
(2009) 04 AHC CK 0568

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27761 of 2002

Ram Bharosey Lal Agnihotri

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0568

Hon'ble Judges : S.Rafat Alam, J and Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

1. We have heard Sri J.H. Khan, learned counsel for the petitioner, Sri Neeraj Tiwari, learned counsel for the respondents University and the learned Standing Counsel for the Staterespondents.

2. The petitioner Ram Bharosey Lal Agnihotri aggrieved by the orders dated 18.6.2002, 9.3.2000 and 30.4.2000, contained in Annexures 13, 14 and 15 to the writ petition respectively, has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing the same. He has also sought a writ of mandamus commanding the respondents not to interfere in his working as Assistant Director/Reader, Department of Adult Continuing Education and Extension, Chhatrapati Shahu Ji Maharaj University, Kanpur (hereinafter referred to as the University) and to pay his regular salary or in the alternative to permit him to assume duty as Project Officer/Lecturer in the aforesaid Department of the University and to pay his regular salary.

3. The facts in brief giving rise to the present dispute, as stated in the writ petition, are that the petitioner was appointed as "Temporary Project Officer in the "Adult and Continuing Education Scheme" (hereinafter referred to as the Scheme) of the University Grants Commission (in short "the UGC") in the pay scale of Rs. 7001300/ pursuant to the decision of the Executive Council dated 9th September, 1985, by the Registrar of the University. It is alleged by the petitioner that the Executive Council vide Resolution dated 15th August, 1984 confirmed him on the post of Project Officer in the said Scheme. The post of

Assistant Director/ Reader was advertised by the University and pursuant thereto the petitioner also applied and he was selected and appointed vide Executive Council's resolution dated 29th April, 1994 communicated by the Registrar of the University vide letter dated 29th April, 1994. The aforesaid appointment was also temporary and required the incumbent, i.e., the petitioner to execute an agreement/contract in accordance with the statute of the University. The petitioner joined the post of Assistant Director on the same date, i.e., 29.4.1994 (afternoon). It appears that the aforesaid Scheme of Adult and Continuing Education was time bound and not extended by UGC beyond April, 2000 though some correspondence in this regard took place between the State Government and the UGC. However, the fact remains that no salary was paid to the petitioner from April, 2000 and on the contrary vide letter dated 9.3.2000 (Annexure14 to the writ petition) he was informed that the post of "Assistant Registrar" which was under the UGC's Scheme, since the UGC has declined to provide any financial assistance from April, 2000 and onwards, therefore the post was liable to be abolished with effect from 30.4.2000 (Annexure15 to the writ petition) and he cannot continue with effect from 30.4.2000, and the service shall stand terminated accordingly. By letter dated 30.4.2000 the Registrar further informed the petitioner that in anticipation of approval by the State Government for continuance of the post if he wants to render service voluntarily without any salary, he may do so but for the said purpose he shall not be paid any salary by the University. Later on, the Registrar vide letter dated 18.6.2002 reiterated what was conveyed vide letter dated 9.3.2000 and 30.4.2000 and informed the petitioner that the post of Assistant Director having abolished on 30.4.2000, his continuance thereafter is not permissible in law and, therefore, he should vacate the official accommodation allotted in the University Campus and should not discharge the official function.

4. It is said that the State Government issued an order dated 23.7.1994 addressed to all the ViceChancellors of the State Universities of the State of U.P. wherein it is provided that the schemes which are approved/launched by the UGC/ All India Technical Education Council wherein some technical academic posts are also sanctioned, the posts which are sanctioned by the UGC, and bear financial expenses with the expectation that the State Government on the closer of the Scheme would bear the expenses of those posts, the State Government grants approval for sanction of such posts, since UGC requires for the issuance of a G.O. not only for sanction of the post by the State Government but also for undertaking the expenses by the State Government, if any. The G.O. further provides that the decision has been taken by the Government that those Schemes which are approved by the UGC/AITEC and grant is provided, the same would also be accepted by the Government for providing corresponding expenses with respect to the post and the steps in this regard be taken in the matters expeditiously. However, it is made clear that only such Schemes be referred to the Government where the UGC has made grant available normally for a period of 5 years. Regarding the continuance of the Scheme, University sent letter

dated 22nd December, 2000 to the Government stating that by the G.O. dated 31st August, 1992, for the Department of Adult Continuing and Education, the following posts were sanctioned.

