

(2025) 03 AHC CK 0981
In the Allahabad High Court
Case No : Writ Appeal No. 7114 Of 2023

Rajnish Kumar Pandey

APPELLANT

Vs

Union Of India And 5 Others

RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 313
Indian Penal Code, 1860 — Section 82, 83, 141, 147, 148, 149, 299, 302, 307, 504
Arms Act, 1950 — Section 27

Citation : (2025) 03 AHC CK 0981

Hon'ble Judges : Siddhartha Varma, J; Anish Kumar Gupta, J

Bench : Single Bench

Advocate : Ashok Kumar Tripathi, Govind Saran Hajela, Radhey Shyam Shukla, Rajesh Kumar, Arvind Agrawal

Final Decision : Dismissed

Judgement

Saurabh Shyam Shamshery, J

1. Heard Sri G.K. Singh, learned Senior Advocate assisted by Sri Santosh Kumar Pandey, learned counsel for petitioner and Sri Kunal Ravi Singh, learned counsel for respondents- 2 to 6.

2. Petitioner has not disclosed in specific words that how he entered in Allahabad University i.e. he has not disclosed specifically that he was initially appointed as a Research Fellow (JRF/SRF) in Department of Philosophy in 1992. Petitioner has not annexed any document to that effect, though during argument, some other documents were referred which indicate that he was an Research Fellow in the said Department.

3. The averments in writ petition commence with an assertion that petitioner and other similarly situated Research Fellows were engaged classes apart from their own duties in Department vide a notification dated 18.01.1992 and he has declared that after 19.01.1992, he was assigned work of teaching on regular

basis. For reference, referred notification dated 18.01.1992 issued by Head of Philosophy Department, Allahabad University is quoted hereinafter :-

"All JRFs, SRFs, Research scholars are required to engage classes as per time table, apart from their other duties in the department."

4. A case is set up by the petitioner and vehemently submitted by learned Senior Advocate that by imparting instructions in classes, petitioner would be a 'teacher' as defined under Section 2(19) of U.P. State University Act, 1973. For reference, said provision is quoted below :-

"2 (19) 'teacher' in relation to the provisions of this Act except Chapter XI-A, means a person employed in a University or in an institute or in a constituent or affiliated or associated college of a University for imparting instructions or guiding or conducting research in any subject or course approved by that University and includes a Principal or Director."

5. Learned Senior Advocate has also referred para 10.02 of the Statute and its provision that persons working as Research Fellow or Research Assistants may be called upon to act as 'part time teacher' and therefore, he submitted that since petitioner has started taking classes since 19.01.1992 soon after notification dated 18.01.1992, he would also be considered as 'part time teacher'. For reference, said paragraph is reproduced hereinafter :-

"10.02 Teachers of the University shall be appointed in the subjects on whole time basis in the scales of pay approved by the State Government:

Provided that part time lecturers may be appointed in subjects in which in the opinion of the Academic Council such lecturers are required in the interest of teaching or for other reasons. Such part time lecturers may receive salary ordinarily not exceeding one half of the initial salary or the scale for the post to which they are appointed. Persons working as Research Fellows or as Research Assistants may be called upon to act as part time lecturers."

6. Learned Senior Advocate has further submitted that the petitioner was a 'part time teacher' since 1992 and, therefore, as he would be within cut off date (31.12.1997) and accordingly, he was entitled for substantive appointment without reference to the Selection Committee and for that learned Senior Advocate has referred Section 31(3)(c) of Act of 1973 as substituted by Uttar Pradesh Act No. 23 of 2004 (w.e.f. 20.05.2004). For reference, Section 31(3)(c) as substituted on 20.05.2004 is quoted below :-

"31(3)(c) :- Any teacher of the University who was appointed as [Associate Professors] part time [Associate Professors] on or before December 31, 1997 without reference to the Selection Committee by way of a short term or part time arrangement in accordance with the provisions for the time being in force for such appointment, may be given substantive appointment by the Executive Council, if any substantive vacancy of the same cadre and grade in the same department is available if such teacher -

(i) is serving as such on December 31, 1997 continuously since such initial appointment by way of short term/part time arrangement;

(ii) possesses the qualifications required for regular appointment to the post under the provisions of the relevant Statutes in force on the date of substantive appointment;

(iii) has been found suitable for regular appointment by the Executive Council. A teacher appointed by way of short term/part time arrangement as aforesaid who does not get substantive appointment under this clause shall cease to hold such post on such date as the Executive Council may specify."

