
(2007) 11 AHC CK 0174
In the Allahabad High Court

Raj Kishore Pathak

APPELLANT

Vs

Chancellor, Deen Dayal Upadhyaya Gorakhpur University,
Deen Dayal Upadhyaya Gorakhpur University and Aniruddh
Prasad, Professor Department of Law, Deen Dayal Upadhyaya
Gorakhpur University

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

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

Citation : (2008) 1 UPLBEC 43

Hon'ble Judges : Sabhajeet Yadav, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sabhajeet Yadav, JJ.—This writ petition under Article 226 of the Constitution of India by the petitioner, Raj Kishore Pathak, challenges the order passed by the Chancellor, Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur (hereinafter referred to as the University) dated 9th August 1999 and the consequential order dated 13th August 1999 passed by the Vice Chancellor of the University. The Chancellor by its order impugned dated 9th August 1999 decided the representation filed by respondent No. 3, Anirudh Prasad, u/s 68 of the U.P. State Universities Act 1973 (hereinafter referred to as the Universities Act). Respondent No. 3, Anirudh Prasad, has challenged the appointment of the petitioner, Raj Kishore Pathak on the post of Reader in the Law Faculty of the University.

2. The case of respondent No. 3 is that the post of Reader in Law Faculty and the appointment of the petitioner, Raj Kishore Pathak, is wholly illegal, inasmuch as the petitioner Raj Kishore Pathak did not possess the requisite qualification for appointment as Reader in Law Faculty. The Selection Committee in its meeting dated 10th October 1997 has interviewed the candidates including the petitioner, Raj Kishore Pathak, and found that except for the petitioner, Raj Kishore Pathak,

everybody possesses the requisite educational qualification including respondent No. 3. With regard to the petitioner Raj Kishore Pathak it is stated that he has obtained his Post Graduation Degree in Political Science and has also done his research work in Political Science whereupon he was awarded a Doctorate Degree by the University. The recommendation of the Selection Committee was accepted by the Executive Council by its resolution dated 11th October 1998. Respondent No. 3 has alleged in his representation to the Chancellor that the respondent No. 3 being a member of the Executive Council has recorded his dissent against the recommendation of the appointment of Sri Raj Kishor Pathak but the then Chairman of the Selection Committee, Professor R.K. Misra, was all out for recommending the name of the petitioner, Raj Kishore Pathak. Respondent No. 3 has further submitted in his representation to the Chancellor that he has annexed a copy of the judgment of the Supreme Court in the case of; Dr. Triloki Nath Singh Vs. Dr. Bhagwan Din Misra and others, whereby the Apex Court has categorically observed that for the post of Reader the research should be in the subject concern, therefore, a degree in the subject of Political Science cannot be considered as a degree required for appointment as Reader in Law Faculty. The petitioner, Raj Kishore Pathak, has passed his graduation (B.Sc.) in III division and therefore does not possess requisite qualification for appointment as teacher within the phrase of "consistent good academic record". Respondent No. 3, therefore, prayed for setting aside the order of approval of the recommendation for appointment of Sri Raj Kishore Pathak, the petitioner.

3. On a notice being issued by the Chancellor, the petitioner submitted his reply denying all these allegations. The University has also submitted its comments before the Chancellor. The University has taken stand before the Chancellor that respondent No. 3 cannot be said to be an aggrieved person who can approach the Chancellor u/s 68 of the Universities Act. The University submitted that before the Selection Committee for the appointment to the post of Reader in Law the petitioner; Raj Kishore Pathak, who was already working in the Law Faculty as reader, along with four others, was present before the Selection Committee. The University has also denied the allegations of mala fides in favour of the petitioner, Raj Kishore Pathak. The University's stand before the Chancellor is further that in the curriculum of Law, Constitutional Law is one of the subjects and, therefore, the research work done by the petitioner, which is one of the topics of Constitutional Law, can be said to be a research work done by the petitioner in law department and in Political Science department. The petitioner, Raj Kishor Pathak, apart from having passed B.Sc, has passed B.A. also in which he has secured more than 54% marks, therefore, the stand taken by respondent No. 3 that he does not possess the consistent good academic record is incorrect.

