

(2014) 01 AHC CK 0120

In the Allahabad High Court

Case No : Special Appeal Defective No. 15 of 2014

Shafiq Ahmad

APPELLANT

Vs

Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Aligarh Muslim University Act, 1920 — Section 19(3)
Constitution of India, 1950 — Article 226

Citation : (2014) 1 ADJ 760 : (2014) 2 ALJ 296 : (2014) 1 ESC 596

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Prakash Padia, Advocate for the Appellant; Shashank Shekhar Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This special appeal arises from a judgment of a learned Single Judge dated 13 September 2013, dismissing a petition which was filed by the appellant under Article 226 of the Constitution. The appellant was appointed on 6 January 2003 on the recommendation of the General Selection Committee by the Vice Chancellor of the Aligarh Muslim University as Principal in the S.T.S. High School on probation for a period of one year with effect from the date he joined duty. The order of the Vice Chancellor was passed in exercise of powers conferred by Section 19(3) of the Aligarh Muslim University Act, 1920 (hereinafter referred to as the Act). The period of probation was extended on 30 April 2004 for a further period of six months with effect from 5 May 2004. This was in view of the fact that the appellant had actually joined as Principal on 5 May 2003 and the probation was to expire on 4 May 2004. The extended period of probation was to come to an end on 4 November 2004. On 4 November 2004, a communication was addressed to the appellant by the Registrar of the University stating that the Vice Chancellor in exercise of the powers vested in him u/s 19(3) of the Act had ordered that the services of the appellant should be dispensed with. The appellant challenged the order dated 4 November 2004 in the writ proceedings

before the learned Single Judge. By the impugned order dated 13 September 2013, the petition has been dismissed.

2. The learned Single Judge has observed that no interim order had enured to the benefit of the appellant during the pendency of the proceedings and though the appellant could file an appeal before the Executive Council of the University u/s 19(3) of the Act, the appellant had not, within the stipulated period of three months or even thereafter, exhausted the alternative remedy. In the circumstances, the learned Single Judge was of the view that the petition had been rendered infructuous and no further order or direction was required to be issued. It may also be noted that in the course of recording the submission of the appellant, the learned Single Judge observed that the appellant had already retired from service after attaining the age of superannuation.

3. At the outset, we must observe that we find merit in the contention of the learned counsel for the appellant that the learned Single Judge was not correct in holding that the petition had been rendered infructuous. The appellant had filed the petition on 18 January 2005 to challenge the order of the Vice Chancellor, which was communicated to him on 4 November 2004, dispensing with his probationary services. The appellant had, therefore, moved the Court with expedition and there were no laches on the part of the appellant in moving the Court. The fact that the petition remained pending between 2004 and until when it eventually came up for final hearing in the month of September 2013, is not a matter in which the appellant had any control. Hence, merely because no interim order had been passed in the petition and the services of the appellant had been actually dispensed with, would not come in the way of the appellant addressing his challenge to the order of the Vice Chancellor dispensing with his probationary services. The challenge which was addressed before the learned Single Judge was required to be dealt with and in such a case it would not be appropriate to displace the petitioner from obtaining an answer to the substantive challenge which he made, merely on the ground that the writ petition remained pending for a substantial period of time before the Court.

4. Having said this, we have heard learned counsel appearing on behalf of the appellant on the challenges which were addressed in the writ petition. In the interest of advancing substantial justice, it would not be either appropriate or proper, at this stage, to remand the proceedings since nearly ten years have lapsed since the order dispensing the services of the appellant was passed.

5. We have considered the submissions which have been urged on behalf of the appellant in support of the challenge to the order dispensing his services.

6. Section 19(3) of the Act provides as follows:

19. The Vice Chancellor -

(3) 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:

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final;

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice Chancellor under this sub-section shall have the right to appeal against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice Chancellor.

7. The records before the Court would indicate that the appointment of the appellant was made in pursuance of the powers conferred by Section 19(3) of the Act and the dispensation of his probationary services was under the same provision.

8. The first submission which has been urged on behalf of the appellant is that under Statute 29(2) of the Statutes of the University, two months' notice period is prescribed for dispensing with the probationary services of a teacher and in the present case, such notice of two months was not given. Statute 29(2)(a) provides as follows:

29(2)(a). All appointments to permanent posts of teachers in the University shall be made by the Executive Council on the recommendation of a Selection Committee in accordance with the provisions of these Statutes after such posts have been duly advertised and the candidates concerned have been interviewed by the Selection Committee, except in cases where such Committee decides to consider the case of a candidate otherwise than by an interview. Except as otherwise provided for in his contract of service, every teacher thus selected shall be placed on probation for a period of one year, on the expiry of which period he may be confirmed in his post. If he is not so confirmed, the Executive Council may, if it deems fit, dispense with his services after the expiry of his probationary period as may be practicable or extend the period of his probation for one year at the end of which, if he is not confirmed in his post, his services shall be dispensed with after the expiry of the period of extension of his probation:

Provided that, if a person in the permanent service of the University is appointed on probation to a higher post in the same department, he shall not lose his lien on his substantive post, nor shall he be deprived of the benefits of leave rules and of the Provident Fund Statutes to which he was entitled at the time of his appointment to the higher post during the period of his probation:

Provided further that the service of a teacher appointed on probation may be terminated at any time during the probationary period by giving two months'

notice without assigning any reason.

