

(1994) 07 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ P. No. 13044 of 1986

N.K.Shah

APPELLANT

Vs

Chancellor,Kumaon University,Nainital and Others

RESPONDENT

Date of Decision : 12-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1994) 07 AHC CK 0037

Hon'ble Judges : S.H.A.Raza, J and Surya Prasad, J

Final Decision : Dismissed

Judgement

1. Petitioner, Dr. N. K. Shah, by means of the present writ petition, has prayed for issuance of a writ in the nature of mandamus commanding the respondents to treat the petitioner's personal promotion dated 26121984 given to respondents 4 and 5 as ineffective and inoperative and to treat the petitioner as senior to respondents 4 and 5 in the Economics Department of the University. It has been further prayed that by means of a writ in the nature of mandamus, the Chancellor of Kumaon University be directed to decide the representation of the petitioner dated 2151985 forthwith.

2. It has been averred in para 39 of the writ petition that the petitioner has availed the remedy available to him under Section 68 of the U. P. State University Act and in spite of his best efforts, and the orders issued by the Court, the representation of the petitioner was not being decided. Section 68 of the U. P. State Universities Act reads as under :

"If any question arises whether any person has been duly elected or appointed as on is entitled to be a member of any authority or other body of the University or whether any decision of any authority or officer of the University (including any question as to the validity of a Statute, Ordinance or Regulations not being a Statute or Ordinance approved by the State Government or by the Chancellor) is in conformity with this Act or the Statutes or the Ordinance made thereunder the

matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final."

3. From a perusal of the provisions contained in Section 68 of the said Act, it is evident that in case any representation has been made under Section 68, the order passed by the Chancellor shall be final. From the averments made in the writ petition and the relief sought, it is evident that the order of the Chancellor has not been received, hence a preliminary objection was taken by the respondents that as the alternative remedy provided under Section 68 has not been exhausted, the petition is not at all maintainable.

4. It has been brought to the notice of this Court by the learned Counsel for the petitioner that earlier, this Court has directed the Chancellor to dispose of the representations but as the representations were not decided, it should be presumed that the Chancellor has failed to carry out the statutory duty in accordance with the provisions contained in Section 68 of the U. P. State Universities Act and it should be deemed that he refused to pass any such order, hence in that situation, there would be no bar for this Court to hear the parties on the merit of the writ petition and pass final orders.

5. In this connection, reliance was placed by the learned Counsel in the case of *Atul Goyal v. Registrar, University of Gorakhpur and others*, 1985 UPLBEC 441, wherein Division Bench consisting of Hon"ble O. P. Saxena and Hon"ble I. P. Singh, JJ. indicated :

"The petitioner was selected for admission to B. Tech. Course of Harcourt Butler Technological Institute, Kanpur and his provisional admission was subject to his production of a certificate of having passed B. Sc. Examination. The rule regarding exhaustion of statutory remedies before a writ may be granted in a rule of policy, convenience and discretion rather than rule of law. It does not oust the jurisdiction of the High Court, but it is only one of the circumstances that the Court should take into consideration exercising its discretionary jurisdiction. A representation to the Chancellor under Section 68 of the U. P. State Universities Act is not a speedy remedy cannot be considered an efficacious remedy. There was a reasonable apprehension of petitioner's admission being cancelled on his nonproduction of the certificate. In the circumstances it cannot be accepted that the writ of certiorari should be refused as the petitioner failed to take recourse to representation under Section 68 of the U. P. State Universities Act."

6. A reference was also made to a decision of Supreme Court reported in 1980 SC 214. This precedent is not relevant for this case, inasmuch as the provision of Section 68 of the U. P. State Universities Act, was neither under consideration before the High Court nor before the Supreme Court. Mr. Nathani, learned Counsel appearing for the petitioner cited the case of *Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur, U. P. and others*, 1987 (4) SCC 525. Wherein the ViceChancellor has reviewed his earlier order, when no such power is vested in him under the U. P. State Universities Act, 1973 or of the

Statutes of the University made thereunder by the University. In the light of the aforesaid circumstances, it was held ; that the ViceChancellor acted wholly without jurisdiction in reviewing his/her earlier order. The review order of the ViceChancellor was, therefore, a nullity. The review order of the ViceChancellor could surely be challenged before the High Court by a petition under Article 226 of the Constitution, and the same cannot be dismissed by the High Court on the ground that an alternative remedy was available to the appellant under Section 68 of the U. P. State Universities Act. Alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of alternative remedy.

7. From the above excerpt of the observation of Hon"ble Supreme Court in the case of Dr. (Smt.) Kuntesh Gupta (supra), it is evident that when an order is nullity, the order is completely without jurisdiction, the alternative remedy would not be a bar.

