
(1984) 11 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 1442 of 1977

Ram Anugrah Shukla

APPELLANT

Vs

The Director of Education (Higher) and Others

RESPONDENT

Date of Decision : 21-11-1984

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31, 31(11), 60A

Citation : (1984) AWC 726 Supp

Hon'ble Judges : K.N. Singh, J;A.N. Dikshita, J

Bench : Division Bench

Advocate : N.L. Gangoly, for the Appellant; Vinod Swarup, for the Respondent

Final Decision : Allowed

Judgement

A.N. Dikshita, J.—Bharti Vidya Bhawan, New Delhi, a Society registered under the Societies Registration Act, runs a degree College known as Vallabh Rani Saligram Mehta College of Science Bharwari, District Allahabad, which is affiliated to the Kanpur University, Kanpur, and is governed by the D.P. State Universities Act, 1973 (hereinafter referred to as the Act) and Regulations and Statutes.

2. The petitioner after having passed the M.Sc. examination from the Allahabad University in Mathematics in the 1st Division was appointed as a temporary lecturer in Mathematics on 17-8-1972 and worked in the said institution from 17-8-1972 to 13th June 1973. The petitioner was again appointed temporarily as a lecturer in Mathematics on 6-8-1973 and joined the institution on the same date. While serving the institution another appointment letter dated 30th September 1973 was issued appointing the petitioner to the same post on which he was already working with effect from 1st October 1973 to 31st March 1974. Again the petitioner was informed that he has been appointed Lecturer in Mathematics in the said College with effect from 1-4-1974 to 30-7-1974. The Vice Chancellor, Kanpur University Respondent 2, vide his letter dated March 5, 1974 also gave approval to the appointment of the petitioner as a temporary Lecturer upto 30th July 1974. Later on the petitioner was informed by the

Principal of the college that his services have been extended with effect from 31-7-1974 till a duly selected Lecturer by the Selection Committee joins. The management of the said College advertised the post of Lecturer in Mathematics and a Selection Committee was constituted as per the Kanpur University Statutes and the Act. The selection committee selected the petitioner for the post of Lecturer in Mathematics in the grade of Rs. 300-25-600 and in pursuance thereof a letter of appointment dated 25th March 1975 was issued to him. The petitioner admittedly worked in the said institution with effect from 6th August 1973 continuously without any break. On the successful completion of the probationary period on 3rd March 1976 the management of the said college confirmed the Petitioner on the post of Lecturer in Mathematics vide their letter dated 4th September 1976. Again respondent 2 vide its letter dated 7-8-1976 granted approval to the temporary services of the petitioner for the period 31-7-1974 to 3-3-1975 and also granted approval to the petitioners' selection for the post of Lecturer with effect from 4-3-1975 as per Section 31(ii) of the Act.

3. Meanwhile the State Legislature amended the State Universities Act, 1973 and added Chapter 11-A to the Act making a provision as per Section 60A of the said Act for payment of salaries of teachers and employees of private degree colleges in respect of period after March 31, 1975.

4. The petitioner was initially appointed in 1973 to the grade of Rs. 300-25-600 which was revised by the State Government on the recommendation of the University Grants Commission and the Central Government providing for fixation afresh of the scale of pay with effect from 1-1-1973 and thus the scale of pay was revised from Rs. 300-25-600 to Rs. 700-160U. The petitioner was accordingly given the pay scale of Rs. 740/- with effect from 6-8-1974. The petitioner was actually given three increments of Rs. 40/- each with effect from 6-8-1976 with dearness allowance at the rate of 27% of the basic pay upto the month of February 1979. The petitioner was given two increments of Rs. 40/- each on 1-1-1976 and the third increment was given on 6-8-1976. While other teachers of the institution started receiving their salary through the Treasury in accordance with the U.P. Education Laws Amendment Act, 1975 (U.P. Act No. XXI of 1975) it so transpired that though the petitioner was entitled to get his salary and other benefit from 1st April 1975 the petitioner was denied this facility and it was indicated by Respondent 1 that the petitioner was entitled to pay scale of Rs. 700-1600 with effect from 1-7-1976 only vide letter dated 23-2-1977.

5. The grievance of the petitioner is that he had started working in the institution with effect from 6-8-1976 and was thus entitled to increments of Rs. 40/- each and should have drawn Rs. 820/- as his salary on 6-8-1976 but vide letter dated 23-2-1977 of the Respondent 1 his salary has been reduced. Such fixation of the salary of the petitioner was made by Respondent 1 without any notice or information to the Petitioner denying him an opportunity of hearing. Representations were made by the petitioner to the respondents but to No. avail and the respondents stuck to their stand as revealed in the letter dated

23-2-1977.