The post sanctioned by the UGC and number The post sanctioned by the U.P. Government and number Persons working if any

Director 1 ProfessorcumDirector 1 None

Assistant Director 2 ReadercumAssistant Director 1 Two.

Project Officer 3 LecturercumOfficer 2 Two

5. There is reference to some Ministerial Staff also but the same is not relevant for the purpose of present case. The aforesaid letter further provides that upto March, 1995, 100% expenses of the aforesaid staff shall be borne by the UGC and thereafter also, though the posts were sanctioned by the State Government but the expenses are being borne by the University from its own sources and now vide letter dated 22.2.2000 the UGC has completely stopped grant and it is not possible for the University to continue to bear the said expenses from its own sources which may now be borne by the Government and it may also sanction one more post of ReadercumAssistant Director since two persons are working. Reminder was also sent by the University on 2.6.2001 but having failed to receive any response from the Government it passed the impugned order accordingly.

6. A supplementary affidavit dated 19.11.2006 has also been filed by the petitioner whereby it has placed on record certain more documents. The first one is letter dated 6.2.1984 of UGC in reference to programme of Adult Continuing Education and Extension which provides that the UGC has agreed to assist the University for financial assistance under the Programme of Adult Continuing Education and Extension and the said assistance will be available upto 31.3.1990. The aforesaid letter mentions one post of Director, two posts of Assistant Director and three posts of Project Officer with clear stipulation of 100% actual expenses to be borne by UGC. AnnexureSA2 is the copy of the letter dated 23rd July, 1994 of the State Government addressed to the University which we have already dealt with. AnnexureSA3 is the copy of the letter of the State Government dated 18th October, 1995 conveying its extension of temporary sanction for creation of temporary posts from the date of issuance of the Notification or the date of appointment whichever is later till 29.2.1996 provided it is not terminated earlier. The posts in the Department of Adult and Continuing Education of Extension are asunder:

Director & Head of the Department 1 Post

Assistant Director 2 Posts

Project Officer 1 Post

Routine Grade Clerk 1 Post

7. We may, however, observe here that this letter dated 18th October, 1995 is not in connection with the petitioner but it is addressed to the Registrar/Finance Officer, Dr. Ram Manohar Lohiya University, Faizabad.

8. On behalf of respondent Nos. 2 to 4 a counter affidavit has been filed stating that UGC vide its letter dated 6.2.1984 (AnnexureCA1) created one post of Director, two posts of Assistant Director and three posts of Project Officer in the University for Adult and Continuing Education Scheme. The UGC agreed by the aforesaid letter to provide assistance for staff as mentioned above upto 31st March, 1990. Since the financial assistance made available by the UGC was for a limited period, i.e., 31st March, 1990 extended upto 1994/95, the University requested the State Government to sanction certain posts under Adult and Continuing Education Scheme. The State Government vide its letter dated 31.8.1992 (AnnexureCA2) informed about the sanction of the Governor for creation of certain posts in Kanpur University, under the aforesaid Scheme. The details of the posts mentioned in the Government Order dated 31.8.1992 are as under:

Karmank Padname Sankhya Vetanman

1. Achary Kam Nideshak 1 450015057002007300
2. Upachary Kam Sahayak Nideshak 1 37001254950155700
3. Parwakta Kam Pariyojana Adhikari 2 22007528001004000
4. Stenographar 1 1200301560d.ro.402040
5. Technical Assistant 1 1200301560d.ro.402040
6. Kanishth Lekha Lipik 1 950201150d.ro.251500?

