava, for the Appellant; L.P. Naithani, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—In this case on 1-5-1992 Hon"ble M.P. Singh, J. granted the Respondents eight weeks time to file counter affidavit, and directed the petition to be listed for admission on 10-7-1992.

2. Subsequently on 9-6-1992 an application was filed before me praying that an interim direction be issued to the Respondent for continuing the Petitioner as Lecturer in Zoology in H. N.B. Garhwal University, Garhwal. In para 8 of the affidavit in support of the application it has been alleged that when the case was taken up on 1-5-1992 by Hon"ble M.P. Singh, J. the counsel for the Petitioner could not appear and press the prayer for interim relief It has been alleged in para 5 of the affidavit that in a large number of similar petitions (referred to in paragraphs 13 to 15 of the writ petition) interim orders have been passed. In paragraphs 9 and 10 of the affidavit it is alleged that the Petitioner has come to know that the Commission is going to finalise regular selection by the end of June, 1992 and some other person will be selected in place of the Petitioner, and hence the urgency in the matter.

3. On 9-6-92 I directed this application to be put up on 11-6-92 and further

directed the Petitioner to inform learned Counsel for the Respondent University about the order.

4. On 11-6-1992 Shri B.K. Srivastava appeared for the Petitioner, and Shri L.P. Naithani appeared for the respondents. Although the case had earlier been fixed for 10-7-1992. in view of the urgency in the matter, and in view of the fact that a purely legal question is involved in the case and there is hardly any factual controversy, I heard the learned Counsels on 11-6-1992 and reserved orders.

5. The controversy in this case is simple. The Petitioner was issued an appointment letter dated 2-11-1991 (Annexure-1 to the writ petition) appointing her as ad hoc Lecturer in Zoology for six months from the date she assumes charge. The Petitioner assumed charge on 11-11-1991. Subsequently, Ordinance No. 43 of 1991 was issued by the Governor on 22-11-91. and by this Ordinance a new Section 61-C was inserted in the U.P. Higher Education Service Commission Act. Section 31-C provided that any teacher who was appointed on ad hoc basis after 31-1-84 but not later than 30-6-91 on a post referred to therein and possessing the necessary qualifications, may be given a substantive appointment if found suitable for regular appointment by the Selection Committee referred to in Clause (2).

6. The Petitioner in the present petition, and the Petitioners in the similar petitions in which interim orders were passed, were appointed after 30-6-91 but before the promulgation of the impugned Ordinance No. 43 of 1991. Their claim is that the benefit given by Section 31-C should be given to all teachers working in ad hoc capacity on the date of the Ordinance, and should not be limited to those appointed on or before 30-6-91. They allege that the cut off date 30-6-91 has been arbitrarily fixed.

7. In the similar petitions referred to in paragraphs 13 to 15 of the writ petition (in which also the validity of the fixation of 30-6-91 as the cut off date has been challenged) Interim orders were passed by various Benches of this Court and some of the Interim orders have been quoted in para 13.

8. In this connection reference may be made to the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , where the Court held that the government cannot pick out a date from a hat (vide para 53). In that case the Court held the cut off date to be arbitrary.

9. Shri L.P. Naithahi, learned Counsel for the respondents has however, contended that in view of the judgment of a learned Single Judge of this Court (Hon"ble M.P. Kenia J.) in writ petition No. 9925 of 1992. Om Prakash Uniyal v. Vice Chancellor H.N.B. Garhwal University decided on 13-3-92 no interim order should be granted to the Petitioner. I have perused the aforesaid decision. It has been stated therein "The argument that the date, namely, the 30th of June, 1991, fixed by the Ordinance has been fixed arbitrarily and has no sanctity at law and is not acceptable, does not take the Petitioner's case any further, even if for the sake of argument it were to be accepted, as it does not rest the Petitioner

with any right."

10. This observation of the learned Single Judge quoted above is clearly per incuriam for it ignores Section 31-C(1)(e) of the impugned Ordinance. If the cut off date, viz. 30-6-92 it struck down as arbitrary then clearly the Petitioner gets a vested right to be considered by the Selection Committee constituted u/s 31-C(2).

11. The learned Single Judge has also observed in the aforesaid decision that "The Petitioner has unequivocally and unconditionally accepted the appointment on the basis on which it was offered to him pursuant to the document Annexure-4 to the petition, and is now seeking to turn around and argue to the contrary. The trend noticed in recent times to accept an appointment on what ever basis it is offered and then to seek to continue on the post by filing a petition, deserves to be deprecated and discouraged. "With great respect to the learned Single Judge, in my opinion, the aforesaid observations are again per incuriam as they have been passed without noticing the Supreme Court decisions in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . In Olga Tellis" case it was held (in para 28) that there can be no estoppel against the Constitution. It was also observed that the principles of estoppel can have no application to representations made regarding the assertions of enforcement of fundamental rights In the Central Inland Water Transport Co. case the Supreme Court held that the Courts will strike down a term in a contract which is unfair, and which has been entered into between parties who are not equal in bargaining power. The principle would apply to situations in which the weaker party is in a position in which he can obtain means of livelihood only upon terms imposed by the stronger party.

12. In view of the above discussion I am of the opinion that the judgment of Hon"ble Kenia. J. is a judgment per incuriam, and hence following the interim orders passed by various Benches in similar cases (referred to in paras 13 to 15 of the writ petition) I direct that the Petitioner will be continued in service and paid salary, and she shall be considered provisionally for regularisation by the Selection Committee constituted u/s 31-C(2) of the impugned Ordinance.

13. List the petition on 10-7-1992 before the appropriate Court.