
(2004) 01 AHC CK 0200

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43423 of 2004

M. Yousuf Hussain (Dr.)

APPELLANT

Vs

Aligarh Muslim University and Another

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 1 UPLBEC 518

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : Suhail Hamid Siddiqui, for the Appellant; Dilip Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned order dated 18.7.2003, Annexure-8 to the writ petition and for a mandamus directing that the petitioner should be allowed to continue as Lecturer in Industrial Chemistry in Aligarh Muslim University till a General Selection Committee is held.

2. A post of Lecturer was advertised in the Department of Chemistry of Aligarh Muslim University which was a leave vacancy of one Dr. (Mrs.) Zeba Siddiqui, Lecturer in Organic Chemistry in the Department of Chemistry in Aligarh Muslim University. The petitioner faced a Local Selection Committee on 18.8.2000 and was appointed as temporary Lecturer in the Department of Chemistry against the leave vacancy of Dr. (Mrs.) Zeba Siddiqui vide office memo dated 12.9.2000, Annexure-2 to the writ petition. The petitioner was given the pay scale of Rs. 8000-13500 plus allowances as admissible under the Rules. Thereafter if continuation of his earlier appointment, the petitioner faced another Local Selection Committee on 2.8.2001 and was appointed as temporary Lecturer in the Department of Chemistry against the leave vacancy of Dr. Anees Ahmad, Reader in Chemistry. A true-copy of the office memo dated 8.8.2001 in this

connection is Annexure-3 to the petition.

3. Thereafter a post of Lecturer in Industrial Chemistry was sanctioned under the IXth Plan which was advertised locally and third Local Selection Committee was held on 26.3.2002 for the post which was on a clear and permanent vacancy sanctioned under the IXth Plan. The petitioner was again selected vide office memo dated 30.3.2002, Annexure-1 to the petition.

4. The above facts disclose that the petitioner has been selected thrice by three Local Selection Committees during three years. Hence the petitioner applied to the Vice-Chancellor through the Chairman and Dean on 11.4.2002 that since the petitioner fulfils the requirement of the Executive Council resolution dated 1.11.2000 he may be placed regularly against the vacancy on which he has been working till a General Selection Committee is held for the post of Lecturer in Industrial Chemistry. A true copy of the petitioner's representation to the Vice-Chancellor, Aligarh Muslim University dated 11.4.2002 sent through the Chairman and Dean is Annexure-4 to the petition. The Vice-Chancellor approved the placement of the petitioner on the post of Lecturer in Industrial Chemistry sanctioned under IX Plan till further orders or till the post is filled up through, general selection vide office memo dated 15.5.2002, Annexure-5 to the petition. By the office memo dated 8.3.2003 the petitioners appointment has been extended till the General Selection Committee is held vide Annexure-6.

5. It is alleged in Para 9 of the petition that in the Department of Chemistry several posts were advertised in the news paper "The Indian Express" dated 17.10.2001, vide Annexure-7 to the petition. The petitioner applied for the post of Reader in Chemistry, Lecturer in Chemistry and Lecturer and Professor in Industrial Chemistry but General Selection Committee was only held for the post of Reader in Chemistry (Analytical Chemistry) and Lecturer in Chemistry but no General Selection Committee was held for the post of Lecturer/Professor in Industrial Chemistry till date. Copy of the interview call letter for the post of Reader in Chemistry (Analytical Chemistry) and copy of the interview call letter for the post of Lecturer in Chemistry dated 4.6.2003 are Annexure-8 to the petition. It is alleged in Para 11 of the petition that the petitioner continued to be in service after summer vacations. The petitioner reported for duty on 16.7.2003 and also attended the Board of Studies of the Department. However, on 18.7.2003 an office memo was issued discontinuing the petitioner's service w.e.f., 23.6.2003 on the ground that the petitioner had faced the general selection for the post of Lecturer in the Department of Chemistry held on 16.6.2003 but his name was not recommended by the General Selection Committee. It is also alleged in Para 11 that the petitioner had never faced a Selection Committee for the post of Lecturer/Professor if Industrial Chemistry and hence his service could not be terminated under Statute 29(2)(c) of the University Statutes. It is alleged that the respondent have misinterpreted the aforesaid statute and have arbitrarily passed order dated 18.7.2003 discontinuing the petitioner's service. Copy of the office memo dated 18.7.2003

is Annexure-9. It is alleged that this order was passed without giving opportunity of hearing to the petitioner.