8. In the case of Committee of Management, Sri Ram Deo Sanskrit Mahavidyaleey Berari, district Jaunpur and another v. ViceChancellor, Sampvrno Nand Sanskrit Vishwavidyalaya, Varanasi and others, 1991(1) UPLBEC 300, an Hon"ble Single Judge of this Court indicated :

"It is true that a representation before the Chancellor is an alternative remedy, which may normally be pursued but in the instant case parties have exchanged counter and rejoinder affidavits and the case is ready for final hearing, although at the admission stage, and the controversy involved is not purely a factual controversy. In view of the facts and circumstances of the case, it is not a fit case to dismiss the writ petition on the ground of alternative remedy."

9. A perusal of the aforesaid two cases reported in UPLBEC, one by a Division Bench and another by a Hon"ble Single Judge, the question of alternative remedy as contained in Section 68 and Section 5(7) of the Banaras Hindu University Act, which are similar in nature, has not at all been considered in detail. In the case of Atul Goyal (supra), the Court was mainly concerned with the admission of the petitioner in the B. Tech. Course of Harcourt Butler Technological Institute, Kanpur and his provisional admission was subject to his production of a certificate of having passed B. Sc. Examination. Considering the career of the petitioner, which was in jeopardy, in extraordinary circumstances, the Court entertained the petition dispensing with the alternative remedy as provided under Section 68 of the U. P. State Universities Act.

10. In the case of Committee of Management, Sri Ram Deo Sanskrit Mahavidyaleey Berari, district Jaunpur (supra), the Court itself indicated that representation before the Chancellor as an alternative remedy should normally be pursued, but in view of the facts and circumstances of that case and considering the facts that affidavits were exchanged and the case was ready for

final hearing, although at the admission stage, the Court passed a judgment for the reason that controversy involved, was purely a factual controversy. Anyhow, it is to be considered as to whether the observations made in the case of Committee of Management, Sri Ram Deo Sanskrit Mahavidyale (supra) have been rightly made in the correct perspective.

11. In the case of Dr. G. Sarana v. University of Lucknow and others, AIR 1976 SC 2428, Hon"ble Justice Jaswant Singh, speaking on behalf of the Bench held :

"It is also difficult to understand how the writ petition or for that matter the present appeal before us is maintainable when the recommendation of the Selection Committee has still to be scrutinised by the Executive Counsel of the University and either accepted or rejected by it and other remedies by way of representation to the Executive Counsel and an application for reference of the matter under Section 68 of the Uttar Pradesh Universities (Reenactment and Amendment) Act, 1974 to the Chancellor are still open to the appellant and have not been exhausted." 12. In the case of Management Committee. Atarra Post Graduate College v. V. C. Bundelkhand University, Jhansi and another, 1990 (Supp) SCC 773, a Division Bench consisting of Hon"ble Mr. Justice S. Ranganathan, J. S. Verma and M. Fatima Beevi, indicated :

"In our opinion it is not for this Court to appraise the factual circumstances and come to a conclusion whether the order of the ViceChancellor is correct or not, particularly when it is open to the aggrieved party, under Section 68 of the U. P. State University Act, to have a reference made to the Chancellor of the University who has ample powers to decide whether any decision taken by any authority or officer is in conformity with the Statutes and Ordinances of the University."

It was further indicated :

"Normally a reference under Section 68 of the U. P. State Universities Act is to be made in three months of the order by the aggrieved person. But, in this case, though the ViceChancellor has passed what purported to be an order, there was some misapprehension as to whether it was an order or only a report pursuant to the interim order of this Court. In view of this the Committee of Management has not so far filed any reference to the Chancellor. We are of the opinion that, in the circumstances, the delay in seeking a reference should be condoned and that the Chancellor may entertain a reference from the Committee of Management, if such reference is preferred within a period of 15 days from today.

"Having regard to the fact that this matter has been pending for a very long time, we hope that the Chancellor will be able to dispose of the reference within two months from today."

13. The Court in the matter of academic body like University, has been consistently of the view that such matters should be referred to the Chancellor under Section 68 of the Act. In the case of Dr. Dara Ram Sharma v. The

ViceChancellor, Meerut University and others, 1982 UPLBEC 144, a Division Bench of the Court indicated :

"Section 68 of the Act entitled a person who is aggrieved by the decision of an authority or officer of the University to file a representation before the Chancellor. It further provides that the decision given by the Chancellor on such a reference shall be final Section 9 numerates the various officers of the University. The ViceChancellor is one of the officers of the University as defined in the Act. Consequently, a person aggrieved by the decision of the ViceChancellor can file a representation under Section 68 of the Act. In this view of the matter the petitioner, who is aggrieved by the order of the ViceChancellor holding him unqualified for the post of Reader and approving Dr. Y. N. Sharma appointed to the said post, had clearly a right of filing a representation before the Chancellor. Therefore, the petitioner had an effective alternative remedy."

