
(1995) 10 AHC CK 0011
In the Allahabad High Court
Case No : C.M.W.P. No. 6733 of 1979

S. Mazharul Haq	Vs	APPELLANT
Chancellor, Allahabad University and Others		RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1995) 10 AHC CK 0011

Hon'ble Judges : R.A. Sharma, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Shashi Nandan and S.M.A. Qazmi, for the Appellant; S.C. and S.N. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—The Petitioner was appointed as a lecturer on ad hoc basis on 3.11.1973 in the department of Arabic and Persian (hereinafter referred to as the department) of the Allahabad University (hereinafter referred to as the University). The University by the advertisement dated January 17, 1975 invited applications for permanent appointment to the post of lecturer in the department. The Petitioner and others applied in pursuance thereof. The University, however, readvertised the same post in 1977 in view of the changes made in the Statute. The Selection Committee selected the Petitioner both for permanent and temporary posts. In so far as the permanent post was concerned, he was placed at serial No. 2. But for temporary post, he was at serial No. 1. On the recommendation of the Selection Committee, the Petitioner was appointed by the University as a temporary lecturer in the department. Respondent No. 3, who had also applied for the same post but was not selected challenged the Petitioner's temporary appointment u/s 68 of the State Universities Act (hereinafter referred to as the Act), before the Chancellor. The Chancellor, on August 21, 1979, allowed the representation of the Respondent No. 3 and cancelled the appointment of the Petitioner on the sole ground that the post of temporary

lecturer was not advertised. Being aggrieved, the Petitioner filed this petition.

2. This Court on 31.8.1979 granted an interim order staying the operation of the aforesaid order of the Chancellor. This order was, however, modified on 11.9.1980 to the extent that selection may be held and the result be declared but the person selected shall not be appointed. In pursuance of the above order, the post was advertised and the Petitioner and the Respondent No. 3 applied. The Selection Committee selected the Petitioner. The recommendation of the Selection Committee has been accepted by the Executive Council of the University which has passed an order appointing the Petitioner as a lecturer in the department but in view of the interim order of this Court dated 11.9.1980, no appointment order has been issued to him.

3. Learned Counsel for the Petitioner has challenged the Impugned order on two grounds viz. (1) the Chancellor passed the said order without issuing any notice and without giving to the Petitioner any opportunity of being heard; (2) in pursuance of the order of the Chancellor, the post was read advertised and both the Petitioner and the Respondent No. 3 appeared before the Selection Committee constituted by the University and he was selected, University has accepted the recommendation of the Selection Committee and has directed for appointment of the Petitioner in substantive capacity as a lecturer in the department.

4. In para 16 of the writ petition, it has been stated that the Chancellor has passed the impugned order without giving any notice to the Petitioner and without giving him any opportunity of being heard. The reply of para 16 is contained in para 3 of the counter affidavit of Sri S.C. Verma filed on behalf of the Chancellor in which the contents of para 16 have not been denied. It has been stated in this counter-affidavit that it was not necessary for the Chancellor to give any notice to the Petitioner, because he being temporary appointee has no right to the post and his services could have been terminated without any previous notice and without giving any opportunity of being heard to him. The University has also not denied in its counter affidavit the contents of para 16 of the writ petition. The result is that in fact, the impugned order was passed by the Chancellor without giving any opportunity of being heard to the Petitioner.

5. It may be that service of a temporary appointee can be terminated without giving him an opportunity of being heard and without assigning any reason but his appointment cannot be cancelled by the Chancellor u/s 68 of the Act without giving him reasonable opportunity of being heard. While exercising his power u/s 68 of the Act, the Chancellor did not terminate the service of the Petitioner. He only cancelled the Petitioner's appointment. Petitioner was entitled to defend his appointment but such an opportunity was not given to him. The impugned order, therefore, could not have been passed in violation of principle of natural justice.

6. That apart, a post was advertised again. Both the Petitioner and the Respondent No. 3 appeared before the Selection Committee which recommended

the name of the Petitioner and rejected the claim of the Respondent No. 3. The Executive Council of the University has accepted the recommendation of the Selection Committee and has ordered for appointment of the Petitioner but the Petitioner could not join in view of the interim order of this Court referred to hereinbefore. This appointment has not been challenged by the Respondent No. 3 and has become final.

7. For the reasons given above, this petition is allowed with costs. The order dated 21.8.1979 (Annexure-4) to the writ petition passed by the Chancellor is quashed. The Petitioner is entitled to be appointed as lecturer in pursuance of the order dated May 2, 1981, a copy of which has been filed as Annexure-I to the supplementary affidavit. He will also be entitled to all consequential benefits with effect from 2nd May, 1981 including seniority, in accordance with law.