7. Learned Senior Advocate by referring documents has further submitted that petitioner and similarly situated persons have represented for their regularisation in terms of above provisions and to consider their grievance, a Committee was also constituted by Executive Council's decision dated 10.06.2004 and 19.12.2004 and it appears that nothing further happened and again it was resolved to constitute a Committee for purposes of ascertaining suitability. It may be noted that on 23.06.2005, the University of Allahabad Act, 2005 came to be enforced, which has different definition of 'Teacher' (Section 3(u)) and 'University appointed Teacher' (Section 3(w)). For reference, both Sections are quoted below :-

"3(u) "teacher" means Professors, Readers and Lecturers appointed or recognized by the University;

3(w) "University appointed teacher" means a teacher appointed by the University for imparting instruction and conducting research in the University or any other college or institution maintained by the University;"

8. It was further argued that on one hand, matter of regularisation kept pending and on other hand, fresh selection process was initiated. The petitioner has challenged it. In paragraph 25 of writ petition, it was disclosed that "claim of regularization was kept pending and fresh selection process was initiated as such writ petitions were filed challenging the selection however High Court vide its order dated 28.03.2014 did not intervene on the ground that some of the teachers were engaged after year 2000 and Ordinance No. 44 was not challenged.". Petitioner has neither disclosed details of said writ petition nor placed a copy of order dated 28.03.2014 on record, which appears to be an attempt to mislead. A copy of said order was later on filed through an annexure with a counter affidavit filed by the University on 13.07.2023.

9. I have carefully perused the said judgment, since it was heavily relied upon by learned counsel for University that issue of consideration for regularisation was rejected therein. From said judgment, following facts are revealed :-

"a. Petitioner herein has not filed earlier a single writ petition but has filed 3 writ petitions along with 2 other petitioners vide Writ A Nos. 64494/2008, 63695/2010 and 18243/2012.

b. Details of all 3 writ petitions are mentioned in above referred order dated 28.03.2014 whereby all 3 writ petitions were dismissed and relevant part thereof are mentioned as follows :-

Writ A No. 63695/2010

2nd writ petition no.63695 of 2010 has been filed by Dr. Uma Kant, Rajnish Kumar Pandey, Dr. Satish Kumar Singh, Dr. Prem Chandra Mishra and Dr. Pankaj Mishra, they seek a writ of mandamus commanding the Allahabad University to consider the claim of the petitioners for regularization pursuant to the decision taken by the Executive Council in its meeting held on 29.10.2009 and as per the assurance given by the Vice Chancellor in the meeting of the Executive Council on 07.08.2010.

Writ A No. 18243/2012

Dr. Uma Kant, Rajnish Kumar Pandey, Dr. Satish Kumar Singh, Dr. Prem Chandra Mishra and Dr. Pankaj Mishra who had filed writ petition no.63695 of 2010, have filed this writ petition for quashing of the advertisement dated 14.02.2012 as well as for declaring the cut of date i.e. 31.12.1997 mentioned under Section 31 (3) (c) of the U.P. State Universities Act, 1973, as arbitrary and void. The petitioners have also prayed for quashing the circular dated 04.10.2002.

c. Relevant part of judgment in reference to leading Writ A No. 64494/2008 is mentioned below :-

Writ A No. 64494/2008

"By means of this writ petition, the petitioners have prayed, for quashing of the order of the Vice Chancellor dated 03.12.2008 and for a mandamus directing the University respondents to comply with the provisions of Ordinance No.44 and to permit the petitioners to continue as Guest Faculty Lecturers without facing any fresh interview/selection at least for a period of three years and they may be paid salary accordingly.