6. Feeling aggrieved the petitioner has filed the instant writ petition seeking a writ of certiorari for quashing the order dt. 23-2-1977 and also for a direction by a writ of mandamus to fix the pay scale of the petitioner in the pay scale as settled by letter dated 7-1-1976.

7. A Counter affidavit has been filed on behalf of the Director of Education, respondent 1. The main contention on behalf of the contesting respondent is that the petitioner was appointed on a purely temporary basis from time to time and he was not selected by a properly constituted selection committee at any stage for his appointment in the college prior to March 1975. It is admitted to the contesting respondent that the Vice Chancellor of the Kanpur University had granted approval to the appointment of the petitioner upto July 1974. It has further been submitted on behalf of the contesting respondent that the appointment was made on a purely temporary basis and not a permanent basis as appointment on a permanent basis could only be approved after selection is made by a duly constituted selection committee. It is on the basis of the approval accorded by the Vice Chancellor of the Kanpur University vide his order dated 4-3-1977 that the petitioners' pay scale was fixed in the grade of Rs. 700-1600 with effect from 6-8-1976. The petitioner on the basis of the recommendation of a duly constituted selection committee was selected for the appointment to the post of lecturer in Mathematics by the said college for the first time in March 1975 and approval thereof was granted by the Vice Chancellor of the Kanpur University vide his order dated 7-3-1976. It is submitted on behalf of the contesting respondent that the services of the petitioner could only be counted from the date when he was appointed pursuant to his selection by a duly constituted selection committee and the approval thereto by the Vice Chancellor of the Kanpur University. It has thus been contended that his earlier services prior to his selection by the duly constituted selection committee cannot be counted for the purpose of seniority and the fixation of grade and the petitioner having been appointed in accordance with the Act is entitled to the benefits with effect from 7-8-1976 only and as the management of the said institution could not appoint the petitioner without prior approval of the Vice Chancellor the appointment of the petitioner could not be deemed to be in accordance with the provisions of the said Act prior to 7-8-1976. The approval which the Vice Chancellor granted under Clause (11) of Section 31 does not operate retrospectively. It is thus the case of the respondent that the fixation of the salary of the petitioner vide order dated 23-2-1977 is correct and just and according to law. Recourse has been sought by the respondents for fixation of the salary of teachers of aided colleges for the purposes of sanctioning maintenance grant as an administrative matter and wholly distinct from an order of a quasi-judicial nature. In any case if the petitioner feels aggrieved he may claim such benefits as accrued to him prior to 7-8-1976 from the College but in No. case the claim can be lodged against the State Government.

8. Counsel for the parties have been heard at length. The controversy in a narrow compass is whether the respondent No. 1 was justified in fixing the salary of the petitioner with effect from 7-8-1976 which is to the detriment of the petitioner and more so without affording him a reasonable opportunity at the time of the fixation of the salary.

9. It is wholly (sic) on the part of the respondent 1 that during the period of his regular appointment and service with effect from 31-7-1974 or 6-8-1976 fixation of salary cannot be counted for the purposes of seniority and the grade. The fallacy of this contention would stand repelled by a perusal of the necessary provisions of the Statutes as well as the Act. Provisions for payment of teacher on temporary basis contained in Statute 1104 is reproduced herein below;

11.04(1) Temporary appointment of a new teacher may be made for a period which shall not exceed two years. Temporary appointment shall not be made against a permanent vacancy but in case a post (sic) vacant during the session, temporary appointment may be made upto the end of the month of June. Wherever a teacher appointed in a temporary vacancy continues for more than one year, he shall be entitled to annual increment.

10. It is thus manifest from a perusal of the above provision that the said Statute provided for appointment of a teacher on a temporary basis. It cannot be maintained on behalf of respondents that the petitioner is entitled to his benefits from the said College in view of the approval having been accorded by the Vice Chancellor for the period 21-7-1974 to 3-3-1975. It has not been disputed that the petitioner was later on selected by a duly constituted selection committee and necessary approval as provided in Section 31 Sub-clause (11) was granted by the Vice Chancellor of the Kanpur University vide letter dated 7-8-1976 with effect from 4-3-1976. Respondent 1 has asserted that the provisions of Sub-section (11)(a) of Section 31 clearly provides as under J--

No. teacher recommended by the Selection Committee shall be appointed by the management of an affiliated or associated college (other than a college maintained exclusively by the State Government) unless prior approval of the Vice Chancellor has been obtained.

