
(2014) 03 AHC CK 0025
In the Allahabad High Court
Case No : C.M.W.P. No. 29241 of 2011

Mohini Verma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Allahabad University Act, 2005 — Section 5(d)
Constitution of India, 1950 — Article 12, 14, 226

Citation : (2014) 104 ALR 340 : (2014) 4 AWC 3924 : (2014) 142 FLR 151

Hon'ble Judges : Arvind Kumar Mishra-I, J; Arun Tandon, J

Bench : Division Bench

Advocate : Ashish Agrawal, Arvind Srivastava and Jitendra Kumar, Advocate for the Appellant; A.K. Tiwari, G. Baghel, V.K. Singh, D.K. Singh, R.N. Singh, Vivek Rai and Ram Gopal Tripathi, S.C, Advocate for the Respondent

Judgement

Arun Tandon and Arvind Kumar Mishra-I, JJ.—The newly added respondent Nos. 4 to 6 are represented by Sri V.K. Singh and Sri D.K. Singh, Advocates. It is pointed out that respondent No. 4 Dr. Narendra Kumar Pandey has already expired. Let the name of respondent No. 4 be deleted from the array of respondents and a note in that regard be made by the office on the memo of writ petition.

2. So far as respondent Nos. 5 and 6 are concerned, Sri R.N. Singh/learned Senior Advocate has made an application for further time being granted to file counter-affidavit. Application is allowed.

3. Let counter-affidavit be filed by 3rd April, 2014, when the matter shall be listed next.

4. Dr. Mohini Verma, the petitioner was appointed as Tabla Accompanist, in Chaudhary Mahadeo Prasad Degree College, Allahabad affiliated to the University of Allahabad, which at the relevant time was a State University under the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act, 1973").

Petitioner seeks a writ of mandamus commanding the University-authorities to re-designate her as Lecturer at par with the 12 Technical post holders, who have been re-designated as Lecturer and for payment of salary in the pay-scale of Lecturer from the same date.

5. Petitioner, by means of the amendment application has prayed for quashing of the order dated 15th December, 2009 and the order passed by the Vice-Chancellor dated 22nd July, 2010 (Annexure Nos. 6 and 16 to the present writ petition). Amendment application has already been allowed by the Court.

6. From the records of the present writ petition, we find that parity is being claimed by the petitioner in the matter of re-designation as Lecturer basically against respondent No. 4 Dr. N.K. Pandey, who has since expired, and respondent Nos. 5 and 6 and 12 other persons.

7. We find that the 12 technicians, the petitioner and respondent Nos. 5 and 6 alongwith Dr. N.K. Pandey were also appointed on a Class III post covered by Category-C-II, Appendix-I of the Calendar of the University of Allahabad, which at the relevant time was a State University.

8. Respondent Nos. 5 and 6 alongwith Dr. N.K. Pandey filed writ petition before the High Court claiming re-designation as Lecturer and payment of salary of the said post in accordance with the provisions of section 31(3)(c) of the Act, 1973, being Civil Misc. Writ Petition No. 45992 of 2005, Dr. Narendra Kumar Pandey and others v. The Registrar, University of Allahabad and others.

9. The writ petition was contested by the Allahabad University. It was case of University that Dr. Narendra Kumar Pandey alongwith other petitioners (i.e., respondent Nos. 5 and 6 to this petition) had not been appointed after publication of any advertisement and after following any procedure prescribed by law. It was also their case that they had not been appointed as part-time teachers. They were only Class-III employees not covered by section 31(3)(c) of the Act, 1973, so as to be eligible for being re-designated as Lecturers. It was also the case of the University before the High Court that said petitioners were not entitled to the benefit of Government Orders.

10. A Division Bench, after hearing learned Counsel for the parties, vide judgment and order dated 5th December, 2006, dismissed the writ petition No. 45992 of 2005, after recording following findings:

(a) Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 were not appointed after publication of any advertisement or after following any procedure prescribed by rules.

(b) They were not appointed as part-time teachers, so as to be provided benefit of section 31(3)(c) of the Act, 1973.

(c) The petitioners were not entitled to be considered for being re-designated as Lecturers.

