

(2015) 11 AHC CK 0042

In the Allahabad High Court

Case No : Service Bench Nos. 1759, 1760, 1774 of 2013, 639 of 2011, 191 of 2014, 1405 of 2013 and 1095 of 2015

Ramesh Chandra and Others

APPELLANT

Vs

Babasaheb Bhimrao Ambedkar University and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

University Grants Commission Act, 1956 — Section 12, 12(3), 12A, 13, 14

Citation : (2015) 11 AHC CK 0042

Hon'ble Judges : S.N. Shukla and Akhtar Husain Khan, JJ.

Bench : Division Bench

Advocate : Sameer Kalia, for the Appellant; Aprajita Bansal and Rajesh Tewari, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Shukla, J.—Heard Mr. S.K. Kalia, Mr. I.B. Singh, Mr. J.N. Mathur learned Senior Counsels, Dr. L.P. Mishra, Mr. Sandeep Dixit, Mr. Ramesh Pandey, Mr. Prashant Singh "Atal", Mr. Mudit Agarwal and Mr. Brijendra Singh, learned counsels for the petitioners as well as Mr. Rajesh Tiwari and Mr. Alok Mathur learned counsels for the respondents.

2. The petitioners are working as Assistant Professors, Associate Professors and Professors respectively in Babasaheb Bhimrao Ambedkar University, Lucknow (in short "the University"). The University had issued an advertisement on 26.05.2010 inviting applications for selection on the post of Assistant Professors, Associate Professors and Professors in different subjects. Pursuant to the said advertisement, the petitioners applied since they possess the qualification prescribed for appointment on the post of Assistant Professors, Associate Professors and Professors. The last date of submission of application was fixed as on 30.06.2010. The University proceeded to make selection under the provisions of Babasaheb Bhimrao Ambedkar University Act, 1994 (in short "the Act, 1994") and completed the same accordingly. On the last date of submission of

application i.e. 30.06.2010, the University Grants Commission (in short "the UGC") framed regulations with regard to minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in higher education that was known as "the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010" (in short "the UGC Regulations, 2010") which came into force with immediate effect.

3. It is not in dispute that in the advertisement, the requisite qualification was prescribed as was provided under the Statute of the University. The UGC Regulations, 2010 also provides the same very qualifications with minor changes. There was no change in the qualification prescribed for the Assistant Professors and Professors in the Act, whereas in the qualification prescribed for the post of Associate Professors, some relaxation was provided. There is no dispute that the petitioners possess the qualifications prescribed under the provisions of the Act or under the Regulations framed by the UGC. The dispute confines only with regard to the procedure of selection. After the petitioners' selection it was placed before the Board of Management for its approval. In the meanwhile it appears that some complaints with regard to the same very selection were received in the University, therefore the Board of Management examined the petitioners matter in terms of complaints in its 41st meeting held on 26.09.2011. In the meanwhile some unsuccessful candidates also filed a writ petition being writ petition No. 639 (S/B) of 2011, whereby they had prayed to quash the advertisement dated 06.02.2010 and for issuing a mandamus commanding the opposite parties not to proceed with the selection process without making necessary amendment in the University Ordinance of 2004 to incorporate the UGC Regulations, 2010. This Court entertained the writ petition and as an interim measure provided that "if any selection or appointment is made by the opposite parties that shall be subject to further order passed by this Court."

4. Their claims are that once the UGC has framed new guidelines for selection, which came into force w.e.f. 30.06.2010 that should have been inserted in the Statute of the University before proceeding for selection but since it has not been done, the selection is vitiated in law. The case of the University is that after framing the Regulations of the UGC, it replaces the provisions of the Statute of the University automatically, therefore, it had come into force for all the Universities guided by the UGC from the date of issuance of the Regulations i.e. 30.06.2010. The Board of Management considered all these aspects and raised several questions on the procedure of selection and constituted a Committee to ensure following questions:

"i. Whether the advertisement was issued appropriately?

ii. Who scrutinized the applications received?

iii. Was the screening committee members were competent to do so as per UGC

Guidelines/University Statutes/Ordinances?

- iv. Was the scrutiny done objectively in accordance with UGC Regulations?
- v. Whether those who were screened out were eligible to be called for interview?
- vi. Whether selected candidates were eligible as per UGC guidelines/University Statutes/Ordinances?
- vii. Whether selection committees were constituted as per UGC Guidelines?
- viii. Whether any ineligible candidate selected?"