11. In view of the above the contention of the respondent is that unless the approval of the Vice Chancellor was obtained No. teacher as recommended by the selection committee shall be appointed by the management of the said college. Recourse to seek aid of the said provision by respondent 1 is of No. avail as the said provision was substituted in the year 1977. Nothing has been shown debarring the Vice Chancellor to grant approval from an earlier date. The Vice Chancellor vide letter dated March 5, 1974 had granted approval for the appointment of the petitioner on a temporary basis with effect from 31-7-1974 to 3-3-1975. Moreover, there is No. denying the fact that the other teachers of the said college had been granted the benefits in regard to the fixation of the salary with effect from 1-1-1973 and the assertion of the petitioner that he is also

entitled to the fixation of his seniority and the grade with effect from 1-1-1973 in view of the letter dated 7-1-1976 appears to be justified. Such a discrimination is neither warranted nor permissible.

12. The next contention of the petitioner is that prior to the fixation of his seniority and salary by the respondent 1 vide letter dated 23-2-77 No. opportunity was ever accorded to him and as such the respondent had deprived him of his valuable right it is not disputed that the petitioner who was drawing more salary earlier in view of the letter dated 23-2-77 was made to draw a lesser amount.

13. Learned Counsel appearing for Respondent 1 has asserted that such a fixation was done as an "administrative exercise and there was No. occasion to accord any opportunity to the petitioner while determining seniority and the salary of the petitioner. It is not disputed that No. opportunity whatsoever was ever afforded to the petitioner before the determination of the seniority and fixation of the salary of the petitioner by Respondent 1. It is also been stressed by the learned Counsel for the respondent 1 that No. illegality was committed while determining the seniority and fixation of salary of the petitioner nor was the petitioner deprived of any valuable right inasmuch as No. prejudice has been caused to the petitioner. We find No. merit in this contention. It is wholly unconscionable and illegal to deprive the petitioner of his right to espouse his case before the authorities where after respondent 1 would have been justified in arriving at a conclusion much to the (sic) of the petitioner. It is well settled law that where the rights of a person are sought to be infringed by an authority it is incumbent on such authority to afford reasonable opportunity to such a person. There may not be any positive words in the statute that a reasonable opportunity shall be afforded to the petitioner yet the justice of the common law will supply such an omission. The principle of audi alteram partem which mandates that No. one shall be condemned unheard is part of the rules of natural justice. It is also now taken to be well settled that even in administrative proceedings which involves civil consequences the doctrine of natural justice must be held to be applicable.

14. In *A.K. Kralpak v. Union of India* AIR 1970 SC 150 it was observed that "the dividing line between administrative power and a quasi judicial power is quite thin and is being gradually obliterated.

15. In the case of *Maneka Gandhi v. Union of India* reported in AIR 1978 SC 597 this doctrine of natural justice was amply magnified. The doctrine of natural justice is intended to invest law with fairness and to secure justice and over the years it has grown into widely pervasive role affecting large areas of administrative action. The enquiry must always be : "does fairness in action demand that opportunity to be heard should be given to the person affected?" The petitioner was being deprived of his seniority and pecuniary benefits in view of the passing of the order dated 23-2-1977 by the Respondent 1 and even his salary was being reduced thus infringing his valuable right. The petitioner

admittedly was never afforded opportunity to represent his case before the authorities. He was being denied his right inviting civil consequences to his career. The Supreme Court thus observed in the case of *Maneka Gandhi v. Union of India* (supra):

Although there are no positive words in the Statute requiring that the party shall be heard, yet the justice of the common law will supply the omission on the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be does fairness in action demand that an opportunity to be heard should be given.

The law must now be taken to be well settled that even in an administrative proceedings which (sic) civil (sic) the (sic) of Natural justice must be held to be applicable.

It was further observed:

That in the applicability of the doctrine of natural justice there can be no discretion between quasi-judicial function and administrative function. The aim of both administrative enquiry to a just decision and if the role of natural justice is calculated to secure justice or to put it negatively to prevent miscarriage of justice it is difficult to see why it should be applicable to the quasi judicial enquiry and not to administrative enquiry. It must be logically applied to both.

16. On more than one occasion the Supreme Court has held that the principles of natural justice apply to both administrative and quasi-judicial exercise of power if it visits a person with civil consequences. Every right being adversely affected is the *sin qua non* for invocation of the principle of *audi alteram partem*.

17. In the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court observed that civil rights are such as apply to every citizen or State or country or in a wider sense to all its inhabitants and not connected with organisation or administration of the government. The civil rights are rights appertaining to a person in by virtue of his citizenship in a State or community and are rights capable of being enforced or redressed in Civil action.

18. Apparently the petitioner was not afforded any opportunity and as such was deprived of being heard. The order of respondent 1 dated 23-2-1977 deserves to be quashed and the petitioner is entitled to be fixed in the pay scale of Rs. 700-1600 with effect from 6-8-1974.

19. In the result the petition succeeds and is allowed with costs. The order dated 23-2-1977 passed by respondent 1 is hereby quashed. We further direct

respondent 1 to fix the petitioner's salary in the scale of Rs. 700-1600 with effect from 6-8-1974.