
(1996) 11 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 14260 of 1988 and 3551 of 1989

Manju Lata Vishwakarma

APPELLANT

Vs

U.P.Higher Education Services Commission,Allahabad & Anr.

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(11)

Citation : (1996) 11 AHC CK 0055

Hon'ble Judges : R.A.Sharma, J and B.Dikshit, J

Final Decision : Dismissed

Judgement

R. A. Sharma, J.—In response to an advertisement dated 2521985 issued by the U.P. Higher Education Services Commission (herein after referred to as the Commission), inviting applications for appointment to the post of Principal in Rajarshi Tandon Manila Mahavidyalaya, Allahabad (herein after referred to as the College), the petitioner applied for the said post and was selected by the Commission. On the recommendation of the Commission she was appointed as the Principal which post she joined on 1371985. Subsequently a complaint was made against the selection and appointment of the petitioner as Principal, in which it was mentioned that although the petitioner was not eligible for appointment as Principal of the College but she has secured her selection from the Commission by making false statement regarding her eligibility qualifications. On the basis of the said complaint the Government appointed Dr. S.C. Tiwari, Assistant Director Higher Education U.P, for making enquiry in the matter who, after making necessary enquiry, submitted a report holding that the petitioner made false statement regarding her eligibility qualifications before the Commission and has secured her selection on that basis. The Commission also issued a notice dated 1121988 to the petitioner, in response to which she submitted her explanation. The Commission, after making necessary enquiry, passed a detailed order dated 2171988 holding the petitioner guilty of making false statement in her application regarding her eligibility qualifications and securing selection from the Commission by misrepresentation and fraud. Being

aggrieved by the said order the petitioner has filed the writ petition No. 14260 of 1988. By an interim order dated 18/1/1988 this Court stayed the operation of the impugned order dated 21/7/88. Thereafter the Director Higher Education U.P. (herein after referred to as the Director) passed an order dated 19/1/1988 asking the District Inspector of Schools, Allahabad, not to make a payment of salary to the petitioner unless she gives an undertaking in the form of an affidavit for refund of the amount which may be paid to her as salary if her writ petition is dismissed by this Court. Being aggrieved by the said order of the Director the Petitioner has filed the second writ petition No. 3551 of 1989 for getting it quashed. Further prayer for writ of mandamus directing the respondents to continue to pay the salary to her, was also made. This Court on 24/2/1989 stayed the operation of the said order dated 19/1/1988. It appears that there is dispute between the parties regarding the working of the petitioner in the college as Principal. The petitioner was also not paid the salary by the Government. She, therefore, prayed for another interim order before this Court for payment of her salary. This Court on 26/4/1996 passed an interim order directing payment of salary of the post of the Principal to the petitioner.

2. The respondent Commission has filed counter affidavit. Petitioner, thereafter, filed rejoinder affidavit in reply thereto. We have heard the learned counsel for the parties.

3. Learned counsel for the petitioner has made three submissions in support of the writ petition viz. (i) The petitioner was having eligibility qualifications, namely, teaching experience of seven years; (ii) Even if it is found that she was not having requisite teaching experience at the time of her selection by the Commission, she has made up the deficiency thereafter before cancellation of her appointment; and (iii) In view of the facts and circumstances of the case petitioner is entitled to continue in service even if it is found that she was not eligible at the time of her selection as Principal. The learned counsel for the respondent/Commission has disputed the above contentions.

4. Admittedly, one of the eligibility qualifications for appointment as Principal of a Degree College is teaching experience of seven years at the degree level. In her application which the petitioner submitted before the Commission for the post of the Principal of the College she has stated that she has teaching experience of about 10 years and 10 months at the degree level, details of which was given in the said application and the same is reproduced below:

(i) teaching experience from 21/1/1974 to 20/5/1975 at Anant Shiksha Niketan Degree College, Allahabad.

(ii) temporary lecturer in Sanskrit in the College from 7/8/1975 to 25/2/1980 and thereafter as permanent lecturer till her appointment as Principal of the college.