We may record that the unamended Ordinance No.44 of the Central University provides that Guest Faculty Lecturer shall not continue after the terminal date of the academic year but if the Academic Unit, so desires, it may continue the Guest Faculty Lecturer earlier selected in the next consecutive academic session without recourse to fresh procedure of the selection but this extension shall not be beyond three consecutive years.

The Ordinance No.44 is not under challenge in the present writ petition. None of the conditions mentioned therein have been questioned on any ground whatsoever. The prayer in the petition is that the petitioners may be allowed to continue for three years on the strength of the selections dated 22.09.2007. This period of three years would admittedly expire in the year 2010. Therefore, for all practical purposes, the writ petition has become infructuous, irrespective of the stand taken by the University that Ordinance No.44 itself has been amended on

20.01.2009.

We may also refer to the judgment of the Division Bench of this Court in the case of Dr. Kirti Raje Singh Vs. University of Allahabad and others reported in 2010 (6) ADJ 860 (DB), wherein it has been held that a Guest Faculty Lecturer has no right to continue till the regular selected candidates join or to claim regularization.

After the aforesaid order has been passed, Sri K.C. Shukla, advocate appeared and made a statement that the petitioners have filed amendment applications dated 07.08.2013 and dated 22.07.2013 for an additional relief i.e. for a writ of mandamus directing the respondents not to interfere in working of petitioners till regular selected candidate joins. Copy of the amendment applications has been handed over to the Court which is taken on record. Office may trace out the aforesaid amendment applications and place the same on records.

There is absolutely no mention as up to what date petitioners have worked after 2008. Ordinance No.44 as it then stood has not been questioned in the amendment applications also. The rights of a Guest Lecturer have already been examined in the case of Dr. Kirti Raje Singh (supra). For the same reason, the prayer made under the amendment application cannot be granted.””

10. The aforesaid judgment has rejected the claim of the petitioner for consideration of regularisation as prayed, in specific words and therefore its copy ought to have been placed by the petitioner and since it was not placed, therefore, the petition is liable to be dismissed on a single ground that he has not approached this Court with clean hands. In regard to doctrine of “clean hands”, a judgment passed by Supreme Court in K. Jayaram and others vs. Bangalore Development Authority and others, (2022) 12 SCC 815 would be relevant and its relevant paragraphs are extracted herein-after :-

”10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the

subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law."

11. The following part of rejoinder affidavit would be relevant that instead of petitioner to extend explanation for not disclosing judgment dated 28.03.2014, he still tried to mislead by stating that said judgment is not applicable to present case, without referring any finding returned therein. Para 8 of rejoinder affidavit is quoted below :-

"8. That it is relevant to state here that the respondent no. 2 to 6 are erroneously relying upon the judgment dated 28.03.2014 of this Hon'ble Court in Writ A 63695 of 2010 as the said judgment had no application to the facts of the present case in as much as the court held that provisions of Clause 6-H of Ordinance 44 was not challenged which provided that Guest Lecturers cannot continue beyond three years as such the writ petition which was filed in the year 2010 had become infructuous.

It has further been observed by the Hon'ble Court that "while omitting the Government Order dated 09th October, 2000 the State decided to provide substantive appointment by executive council to such teachers of the University, who were appointed as Part Time Lecturers on or before 31st December, 1997". The division bench has further recorded the contention of the Standing Counsel to the effect that "This date of 31st December, 1997 has been chosen, according to the Standing Counsel, with reference to the issuance of the Government Order dated 09th October, 2000 in as much as subsequent to 2000 the University cannot offer appointment as part time Lecturers in terms of the Government Order and on that date the earlier appointees would complete nearly 3 years of service so as to have some semblance of continuity or a right to be offered substantive appointment."