9. The said Scheme was further granted extension by the UGC but vide letter dated 22.2.2000 (AnnexureCA3) it informed the University that no further assistance shall be available to any staff under the said Scheme from April, 2000 and the entire responsibility of meeting the expenditure of such staff member's salary would rest with the respective State Government's/State University. The University sent a letter dated 9.3.2000 informing the petitioner that since the sanction of UGC for financial assistance is not available, therefore the post of Assistant Director would not be available after 30.4.2000, hence the petitioner's service would also stand terminated on 30.4.2000 due to nonavailability of post, i.e. abolition of post. The same information was reiterated by the University vide letters dated 30.4.2000 (AnnexureCA5) dated 18.6.2002 (AnnexureCA6). The State Government's letter dated 4.1.1999 has also been filed as Annexure7 to the counter affidavit stating that the proposal for sanction of two posts of Reader/ Assistant Director and Lecturer/Project Officer has been rejected and the work may be got done from the already sanctioned posts.

10. The case of the respondents is that the petitioner was newly appointed by way of direct recruitment as Assistant Director/Reader and it was not a case of

promotion. The post having become non est due to its abolition, he was rightly terminated. So far as the earlier post where the petitioner was working, i.e., the Project Officer, the same was already filled in by appointing another person, there is no question giving assignment to the petitioner on the said post.

11. A supplementary counter affidavit on behalf of the State of U.P., i.e., respondent No. 1, has also been filed wherein it has been said that vide letter dated 6.2.1984 the UGC agreed to assist the University for the programme of Adult, Continuing Education and Extension, 1982 with the condition that the assistance from the UGC would be available up to 31st March, 1990. It has further been said that the UGC agreed to provide assistance for the Core Staff and the Supporting Staff under the Core Staff. The provision for the post of Director, two posts of Assistant Director and three posts of Project Officer and the Core Staff of the said Scheme has been made with the condition that after the stipulated period of time, the State Government/University concerned would bear the expenses. The State Government vide letter dated 31.8.1992 agreed to create among others, one post of ProfessorscumDirector, one ReaderscumAssistant Director and two posts of LecturerscumProject Officer only. However, disregarding the direction of the State Government the University temporarily appointed the petitioner first as Project Officer on 9.9.1985 and then as Assistant Director on 29.4.1994 without there being any such post in existence. It also said that by general order dated 23.7.1994 issued by the State Government and circulated to all the Universities it was conveyed that the Government would provide financial assistance and abide by continuance of the posts for the Scheme accepted by the UGC and funded for the stipulated period of time and thus, in this context the letter dated 31.8.1992 should also be seen. However, the University making the appointment of the petitioner as Project Officer and thereafter Assistant Director acted illegally and since the aforesaid appointment was null and void, no benefit can be claimed by the petitioner. The State Government had sanctioned only one post of Assistant Director in the University and in the absence of Government's approval any claim for continuance of two posts of Assistant Director in the University is illegal.

12. Sri J.H. Khan, learned counsel for the petitioner vehemently contended that it is incorrect on the part of the University saying that the post of Assistant Director was abolished in April, 2000, hence the termination of the petitioner is not legal. He further submitted that he was regularly appointed on the post of Project Officer in the year 1999 and thereafter he was appointed as Assistant Director. If the post of Assistant Director was not available at any subsequent point of time, instead of termination of the petitioner it was incumbent upon the respondents to accommodate him against the vacancy of Project Officer but the petitioner could not have been rendered jobless all through. He had a lien on the post of Project Officer. In support he placed reliance on the decision of the Apex Court in Anil Kumar Sony v. Managing Director, Punjab Financial Corporation and another, 1991 (63) FLR 591.

13. However, having given our considerate thoughts to the above submission, we do not find ourselves in agreement with the learned counsel for the petitioner. ,

14. In our view, the writ petition deserves to be dismissed. The reasons are as under:

15. The appointment of the petitioner on the post of Project Officer was clearly in a Scheme and was specifically mentioned as temporary as is evident from the appointment letter dated 9.1.1985 (Annexure1 to the writ petition).

16. Despite of our repeated query learned counsel for the petitioner could not show any order of the University whereby the petitioner as confirmed on the post of Project Officer. He could not show that his appointment was ever made permanent on the post of Project Officer. In the absence of permanent appointment on the post of Project Officer the assumption on the part of the petitioner that he had a lien on the post of Project Officer is misconceived and misleading. The term lien has been defined in Fundamental Rules 9(13) as under:

"Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively."