5. On enquiry conducted by the Assistant director Higher Education it was found that the Anant Shiksha Niketan College, in which the petitioner claims to have worked as a teacher from 21/1/1974 to 20/5/1975 is not a Degree College and is also

not affiliated to any University. In fact, it is an Intermediate College where the education upto Intermediate classes is imparted. The petitioner failed to prove before the Commission that Anant Shiksha Niketan College is a Degree College. She also did not prove before this court that the said College is a Degree College. In her reply to the showcause notice issued by the Commission the petitioner has admitted that the said College is not affiliated to any University. If that is so, it cannot be a Degree College. The Commission has, therefore, rightly held that her statement in her application about her teaching experience at degree level from 1974 to 1975, is false. As regards her appointment as lecturer in temporary capacity in the College from 1975 to 1980 she has also failed to prove it before the Commission. She could neither produce any letter of her appointment as temporary lecturer in the College nor could she produce the proof of having drawn the salary of a lecturer from the College during the said period. She has also failed to prove before this Court that she was appointed and worked as lecturer in the College from 1975 to 1980. Neither her appointment letter nor the proof of having drawn salary of a lecturer from the College during the aforesaid period, was placed before this Court. In view of the provisions of Section 31(11) of the State Universities Act, 1973 a teacher cannot be appointed in a Degree College without prior approval of the Vice-Chancellor of the University to which the College is affiliated. The Vice-Chancellor passed an order on 28/1/1980 granting approval to the petitioner's appointment. In the absence of the any appointment order and proof of having drawn the salary of the lecturer from the College from 1975 to 1980 coupled with the absence of any order of approval of the Vice-Chancellor under Section 31(11) of the State Universities Act prior to 28/1/1980 the Commission was fully justified in holding that the petitioner was not lecturer in the College during the aforesaid period and she made a false statement about it in her application. The fact is that when she applied before the Commission for the post of the principal in the year 1980, she has less than five years teaching experience at the degree level, although the statutory requirement was for seven years experience. Therefore, she was not entitled to be considered, selected and appointed as Principal of a Degree College. The Commission has by a Well reasoned order held that the petitioner was selected as the principal of the College on account of her misrepresentation and fraud. No exception can be taken to the impugned order.

6. Learned counsel for the petitioner has, in this connection, however submitted that seven years teaching experience need not be of the degree level and it is sufficient if a candidate has seven years teaching experience at any other level. In support of his contention the learned counsel has placed reliance on the following cases; *The State of Bihar v Asis Kumar Mukherjee* AIR 1975 SC 192; *R. Narayan Iyer v. The Registrar, University of Kerala* 1976 LAB I.C. 1312; *Jadunandan Sahav v. Chancellor Bihar University* (1976 LAB I.C. 327); and *Kumari Paramjit Kuar v. Delhi Administration* 1986 LAB I.C. 139. This contention is also devoid of merit and the aforesaid decision, cited by the learned counsel, are of the help to him. In the *State of Bihar v. Asis Kumar Mukherjee*

(Supra) one of the eligibility conditions was teaching experience of atleast three years in a teaching institution. The controversy therein related to the question as to whether experience of Dr. Mukherjee, respondent therein, while working as Registrar in the University of England can be said to be teaching experience from a teaching institution. The Supreme Court held that the institution in which Dr. Mukherjee was working in England as a Registrar as a teaching institution and the Registrar was also having duty of teaching in the institution. It was accordingly held that the experience acquired by Dr. Mukherjee as Registrar in the said institution was teaching experience which was liable to be taken into account. This case, therefore, cannot support the case of the petitioner.

7. The law laid down in the case of *R. Narayana Iyer v. The Registrar, University of Kerala* (supra) is contrary to what the learned counsel for the petitioner contends. In that case one of the eligibility qualifications for appointment to the post of the Professors/Heads of Departments was four years teaching experience. The Vicechancellor of the University held that the teaching experience must be at the degree level. This was upheld by the Supreme Court by holding as under:

"But it appears to use that the words "teaching experience" by themselves were certainly capable of the wide meaning attributed to those words by the Vicechancellor and will take in even teaching experience in a school. Considering posts for which the qualifications have been prescribed for a Professor or Heads of the Departments reading the words "teaching experience" without any qualifications might lead to anomalies. If that be so, the view taken by the Vicechancellor cannot be said to be so erroneous as to justify interference in proceedings under Article 226 of the Constitution of India."

