
(2009) 01 AHC CK 0141

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34636 of 2008

Shashi Pandey

APPELLANT

Vs

University of Allahabad and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Citation : (2009) 01 AHC CK 0141

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Yogesh Agarwal, learned counsel for the petitioner and Sri P.S. Baghel, learned counsel for respondents.

2. This petition has been filed for the relief in the nature of mandamus for commanding the respondents to admit the petitioner in D. Phil Course in Sociology w.e.f. 2006.

3. Counter and rejoinder affidavits have been exchanged. On the request of learned counsel for the parties, the petition, is being decided at the admission stage as the matter pertains to future of the petitioner.

4. The contention of Sri Yogesh Agarwal, learned counsel for the petitioner that the petitioner completed her post graduation in Sociology in the year 2006 of which Anthropology is also a Branch. Thereafter in order to have a Doctorate Degree in Sociology, she applied for admission in the Research Degree course in the year 2006/07. At that point of time there was no Entrance Examination Programme for admission for Doctorate. The candidates were admitted after being approved by head of the department. The candidature of the petitioner was approved by the Professor and HOD Dr. Satya Narain, who directed the petitioner to complete the formalities; that the petitioner after completing all requisite formalities applied for admission to the D. Phil Course in Sociology in the Allahabad University.

5. It is stated that the admission form was counter signed by Professor A. Satya Narain as required and temporary marksheet of M.A. final year issued by the University on 30.3.2005 was also appended with the said form.

6. It appears that an objection was raised by the Research Development Committee of the University that the petitioner final year marksheet submitted by the petitioner had not submitted synopsis after thesis and that was not a permanent marksheet, hence she was not qualified for admission and on the basis of temporary marksheet which had been issued by the Allahabad University itself.

7. In order to remove objection, the petitioner completed her synopsis and also got permanent marksheet. According to the learned counsel for petitioner, temporary marksheet also verified by the University and as such the petitioner was rightly seeking admission on basis of temporary marksheet and disqualification was wholly frivolous.

8. After removal of the objection, the petitioner's name was forwarded for being admitted to D.Phil and her name was also approved by Doctorate Programme Committee. The petitioner's form for admission for D.Phil course in Sociology had been countersigned by Professor A. Satya Narain as required under the Rules.

9. The grievance of the petitioner that he was never informed about the fate of application. The petitioner had also applied under Right to information Act regarding her admission to D.Phil in Sociology. The petitioner came to know that her name was approved by D.P.C., she also met members of Research Committee including the ViceChancellor of the Allahabad University. However neither any satisfactory reply was given to her nor she was communicated about the admission. She has come up in this writ petition.

10. It is urged that a large number of students, who appeared for filling up their admission form in D.Phil alongwith the petitioner have been admitted. The petitioner has relied upon a letter dated 9.4.2008, which is in reply to the petitioner query under the Right to Information Act in this regard. The letter dated 9.4.2008 is as under:

"To

The Central Public Information Officer, Dt.: April 08, 2008

Senate Hall (North), First Floor,

University of Allahabad

Sub : With reference to Reminder (Most Important) letter No. RTI243/200708 dated March 26, 2008.

Sir,

With reference to the above, I wish to submit as follows:

1. That in response to Part I of your query it is stated that after 29.11.2006 only one meeting of the DPC was held in the department of Anthropology. The minutes of the meeting was sent to the Dean Faculty of Arts on 5.9.2007.

2. That on 29.11.2006 the DPC approved the applications for registration in D.Phil, program of Wasim Fatima, Vinay Kumar Jaiswal and Brijesh Narayan Pandey in Anthropology and Snehlata Sharma and Poonam Srivastava in Sociology. Kumari Shashi Pandey's application was not approved in the meeting in want of relevant and required papers.

3. That on 5.9.2007 Shashi Pandey's application was approved after she furnished the required documents.

4. That with reference to your query in Para 2, I wish to inform you that earlier Prof. Rajshekhar of MONIRBA and Prof. A. Satyanarayan from the Department of Psychology were the only teachers who supervised the D.Phil, in Sociology. After the death of Prof. Rajshekhar, Prof. A.R.N. Srivastava (Retd.) Ex. Head of Department of Anthropology has been supervising the D. Phil in Sociology of one candidate. Please find below the names of the candidates for D. Phil, in Sociology and their Supervisors:

S.No. Name of the candidate Name of the Supervisor

1. Preeti Dwivedi Prof. A. Satyanarain

2. Deepmala Mishra Prof. A. Satyanarain

3. Poonam Srivastava Prof. A. R.N. Srivastava

4. Snehlata Sharma Late Prof. Rajshekhar (Supervisor still not replaced)

5. That a response to your query in Para 3 candidate Poonam Srivastava was registered for D.Phil. under the late Prof. Rajshekhar of MONIRBA vide RDC letter No. 54/Res/06 dated 12.12.2006. She has been registered since (w.e.f.) 9.11.2006. Her D.Phil. Enrollment Form should be with the Research Degree Section. For the photocopy of her form the Research Degree Section may be contacted.

