

(1991) 12 AHC CK 0056

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25238 of 1991

Prof. M. Zameeruddin

APPELLANT

Vs

The Visitor, Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 19-12-1991

Acts Referred:

Aligarh Muslim University Act, 1920 — Section 13(6)
Constitution of India, 1950 — Article 226

Citation : (1992) 1 AWC 387

Hon'ble Judges : V.K. Khanna, J; R.A. Sharma, J

Bench : Division Bench

Advocate : S.N. Singh, R.N. Singh and G.K. Singh, for the Appellant; Dilip Gupta and B.D. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner was promoted to the post of professor, in the department of History of Aligarh Muslim University (hereinafter referred to as the University), under Merit-Promotion-Scheme of the University Grants Commission, with effect from 1-1-83 by appointment letter dated August 6, 1984. The Respondent No. 4 was also promoted to the post of Professor in the department of Political Science, by appointment letter dated 22-2-1984 under Merit-Promotion-Scheme with effect from 1-1-1983. The Executive Council of the University, on 18/19-6-1983 resolved that the seniority of the Professors and Readers, appointed under Merit-Promotion-Scheme, should be counted from the date of issue of the orders relating to such appointments, notwithstanding the fact that such appointments have been given retrospective effect from an early dated 1-1-1983. By another resolution the Executive Council on 10-11.12-1988 re-iterated the same criteria, mentioned above, for determination of seniority. As the appointment letter of the Respondent No. 4 was prior to the appointment letter of the Petitioner, Respondent No. 4 was treated as senior by the University. The Petitioner, being aggrieved, filed a representation before the Executive Council on 4-5-1989 against the aforesaid decision of the Executive Council, which

was rejected on 16/17-5-1989. The Petitioner again made a representation on 2-9-1989 against the aforesaid decision of the Executive Council and no action having been taken by the Executive Council, inspite of several reminders, the Petitioner filed a writ petition before this Court which was disposed of on 13-5-1991 with the direction to the Executive Council to decide the Petitioner's representations, as far as possible, before 3-7-1991. The Executive Council in its meetings held on 1-7-1991 and 16-7-1991 again rejected the Petitioner's representations. The Petitioner thereafter, filed a representation on 8-6-1991 before the visitor of the University, against the aforesaid orders passed by the Executive Council of the University. During the pendency of the representation before the Visitor Respondent No. 4 was appointed as Dean Faculty of Social Science in the University. The Petitioner accordingly filed another representation before the Visitor in July 1991 for an interim order staying the order of the Executive Council appointing the Respondent No. 4 as Dean Faculty of Social Sciences. As the Visitor has not decided the Petitioner's representations, mentioned above, the Petitioner filed this writ petition for the same relief, which he had claimed in his representations moved before visitor viz. for quashing of resolutions the Executive Council of the University, laying down the criteria for promotion of the Professors under Merit-Promotion-Scheme and also for quashing the appointment order dated 3-7-1991, appointing the Respondent No. 4 as Dean Faculty of Social Sciences.

2. Respondents have filed counter-affidavit and the Petitioner has filed rejoinder-affidavit in reply thereto. Sri B.D. Agarwal, learned Senior counsel appearing for the Respondents has raised a preliminary objection to the effect that the Petitioner has a statutory alternative remedy of making representation before visitor u/s 13(6) of the Aligarh Muslim University Act and he has, in fact already made representations before the visitor, and during the pendency of the representation before Visitor the Petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Sri R.N. Singh, learned Counsel for the Petitioner has submitted that as the representations made by the Petitioner before the Visitor have not been decided and the Respondent No. 4, who was junior to him as Reader, has in the meantime, been appointed as Dean Faculty of Social Sciences, the Petitioner has not alternative but to approach this Court under Article 226 of the Constitution.

3. Section 13(6), of the Aligarh Muslim University Act empowers the Visitor to annul any proceeding of the University which is not in conformity with the Act, Statutes or Ordinances. It is under this provision that the Petitioner has filed aforesaid representations before the visitor which, according to the Petitioner, are still pending. Remedy of representation before the Visitor is an efficacious alternative remedy. A Division Bench of this Court in the case of Dr. Nand Kumar Singh v. Banaras Hindu University, 1990 (1) UPLBEC 215 has while considering the identical provisions of the Banaras Hindu University Act, laid down that remedy of making the representation before the Visitor as an efficacious alternative remedy which should be availed of by a person aggrieved by the

decisions of the University authorities, before approaching this Court under Article 226 of the Constitution of India. Article 226 of the Constitution cannot be used to circumvent the statutory remedy. That apart, it is not open to a person to pursue two parallel remedies at the same time. The Petitioner, having taken recourse to the remedies provided by the Act, cannot be allowed to pursue the writ petition for the same relief which has been claimed by him before the visitor. This writ petition, as such, is liable to be dismissed on the ground of alternative remedy.

4. learned Counsel for the Petitioner has however, argued that after the counter and rejoinder affidavits have been exchanged between the parties, the writ petition cannot be thrown out on the ground of alternative remedy. It is not possible to agree with the learned Counsel. It is true that after exchange of affidavits normally this Court decides the writ petition on merit and does not dismiss it on the ground of alternative remedy. But this is not an inflexible rule. If after perusal of the affidavits of the parties the Court is of the opinion that better course is to relegate the Petitioner to alternative remedy, this Court can dismiss the writ petition on that ground. Apart from this, in the instant case, as mentioned above, the Petitioner has already taken recourse to the statutory alternative remedy, and this Court will not permit him to pursue two parallel remedies at the same time for the same relief, even if the affidavits have been exchanged between the parties.

5. It is true that representations made by the Petitioner before the visitor should be decided expeditiously as in the event of delay in deciding these representations, he will suffer great prejudice and loss. But for that purpose remedy is not a writ petition under Article 226 of the Constitution, but an application before the Visitor requesting for early disposal of his representations.

6. We accordingly give liberty to the Petitioner to move a fresh application, alongwith certified copy of this order, before the Visitor, containing all his grievances and requesting for expeditious disposal of his representations, preferably within two months from the date of presentation of certified copy of this order. This application should be handed over by the Petitioner to a responsible officer in the office of the Visitor. We are sure that if the Petitioner makes the application, as mentioned above, the Petitioner's representations will be decided expeditiously, preferably within two months from the date of presentation of certified copy of this order.

7. The writ petition is dismissed on the ground of alternative remedy. In view of the facts and circumstances of the case there shall be no order as to costs