
(2010) 10 AHC CK 0255
In the Allahabad High Court

Rosy Mishra

APPELLANT

Vs

Acharya Narendra Dev Nagar Nigam Mahila Vidyalaya & Ors.

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Citation : (2010) 10 AHC CK 0255

Hon'ble Judges : Ashok Bhushan, J and Virendra Singh, J

Final Decision : Allowed

Judgement

Virendra Singh, J.—Heard learned counsel for the petitioner, Shri N. Mishra appearing on behalf of respondent nos. 1 and 2 and the learned Standing Counsel appearing on behalf of respondent no.3.

2. Counter and rejoinder affidavits have been exchanged and with the consent of the parties this petition is finally disposed of.

3. By this petition, petitioner has prayed for quashing the order dated 30/12/2000, by which order the Mukhya Nagar Adhikari, Nagar Nigam, Kanpur has informed the petitioner that her services are being terminated since she failed to join within a week as notified earlier by letter dated 12/8/2000.

4. Brief facts necessary for deciding the writ petition are: The petitioner was initially appointed as Lecturer on adhoc basis in the institution namely, Acharya Narendra Dev Nagar Nigam Mahila Vidyalaya run by Nagar Nigam, Kanpurnagar. The petitioner's appointment was made on the post of Lecturer in Economics in July, 1991 on adhoc basis. Amendments were made in U.P. Higher Education Services Commission Act, 1980 (hereinafter called the "Act, 1980") by inserting Section 31C that adhoc teachers who were appointed after January, 3, 1984 but not later than 22/11/1991, were entitled to be considered for regularisation by a selection committee as contemplated under subsection 2 of Section 31C. The petitioner's case was considered by the appropriate selection committee and recommendation was made to the Director of Higher Education for regularising the services of the petitioner. The Director of Higher Education by letter dated

06/3/1988, recommended to the Management for issuing regular appointment to the petitioner in accordance with the provisions of the Amended Act, 1980. The Management, in pursuance of the said order issued an order regularising the services of the petitioner by issuing a regular appointment on probation period w.e.f. 01/4/1998. The said order was issued on 16/6/1998. The petitioner continued to have been working on regular basis on probation since 01/4/1998. Petitioner's case is that she was selected by U.P. Higher Education Service Commission in M.M.H. College, Ghaziabad and she made an application on 03/4/2000, that she may be granted one year leave without pay w.e.f. 17/4/2000. Petitioner's case is that she was relieved on 17/4/2000, from the Acharya Narendra Dev College and she joined the M.M.H. College Ghaziabad on 18/4/2000 and has been working there. Petitioner's case is that the Principal of the said institution wrote a letter to the petitioner that the petitioner being a temporary employee was only entitled to 3 months leave without pay which came to end, hence she may join within a week. In continuation of the notice dated 12/8/2000, written by the Principal the order was passed by the Mukhya Nagar Adhikari dated 30/12/2000.

5. Learned counsel for the petitioner challenging the impugned order contended that the petitioner was no more temporary employee having completed the probation period of one year. It is submitted by the learned counsel for the petitioner that according to the U.P. Nagar Mahapalika Shiksha Sewa Niyamavali, 1972, (hereinafter called the Rules, 1972") appointment on probation can be made for a period of one year which can be extended for a further period not exceeding one year. It is submitted that by virtue of Rule 22 read with Rule 20, of the 1972 Rules, after expiry of the probation period, petitioner shall be deemed to have been confirmed after expiry of 2 years from 01/4/1998 and the termination of the petitioner's services treating her to be temporary employee was erroneous. Reliance has been placed on the judgment of the Apex Court in The State of Punjab Vs. Dharam Singh, AIR 1968, SC 1210.

6. Shri N. Mishra, learned counsel appearing for the respondent nos.1 and 2 submits that there was certain technical defect in the regularisation of the petitioner which fact has been mentioned in the impugned order. It is submitted that no order was passed confirming the services of the petitioner, hence she was not entitled for the leave of one year.

