
(1981) 02 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 88 of 1980

Sabir Hussain

APPELLANT

Vs

Vikram University and others

RESPONDENT

Date of Decision : 03-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 2(ii), 49

Citation : (1981) JLI 500

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Vijaywargiya, J.—The material facts giving rise to this petition under Articles 226 and 227 of the Constitution are as follows:

2. The respondent No. 1- University was established under the Madhya Bharat Vikram University, Act, 1955 (herein-after referred to as the Act). The said University is now governed by the provisions of M.P. Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as the Adhiniyam). The petitioner has alleged that he was Research Scholar in the Urdu Department in the Madhav College, Ujjain, which is managed by the respondent No. 1-University. The petitioner had applied for lecturer-ship of the University but his claim has been ignored. The respondents No. 2 to 10 were temporarily appointed to the posts of lecturers in the Madhav College, Ujjain. The grievance of the petitioner is that they have not been selected by the selection committee appointed under S. 37-A of the Act. According to the petitioner Madhav College was transferred to the respondent No. 1- University in the year 1959 and thereafter the respondent No. 1- University has appointed majority of the teachers and the employees. The respondents No. 2 to 10 were also appointed by the respondent No. 1- University and they are being paid by the Vikram University. In the petition the petitioner has assailed the appointment and continuance in service of the respondents No.

2 to 10. However, at the hearing of the petition the learned counsel for the petitioner stated that he has instructions not to challenge the appointment and continuance in service of the respondents No. 4 to 10 and the petition has been confined to the appointment and continuance in service of the respondents No. 2 and 3. The main grievance of the petitioner in the petition is that the appointments of the respondents No. 2 and 3 as lecturers in Urdu department of the Madhav College, Ujjain are not valid and they have no authority to hold the said office. The petitioner has prayed that the orders passed by the respondent No. 1 appointing the respondents 2 to 3 be set aside. In the return filed by the respondents it is contended that the Madhav College, Ujjain, originally belonged to the Government of Madhya Pradesh and its management was handed-over to the respondent No. 1-University for a period of five years by agreement dated 16.3.59. According to the respondents the Madhav College, Ujjain is not maintained by the respondent No. 1 University and it is only a constituent college of the University and as the respondents were not appointed to any teaching posts of the University paid by the University the provisions of S. 37 A of the Act were not applicable and the respondents were duly appointed as lecturers of the Madhav College, Ujjain and the petitioner is not entitled to assail their appointments. It was also contended that the petitioner is not an aggrieved person and that the petition should be dismissed on that ground also. It was further contended that the respondents No. 2 and 3 were appointed as far back as in the year 1968 and therefore the petition filed in the year 1979 should be dismissed on the ground undue delay. It was also contended that even if there was any illegality or irregularity in the appointments of the respondents No. 2 and 3 because they were not appointed on the recommendation of the committee of selection constituted in accordance with the provisions of S. 37- A of the Act, their appointment shall not be deemed to be invalid because of the provisions of S. 37 of the Act It was also contended that in view of the provisions of the Adhinyam the appointments of the respondents shall be deemed to have been made under the provisions of the Adhinyam and therefore the petitioner is not entitled to question the legality of the appointments of the respondents.

3. Having heard learned counsel for the parties we have come to the conclusion that this petition deserves to be dismissed. As we are dismissing the petition on other grounds as hereinafter stated we do not consider it necessary in this petition to decide the question whether the Madhav College is maintained by the respondent No. 1- University and whether the respondents were appointed to the teaching posts of the University and paid by the University and therefore, the provisions of section 37-A of the Act are attracted to their appointments.