12. Learned Senior Advocate for petitioner has also tried to cover up above facts by stating that petitioner's case has now been liable to consider in accordance with Section 31(3)(c) of State Act, since it was accepted that he was working as Part Time Lecturer in the Department of Philosophy of University of Allahabad w.e.f. 19.01.1992 and for that learned Senior Advocate has referred an Office Order dated 05.09.2019 issued by Registrar, University of Allahabad as well as a Corrigendum dated 30.07.2019 that the petitioner would be entitled for full salary/emolument as an Assistant Professor, however, without any basis and without putting again before Executive Council and without putting petitioner on notice, the office order dated 05.04.2019 and its corrigendum dated 30.07.2019 was withdrawn by a subsequent order dated 14.02.2020 issued by Registrar, University of Allahabad. Learned Senior Advocate has also referred Agenda No. IV of 55th Meeting of Executive Council dated 10.04.2019 (in regard to petitioner) and that it was approved and same is still in existence.

13. Learned Senior Advocate has further referred a report of 3 Members' Committee dated 17.12.2018 wherein, it was specifically mentioned that petitioner was a selected candidate on a post of 'Guest Faculty' against 08 vacancies in department by a Selection Committee dated 22.09.2007, duly approved on 25.09.2007 by the then Vice Chancellor. The Selection Committee was comprised of Chairman and 2 other Members.

14. In aforesaid circumstances, the petitioner has approached this Court against aforesaid order dated 14.02.2020 vide Writ A No. 3177 of 2020 and it was disposed of vide order dated 28.11.2022 whereby impugned order was set aside with an observation that now issue of regularization, if at all, will be decided only by Executive Council in terms of Statute 15(7)(iv) of the University framed under the Central Act. Learned Senior Advocate has referred following part of said judgment. It is to note that outcome of earlier litigation (judgment dated 28.03.2014 passed in 3 writ petitions filed by the petitioners) was not brought into knowledge of that coordinate Bench :-

"25. As noted above, up to the date of enforcement of the Central Act, no better right or status had been acquired by the petitioner as a regular employee of the University. The first Resolution passed by the Executive Council to deal with the rights being claimed by the petitioner is dated 08.12.2011. It authorized the Vice Chancellor to constitute the Committee to examine the cases of regularization of certain teaching faculty including the present petitioner. That document itself makes it plain, no status had been acquired by the petitioner up to that date as a regular teaching faculty. Once that fact situation becomes plainly apparent on the face of the record, it cannot be gain said that the petitioner was entitled to automatic regularisation by virtue of Section 5(d) of the Central Act. As to the further submission that there existed an earlier Resolution of the Executive Council to regularize all teachers, there is no reference to that in the resolutions of the Executive Council or of the Committee (that form the sheet anchor of the case now set up by the petitioner).

26. Even then, the claim of automatic regularisation is defeated upon parallel claim set up by the petitioner claiming appointment as Guest Faculty by the regular Selection Committee, on 22.09.2007. That engagement arose to the petitioner after enforcement of the Central Act. If the petitioner claims prior regularization under the State Act, he could never have sought engagement as a Guest Faculty at the same University, subsequently. Having obtained that engagement in that capacity, it is too late in the day for the petitioner to turn around and claim any higher status conferred on him prior to that date.

27. Under Statute 15.7(IV) as framed under the 'Central Act', a teaching faculty engaged on a temporary post may be regularized subsequently if such post becomes permanently vacant or another permanent post of the same rank and grade become available in the same cadre. In that case, the Executive Council may appoint such teacher on permanent basis in such department without further reference to the regular Selection Committee.

28. For reason of that material difference in language of Statute 15.7(iv) of the Statutes, the claim of continuity would require further consideration. The Selection Committee in its resolution dated 17.12.2018 has clearly reached a conclusion that the petitioner had continuously taught at the University in the department of Philosophy, since his initial engagement on 19.1.1992. It also found, that engagement was made under the 'State Act' and there was no defect in the constitution of the Selection Committee, at that stage.