6. In response to your query in Para 4, please find the complete list of Research Scholars enrolled for D.Phil, in Anthropology and Sociology with the names of their supervisors in Annexure 1.

7. That in response to your query in Para 5, it is stated that the duly signed minutes by the members DPC of the said meeting was sent to the Dean, Faculty of Arts office vide letter No. SA/6264 dated September 6, 2007. For the photocopy of the aforesaid Dean, Faculty of Arts office may be contacted.

8. In response to your query in para 6, 7 and 8 the desired papers are in the Research Degree Section. Therefore, any query should be made in this to the Research Degree Section and not to the Department of Anthropology."

11. Learned counsel for the petitioner has relied upon averments made in letter dated 5.9.2007 appended as Annexure 1 of the counter affidavit. A perusal of the letter shows that the petitioner had already submitted her form and had applied for admission prior to guidelines for admission through Joint Entrance Examination but due to want of relevant and necessary papers it was not recommended by the R.D.C. and that as the necessary papers have been furnished by the candidate she may be admitted as a D.Phil Scholar in Sociology. It further shows that two members of the D.P.C. had also discussed the issue on 5.9.2007 and had approved the request of the candidate. The letter dated 5.9.2007 is as under:

"Dean, Faculty of Arts, A.U.

Please find enclosed herewith the application form as the candidate Shashi Pandey for admission as D.Phil Scholar.

The candidate had already submitted this form and had applied for admission last year. But in wants of relevant and necessary papers, it was not recommended by the R.D.C.

Now that the necessary papers have been furnished, the candidate may be admitted as a D.Phil scholar in Sociology.

Two members of the D.P.C. also discussed the issue on 5.9.2007 informally and both have also approved the request of the candidate."

12. Sri Yogesh Agarwal counsel for the petitioner also relied upon Annexure CA2 wherein the Dean, Faculty of Arts has recommended to the petitioner, which is as under:

"In case of this candidate the following points have to be taken into consideration:

1. That P.G. programme in Sociology has never been in the University.
2. That, in spite of that Doctoral programme continued since decades. Earlier more than a dozen candidates have obtained degree of D.Phil, from this University in Sociology.
3. That Vice Chancellor order (vide letter No. 05/Reg/262/2007 dated August 22, 2007) prohibits enrolment for Degree of D.Phil in the subjects where the admissions to P.G. programme is conducted.

However, the candidate applied much before the aforesaid order i.e. on 24.7.2006.

Therefore, in view of the order, the candidate may be admitted for disposal programme."

13. It appears from Annexure CA3 that the University Grants Commission vide its letter dated 31.1.2008 recommended the admission in Degree course through

Joint Entrance Test, hence emphasis has been laid down by the respondents that now petitioner cannot be admitted without competition in the Joint Entrance Test.

14. It appears from paragraph 28 of the writ petition that there is no Entrance Examination for Doctorate in Sociology. It is apparent from the record that petitioner had applied much earlier for D.Phil in Sociology, hence even there is any change in the code of admission/selection to the candidates for D.Phil in Sociology, it cannot be made applicable from retrospective effect. Reference in this regard may also be made in the judgment rendered in *A.A. Calton v. Director of Education*, 1983 (3) SCC 33. In paragraph 5, 6 and 7 of the aforesaid judgment it has been held:

"5. It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16F (4) of the Act in the case of minority institutions. The amending Act did not however, provide expressly that the amendment in question would apply to pending proceedings under Section 16F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16F (4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the Legislature may pass laws with retrospective effect subject to the recognized constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provisions so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore find any substance in the contention of the learned counsel for the appellant that the law as amended by the U. P. Act 26 of 1975 should have been followed in the present case.

6. In so far as the second is concerned it is to be stated that the Act does not state that a person who had been recommended by a Selection Committee once

and whose selection had been disapproved by the Deputy Director should not be considered for the post in question by the Director when he exercises his power under subsection (4) of Section 16F of the Act. That provision merely states that in such an event, where the post to be filled up is that of a Principal or a Headmaster, the Director may appoint any qualified person from amongst the candidates who had applied for the vacancy and that such appointment shall be final. The respondent No. 2 satisfied the requirement of subsection (4) of Section 16F of the Act. The fact that the Deputy Director had disapproved the recommendation of the Selection Committee recommending him for the post in question once before cannot be construed as amounting to a disqualification. It is also to be noticed that under Section 16F (4) of the Act it is the Director who is authorized to make the appointment of a Principal and not the Deputy Director. There is, therefore, no ground to interfere with the judgment of the Court.