4. According to the respondents, the respondents No. 2 and 3 were respectively appointed on 1-8-68 and 23-9-68 on temporary basis and they were confirmed with effect from 30-4-70 and 13-4-70 respectively. This fact has not been disputed by the petitioner. The respondents were thus appointed 11 years before the filing of the petition and they were confirmed 9 years before the filing of the petition. It is not in dispute that the respondents were appointed after following

the procedure applicable for appointment of teachers in affiliated and constituent colleges as provided in statute No. 7-B made u/s 27 (h) of the Act. If the University erroneously thought that provisions of section 37-A of the Act were not applicable and the appointments of teachers of the Madhav College, Ujjain were governed by Statute No. 7-B and they were appointed after following the procedure laid down in that statute it cannot be said that the respondents are usurpers of office and they have no right to hold that office more particularly when they have been functioning and working as such for more than 11 years prior to the filing of the petition. It is, no doubt, true that there is material difference in the constitution of the Selection Committee as provided by section 37-A of the Act and as envisaged by the Statute referred to above. But the fact remains that the respondents were appointed as lecturers after following the procedure laid down by Statute 7-B. The posts were advertised. The respondents submitted applications and their cases were considered by the committee of selection and they were appointed after following the procedure applicable for the appointments of teachers to affiliated and constituent colleges of the University. In the circumstances if there was any irregularity in their appointments their appointments cannot be deemed to be invalid merely on account of such irregularity under the provisions of S. 37 of the Act which provides that "no act or/proceedings of an authority or other body of the University shall be deemed invalid by reason only of some defect in the constitution of the Authority or Body or by reason of the existence of a vacancy or vacancies among its members or the invalidity of the election of any of its members."

5. Then the Act has been repealed by the Adhiniyam which came into force on 5-5-73. u/s 2(ii) of the Adhiniyam the respondent No. 1 - University which was established under the repealed Act shall be deemed to be University established under the Adhiniyam Section 2 (v) of the Act inter alia provides that all appointments made under the repealed enactments and in force immediately before the date aforesaid shall be deemed to have been made under this Act. So the appointments of the respondents made under the provisions of the Act shall be deemed to have been made under the provisions of the Adhiniyam on the coming into force of this Adhiniyam; and even if there was any irregularity or illegality in the appointments of the respondents under the Act their appointments cannot be questioned after the coming into force of the Adhiniyam because their appointments are deemed to have been made under the Adhiniyam after it came into force The petitioner, therefore, cannot assail the appointments of the respondents after the coming into force of the Adhiniyam.

6. The petition is also liable to be dismissed on the ground of undue delay. The respondents were appointed as far back as in the year 1968 and have been working on their respective posts since then. They cannot be said to be usurpers of office because they were appointed after following a particular procedure, and by the authorities competent to appoint them. The petitioner has not shown any reason why the petition has been filed after a lapse of more than 11 years. The

learned counsel for the petitioner contended that this Court in Misc. Petition No. 256 of 1979 (Sabir Hussain v. Vikram Vishwavidyalaya and others) decided on 27-11-1979 held that the question of delay in filing a petition in the nature of quo-warranto does not arise. This contention of the learned counsel for the petitioner has no merit. The observations in that case were made in the context of the facts of that case and cannot be read out of context. In that case the petitioner had challenged the continuance in service of the respondent No. 3 therein as lecturer in Urdu department in the Madhav College, Ujjain. The said respondent No. 3 was appointed on 12-1-78 and he was continuing on the post when the petition was filed in the year 1979. The petitioner successfully contended that the appointment was in contravention of the provisions of section 49 of the Adhiniyan. In that context the contention of the respondent that the petition should be dismissed on the ground of delay was negatived and it was observed that there was no question of delay in filing the petition in the circumstances of the case. The said decision is not an authority for the proposition that the question of delay in filing a petition in the nature of quo-warranto is not material. Each case has to be determined on the facts of that case. In the present case we are of the opinion that the petitioner has not made out a ground for considering the legality of the appointments of the respondents after a lapse of about 11 years and this petition is liable to be dismissed on the ground of undue delay also.

7. As a result of the discussion aforesaid this petition fails and is dismissed. In the circumstances we leave the parties to bear their own costs of this petition. The outstanding amount of security deposit be refunded to the petitioner after verification.