29. All that survives for consideration is whether a post on which the petitioner had been initially appointed had become substantively vacant and was available or any further permanent post of same rank and grade had become available in the department of Philosophy. Plainly, that has escaped consideration of the Committee in its Resolution dated 17.12.2018. Arising therefrom, Executive Council has also not considered that issue.

30. Accordingly, order dated 14.02.2020 passed by the Registrar of the University is set aside. If at all, the matter has to be examined by the Executive Council if the post on which the petitioner had been initially appointed in the year 1992 had become vacant on substantive basis and was available (at present), or if any other post in the same pay and grade was substantively vacant in the department of Philosophy on which the petitioner could be regularized in terms of Statute 15.7(IV) of the University framed under the 'Central Act'. That exercise may be completed by the Executive Council, within a period of two months from today."

15. In pursuance of above order, a Committee was constituted on 12.01.2023 and its report was submitted before the Executive Council's meeting held on 23.03.2023 vide Agenda No. 06/2013 wherein it was accepted and it was resolved that the petitioner shall not continue teaching in any capacity.

16. The order dated 07.04.2023 is impugned in present writ petition along with resolution. For reference, impugned order, as communicated to petitioner, is reproduced hereinafter :-

"No.05/R/1185/2023

Date 07th April, 2023

To,

Dr. Rajnish Kumar Pandey,

Department of Philosophy,

University of Allahabad.

Subject:- In compliance of the order dated 28th November, 2022 of Hon'ble High Court passed in Writ Petition No. 3177/2020

Sir,

In pursuance of the order of the High Court dated 28th November, 2023 a committee was constituted vide office order No. 05/R/23/2023, dt. 12 January,

2023. The report of the committee was then placed before the Executive Council in its meeting held on 23 March, 2023 vide agenda No. 06/73 wherein after due consideration and deliberation over the report of the committee, especially in view of the fact that you have never faced a regular selection committee and hence it is not possible to consider your claim for regularization under any of the provisions including that of Statute 15[7] (iv), of the University of Allahabad Act, the EC has resolved as under:-

Resolution No. 06/73:

In pursuance of the High Court's order dt. 28.11.2022 in the writ petition no. 3177/2020 in the matter of Dr. Rajnish Kumar Pandey, a committee was constituted vide office order no. 05/R/23/2023 dt 12th January, 2023 comprising of Hon'ble Justice Shishir Kumar (former Judge, Allahabad High Court) (Chairman of the committee). Prof. Pankaj Kumar, Dean College Development (member) and Dr. Haribansh Singh, Assistant Professor. Department of Law (Convener).

The report of the committee was read out by Secretary, Executive Council before the EC member. On the basis of the report, it is brought to light that claim of regularization of Dr. Rajnish Kumar Pandey has been rejected due to non-applicability of U.P. State University Act 1973 (i.e. old Act) & Section 5(d), Section 45(2) & Statutes 15(7) (iv) of the New Act and Statutes.

As far as the question of the payment to Dr. Rajnish Kumar Pandey is concerned, it is clear that he has a status of Guest Faculty only, hence the payment to him shall be made as per the UGC norms applicable to payment to Guest Faculty for the time period from which his payment was stopped by the then Vice Chancellor till the present day.

After detailed discussion, the Executive Council unanimously approved the report of the committee and also resolved that Dr. Rajnish Kumar Pandey, however, now shall not continue teaching in any capacity in the University of Allahabad.

This is for your kind information.

Regards,

Sd.

07.04.2023

Registrar"

17. The argument that petitioner could still be considered under old Act has already been rejected that his case could not be better than the observation made by coordinate Bench in judgment dated 28.11.2022 that he now could be considered only in terms of 15.7 (iv) of Statute for substantive appointment. For reference, relevant paragraph no. 27 of said judgment is quoted hereinafter :-

"27. Under Statute 15.7(IV) as framed under the 'Central Act', a teaching faculty engaged on a temporary post may be regularized subsequently if such post

becomes permanently vacant or another permanent post of the same rank and grade become available in the same cadre. In that case, the Executive Council may appoint such teacher on permanent basis in such department without further reference to the regular Selection Committee.

