

(1998) 01 AHC CK 0080
In the Allahabad High Court
Case No : C.M.W.P. No. 324 of 1992

Narendra Singh Chauhan

APPELLANT

Vs

Hemwati Nandan Bahuguna University, Srinagar, Garhwal and
others

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31, 68

Citation : (1998) 2 AWC 1077 : (1998) 2 UPLBEC 1377

Hon'ble Judges : S. H. A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Dinesh Dwivedi, Rakesh Dwivedi, R.G. Padia and P. Padia, for the Appellant; S. C. and B.R. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

S. H. A. Raza and Bhagwan Din, JJ.—The Selection Committee of the University recommended a panel of four persons for the post of Lecturer in the Department of Commerce of the respondent-University. The petitioner was placed second in the panel while Shri R. S. Pandey (respondent No. 3) was placed at Serial No. 4 by the panel.

2. The Executive Council approved the appointment of the petitioner. Later on Shri R. S. Pandey (respondent No. 3) preferred a representation to the Chancellor u/s 68 of the State Universities Act (hereinafter referred to as the Act). Although the said representation was not very much pressed but the Chancellor in exercise of his powers u/s 68 of the Act, exercising suo motu powers passed an order to the effect that the petitioner of this writ petition did not come within the field of eligibility criterion in accordance with Statute 11.01 framed under the Act and ordered the appointment of Shri R. S. Pandey (respondent No. 3) as the Lecturer in the Faculty of Commerce of the respondent-University.

3. Being aggrieved against the said order, the petitioner has preferred this writ petition.

4. Dr. R. G. Padia, learned counsel for the petitioner, assailed the order of the Chancellor mainly on three points that, firstly : u/s 68 of the Act the Chancellor can exercise suo-motu power only under exceptional circumstances but the Chancellor has not Indicated in the order that the case was exceptional in nature and he could not have exercised the suo motu powers. Secondly ; it was submitted that if the Chancellor would have exercised its power, it was incumbent upon him to have issued notices to the petitioner asking for his comments and thereafter decided the question. Thirdly and lastly ; it was submitted that in a similar circumstance the disqualification or non-eligibility was waived by the Chancellor in other cases but in the case of the petitioner, it was not done so.

5. Before dealing with the question, it would be relevant to consider as to what are the minimum qualifications for the appointment of the Lecturer in the University in question and whether the petitioner fulfilled those qualifications or not. Statute 11.01 of the Garhwal University as it existed earlier reads as under :

"11.01. (1) In the case of the Faculties of Arts, Commerce, and Science, the following shall be the minimum qualifications for the post of a Lecturer in the University, namely:

(a) a doctorate In the subject of study concerned or a published work of a high standard in that subject: and

(b) consistently good academic record (that is to say. the overall record of all assessments throughout the academic career of a candidate), with first class or high second class (that is to say, with an aggregate of more than 54 per cent marks) Master's degree in the subject concerned or equivalent degree of a foreign University in such subject.

(2) Where the Selection Committee is of opinion that the research work of a candidate, as evidenced either by his thesis or by his published work, Is of a very high standard, it may relax any of the requirements specified in sub-clause (b) of clause (1)."

6. A bare perusal of the aforesaid statute would Indicate that if the minimum qualifications, i.e.. consistently good academic record (that is to say, with an aggregate of more than 54 per cent marks) is to be relaxed, it is incumbent upon the Selection Committee to express an opinion that the research work of a candidate as evidenced either by his thesis or by his published work is of a very high standard and only then the infirmity in the qualifications, if any, can be waived.

7. As far as the petitioner is concerned, unfortunately he suffered from infirmity, inasmuch as he did not possess the consistently good academic record. He secured second division obtaining 56.08 per cent marks In his High School

Examination. He cleared his Intermediate in the year 1983. obtaining second division with 53.8 per cent marks. He graduated In the year 1985 in third division obtaining 44.33 per cent marks. He obtained his Master is degree in the year 1987 in Commerce securing 68 per cent marks.

8. In view of the aforesaid position, it cannot be said that the petitioner possesses consistently good academic record (that is to say, with an aggregate of more than 54 per cent marks). The recommendation of the Selection Committee has not been placed before us to arrive at a conclusion that for cogent reasons, the Selection Committee, relaxed the Infirmary of having minimum educational qualifications. It is well-settled that whenever the minimum educational qualifications of a Lecturer are to be relaxed by the Selection Committee for the reason that either the published work of the petitioner or his thesis was of a very high standard, the Selection Committee must express an opinion/reason in its recommendation. We are not aware whether it was done by the Selection Committee or not as this was not placed before us.

9. As far as the submission of Dr. Padia that the Chancellor could not have exercised his power as the case was not of exceptional circumstances as provided u/s 68 of the Act is concerned, the same Is misconceived. Admittedly, it was the petitioner who filed the representation. Besides his submissions, he also submitted his comments before the Chancellor. After the comments of the University as well as of Shri R. S. Pandey (respondent No. 3) were received, he did not choose to press his representation. We are not aware as to what were the reasons which prompted Shri R. S. Pandey (respondent No. 3) not to press the representation as it was not disclosed by the parties in their affidavits filed before us. In such an apprehensive situation, the Chancellor suo motu exercised his power which power he could exercise under the provisions contained in Section 68 of the Act. Such representations and comments of respondent No. 3 as well as of the University were available before him. It was not at all necessary for the Chancellor to have Issued a notice to the petitioner again.

10. As far as the third submission of Dr. Padia is concerned, the attention of this Court was brought to the fact that the Statute of the University underwent a change on 25.3.1989 wherein the Statute regarding relaxation in the minimum qualifications was deleted, meaning thereby, that neither the Selection Committee nor the University nor the Chancellor was vested with a power to waive the minimum qualifications for the appointment of a Lecturer.

11. But there is another aspect of the matter which needs consideration. As soon as that part of Clause (2) of Statute 11.01 was deleted on 25.3.1989. a writ petition was filed before this Court and the deletion of clause (2) of Statute 11.01 was stayed by this Court. The writ petition was ultimately dismissed on 1.3.1997. Dr. Padia contended that at the relevant time when the notification of amendment in the Statute was stayed by this Court, the Chancellor had no option except to act in accordance with the old Statute of the University which empowered the Selection Committee to waive the infirmity in the minimum

qualifications if the thesis or the published work of a person was of high standard. In that regard, he has referred to the decision of the Chancellor himself which was given in a particular case where he allowed relaxation of the minimum qualifications for the appointment of the Lecturer. Hon''ble Supreme Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, observed in paragraph 10 of the report :

".....While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

12. After the decision of the Chancellor, respondent No. 3 who fulfilled the minimum qualifications and was directed by the Chancellor to be appointed as Lecturer in the University joined the post of the Lecturer in the Garhwal University and ever since he has been continuing as such. He must have gained sufficient experience by now after a lapse of about more than five years. It would not be expedient in the interest of justice to throw him out from the University. The principles of equity demand his continuance as Lecturer. As far as the petitioner is concerned, undoubtedly he was working as a Lecturer on the said post since 1988 and his service could have been regularised u/s 31 (c) of the Act. but as he lacked the minimum educational qualifications for being appointed as a Lecturer in the University and after the order of the Chancellor, respondent No. 3 was appointed, he cannot claim any right on the post of Lecturer in the University.

13. The writ petition is accordingly dismissed. Interim order, if any, is vacated.