17. The concept of lien was considered by the Apex Court in *Triveni Shankar Saxena v. State of U.P. and others*, 1992 Supp (1) SCC 524, wherein it was held "a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier". The Apex Court while making the aforesaid observation affirmed this Court's judgment taking similar view in *M.P. Tewari v. Union of India*, 1974 ALJ 427.

18. In *Dr. (Mrs.) Chanchal Goel v. State of Rajasthan*, AIR 2003 SC1713, the Apex Court upheld the contention of the respondents' counsel that merely because she had Continued for a long time, that has not crystallised into any enforceable right and on that basis only one cannot claim lien over the post.

19. In *All M.K. and others v. State of Kerala and others*, 2003(11) SCC 632 the Apex Court reiterated the law in respect to the "lien" and observed "It is a settled position in law that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier."

20. Both the above judgments have been followed in *S. Narayana v. Md. Ahmedulla Khan and others*, 2006(10) SCC 84. The Apex Court in *S. Narayana* (supra) rejected the contention of the respondents that when the services were regularized it amounts to confirmation in service and, therefore, lien would operate from the said date and in para18 of the judgment the above submission of the learned counsel was rejected by the Apex Court.

21. The contention of the petitioner that if the post of Assistant Director was not available, he ought to have been reverted to the post of project Officer since he

had lien to the said post, has no legs to stand for the simple reason that the petitioner could not show that he was ever made permanent on the said post or was confirmed so as to create a "lien" on the said post. The record on the contrary shows that he was appointed as "temporary Project Officer" and continued to work till he was selected and appointed as "Assistant Director" which was also a temporary appointment.

22. The judgment cited by the learned counsel for the petitioner in Anil Kumar Sony (supra) has no application for the simple reason that therein Anil Kumar Sony was admittedly a confirmed Assistant Technical Officer (Textiles) and thereafter he was appointed by direct recruitment as Assistant Manager in the same Corporation, i.e., Punjab Financial Corporation. Initially his appointment as Assistant Manager was on probation which was extended from time to time but ultimately he was terminated from the post of Assistant Manager. The Apex Court held that since he was a confirmed Assistant Technical Officer and had a lien on the said post which was shown to have never been terminated at any point of time, he was entitled to join on the said post after his termination from the post of Assistant Manager. In these circumstances, the Apex Court said as under:

"The entire purpose of such resolution was that if an employee of the Corporation was appointed in the new cadre post to be filled up by direct recruitment then the Corporation did not want to continue the earlier post held by such employee of the Corporation. Thus in the scheme of things such appointment of the employee of the Corporation to the new cadre posts ought to have been confirmed appointment. It would be against all canons of justice that confirmed employee of the Corporation though allowed to compete for a new cadre post by direct recruitment but having not been confirmed on such post is not allowed to claim his right even on the lower post on which he had permanent lien to continue. It would be a travesty of justice to throw the person on the streets after a period of service of nine years in the Corporation. The post of Assistant Technical Officer held by the appellant as a confirmed employee could have only been abolished in case he was confirmed on the post of Assistant Manager."

23. On the very facts of the case, as discussed above, we are clearly of the view that the judgment in Anil Kumar Sony (supra) does not help the petitioner.

24. So far as the question of abolition of the post of Assistant Director is concerned, we find that the post was created initially in a Scheme but subsequently the UGC refused to provide financial assistance and the State Government on the contrary declined to create one more post of Assistant Director as requested by the University. The aforesaid decision had neither been shown to be arbitrary nor mala fide and in these circumstances, if the University found that the post stood abolished with effect from 30th April, 2000 as a consequence whereof the petitioner was terminated. We do not find any legal or otherwise infirmity therein.

25. Termination as a result of abolition of post is a necessary consequence

flowing from the very nature of all such transactions unless it can be shown that the incumbent concerned has a lien on some other post where he may be entitled to go back, which is not the case herein.

26. We, therefore, do not find any merit in the writ petition. It is, accordingly, dismissed.