7. In view of the foregoing, the appeal is dismissed. There shall be no order as to costs.

15. Reference may also be made in AIR 1990 SC 1233, *N. T. Bevin Katti v. Karnataka Public Service Commission*, wherein it is held that once the selection/admission process has taken place then the eligibility cannot be changed with retrospective effect and those candidates, who were qualified would not be affected by a subsequent change in the proceeding of recruitment/admission. In that case the facts were that the Karnataka Public Service Commission issued a notification on 23.5.1975 inviting applications from in service candidates for recruitment to 50 posts of Tehsildars. Para 3 of Notification specified details of posts reserved for candidates belonging to SC, ST and other Backward classes including posts set apart for ExMilitary Personnel. In case of nonavailability of sufficient number of candidates for reserved categories vacancies were to be filled up as per rules in force. The Notification further gave details of the written and viva voce examinations. Para 14 of the Notification stated that the provisions of 1975 Rules and Rules 7 to 14 of the Karnataka Recruitment of Gazetted Probationers (Class I and II Posts Appointment by Competitive Examination) Rules, 1966 shall mutatis mutandis apply to the conduct of the competitive examination and the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1957 shall apply in respect of matter for which no provisions is made in the Rules. Pursuant to the advertisement, the appellants who were in service of the State Government applied for their selection and appointment to the posts of Tehsildars. After the written examination and viva voce test the Commissions finalized the list of successful candidates and published the same in the Karnataka Gazette dated March 18, 1976. The commission also notified an additional list of successful candidates for appointment to the posts of Tehsildars in accordance with 1975 Rules, which included the names of the appellants. In preparing the select list and making reservation to the various categories, the Commission followed the directions and the procedure as contained in the Government order dated 6th September, 1969. The State Government refused to approve the list prepared by the Commission as in its opinion the reservation for

the Scheduled Castes, Scheduled Tribes and other Backward Classes should have been made in accordance with the directions and procedure contained in the Government order dated 9th July, 1975. The State Government by its order dated 23rd April, 1976 directed the Commission to prepare a fresh list of successful candidates by making reservation in accordance with the procedure contained in the Government Order dated 9th July, 1975. Pursuant to the directions to the State Government the Commission prepared the select list afresh after making reservations in accordance with the procedure prescribed by the Government Order dated 9th July, 1975 and published the same on 27th May, 1976. The appellants' names did not figure in the revised list of candidates.

16. It was held by the Court that in aforesaid writ petition that para 11 of the Government Order dated 9th July, 1975 made the Government's intention clear that the revised directions which were contained in that Government Order would not apply to the selections in respect of which advertisement had already been issued, therefore the mode of selection as contained in the Government Order dated 9th July, 1975 was not applicable to the selection for filling the 50 posts of Tehsildars pending before the Public Service Commission. Therefore the select list including the additional list as prepared by the Commission and published in March 1976 was legal and valid and the State Government wrongly refused to approve the same. The State Government's Order dated 23rd April, 1976 directing the Commission to prepare fresh list in accordance with the mode of selection as contained in the Government Order dated 9th July, 1975 was illegal and consequently the select list prepared afresh by the Commission pursuant to the directions of the State Government is not sustainable in law. Since the additional list prepared by the Commission contained the names of the appellants, they were entitled to appointment to the posts of Tehsildars.

17. The present writ petition is filed questioning the decisions of the University of Allahabad restraining the petitioner from D. Phil Programme until she succeeds in the Combined Research Entrance Test (CRET) conducted by the University for various subjects. It may be noted that University of Allahabad was previously governed by the U.P. State Universities Act, 1973 and the statutes and the ordinances framed thereunder. It became a Central University with the enforcement of University of Allahabad Act, 2005 (Act No. 26 of 2005). Prior to the University becoming a Central University the admission/registrations to D. Phil Programme was governed by set of ordinance for the Degree of Doctor of Sociology in Chapter XXXVIII.

18. The aforesaid ordinance was not replaced by any new ordinance for the Central University by the Vice Chancellor with the approval of the Central Act as required under the Act 2005. Regard may also be had to the fact that even in the meeting of the Academic Council convened on 14.5.2007 no decision was taken by the Executive Council to supersede the earlier ordinances which were holding the field or to implement some new procedure for making admission in the D. Phil programme of the University for the session 200607, therefore the

ordinances issued earlier by State would hold field in the circumstances during the transitory period till replaced by new ordinances of the Central University.

19. Admittedly the application form of the petitioner had been rejected on the ground that marksheet appended by the petitioner was temporary, but her case for admission was also approved by D.P.C. on 5.9.2007. The Vice Chancellor vide his letter dated 13.11.2007 appended as Annexure CA2 has rejected the application of the petitioner only on the ground that the admissions were to be made through the CRET.

20. In view of the law explained above, no change in the qualification of the conditions for admission would apply from retrospective effect.

21. In my considered opinion, the Vice Chancellor is duty bound to exercise power and perform the duties as may be prescribed by the Statute or the Ordinance, therefore it was not correct for him to reject the form of the petitioner unless and until a new Ordinance was framed by the Central Government providing for holding of a Combined Entrance Test and the University was not authorized to hold the same prior to taking effect of new ordinance framed later on.

22. In view of the suggestion of Sri P.S. Baghel counsel for the University at this stage that the matter may be remanded to the Vice Chancellor for reconsideration and its acceptance by the petitioner's counsel, the writ petition is allowed. The Vice Chancellor is requested to decide the representation of the petitioner afresh by a reasoned and speaking order within a period of two weeks from the date of production of certified copy of this order without being influenced by his earlier judgment by which he has rejected the application of the petitioner.

23. No order as to costs.