
(2014) 05 AHC CK 0085

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28225 of 2014

R.S.D. Academy

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Citation : (2014) 6 ADJ 422 : (2014) 105 ALR 561 : (2014) 5 AWC 4860 :
(2014) 3 ESC 1863 : (2014) 143 FLR 174 : (2014) 4 LLN 57

Hon'ble Judges : Rajan Roy, J; Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : Anurag Khanna and Nipun Singh, Advocate for the Appellant; Ashok Kumar Rai and Vivek Varma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Nipun Singh, learned counsel for the petitioner, Sri Vivek Varma, learned counsel appearing for respondent No. 2 and Sri Ashok Kumar Rai, learned counsel for the respondent No. 3. By means of this writ petition, the petitioner, i.e. college, under which the respondent No. 3 was employed as lecturer on contract basis under the self-finance scheme, has challenged the judgment of the Vice-Chancellor, Mahatma Jyotiba Phule, Rohil Khand University, whereby he has declined to accord approval for removal of the respondent No. 3 from service and has disapproved such action of the petitioner.

2. The undisputed facts are that the contractual appointments of lecturers are made under the self-finance scheme in accordance with the Government Orders issued from time to time and their terms and conditions of service are also regulated by the said Government Orders. Such appointments are not made under the U.P. State Universities Act, 1973 nor the conditions of service are governed thereunder. The respondent No. 3 was appointed as lecturer on contract basis under the self-finance scheme by the petitioner on 31.10.2010 in the department of education after due and proper selection for a period of three years. The said appointment was alleged to have been made under the

Government Order dated 9.5.2000. The appointment order also contained a stipulation that after the expiry of the aforesaid period of three years, his name would be considered on priority for reappointment, subsequently, he was free to leave the job by giving three months" notice to the management. Ultimately, if the management is not satisfied with his teaching work, disciplinary action can be taken including removal from service, with the approval of the Vice-Chancellor of M.J.P. Rohil Khand University. The appointment order is annexed as Annexure-11 to the writ petition.

3. The respondent No. 3 had filed a writ petition bearing No. 69240 of 2013 alleging oral termination of his services and challenging the same. The said writ petition was disposed of on 17.12.2013 directing the respondents therein that if the services of the respondent No. 3 herein had been terminated and if any order has been passed, the copy of the same may be provided to the respondent No. 3 herein within a week from the date of presentation of the certified copy of the said order and if the services of the petitioner had been terminated, the necessary information in this regard may be communicated in writing to the respondent No. 3 herein.

4. After passing of the aforesaid order dated 17.12.2013 by this Court, the petitioner alleges that it informed the respondent No. 3, vide letter dated 4.1.2014, that his appointment came to an end automatically on the expiry of the three years period, for which he was appointed under the Government Order dated 9.5.2000 and that his services had not been terminated orally. It was also stated that the respondent No. 3 had accepted the terms and conditions of his appointment.

5. Thereafter, the respondent No. 3 filed a writ petition bearing Writ-A No.-11011 of 2014 being aggrieved by the termination of his contractual appointment, which was disposed of on 20.2.2014 by providing that the petitioner may make a representation raising grievances before the respondent No. 2, i.e. University Vice-Chancellor. In pursuance of the aforesaid direction of this Court, an application was submitted by the respondent No. 3 before the Vice-Chancellor, i.e. respondent No. 2 herein, the Committee of Management of the petitioner was represented before the Vice-Chancellor through the Principal of the college and there is no dispute in this regard.

6. The contention of the respondent No. 3 before the Vice-Chancellor was that he had been teaching continuously since 1.11.2010, he had not been given any notice on the ground of incompetence, irregularity and indiscipline on his part. The termination of his services during the statutory period of continuance of the contract, that too without any disciplinary inquiry being conducted is against the statutory rights as also the established principles of natural justice. The Principal of the petitioner college submitted that the respondent No. 3 was appointed for three years period and that the respondent No. 3 herein was orally summoned before the departmental inquiry and told of charges against him. However, the Principal was unable to provide any proof of the aforesaid facts before the Vice-

Chancellor. He also did not advert to the Government Order dated 30.5.2013, which prescribed a tenure of five years for such appointments under the self-finance colleges. The Principal also could not produce documents in support of contention that any opportunity of hearing was given to the respondent No. 3 herein in the departmental inquiry as stated by him.