28. For reason of that material difference in language of Statute 15.7(iv) of the Statutes, the claim of continuity would require further consideration. The Selection Committee in its resolution dated 17.12.2018 has clearly reached a conclusion that the petitioner had continuously taught at the University in the department of Philosophy, since his initial engagement on 19.1.1992. It also found, that engagement was made under the 'State Act' and there was no defect in the constitution of the Selection Committee, at that stage."

18. Learned Senior Advocate for petitioner has also referred that earlier, a 3 Members' Committee was constituted and a report was submitted which was considered by Executive Council in its meeting dated 17.12.2018, wherein minutes of Selection Committee dated 22.09.2007 was mentioned that petitioner was one of selected candidates against 08 vacancies in the department and petitioner was recommended for appointment and after judgment of this Court dated 28.11.2022, said report was upheld as well as he has faced Selection Committee, therefore, reasons assigned in impugned order are legally unsustainable.

19. Learned Senior Advocate has referred Section 45 of the Act of 2005 which provides 'Transitional Provisions' and referred its clause-2 that in given set of circumstances, since Ordinance are not made, therefore, case of petitioner still could be considered in accordance with provisions of Statute and Ordinance was made immediately before commencement of 'Act of 2005/Central Act' under the provisions of U.P. State Universities Act, 1973. For reference, sub-clause 2 of Section 45 is quoted below :-

"45. Transitional provisions.—

(1)

(2) Till such time as the first Ordinances are not made under sub-section (2) of section 29, in respect of the matters that are to be provided for by the Ordinances under this Act and Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Act under the provisions of the Uttar Pradesh State Universities Act, 1973 (President's Act 10 of 1973) shall be applicable insofar as they are not inconsistent with the provisions of this Act and the Statutes."

20. Learned Senior Advocate has also placed reliance upon judgments of this Court in P.K. Malik vs. State of U.P. and others, 2005 (6) AWC 5945(FB); Pankaj Kumar vs. University of Allahabad and others, (1993) 1 UPLBEC 544); Manshyam Verma and another vs. University of Allahabad and others, Writ A No. 50303 of 2015 decided on 18.12.2017; Dr. Rajendra Bahadur Singh and others vs. State of

U.P., 2021 (6) ADJ 602 (LB); Dr. Sangita Srivastava vs. University of Allahabad and others, 2002 (3) AWC 2088 and Swatantra Bala Sharma vs. State of U.P., 1994 (4) AWC 3142.

21. Per contra, learned counsel for respondents 2 to 6 has submitted that :-

(a) The report of 3 Members' Committee was not approved in 53rd Meeting of Executive Council dated 20.12.2018 rather Chairman was authorized to get legal vetting as he referred Agenda No. 19/53 of said meeting and its resolution, which is quoted below :-

"The Executive Council in its meeting held on 08.12.2011, while considering the following item under " Any other item with the permission of the Chair", the following point were raised and resolved as under:-

The following issue were emerged and decided:-

(i) Some of the members raised the issue regarding the action on the representation of Dr. Manik Chandra, Department of Ancient History and other Guest Faculty/ Part-time Lecturers in pursuance of Executive Council Resolution No. 03/15 dated 20.06.2010 and Resolution No. 01/16 dated 07.08.2010.

Resolved that the Vice Chancellor be authorized to constitute a committee to examine the cases.

In pursuance of the above decision of the Execution Council, you are required to put up note immediately to the Registrar, with regard to the Guest Faculty/ Part-time Lecturers, may kindly submit the same to the Hon'ble Vice Chancellor for constituting a Committee the same."

(b) Though it has not been denied that a subsequent Office Order was issued on 05.04.2019, whereby approval was accorded to continuity of service of the petitioner as Part Time Lecturer and it was approved in 55th Meeting of Executive Council.