4. The Chancellor on the pleadings of the parties before him has observed that the main question for decision between the parties is as to whether the petitioner, Raj Kishore Pathak, having been appointed on the post of Lecturer in the University in the Law Faculty is eligible to be promoted or appointed as Reader or not and whether the petitioner, Raj Kishore Pathak, possesses requisite

qualification of Doctorate in the subject of Law or not. The Chancellor has found that according to statutes of the University, apart from having consistent good academic record, the candidate must possess Doctorate degree or the published work of the candidate must be of a high standard and the candidate should have possessed the experience of teaching. In addition to the above the further requirement was that he must have worked as teacher for five years and out of that must have Lecturer for at least three years and have guided students for research. The Chancellor has found that the main controversy is as to whether the petitioner, Raj Kishore Pathak, possesses the Doctorate degree in Political Science or in the subject of Law. After considering the case set up by the petitioner, Raj Kishore Pathak, the Chancellor has arrived at a conclusion that no doubt the Constitution is one of the subjects in the Political Science but in the context of research conducted by the petitioner in the Political Science department cannot be said to be the research work done by the petitioner in the Constitutional Law. The Chancellor has recorded a finding that it is so because the study of Constitution in the context of Political Science is different than in the context of Law. The Chancellor, therefore, found that the research work done by the petitioner, Raj Kishore Pathak, cannot be said to be research work in connection with Law Faculty or in the subject of Law and, therefore, the Chancellor has held that since the petitioner, Raj Kishor Pathak, did not possess requisite qualification for appointment to the post of Reader, therefore, the appointment of the petitioner as Reader is cancelled. The petitioner has challenged this order by means of the present writ petition and the order dated 13th August 1999 which is consequential order communicated by the Registrar of the University.

5. We have heard learned Counsel for the parties.

The brief facts as emerge out of pleadings are that the petitioner, Raj Kishore Pathak, before joining the post of Reader in the University on 11.10.1998 was working as Reader in Sant Vinoba Post Graduate College, Deoria which is a college affiliated to the University. The petitioner was appointed in the said college in Deoria in 1983 as Lecturer and in the year 1996 he had been awarded Ph.D Degree while working in the University as Lecturer in the Post Graduate College at Deoria for his thesis on "Semantics of the State under Article 12 of the Indian Constitution (A problem in constitutional Hermeneutics". This thesis according to the petitioner is based on Article 12 of the Constitution of India which is a very important constitutional provision, hence covered by the qualification required for appointment as Reader by Statute 11.02 of the First Statute of the University and the view taken by the chancellor to the contrary is arbitrary and illegal.

6. The petitioner has categorically pleaded that the mere fact that the Ph. D was awarded by the Department of Political Science of the University will not affect in any way the eligibility of petitioner for the post of Reader. The petitioner has attacked the maintainability of the reference filed by the respondent No. 3 u/s 68

of the Universities Act. That the representation challenging the appointment of the petitioner to the post of Reader that the petitioner's appointment was not in accordance with the statute cannot be entertained by the Chancellor inasmuch as respondent No. 3 cannot be said to be a person aggrieved within the meaning of Section 68 of the Universities Act.

7. The order passed by the Chancellor dealt with this objection of the petitioner in the impugned order and has held that the proviso of Section 68 of the Act confers power on the Chancellor to act suo motto and this power is being exercised while passing the impugned order by the Chancellor suo motto. The petitioner's contention further is that the petitioner has already worked as Reader in Law in Deoria on the pay scale meant for the Reader of the University; therefore, the impugned order has ruined his career. The contention of the petitioner is that the University is supporting the petitioner. The Selection Committee has found that the research work of the petitioner, namely, "Semantics of the State under Article 12 of the Indian Constitution (A problem in constitutional Hermeneutics)" has been treated to be research work in the Faculty of Law and, therefore, the order passed by the Chancellor deserves to be quashed.

8. As against this contention of the petitioner, the State counsel representing the Chancellor and also the learned Counsel for respondent No. 3 has relied upon a decision of the Apex Court in the case of Dr. Triloki Nath Singh Vs. Dr. Bhagwan Din Misra and others, and the case of Dr. M. Ismail Faruqi v. State of U.P. and Ors. 1994 (1) UPLBEC 312 (D.B.), Committee of Management, Vasanta College for Women Vs. Tribhuwan Nath Tripathi and Others, and other cases. In reply to the objection raised by the petitioner, regarding the representation filed by respondent No. 3, learned Counsel for the respondent has relied upon a decision of a Division Bench of this Court in the case of Dr. R.R.K. Shukla v. Chancellor, University of Lucknow and Ors. Writ Petition No. 1110 (SB) of 1993 and the case of Dr. Banvir Singh v. Chancellor of Lucknow University Writ Petition No. 132 (SB) of 1993, both decided on 16th September 1996, wherein a similar objection has been dealt with by a Division Bench of this Court.

9. In view of what has been stated above and law laid down, referred to above, we find that the view taken by the Chancellor- does not suffer from any illegality or infirmity which may warrant interference by this Court under Article 226 of the Constitution of India.

10. This petition is, therefore, devoid of merits and is accordingly dismissed.