5. However, since there was no unanimous resolution, therefore, the Board of Management rejected the report and decided to call all the relevant files to have a deliberation on the issue. Accordingly, after considering the various issues, the Board of Management resolved unanimously as under:

"1. Screening of all the applications of the candidates for the posts of Assistant, Associate and Professors posts submitted on or before 30.09.2010 be carried out afresh by following UGC Regulations June 2010/Norms, followed by the Universities including the BBAU earlier.

2. The Selection Committee be constituted afresh for all the cases by strictly following the UGC Guidelines 2010.

3. The incumbent teachers be allowed to continue till the end of the academic session or selection through proper selection procedure, whichever is earlier.

4. Necessary action be initiated against those responsible for violating UGC Guidelines/Regulations/Norms for the appointment of teachers.

5. The advice of UGC be obtained for counting the experience of teachers who have worked under various National/International fellowships such as Fulbright etc. which are earned after competing at national/international levels."

6. A bare perusal of the aforesaid resolution shows that the Board of Management has also taken note of the violations of the UGC Guidelines/Regulations/Norms for appointment of teachers.

7. Learned counsels for the petitioners have submitted that since at the time of issuance of advertisement no Regulations, framed by the UGC, were adopted by the University, the matter of appointment was governed under the University Act as well as Statute framed by the University, therefore, they could not be said that there had been violation of UGC Regulations.

8. Indisputably, the UGC Regulations, framed on 30.06.2010, were adopted by the University through item No. 46.8.5 of its resolution dated 20.11.2013 on its 46th meeting of the Board of Management. At this stage, the question arises whether the Regulations framed by the UGC had come into force automatically w.e.f. the date of its enforcement or it could be enforced only by way of proper

resolution adopted by the Board of Management of the University.

9. Regulation No. 1.1.2 of the UGC Regulations, 2010 provides that "they shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under Section 3 of the said Act.". The UGC Regulations have also provided the consequences. Regulation 3 provides the consequences that "consequences of failure of the Universities to comply with the recommendations of the Commission, as provision of Section 14 of the University Grants Commission Act, 1956."

10. Section 14 of the University Grants Commission Act, 1956 reads as under:

"14. If any University [grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that sub-section or] fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13 , [or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25 , or of any regulation made under clause (e) or clause (f) or clause (g) of section 26 ,] the Commission, after taking into consideration the cause, if any, shown by the University [for such failure or contravention], may withhold from the University the grants proposed to be made out of the Fund of the Commission."

11. Admittedly, the Board of Management adopted the Regulations in 2013, if the period between the issuance of Regulations till its adoption of the University is taken as a failure of the University, it was open to the UGC to take action against the University as is provided under Section 14 of the Act but no such action was taken by the University. Under the resolution of the Board of Management impugned, the University has to proceed to screen out all the applications of the candidates for the post of Assistant Professors, Associate Professors and Professors and a Selection Committee has to be constituted afresh for selection by following the UGC Regulations, 2010.

12. Keeping in view of the decision of the Board of Management, learned Senior Counsels appearing for the petitioners have given emphasis over the provisions of section 20 (note-6). It reads as under:

"(6) If the Board of Management is unable to accept the recommendations made by a Selection Committees, it shall record its reasons and submit the case to the Visitor for final orders."

13. Section 9(1) of the University Act provides that "the President of India shall be the Visitor of the University".

14. The learned counsel for the petitioners have submitted that since the

qualifications are prescribed under the Statute framed under the University Act unless the Statutes are amended by the University in accordance with law, this notification shall not invalidate the petitioners' appointment made in accordance with the provisions of the Act.

15. The Board of Management in its 41st meeting dated 20.09.2011 took up the petitioners' matter for its ratification, however, considering the representations received by them it resolved to constitute a three member committee to look into issues relating to the eligibility of teachers, however, no such representation was handed over to the University even after lapse of fourteen months. The Board of Management also recorded this fact in its 42nd meeting. The Vice Chancellor and Chairman Board of Management vide letter dated 03.12.2012 intimated the Joint Secretary department of Higher Education, Ministry of Human Resource and Development, Union of India to be aware that the said matter had already been referred to the Visitor's office as per Statutory provisions. He further requested to provide those representations to be furnished to the Visitor Office.

