
(2009) 09 AHC CK 0192
In the Allahabad High Court

Mohd. Tariq Khan and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2010) 2 AWC 1630 : (2009) 123 FLR 1067

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, J.—Since all the aforesaid writ petitions are arising out of selfsame Impugned order and common question is involved, the aforesaid writ petitions have been heard analogously and are being decided by this common judgment having binding effect on all the writ petitions.

2. These writ petitions have been filed challenging the order dated 3.3.2009, passed by the appropriate authority-respondent No. 4 holding that the appointment of the petitioners have been made without approval of the Vice-Chancellor, M.J.P. Rohilkhand University, Bareilly (hereinafter in short called as the "University"), hence their salary cannot be released.

3. The fact remains that in pursuance of the advertisement/s issued by the Gandhi Faiz-E-Aam College, Shahjahanpur (hereinafter in short called as the "College"), which is a minority institution, the petitioners being qualified and eligible for facing interview before the Selection Committee, applied for the post of Lecturer in Physics, English and Mathematics respectively. Approval for the panel of experts was granted by the Vice-Chancellor and accordingly the Selection Committee was constituted. The Selection Committee selected the petitioners and recommended for their appointment. The Managing Committee of the college approved the recommendation of the Selection Committee. The concerned college sent the matter to the Vice-Chancellor along with the

documents and details on 11.9.2008 and 6.10.2008 (as per individual case of the respective petitioners) for approval of proposal of the petitioners' appointment. Since no response was being received from the office of the Vice-Chancellor till 4.11.2008 and 13.11.2008 (as per individual case of the respective petitioners), the Management of the College applying the provisions of Section 31(11)(c) of the Uttar Pradesh State Universities Act, 1973 (hereinafter in short called as the "Act, 1973") issued appointment letters to the petitioners. The petitioners joined and are regularly teaching in the college as Lecturers in the respective subjects. Pay-bill/s along with the letter/s was/were sent by the college to the District Inspector of Schools for payment of salary to the petitioners. However, on 7.3.2009 the petitioners have been informed by the college that the District Inspector of Schools has passed the impugned order on 3.3.2009 to the effect that since the appointments were made without approval of the Vice-Chancellor, their salary cannot be released. In such circumstances, though the petitioners are regularly teaching in the college as Lecturers but their salaries are not being paid.

4. Mr. Anurag Khanna, learned Counsel appearing for the petitioners, contended before this Court that the appointment of the petitioners were made in accordance with law. Section 31 of the Act, 1973 has several parts. He said that the institution, in which appointments have been given to the petitioners, is a minority institution. As per the second proviso to Section 31(4)(c) of the Act, 1973, in the case of colleges established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India, the experts shall be nominated by the Management suggested and approved by the Vice-Chancellor. In the instant cases, it has been done. Section 31(11)(c) of the Act, 1973 says that the Vice-Chancellor, if he is satisfied that the candidate recommended by the Selection Committee does not possess the minimum qualifications or experience prescribed, or that the procedure laid down in the said Act for the selection of the teacher has not been followed, shall convey to the Management his disapproval, but if he does not convey his disapproval within a period of one month from the date of receipt of the documents referred to in Clause (b), or does not send to the Management any intimation in connection therewith, he shall be deemed to have approved the proposal. This question arose because the Management was required to submit the recommendations of the Selection Committee along with relevant documents to the Vice-Chancellor for approval.

5. In the cases in hand, the University and the State have taken two stands. Mr. Vivek Verma, learned Counsel appearing for the University, has said that irregularity was there in making the Selection Committee, therefore, the same cannot be allowed. So far as the State is concerned, Mr. Ramanand Pandey, learned standing counsel, said that the Act, 1973 cannot be held to be applicable in the case of the petitioners.

6. However, on the basis of an affidavit filed by the State it appears to us that the Uttar Pradesh Higher Education Service Commission Act, 1980 (hereinafter in

short called as the "Act, 1980") by its second amendment in 2004 incorporated Section 24 making exemptions to the minority institutions, hence the Act, 1980 cannot be said to be applicable in this case. We have extensively gone through the Act, 1980 but not seen any provision to override or supersede the Act, 1973 in any manner whatsoever. In the said affidavit filed on behalf of the State, it is categorically said that requirement of approval by the Uttar Pradesh Higher Education Service Commission has been dispensed with vide Uttar Pradesh Higher Education Service Commission (Second Amendment) Act, 2004.

7. Mr. Khanna cited three judgments, two of which are of learned single Judge of this High Court having its persuasive value in *Awadh Behari Pandey v. Chancellor, University of Gorakhpur* Raj Bhawan, Lucknow and Ors. 1987 AWC 134 and *Ram Kumar v. District Inspector of Schools, Ghaziabad* and Ors. 2004 (2) ESC 829 (All) : 2004 (5) AWC 4392 , whereas one is of the Division Bench of Delhi High Court in *University of Delhi Vs. Ashok Kumar Chopra and Another* , to say that in case deeming provision is available in the Act, the same is required to be effective. Law is to be read and understood in the manner as has been laid down but not in any other manner whatsoever. Against the query of estoppel to apply the deeming provision, he relied upon *Ashok Kumar Chopra (supra)*. As against removal of difficulties, he said that the approval would be deemed to have been granted after expiry of the period even as per the ratio of *Ram Kumar (supra)*.

8. From the analysis of the respective cases and submissions as made by the respective parties, we are of the view that when a deeming provision has been prescribed under the Act, 1973, rigour of such provision has to be maintained by the parties, otherwise there will be no meaning of incorporation of such deeming clause. It acts as an estoppel or acquiescence. Therefore, we do not find any justification to withhold the salary of the petitioners. The question of irregularity, which has been raised by the University, cannot be equated with the illegality or fraudulent practice. If it is so, it has to be established beyond doubt to come to an appropriate finding when automatically the entire selection will go. But this is not the situation herein. Hence, taking into account totality of the matter the order impugned dated 3.3.2009 is liable to be quashed and is hereby quashed. The petitioners will be entitled to get arrears of the salary from the date they are working in the college, as early as possible but not beyond the period of two months from the date of communication of this order. Current salary will be paid regularly.

9. Accordingly, the writ petitions are allowed.

No order is passed as to costs.

Shishir Kumar, J.

I agree.