(c) Learned counsel has further referred paragraphs 30, 42 and 49 of counter affidavit which are quoted below :-

"30. That the contents of paragraph 30 of the writ petition are incorrect. It is submitted that the reliance placed on Statue 15(7)(IV) is clearly misplace. Statute 15 is with regard to Selection Committee and its composition. Furthermore for application of 15(7)(IV), there has to be recommendation of a regular selection committee. In the present case, the petitioner has never faced any regular selection committee, apart from the selection committee for guest faculty, and his name has never been recommended by any regular selection committee.

With regards to Section 31 (3) (c) of the State University Act, the Court in Writ A No. 3177 of 2020 categorically held that the petitioner had lost any claim of higher status available under the State Act once the petitioner obtained an

engagement of Guest Faculty in 2007.

Similarly section 46 (2) (b) of the 2005 Act were also not applicable because the essential requirements of the section were not met in the case of the petitioner. His name has never been recommended by a regular selection committee and neither was the petitioner ever appointed as a part time lecturer in the University after recommendation from any selection Committee.

It is pertinent to mention that the Committee was not a selection committee. The three member committee never functioned as a selection committee as it did not fulfil the requirement of Statue 15.

42. That the contents of paragraph 42 of the writ petition are incorrect. It is submitted that there was no selection of the petitioner at any point of time. The petitioner was initially a JRF scholar till 1997 and later on was appointed a Guest Faculty in 2007. Apart from these two instances, the petitioner was never appointed by the University in any capacity. Furthermore the order dated 05.04.2019 clearly stated that continuity/regularization would be subject to the petitioner facing a regular selection committee of the department. The petitioner is yet to face such a selection committee. There is no irregularity in the selection procedure but the fact that the selection procedure for the petitioner was never undertaken. The respondents have never acquiesced to the right of the petitioner.

49. That the contents of paragraph 50 of the writ petition are incorrect. It is submitted that the claim of the petitioner for regularization can't be considered in light of the judgment rendered in Writ A no. 64494 of 2008 whereby the Court held that the Vice Chancellor or for that matter the Executive Council had no authority of law to constitute a committee for regularization that was claimed by the petitioner.

Furthermore any claim on the basis of the State Act has been negated by the Court in Writ A No. 3177 of 2020. The only question that the Court referred for adjudication was the applicability of Statue 15.7 (IV) which is clearly not applicable in case of the petitioner. For application of 15.7(IV), there has to be recommendation of a regular selection committee. In the present case, the petitioner has never faced any regular selection committee, apart from the selection committee for guest faculty in 2007, and his name has never been recommended by any regular selection committee as constituted under Statue 15(2).

The Court vide its order made it clear that regularization could only be seen on the basis of Statue 15(7) (IV) and on that basis directed the University to complete the exercise within two months. Thus all that was left was for the University to see the applicability of Statue 15(7) (IV) which was done by formation of Committee which examined the issue denovo and came to a conclusion that Statue 15(7) (IV) did not have any application in the case of the petitioner."

(d) Learned counsel has further submitted that in the Office Order dated 05.04.2019, there was a reference of Selection Committee, however, it was not in terms of 'Act of 2005' and Statute. In absence of Ordinance, provisions of Act of 2005 and Statute were required to follow. Section 45 of Act of 2005 also provides no provision in consistent of Act of 2005 and Statute would be applicable and as such, Selection Committee as referred in Minutes of Meeting dated 22.09.2007 was not in terms of para 15.2 of Statute so far as Selection Committee for appointment of Lecturer was concerned.

22. Heard learned counsel for parties and perused the record.

23. From above referred rival submissions and facts and circumstances of case, only issue left for consideration is that despite petitioner is guilty of not coming before this Court with clean hands still whether petitioner could be regularized in terms of para 15(7)(iv) of the Statute. For reference, para 15(2) (Selection Committee for Lecturer) and 15(7)(iv) of Statute are quoted below :-

"15. Selection Committees :-

(1).....