7. The Vice-Chancellor found that the college had failed to prove the charges as put forward before him on 4.1.2014 and 4.2.2014. He found that there was no material to substantiate the stand of the college against the respondent No. 3 that opportunity of hearing was given to the respondent before terminating his contract.

8. The Vice-Chancellor referred to the Statute 14.06 of the University Act as also the Section 35(2) of the U.P. State Universities Act, 1973 and the Government Order dated 11.1.2008 prescribing a tenure of a period of five years for such teachers and came to the conclusion that the college had acted hastily and unauthorisedly in the matter. The statutory provisions and rules of natural justice had also not been complied with while terminating the services of Sri Ravindra Singh. Accordingly, the Vice-Chancellor declined to give consent to the action of the Committee of Management, petitioner herein.

9. Being aggrieved, the petitioner college has filed this writ petition. The main contention of the learned counsel for the petitioner is that throughout its stand was that respondent No. 3 has been appointed for a fixed tenure of three years under the Government Order dated 9.5.2000. The contract came to an end on the expiry of the aforesaid period and in fact the respondent No. 3 himself stopped coming to the college on the expiry of such period. The subsequent action by the respondent No. 3 is based on concocted facts and his services had not been terminated on the basis of any mis-conduct or disciplinary proceedings. It was also contended that the appointment being a contractual one governed by Government Orders and the provisions of the Act of 1973 are not at all applicable and the reference made thereto by the Vice-Chancellor is absolutely wrong, therefore, the decision taken by him is not sustainable in law and is liable to be quashed.

10. Sri Vivek Varma, learned counsel for University, on the other hand, invited the attention of the Court to paragraph (2) of the Government Order dated 17.1.2006, which contained a provision for appointment of lecturers in self-finance colleges for three or five years and thereafter, to the provisions of Government Order dated 11.1.2008, wherein the aforesaid provision contained in the G.O. dated 17.11.2006 was amended and it was provided that such appointments shall be made for a period of five years. The learned counsel also invited the attention of the Court to the relevant provision contained therein to the effect that such appointments were liable to be renewed for another period of five years without the requirement of appearing in any interview or approval by the University, if his work and conduct had been good. However, if the management was not satisfied with the teaching work of such appointee, then it

could initiate the disciplinary proceedings and remove him from service but the approval of the Vice-Chancellor was necessary in such matters of disciplinary proceedings. The contention of the learned counsel was that the appointment of the respondent No. 3 having been made subsequent to the issuance of the G.O. dated 11.1.2008, i.e. on 31.1.2010, the same was governed by the aforesaid Government Order and the appointment could only have been made for a period of five years and not three years. Moreover, in the case of removal of a teacher, the approval of Vice-Chancellor was must.

11. Learned counsel for respondent No. 3 also submitted that he was entitled to continue for a period of five years irrespective of the terms and conditions mentioned in his appointment order as such appointments had to be governed by the Government Order dated 11.1.2008 and the petitioner college cannot take advantage of its own wrong in not following the said Government Order and mentioning a wrong G.O. in the appointment order, in such a case there could be no question of any estoppel etc. on the part of the respondent No. 3 as the action of the respondent No. 3 was clearly against the policy decision, which is being uniformly applied all over the State, therefore, no exception in the case of the said respondent could be made. The contention of learned counsel was also that the petitioner had arbitrarily terminated his services during the subsistence of the contract period, that too without the approval of the Vice-Chancellor, which was clearly impermissible.