6. It is alleged in Para 14 of the petition that the impugned office memo was totally unjustified since the post of Lecturer in Industrial Chemistry has not been filled up till date by a General Selection Committee. In fact the post has been re-advertised in July, 2003, vide Annexure-10 to the petition.

7. It is alleged in Para 15 of the petition that the spirit of the resolution of Executive Council was that a temporary Lecturer should not face Local Selection Committee repeatedly once he had faced three Local Selection Committees and he should be placed against a vacancy and should be considered by the General Selection Committee. It is alleged that the petitioner was Lecturer in Industrial Chemistry teaching only Industrial Chemistry course. Hence the petitioner should be given a chance to defend his temporary appointment as Lecturer in Industrial Chemistry before any General Selection Committee and discontinuation of his service was illegal and arbitrary. In Para 17 of the petition the petitioner has given names of several Teachers of the University who were allowed to continue although they have faced General Selection Committee and were not recommended for appointment in the same subject. These persons were continued in service while the petitioner has been discriminated. Hence it is alleged that there is violation of Article 14 of the Constitution. In addition to the above, Dr. Kaleem Uddin Lecturer in Industrial Mathematics appeared before the Selection Committee on 16.6.2003 for the post of Reader in Mathematics but was not selected but still was continued in service. Hence the respondents have adopted double standards. A copy of the interview call letter to Mr. Mohd. Abdul Nasir for the post of Lecturer in Civil Engineering in the Department of Civil Engineering dated 20.12.1999 and copy of office memo dated 4.8.1999 are Annexures-11 and 12 to the petition.

8. A counter-affidavit has been filed and we have perused the same. It is not disputed in Para 4 of the counter-affidavit that the petitioner was selected thrice by the Local Selection Committee. In Para 5 it is alleged that the post of Lecturer and Professor of Chemistry (Industrial Chemistry) had been advertised. In Para 6 of the respondents have quoted Statute 29(2)(c) of Aligarh Muslim University which states :

"No Teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under these Statutes be continued in service on such temporary employment or given a fresh appointment unless he is subsequently selected by a Local Selection Committee for a temporary or permanent appointment, as the case may be."

9. In Para 7 it is alleged that the petitioner appeared before the General Selection Committee but was not selected. Hence, it is alleged that he has no right to continue. However, it has been admitted in Para 8 of the counter-affidavit that no General Selection Committee for making appointment against the specific

post of Lecturer in Chemistry (Industrial Chemistry) could be arranged. The petitioner faced the General Selection Committee for the post of Lecturer in Chemistry but he was not recommended.

10. From the above facts it is evident that no General Selection Committee for the post of Lecturer in Chemistry (Industrial Chemistry) has been held and the post has not been filled up and has not even been re-advertised as stated in Para 9 of the counter-affidavit. However, the post was advertised locally in the news paper "Danik Jagran" for making temporary appointment through Local Selection Committee. On the facts of the case, it is obvious that the petitioner was not selected for the post of Lecturer in Chemistry by a General Selection Committee but he has not been considered by the General Selection Committee for the post of Lecturer in Industrial Chemistry. It appears that there is a difference between Lecturer in Chemistry and Lecturer in Industrial Chemistry. Since the petitioner has not even been considered by the General Selection Committee for the post of Lecturer in Chemistry (Industrial Chemistry), hence in view of the office memo dated 1.11.2000, as clarified by office memo dated 8.3.2003 the petitioner should have been allowed to continue as Lecturer in Chemistry (Industrial Chemistry) till General Selection Committee for the post of Lecturer in Chemistry (Industrial Chemistry) was held. The petitioner faced the General Selection only for the post of Lecturer in Chemistry and not for the post of Lecturer in Industrial Chemistry.

11. Hence in our opinion, the petitioner should be continued as Lecturer in Industrial Chemistry till the General Selection Committee is held for that specific post. The petitioner has already been selected thrice by Local Selection Committee and we see no reason why she should not be continued as Lecturer in Industrial Chemistry till the General Selection Committee is held for that post.

12. It is also evident that the petitioner has been discriminated against several Teachers who were not even selected by the General Selection Committee (whose names are given in Para 17 of the writ petition) and Dr. Kaleem Uddin are continuing on their posts.

13. For the reasons given above this writ petition is allowed. The respondents are directed to permit the petitioner to continue as Lecturer in Industrial Chemistry till the regular Selection Committee is held for the post. The petitioner shall also not arrears of salary from the date of termination of service till reinstatement and suit arrears must be paid within 2 months.