(2) The Selection Committee for appointment to the posts specified in column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Visitor and the persons specified in the corresponding entry in column

2 of the said Table:

Lecturer :-

(i) The Dean of the Faculty/Head of the Department.

(ii) Three experts in the concerned subject/field, to be appointed by the Executive Council, out of the panel recommended by the Academic Council.

(3).....

(4).....

(5).....

(6).....

(7) Appointments to temporary posts shall be made in the manner indicated below :-

(i).....

(ii).....

(iii).....

(iv) Where a teacher has been appointed to a Department on the recommendation of a regular Selection Committee on a temporary post, and

such post subsequently becomes permanently vacant or another permanent post of the same rank and grade becomes available in the same Department, the Executive Council may appoint such teacher on permanent basis in such Department without further reference to a regular Selection Committee.”

24. Aforesaid clause provides that petitioner may only be considered for appointment on permanent basis, if petitioner (teacher) was appointed on recommendation of a regular Selection Committee and only then he may not be referred to a regular Selection Committee for appointment of a teacher on permanent basis.

25. Now Court has to scrutinize whether Selection Committee constituted for consideration of appointment of petitioner dated 22.09.2007 was duly constituted or not.

26. In this regard, Clause 15 (2) of Statute of University would be relevant wherein constitution of a Selection Committee for post of Lecturer was also mentioned that it ought to have been comprised with Dean of the Faculty, Head of Department and three experts in concerned subject/field to be appointed by the Executive Council, out of the panel recommended by the Academic Council, however, above referred constitution of Selection Committee was not in terms of above referred details of Constitution of Selection Committee.

27. In aforesaid documents, Court also takes note of effect of Section 45 of the Act, 2005 and for that Court takes note of Section 29 of the Act of 2005 which is powered to make Ordinance. At this stage, it would be relevant to refer that the Ordinance of University made under Section 29(2) of Act of 2005 were published in Gazette on 09.02.2008.

28. Constitution of Selection Committee for appointment on post of Lecturer would be governed in terms of Clause-15(2) of Statute and as referred above, constitution of Committee as referred in ‘3 Members’ Committee dated 17.12.2018’ does not fulfil condition, therefore, it cannot be held that petitioner was duly selected and therefore, condition prescribed in Statute 15.7(iv), that since petitioner was not appointed on recommendation of a regular Selection Committee and therefore, any exemption that such teacher may be appointed on permanent basis without further reference to a regular Selection Committee could not be granted.

29. In this regard, contents of Section 45(2) of Act of 2005 are taken note of that even in a case till Ordinance are made on issue of Selection Committee, no provision of earlier Act of 1973 and its Statute and Ordinance would be applicable if these are in consistent with provisions of Act of 2005 and its Statute. As referred above, composition of 3 Members’ Selection Committee dated 17.12.2018 was in consistent with the composition of Selection Committee provided in para 15(2) of Statute for purpose of selection of a Lecturer, therefore, it could not be considered that all conditions prescribed under Statute 15(7)(iv) to grant exemption to petitioner to exempt to face a Selection

Committee for consideration for permanent were exist. The Selection Committee dated 17.12.2018 does not comprise in terms of Section 31 and its subsection of the U.P. State University Act, 1973, therefore, the reason assigned in impugned order has legal and factual backup, hence, no ground exists for interference.

30. In aforesaid circumstances, Court also takes note conduct of petitioner that he has not come forward before this Court with clean hands and since petitioner was not qualified in terms of Clause 15.7(iv) for appointment on permanent basis without further reference to a regular Selection Committee and since requisite condition of such clause are not present, therefore, his claim for appointment on permanent basis cannot be considered.

31. In view of above, Court is of considered opinion that since petitioner has not come before this Court with clean hands, therefore, this writ petition may be dismissed with cost, however, in the interest of justice, cost is exempted and writ petition having no force is, accordingly, dismissed.