8. The case of *Jadunandan Sahav v. Chancellor, Bihar University* (supra) deals with the different controversy. In that case it was held that the teaching experience of I.I.T. Kanpur is liable to be taken into account in order to find out the eligibility qualifications relating to the teaching experience of a candidate.

9. The case of *Kumari Paramjit Kaur v. Delhi Administration* (supra) also does not deal with the same controversy which is involved in the present case. In that case, the claim of the petitioner relating to teaching experience, was denied initially on the ground that the experience certificate produced by the petitioner was not countersigned, but subsequently, the respondents changed their stand and disputed teaching experience of the petitioner on the ground that she was teaching in an institution in honorary capacity without permission of the Director. This plea of the respondents was rejected by the learned Single Judge of Delhi High Court. The first contention of the learned counsel for the petitioner, is rejected.

10. The 1st two submissions are also devoid of merit and, therefore, cannot be accepted. In the instant case the petitioner's selection has been cancelled not merely on the ground that she did not possess requisite teaching experience at

the relevant time but also on the ground that she obtained her selection and appointment by misrepresentation and fraud. An appointment obtained by misrepresentation or fraud is vitiated and is liable to be cancelled. In *Union of India v. M. Bhaskaran*, 1995 Supp (4) SCC100:1996(2) LBESR 720(SC), the Hon"ble Supreme Court has laid down that if a person secures appointment by misrepresentation and fraud the same is liable to be cancelled. The Supreme Court further held that in such cases continuance in service pursuant to the appointment obtained by misrepresentation and fraud cannot create equity in favour of the appointee. Relevant extract from the said decision of the Supreme Court is reproduced below:

"If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointments orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondentemployees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour of any estopped against the employer. In the connection we may usefully refer to a decision of this Court in *Distt. Collector & Chairman, Vizianagram Social welfare Residentied School Society v. M. Tripura Sundan Devi*. In that case Sawant, J. speaking for his Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the concerned appointee. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No. Court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision,

if by committing fraud any employment is obtained, such fraudulent practice cannot be permitted to be countenanced by a court of law."

(Emphasis supplied).

In *Jammu & Kashmir Public Service Commission v. Farhat Rasool*, 1995 Supp. (4) SCC 621, the Supreme Court held that "The present is a case where almost a fraud was sought to be played by the respondent by giving wrong information as to his eligibility, benefit of which fraud cannot be allowed to the respondent.". In *Kishori Lal & Sons v. Delhi Development Authority*, (1995) 3 SCC 320, the Supreme Court laid down that if a person has obtained allotment of plot from Development Authority by playing fraud, he is not entitled to retain the same.

11. The decisions of *Ram Swarup v. State of Haryana* (1978 SC 1536) and *J.C. Yadav v. State of Haryana* AIR 1990 SC 857, on which reliance has been placed by the learned counsel for the petitioner are of the help to him. In the case of *Ram Swarup v. State of Haryana* (supra) the appointment of the appellant therein as Labour cum Conciliation Officer in the Labour Department was cancelled on the ground that he did not possess one of the minimum qualifications namely five years experience of working in Labour Laws as Deputy Chief Inspector, Chief Inspector of Shops. The Supreme Court held that although that was the eligibility qualification and the appointment of the appellant therein was made in violation of the statutory rules, but such appointment was merely irregular when made and stood regularised from the time when he completed the requisite minimum experience of five years after the appointment. This decision was followed by the Supreme Court in *J.C. Yadav v. State of Haryana* (supra). In none of those two cases the concerned candidate made any misrepresentation regarding his eligibility qualifications and they were not found guilty of misrepresentation and fraud in securing their appointment. But in the instant case the position is different. Here, as mentioned earlier, the selection of the petitioner was cancelled on account of the fact that she has obtained it by fraud and misrepresentation.

12. The post of a Principal of Degree College is a post of responsibility and trust. Therefore, if an appointment is secured for such a post by misrepresentation and fraud the same is liable to be cancelled. As held by the Supreme Court in *Union of India v. M. Bhaskaran* (supra) the appointment of such an appointee cannot be saved merely because he/she has continued on the basis of the appointment secured by misrepresentation and fraud for some years. It was further held that "no Court should be party to the perpetuation of the fraudulent practice".

13. For the reasons given above, both the writ petitions lack merit and are accordingly dismissed. In view of the facts and circumstances of the case there shall be no order as to costs. Petitions dismissed.