9. Sub-clause (2)(a) of Statute 29 provides that every teacher thus selected shall be placed on probation for a period of one year and on the expiry of such period, he may be confirmed. If he is not so confirmed, the Executive Council may, if it deems fit, dispense with his services after the expiry of his probationary period or may extend the period of his probation further. The second proviso to sub-clause (2)(a) of Statute 29 however, stipulates that even during the probationary period, the services of a teacher can be dispensed with by giving two months' notice without assigning any reason. The second proviso comes into operation where the probationary period is sought to be brought to an end during the period of probation. In the present case, this will not apply for the simple reason that the initial period of probation which commenced from 5 May 2003, was to expire on 4 May 2004 and was further extended for a period of six months on 5 May 2004. In the ordinary course, the period of probation would have come to an end on 4 November 2004. In other words, the services of the appellant were not dispensed with during the period of probation. Unless the appellant was to be confirmed in service, he had no vested right to continue. In this case, the period of probation that was further extended for a period of six months was to come to an end on 4 November 2004. In such a case, there would be no requirement of furnishing two months' notice within the meaning of the second proviso to clause (2)(a) of Statute 29.

10. The next submission which has been urged on behalf of the appellant is that since the Vice Chancellor had taken action u/s 19(3) of the Act, the Executive Council was required to apply its mind to the performance of the appellant in the meeting of the Executive Council which was held on 29 November 2004.

11. Now, while dealing with the submission, it must be noted that under the substantive part of Section 19(3) of the Act, the Vice Chancellor is empowered to take action, if he is of the opinion that immediate action is necessary on any matter in which he wants to exercise any power conferred on any authority of the University. Thereafter he has to report to the authority the action taken by him on the matter. If the authority concerned is of the opinion that the action ought not to have been taken, it may then refer the matter to the Visitor whose decision thereon shall be final. Hence, what Section 19(3) of the Act postulates is that where the Vice Chancellor has taken immediate action on any matter, he has to report the action to the authority and if the authority is of the opinion that such action was not necessary, it may make a reference to the Visitor. In the present case, the dispensation of the services of the appellant was reported to the Executive Council, which in its meeting held on 29 November 2004 ratified the decision. When the Executive Council ratified the decision of the Vice Chancellor and did not differ with the view taken by the Vice Chancellor, there was no further requirement in law for the Executive Council to pass a detailed resolution.

12. It also needs to be noted that the purpose of probation is to enable an

assessment to be made of the performance of an employee. In the present case, it is not in dispute that the initial period of probation was extended by a period of six months. In the counter affidavit that was filed by the University, it was stated that it was on the recommendation of the Manager of S.T.S. High School that the initial period of probation was extended in order to enable the appellant to overcome his shortcomings. It was also stated that the appellant was called upon to justify the ad hoc appointment of teachers made by him without prior approval of the competent authority and though by a letter dated 10 April 2004, the appellant had furnished a justification but that was not found to be satisfactory by the Vice Chancellor of the University. The contents of the counter affidavit which was filed by the University would indicate that it was on an assessment of the performance of the appellant that a considered decision was taken to dispense with his services. A probationary employee has no vested right of confirmation or to the grant of permanency and once his services are brought to an end for want of satisfactory performance, the Court under Article 226 of the Constitution would not be justified in entertaining a petition filed to challenge the action of the Vice Chancellor.

13. Finally, it has been submitted that the appellant should be permitted to file an appeal before the Executive Council of the University since such an alternative remedy is provided for under the second proviso to Section 19(3) of the Act. The appellant was obviously not unaware of the fact that an appeal was available to him within a period of three months from the communication of the decision. Instead, the appellant moved the proceedings under Article 226 of the Constitution. The proceedings have been entertained. Indeed, if after a lapse of over a decade the appellant were to be relegated to the statutory alternative remedy, the grievance would be that it would be unfair and unjust to relegate the appellant to the statutory alternative remedy long after the petition had been entertained. Since we have now duly considered all the submissions which have been urged in support of the challenge to the termination of the probationary services of the appellant and having found no substance in the challenge, we do not consider it fit to grant liberty to the appellant to seek recourse at this stage to the alternative remedy of appeal before the Executive Council of the University.

14. For these reasons which have been noted in the present judgment, we are of the view that there is no merit in the petition which was filed by the appellant under Article 226 of the Constitution.

15. We, therefore, dismiss the special appeal. There shall be no order as to costs.