11. After recording the aforesaid findings, the Division Bench held that no person can claim absorption or regularisation merely on the strength of his continuance and there has to be adherence to Rule of equality in public employment, which is the basic feature of the Constitution of India. In support of the same, reference was made to the Constitution Bench Judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

12. The Division Bench also took note of the fact that by the time, the writ petition came to be heard, the University of Allahabad had already been made a Central University by an Act of Parliament of 2005, known as the "University of Allahabad Act, 2005", which came into force w.e.f. 14th July, 2005 and accordingly, it all recorded as follows:

no direction can be given to the Executive Council to consider the cases under the provisions of the Act, is not required to examine it in this petition.

13. We may record that u/s 5(d) of the University of Allahabad Act, 2005, so far as the existing officers and staff, who were working on 14th July, 2005, it was provided as follows:

5. Effect of incorporation of Allahabad University....

....

(d) every person employed by the University of Allahabad immediately before the appointed day shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes.

14. What logically follows is that so far as the staff including Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6, who were working on Class III post covered by Category-II, Appendix-I of the calendar of the University of Allahabad are concerned, they had to be continued on similar terms and conditions with same privileges till altered by amendments to be made in the Statute. The Act, 2005 itself contemplates that the University, on its own including the Executive Council, will have no power to alter the designation, salary etc. of the existing staff except by amendment in the Statute.

15. We further find that in a selective manner, a legal opinion was obtained in the case of Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6. On the basis of the legal opinion so obtained, the Executive Council is stated to have constituted a Selection Committee and re-designated Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 as Lecturers, although their writ petition had already been dismissed by the High Court on 5th December, 2006, referred to above.

16. We are surprised to note that in the legal opinion, which was so tendered, there is absolutely no mention of the dismissal of the writ petition filed by Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 being writ petition No. 45992 of 2005, which was so hotly contested by the University itself. The learned Counsel for the University or the private respondents could not furnish any reason whatsoever as to how the case of Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6, could be considered on the basis of legal opinion selectively, to the exclusion of all other similarly situated employees for such designation of Lecturer.

17. In these circumstances, we prima facie find that the grant of status of Lecturers alongwith pay-scale to Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 is patently illegal discriminatory and in teeth of section 5(d) of Act, 2005.

18. The question that arises, is that if we refuse the relief prayed for by the petitioner on the ground that there can be any negative equality and the High Court may not issue any order asking the University-authorities to perpetuate the same illegality, as per the law laid down by the Apex Court repeatedly, Reference Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another, is this Court to permit the hostile discrimination to continue. Will this Court permit others to enjoy the benefit of illegal orders made by the University, but for the petitioners, it shall lay its hands off. The answer, in our opinion, has to be a "No". We are conscious of the fact that such discrimination in an establishment like University and associate degree colleges only breeds discontent in the mind of persons, complaining discrimination. The Court cannot be a mute spectator and we cannot ask the petitioner to suffer at the hands of the University only because the University decides to act selectively and confer illegal benefit upon persons like Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6, who had lost earlier before the High Court and who in terms of section 5(d) of the University of Allahabad Act, 2005 could not have been designated as Lecturers except by amending the Statutes.

19. If two equals have been made unequal because of any illegal act of an authority, which answers the description of "State" within the meaning of Article 12 of the Constitution of India and further if this Court under Article 226 of the Constitution of India, cannot refuse to confer same benefits upon the left behind as the same would amount to perpetuating the illegality than it is the duty of the Court to strike at the order/action of the authority, which has created the divide amongst the two, who were equal earlier and to see that illegal benefits are withdrawn from the beneficiary of illegal acts. In our opinion, this is the real intent of Article 14 of the Constitution of India. Scales of balance of justice must remain equal for all similarly situated.

20. We deem it fit and proper in the facts of the case at this stage to provide that the University shall revisit the matter in respect of grant of status of Lecturers alongwith salary to all such persons, who were working on a post covered by

Category-C-II of the Calendar of the University of Allahabad on 14th July, 2005 when the University of Allahabad Act, 2005 was enforced and the University of Allahabad was declared to be a Central University. To respondent Nos. 5 and 6, there should be no further payment of salary as Lecturers. Till the next date of listing, they may be paid salary of the post on which they were working on 14th July, 2005, as per the pay-scale amended up-to-date. The University shall take appropriate decision in light of what has been recorded above qua others also by the next date after affording opportunity of hearing to them. List this matter on 3rd April, 2014.