16. In the aforesaid terms, it has been submitted that since the Board of Management is not the final authority to take any final decision its resolutions may be treated the opinion of the Board and necessarily it should be placed before the Visitor for a final decision.

17. Mr. Rajesh Tiwari, learned counsel for the University has made his best effort to dispute the arguments raised by the learned Senior Counsels for the petitioners and further to maintain the supremacy of the UGC Regulations over the provisions of the University Act as well as Statute framed thereunder but on the point of reference of dispute to the Visitor, he has not raised any serious objection. Mr. Tiwari has pointed out several defects in the proceeding of selection in light of the UGC Regulations.

18. The Board of Management in its 38th meeting dated 12.05.2011 through resolution No. 4.16.1 approved the action taken for adoption/implementation of UGC Regulations and also decided to incorporate under the University Academic Ordinances.

19. Mr. Tiwari, learned counsel for the University has submitted that by means of Notification dated 20.07.2011, the University had adopted the UGC Regulations with immediate effect, therefore, it could not be said that the University had not adopted the UGC Regulations.

20. It is stated that the said exercise of power has been strengthened with the provisions of section 12(3) of the Act it reads that "the Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter."

21. In view of the aforesaid provisions, it has been submitted by Mr. Tiwari that since the Vice-Chancellor was authorized to exercise the power of Board of

Management, he exercised it and issued the notification dated 20.07.2011, therefore, the notification dated 20.07.2011 issued by him cannot be said to be not in accordance with law.

22. The petitioners have also claimed the order impugned to be in violation of principles of natural justice and submitted that in decision making process they had not been taken into confidence nor had been noticed.

23. Mr. Tiwari, learned counsel for the University, in support of his submission, also cited a decision of the Hon"ble Supreme Court rendered in Kalyani Mathivanan Vs. K.V. Jeyaraj and Others in which the second question for consideration was "whether in the event of conflict between the University Act, the regulations framed thereunder and the UGC Regulations, 2010, the provisions of the UGC Regulations, 2010 would prevail or not". The Hon"ble Supreme Court answered the aforesaid question in the following manner:

"62.1.....

62.2. The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation has binding effect on the Universities to which it applies.

62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and colleges thereunder and the Institutions deemed to be universities whose maintenance expenditure is met by the UGC.

62.4. The UGC Regulations, 2010 are directory for the Universities, colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.

62.5. The UGC Regulations, 2010 having not been adopted by the State Tamil Nadu, the question of conflict between State Legislation and the Statutes framed under Central Legislation does not arise. Once they are adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation."

24. Regulation 7.4.0. provides that "the Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations."

25. While discussing the aforesaid question in paragraph 56 of the Judgment, the Hon"ble Supreme Court observed that "we have noticed and held that UGC Regulations, 2010 are not applicable to the Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature unless State Governments wish to adopt and implement the Scheme subject to the terms and conditions therein..... "

26. In the case of University of Delhi Vs. Raj Singh and others, , the Hon''ble Supreme Court has held that the UGC Regulations are merely recommended.

27. Pursuant to the advertisement, the interview commenced in April, 2011 and held till August, 2011, the petitioners succeeded in the examination, therefore, the appointment letters were issued to them in 2011.

28. Indisputably, on the last date of submission of the application i.e. 30.06.2010, the UGC published the Regulations with certain amendments in the procedure of selection but that was adopted by the University only in 2013. By that time the University proceeded to complete the selection and issued appointment orders to the petitioners, who are working in the University. We do not find any such automatic application of Regulations in the University unless it is adopted by the University. In the eventuality of failure of the University in adoption of the Regulations, the measures have been provided to withhold the grant under the University Act, 1956 but there is no provision to annul the selection held under the provisions of the Statute of the University, however, before forming any conclusive opinion in the matter in light of the provisions of Section 20 of the second schedule framed under the University Act, 1994, we feel it appropriate to lay the impugned resolution of the Board of Management before the Visitor of the University, who is final fact finding authority, for his final decision.

29. In view of the aforesaid observations, we hereby direct the respondent Nos. 1 to 3 to place the impugned resolution of the Board of Management before the Visitor of the University for his final decision. In the meanwhile the opinion formed by the Board through resolution impugned shall be treated purely a tentative opinion without having any adverse affect on the petitioners.

30. In the aforesaid terms, the writ petitions stand disposed of finally.