7. We have considered the submissions of the learned counsel for the parties and have perused the record.

8. The petitioner who was an adhoc lecturer was considered for regular appointment in accordance with Section 31C of the amended Act, 1980, copy of which has been filed as Annexure2 to the writ petition. This letter was written by the Director of Higher Education to the Manager/Principal of Acharya Narendra Dev Nagar Nigam Mahila Vidyalaya after a recommendation was made in favour of the petitioner by the selection committee as contemplated under subsection 2 of Section 31C and the said letter was a communication to the Management for

issuing regular appointment to the petitioner, she having being found fit under Section 31C, of the amended Act, 1980. The management issued a consequential order dated 16/6/1998, giving appointment to the petitioner on probation w.e.f. 01/4/1998. Now, a stand has been taken that there is a technical defect in regularisation of the petitioner's service. There is nothing on record to show that the order of Director of Higher Education was ever recalled or any other order has been passed by the State Government. The petitioner's regular appointment issued in pursuance of the recommendation under Section 31C has never been recalled, thus the status of the petitioner was of the regular teacher on probation period from 01/4/1998. The provisions of Rules 20 and 22 of the Rules, 1972 which has been relied on by the learned counsel for the petitioner are as follows:

"20.Probation.(1) All persons appointed to the service whether by direct recruitment or by promotion in or against substantive vacancies shall be placed on probation for a period of one year:

Provided, firstly, that continuous service rendered in an officiating and/or temporary capacity on the same post or a higher post included in a cadre in the service may, at the discretion of the appointing authority, be allowed in whole or in part, to be counted by the appointing authority, towards the period of probation:

Provided, secondly, that the appointing authority may, for sufficient reasons to be recorded in writing extend the period of probation in individual cases, for a further period not exceeding one year. Any such order of extension shall specify the exact period for which the probation is extended:

Provided, lastly that this subrule shall not apply to persons

(i)who were permanent servants referred to in clause (e) of section 577 of the Act of the Municipality upon their appointment under clause (f) of that section;

(ii)who are servants of the State Government and whose services have been lent to the Mahapalika; and

(iii)who are appointed against or in substantive vacancies for short period not exceeding six months pending completion of of formalities for filling the vacancy on a permanent basis.

(2)If during or at the end of the period of probation of extended period of probation, it is found that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction as to the standard of work and conduct expected of him, his services may, if directly recruited, be dispensed with without entitling him to any notice or compensation; or if appointed by promotion, reverted to the substantive post from which he was promoted.

22. Confirmation.A probationer shall be confirmed in his appointment at the end of the period of probation or extended period of probation if his work and

conduct have been found satisfactory and his integrity is certified."

9. According to Rule 20, of the Rules, 1972, appointment on probation shall be for a period of one year which can be further extended for a period not exceeding one year. Thus according to above Rules, there is no prohibition for extension of period of probation beyond the period of 2 years. The effect can be that after expiry of 2 years, there cannot be extension of probation period. The judgment in the case of The State of Punjab (supra) which has been relied on by the learned counsel for the petitioner fully supports the petitioner's case that in view of Rules 20 and 22 of 1972 Rules, even if no express order has been passed for confirmation, petitioner cannot be divested with the status of regular employee. The view which has been taken in the impugned order that the petitioner being a temporary employee was entitled for leave of only 3 months is clearly erroneous.

10. In view of the above, order dated 30/12/2000, cannot be sustained and is hereby set aside. It is made clear that the petitioner having joined another institution on 18/4/2000, after selection under the amended Act, 1980, there is no occasion for the petitioner to be given any monetary benefits of salary by the respondent no.2. The period of one decade having already come to an end after petitioner's joining another institution the petitioner shall have no lien in the college of the respondent no.1. In event, the petitioner is entitled for any other benefit as for the services rendered by the petitioner in the institution of the respondent no.1 is concerned, this order shall not preclude the same in any manner.

11. With the aforesaid observations, the writ petition is allowed.