
(1986) 10 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9933 of 1983

Mool Chand Singh

APPELLANT

Vs

The Vice Chancellor, Gorakhpur University and Others

RESPONDENT

Date of Decision : 15-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 68, 9

Citation : (1987) 1 AWC 268

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant; M.P. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—A preliminary objection has been raised by the learned Counsel for the contesting Respondents, namely, Respondent Nos. 1 and 3. The objection is that the Petitioner has an equally efficacious remedy by way of approaching to the Chancellor u/s 68 of the U.P. State Universities Act against the impugned order passed by the Vice Chancellor, Gorakhpur University, on 26-7-1983 determining, inter se, seniority between the Petitioner and the Respondent No. 3, who are, both teachers in the Mahajan Degree College, Chauri-Chaura Gorakhpur, which is affiliated to the Gorakhpur University and" is governed by the aforesaid Act and the statutes framed by the Gorakhpur University.

2. I have heard learned Counsel for the parties. I find considerable merit in the above objection. The objection is also supported by two decisions of this Court, one in the case of Dr. Data Ram Sharma v. The Vice Chancellor, Meerut University 1982 Edu. Cas 80 and the other in Managing Committee v. The Vice Chancellor 1980 UP LB EC 270 . In both these decisions the view taken was that if remedy is available to the Petitioner u/s 68 in regard to an order passed against him by the Vice Chancellor who is admittedly an officer of the University within the meaning

of Section 9 of the Act, the Petitioner ought to be relegated to the statutory remedy provided u/s 68 of the Act. The decision cited by the Petitioner in both these cases namely, L. Hirday Narain Vs. Income Tax Officer, Bareilly, , was distinguished by both the Division Benches.

3. The situation in the present case is exactly the same as that which persuaded this Court, in the above two cases, to dismiss the petition on the ground of availability of alternative remedy u/s 68 of the Act.

4. This petition was filed at a time when the Petitioner and the Respondent No. 3 liad, both, staked their claim for officiating as Principal of the college, each claiming to be senior to the other. The Managing Committee has, in exercise of its powers under statute 18.4 upheld the claim of the Petitioner and held that he was senior to the Respondent No. 3. Aggrieved by that decision the Respondent No. 3 filed an appeal before the Vice Chancellor who allowed the same by the impugned order. As the post of the Principal was, at the time when this petition was presented, vacant and the Petitioner was claiming the right to officiate as the Principal by virtue of his alleged seniority over the Respondent No. 3, this Court appears to have been persuaded to admit this petition notwithstanding the fact that the remedy by way of representation was available to him u/s 68 of the Act.

5. The position has now changed. It is not disputed that the regular Principal of the institution, namely, Sri Rama Kant Gupta, is currently acting as Principal of the college. Neither the Petitioner nor the Respondent No. 3 can, therefore, claim any right to officiate as Principal, as the post itself is not vacant for the time being. There is, hence, no such urgency as to warrant entertainment of this petition. Further the controversy involved in this petition depends on investigation of facts about which there is a serious dispute between the parties. The dispute can, in these circumstance, be more appropriately resolved within the frame-work of the statute itself by the Chancellor u/s 68. The Petitioner should therefore exhaust his remedy u/s 68 of the Act before approaching this Court under Article 226 of the Constitution in case his claim for seniority is negated by the Chancellor.

6. In the circumstances mentioned above it does not seem necessary to go into the merits of the claim to seniority put forward by the two parties at present. That is a matter, which should be decided by the Chancellor u/s 68 if the Petitioner chooses to file a representation under that provision. The learned Counsel for the Petitioner, however, submitted that his representation if filed now would obviously be barred by limitation. It is urged that if this Court had not entertained the petition and dismissed the same on the ground of alternative remedy, he would have approached the Chancellor immediately and would not have been confronted by the objection of limitation.

7. It is true that the representation, if filed by the Petitioner now, would be belated, but, I find that Section 68 itself confers powers on the Chancellor to

entertain a representation even after the period of limitation prescribed thereunder. I do think that the present is a pre-eminently fit case for condonation of delay. In these circumstances the Petitioner seems entitled to the exclusion of time spent in pursuing the petition in this Court as his petition had been admitted by this Court and the same has been pending ever since. If, therefore, the Petitioner submits his representation together with an application for condonation of delay, this Court hopes the question of delay will be considered by the Chancellor in the light of the observations made in this judgment.

8. In the result, petition fails and is dismissed, but I make no order as to costs. If, however, the Petitioner files a representation u/s 68 of the U.P. State Universities Act before the Chancellor of the University, the same may be disposed of expeditiously, if possible, within six months from the date on which the representation is submitted before the Chancellor.

9. A copy of this order may be given to the learned Counsel for the parties on payment of usual charges within three days.