12. We have given our anxious consideration to the issues involved in the instant case. No doubt, the appointment and terms and conditions of service of the respondent No. 3 are to be governed by the Government Orders issued from time to time. The first Government Order for contractual appointments of lecturers under the self-finance scheme was issued on 9.5.2000, which referred about the tenure of such appointment as being three or five years. Thereafter, another Government Order, i.e. the G.O. dated 17.1.2006 was issued, which also contained similar provision, however such provision contained in the G.O. dated 17.1.2006 was amended on 11.1.2008 and the tenure of such appointments was fixed at five years with a provision for renewal for another five years, if work and conduct was good. Admittedly, the respondent No. 3 was appointed as lecturer on 31.1.2010, therefore, the G.O. dated 11.1.2008 was existing and was applicable in his case. Therefore, the reference in his appointment order to the earlier Government order dated 9.5.2000, which in fact ceased to be operative in so far as it was contrary to the subsequent G.O. dated 17.1.2006 and 11.1.2008, was clearly misconceived and misleading. We are of the view that the reference to the said G.O. in the appointment order appears to have been made with a view to deprive the petitioner of his valid right under the policy decision of the State Government, which was uniformly applicable throughout the State and no exception could be made in this regard by the petitioner. It was not open for the petitioner to choose the G.O. dated 9.5.2000 for making such appointments as the same had to be made strictly in accordance with the Government Orders prevailing on the date of selection and appointment, which in this case was G.O.

dated 11.1.2008. Therefore, the contention of the learned counsel for the petitioner that the appointment of respondent No. 3 was only for a period of three years, which having been accepted by him, it was not open to turn around and claim a longer period, is not acceptable.

13. We are of the view that the respondent No. 3 was entitled to continue for a period of five years from the date of his joining in pursuance of the appointment order dated 31.1.2010 and in view of the G.O. dated 11.1.2008, the lesser tenure mentioned in his appointment order cannot be sustained. However, if the teaching work of the respondent No. 3 was not satisfactory, the management could very well have removed him from service after initiating disciplinary proceedings in terms of the provisions contained in the Government Order referred above but only after seeking approval of the Vice-Chancellor.

14. The contention of the learned counsel for the petitioner that the services of the respondent No. 3 had not been terminated orally nor based on any disciplinary proceedings and that the same had come to an end automatically on the expiry of the period of three years, is also not acceptable. In view of the above discussion and the clear stand taken on its behalf before the Vice-Chancellor regarding nine charges having been levelled against him and the respondent No. 3 having been summoned by the committee of management in the said departmental inquiry for placing his version, clearly the petitioner is playing ducks and drakes and is blowing hot and cold as per its convenience. The stand taken before us is contrary to the stand taken before the Vice-Chancellor, which clearly goes to show lack of bona fide on its part.

15. Having said so, we would like to observe that the order of the Vice-Chancellor in so far as it refers to the provision of Section 35(2) of the U.P. State Universities Act, 1973 is misconceived as the appointment of the respondent No. 3 and the terms of his service are governed by the relevant Government Orders specially the G.O. dated 11.1.2008 and not by the provisions of the Act, 1973. Nevertheless, considering the aforesaid facts and circumstances, specially the requirement under the aforesaid Government Orders also for seeking approval of the Vice-Chancellor before removal of a lecturer, we find that the reasons given by the Vice-Chancellor for disapproving the said action of the petitioner do not suffer from any error. We have absolutely no doubt that the termination of the services of respondent No. 3 by the petitioner and his discontinuance is absolutely illegal being against the policy of the State Government as contained in the G.O. dated 11.1.2008 as also the subsequent G.O. dated 13.5.2013. Therefore, the respondent No. 3 is entitled to be reinstated forthwith.

16. Subject to the above, the impugned order passed by the Vice-Chancellor does not suffer from any error and he has rightly declined to approve the action of the petitioner. In the aforesaid circumstances, the writ petition is misconceived. The same is accordingly dismissed. The petitioner is directed to reinstate the respondent No. 3 forthwith treating him in continuous service from the date of his illegal termination/disengagement with all consequential benefits.

However, if, according to the management, the teaching work of the respondent No. 3 is not satisfactory, it is open for it to proceed against him in accordance with the provisions of G.O. dated 11.1.2008 and 13.5.2013 or such order G.Os., which may be applicable.