14. In the case of Managing Committee K. P. Degree College, Kamalganj, Farrukhabad v. The Vicechancellor, Kanpur University, Kalyanpur, Kanpur and others, 1980 UPLBEC 270, a Division Bench of this Court indicated :

"The provision contained in Section 68 of the U. P. State Universities Act is mandatory. The decision of the ViceChancellor refusing to approve the resolution of the Managing Committee is a decision of an authority of the University. A reference against that decision would, therefore, lie to the Chancellor. Consequently, it cannot be gainsaid that the petition had effective alternative remedy under Section 68 of the U. P. State Universities Act. The petitioner could not bypass that remedy and come direct to High Court."

15. In the case of Dr. Nand Kumar Singh v. Banaras Hindu University. Varanasi and others, 1990 (1) UPLBEC 215, a Division Bench of this Court observed :

"Section 5 (7) of the Act empowers the Visitor to set aside any order or proceedings of the University on facts and as well as law and there is no limitation on the power of the Visitor. This provision provides an efficacious alternative remedy to a person who is aggrieved by the decision of the University. A Division Bench of this Court in Framed Pathak v. ViceChancellor, B. H. U., 1985 UPLBEC 634, has held that Section 5(7) of the Act provides an alternative remedy before the Visitor, who is aggrieved by the decision of the Executive Council.

Hence, the petitioner should approach the Visitor first before coming to this Court."

16. In the case of Dr. Pramod Kumar Srivastava v. Dr. Pankaj Kumar and others, in WP No. 23 (SB)92 (unreported) a Division Bench of the Allahabad High Court at Lucknow, observed :

"We may also point out that clause (a) of the second proviso to Section 68 of the State Universities Act empowers the Chancellor to act suo moto as well in the matter. We, therefore, find that it will be no hurdle, rather it will be made open to

the Chancellor, while considering the question of minimum qualifications of opposite party No. 1 to consider about the validity of his appointment on the post of Reader as well. The Chancellor may naturally consider all points raised in the representation preferred by the petitioner including the one, as raised by the petitioner that opposite party No. 1 was not entitled to be appointed to the post of Reader once he had earlier declined to join on that post."

17. In the instant case the petitioner has only raised a grievance that the "personal promotions" given to respondents 4 and 5 was ineffective and inoperative and he deserved for the personal promotion and he be treated senior to respondents 4 and 5 in the Economics Department of the University. This contention is based on the premises that the order was against the provisions of the Government order dated 2521984 and the Statutes of the University. There is no challenge that the authorities had no jurisdiction to either promote the petitioner or to accord personal promotions to respondents 4 and 5, therefore, it cannot be said that the order is non est and without jurisdiction as held by the Supreme Court in the case of Dr. (Smt.) Kuntesh Gupta (supra). It is only where the order is nullity and without jurisdiction, the alternative remedy would not be a bar. Mr. Nathani has cited several authorities which do not pertain to either Section 68 of the U. P. State Universities Act or similar provisions mentioned in the Act of the Central University where the representations are filed before the Visitor.

18. We are of the view that the case of Committee of Management, Sri Ram Deo Sanskrit Mahavidyale, Berciri district Jaunpur and another, (supra) was not correctly decided inasmuch as it is against the ratio of the cases decided by Hon"ble Supreme Court, as well as this Court, which have been quoted and mentioned above.

19. At the outset, we want to make it emphatically clear that under Article 141 of the Constitution of India, the law laid down by the Supreme Court is final and operative for all the Courts. We are not inclined to stroll into a field which has been fenced by the Constitution of India. Hence, we have not entered into the factual matrix of the case, only for the reason that the matter is pending before Chancellor, Kumaon University and he would apply his own mind over the question of facts and the law raised in the representation and decide the said representation. The Chancellor has been vested with ample powers under Section 68 of the U. P. State Universities Act to pass appropriate order. The petitioner has an effective remedy before the Chancellor but instead of filing the same, he has rushed to this Court by filing a writ petition.

20. But before parting with the judgment, we are constrained to hold that there existed no reason for the office of the Chancellor not to have placed the representation of the petitioner before the Chancellor. Even after two orders of this Court, sufficient time was granted in which representation of the petitioner could have been disposed of by the Chancellor, but it was not done as a result of which the petitioner has been litigating before this Court. No explanation has

been given as to why despite two orders of this Court, by which directions were issued to the Chancellor to dispose of the representation submitted by the petitioner, final orders were not passed by the Chancellor. It may be for the reasons that his attention was not drawn to this fact.

31. In view of what we have indicated hereinabove, although the writ petition pertaining to the reliefs sought in clauses (a) and (b) of the relief column is dismissed only on the ground of availability of alternative relief, yet the writ petition pertaining to the relief sought in clause (c) is allowed. A writ in the nature of mandamus directing the Chancellor of Kumaon University to decide the representation of the petitioner dated 2151985 is issued. That will be done within three months from the date of production of the certified copy of this order by the petitioner to the office to the Chancellor. The petitioner, alongwith the order, will also annex a copy of the representation dated 2151985 to the Chancellor, who would decide the same within three months from the date of filing of the said certified copy of the order and representation as indicated above.