
(1995) 11 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 461 of 1980

Pushpa Lata Saxena (Smt.)	Vs	APPELLANT
Chancellor, Agra University and Others		RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(3), 50, 60

Citation : (1997) 3 LLJ 4 : (1996) 1 UPLBEC 347

Hon'ble Judges : P.K. Mukherjee, J;B.K. Sharma, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant;

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—This Writ Petition which is of 1988 origin, comes up for final hearing before us in the presence of Sri L.P. Naithani, learned counsel for the petitioner and Sri S.N. Upadhyay, learned Advocate appearing for the Agra University.

2. By means of this petition, petitioner has prayed for issue of an order of injunction restraining the respondents from interfering with the petitioner's continuing in service as Lecturer in Hindi in Chitragupta Post Graduate College, Mainpuri. The petitioner has also prayed for issuing a mandamus to the respondents to the effect that no person be appointed on the said post by the Selection Committee during the pendency of the Writ Petition.

3. When this Writ Petition was moved before this Court, Hon'ble Y. Nandan J. and Hon'ble B.D. Agarwal, J. on November 16, 1980 issued notice and restrained the respondents from interfering with the petitioner's continuation in service as lecturer in Hindi in the said college until disposal of this application.

4. By virtue of aforesaid interim order, the petitioner Smt. Pushpa Lata Saxena is continuing in the post in question till date.

5. Brief facts of the present case are that the petitioner passed her B.A. (Part II) Examination in the year 1962 in Second Division with 48.35 percent marks from the Agra University. She secured Second Division again in 1964 in M. A. (Hindi) with 59 percent marks from the same University. The percentage of marks obtained by the petitioner right from High School upto her Master's Degree came to be 52.2 percent. After the death of her husband, the petitioner was anxious to serve some institution to maintain her only minor son and she consequently joined a Girls' Intermediate Institution at Indore as a Lecturer on a permanent vacancy. In the year 1966-67, the petitioner also passed B.Ed. Examination and hence, she was fully qualified to serve educational institutions. Meanwhile, a vacancy arose in Chitragupta Post Graduate College, Mainpuri which is within the jurisdiction of the Agra University. An advertisement was made on November 15, 1976 to fill up two posts of Hindi Lecturers in the said college. Accordingly, the petitioner made an application for the said post along with mark sheet of M.A. Examination.

6. Section 50 of the State Universities Act, 1973 (hereinafter referred to as the Act) provides as under: -

"First Statutes of the University shall be made by the State Government by notification in the Gazette and in the case of any existing University, for so long the First Statutes are not so made, the Statutes, as in force immediately before the commencement of this Act, in-so-far as they are not inconsistent with the provisions of the Act, shall subject to such adaptations and modifications, whether by way of repeal, amendment or addition as may be necessary or expedient may be made applicable."

7. Before July 15, 1977, when the First Statutes were enacted by the State Government, the qualifications for the appointment to the post of Lecturer for Post Graduate Classes were Master's degree, with not less than 48 percent (average) and having not more than one III Class at any stage with First or High Second Class (i.e. with an aggregate of 54 percent for Master's degree in a subject).

8. Accordingly, the petitioner was fully qualified in accordance with the Agra University Statutes which were prevalent on November 15, 1976, inasmuch as, she had not less than 48 percent marks (average) and not more than one 3rd Class at any stage from High School to M.A. and had secured more than 54 percent marks in her Master's Degree. The percentage of marks obtained by petitioner in various classes, is as under: High School 51% Intermediate III Division B.A. 48.38% M.A. 59%

9. At this stage, it will be relevant to set out Regulation No. 11.13 of the said Statutes, which reads as follows:

"11.13 (1) In the case of any college affiliated to the University, the following shall be the minimum qualification for the post of Lecturer in the Faculties of Arts, Commerce and Science, namely: (a) a consistently good academic record

(that is to say, the overall record of all assessments through the academic career of a candidate) with first or high second class (that is to say, with an aggregate of more than 54 percent marks), Masters' Degree in the subject concerned or equivalent degree of a foreign University in such subject."

10. Surprisingly enough, this time the Secretary of the Universities Grants Commission interpreted the words, "a consistently good academic record" as occurring in the Agra University Statutes, and by letter dated September 14, 1978, he wrote to the Vice-Chancellor of the Agra University about the opinion of the Universities Grants Commission regarding the same. The commission was of the view that the candidates for the appointment to the post of Lecturer in University/College should either have an average of 55% in the two examinations, prior to Master's degree (irrespective of the marks obtained in any of the two examinations) or 51% marks in each of two examinations separately.

11. In the meantime, the petitioner came to know that by letter dated July 1, 1978, the Registrar of the University informed that the appointment of the petitioner was extended till June 30, 1979, but the post will be re-advertised in accordance with the latest Government Orders. The petitioner being aggrieved with the said decision of applicability of the Government Order, on September 27, 1978, made a representation to the Chancellor.

12. The petitioner made a reference u/s 60 of the U.P. Universities Act before the Chancellor. She prayed that since she was duly qualified at the time of recruitment, she should be given substantive appointment u/s 31 (3) (b) in the event of the post being made permanent.

13. Dealing with the relaxation of the maximum qualification on compassionate ground, the Chancellor was of the opinion that as there was no legal provision, under which the Chancellor may grant relaxation from the statutorily prescribed minimum qualifications, as such, the relaxation in qualification was not possible. Thus, by order dated October 16, 1976, the Chancellor rejected the aforesaid reference.

14. In the first place, Mr. L.P. Naithani, learned Advocate, appearing for the petitioner submitted that in view of the fact that the petitioner having been appointed on February 15, 1977 by unilateral interpretation made by the State Government, her appointment cannot be annulled by re-advertising the post as it was said to be done in the present case.

15. In the second place, he submitted that qualifications prescribed by Government cannot override the provisions prescribed in the statute. He further submitted that the qualifications prescribed by Government Order being in the nature of circular cannot have any retrospective effect, as has been held in the case of *P. Mahendran v. State of Karnataka*, wherein Hon'ble Supreme Court, inter alia, observed as follows:

"It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective".

16. In the next place, he submitted that the petitioner having fulfilled the qualifications of the Statue, on the relevant date of appointment, i.e. on February 15, 1977, her services cannot be done away on the basis of lacking of the purported qualification made by the Government Order.

17. Learned counsel appearing for the University, however, submits that under the Statue 12.19, it has been, inter alia, provided as follows:

"12.19. Every affiliated college shall have on its staff teachers having such qualifications shall be given such grades of pay, and governed by such other conditions of services as may be laid down from time to time in the Ordinances or in the orders of the State Government in that behalf; Provided that no Ordinance relating to grades of pay and qualifications shall be made without the prior approval of the State Government."

18. Thus, according to the learned counsel for the respondent University, in terms of the provisions of Statute 12.19, the Chancellor has got power to clarify the conditions of the qualification of a teacher or a lecturer.

19. After formulating the aforesaid points, Mr. Naithani, for the convenience of the Court has filed English version of Annexure-8 containing clarifications regarding "consistently good academic record" in minimum qualification, for appointment of candidate in University and Degree College, under the G.O. No. 3751/15-10-77/25 Education (10) Section dated September 22, 1977, a gist of which is set out herein below:

"I have been directed to say that minimum qualification for appointment of teachers in the University and Degree College has been prescribed by the Union of India on the recommendation of University Grants Commission, New Delhi. The State Government has included the aforesaid minimum qualification by means of notification. The various Universities are interpreting the minimum qualifications differently as the same has not been defined. The matter was also discussed in the meeting of Vice-Chancellors held on December, 5/7, 1976 and it was resolved that the term consistently good academic record to have the same meaning in all the Universities. The State Government has decided after consultation with the Union of India, Education and Social Welfare Ministry that "Consistently Good Academic Record" means that the candidate must obtain 50-55% marks as average in the two examinations prior to master degree and where the examinations provide gradation "B" grade."

20. In the last place, Mr. Naithani reported an unreported Division Bench decision of this Court dated July 26, 1995 in Writ Petition No. 9531 of 1978, delivered by

a Bench consisting of Hon''ble R.S. Sharma, J. and Hon''ble I.M. Quddusi, J. wherein in similar set of facts and circumstances the Division Bench of this Court took a view that since the petitioner in that case namely, Ramesh Chandra Mittal having served the department for such a long period. (sic.)

21. Mr. Naithani submits that since the petitioner has been discharging duties as lecturer in the aforesaid college of the University, she could not be thrown out on the basis of the interpretation made by the State Government. The petitioner has been allowed by the University Authority, by way of extension of the interim order granted by this Court, from 1980 onwards to function as lecturer.

22. On being asked by this Court, as to why the petitioner could not get benefit of permanent absorption in service in view of the aforesaid legal position in regard to applicability of the qualification, Mr. Upadhyay, however, could not make any fruitful submission before this Court.

23. Therefore, this Court has to arrive at the necessary conclusion as to whether doctrine of acquiescence could be made applicable, apart from the decision cited by Mr. Naithani, on the facts and in the circumstances of the present case.

24. This Court is not unmindful of the decision of Hon''ble Supreme Court in *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, wherein, Hon''ble Supreme Court observed that if a person is appointed to a post erroneously and he is allowed to continue on the said post for a long time, he cannot be removed from said post on the garb of rectification of mistake as the doctrine of acquiescence applies. On the facts of the present case, we are of the view, that the ratio-decidenti of that decision can be extended to the facts of the case in hand, although the said decision is not identical so far as the facts of the present case are concerned.

25. Further, we are of the view that in view of the decision of the Supreme Court in the case of *P. Mahendran (supra)*, this qualification cannot be applied to the facts of the petitioner's case who has been appointed even on ad-hoc basis w.e.f. February 15, 1977 as it has been held in countless decisions of the Apex Court, as well as respective High Courts that the period of ad-hoc appointment should be taken into consideration for determination of length of service.

26. That being the legal and factual position, we are of the view that this Writ Petition is liable to succeed and the impugned order passed by the Chancellor dated October, 16, 1979 (Annexure-18) deserves to be set aside. 27. In the result, the writ petition is allowed. Impugned order dated October 16, 1979 (Annexure-18) passed by Chancellor is hereby set aside. Concerned authorities of the Agra University are directed to regularise the services of the petitioner as lecturer in Hindi, within a period of two months from the date of production of a certified copy of this judgment and order. There will be no order as to costs.