
(2013) 02 MP CK 0067
In the Madhya Pradesh High Court
Case No : W.P. No. 7232 of 2012

Shri Kanha Shiksha Prasar Prachar Samaj Kalyan Samiti	APPELLANT
Vs	
Jiwaji University Gwalior	RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) 02 MP CK 0067

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Judgement

1. Heard. The petitioner has filed this petition against the condition No. 2 imposed by the respondent - University vide notification Annexure P/1 dated 11/07/2011.

2. The petitioner is a society registered under the Societies Registration Act, 1973. The petitioner - Institution was granted recognition by the National Council for Teacher Education to conduct B.Ed. Course from the academic sessions 2005-2006 with annual intake of 100 students. Since then, the petitioner - Institution is running the B.Ed. Course. It submitted an application for affiliation to the respondent - University. The respondent - University granted affiliation to the petitioner vide notification dated 11/07/2011, copy of which has been filed as Annexure P/1 with the following conditions:-

3. The petitioner is aggrieved by Condition No. 2 imposed in the aforesaid notification. In accordance with the aforesaid condition, appointment of teaching staff appointed by the petitioner - society shall be approved by the Executive Council of the University. The petitioner - Institution has submitted that in accordance with the provisions of College Code Statute No. 28, which is having statutory force, there is no provision for approval of the teaching staff from the Executive Council of the University.

4. Contrary to this, the respondent - University in its reply stated that u/s 24 of the Madhya Pradesh Vishwavidhyalaya Adhiniyam, 1973, the Executive Council

has powers and duties to prepare the College Code for an affiliated College and recognize the members or the staff of an affiliated College as a teacher of the University. It has further been stated that approval from the Executive Council for the teaching staff appointed in a affiliated college is required under the College Code. The petitioner - society was granted recognition by the N.C.T.E. vide order dated 28/10/2006 subject to following conditions:

Para 3(a) - The institution shall ensure that it gets duly affiliated for this course to the concerned university and all other formalities required by university are also completed before commencement of the course.

Para 4 - Recognition is subject to the condition that affiliating University shall ensure that, among other things, the institution has appointed required number of faculty members as per Norms of NCTE/State Government.

5. The petitioner - Institution appointed the staff including the teachers in accordance with College Code, Statute No. 28. The petitioner - Institution comes under the "Non-Grantee College", because it has not been receiving regular maintenance grant from the State Government or Madhya Pradesh Uchcha Shiksha Anudan Ayog. Section 1(iii) of the College Code Statute No. 28 defines "Non-Grantee College", which is as under:

(iii) "Non-Grantee College" - a College not receiving the regular maintenance grant from State Government or Madhya Pradesh Uchcha Shiksha Anudan Ayog.

6. Section 17(2) of the College Code, Statute No. 28 prescribes selection for teachers, principals and members of non-teaching employees in "Non-grantee Colleges", which is as under:

(2) Selection Committee for teachers, principals and non-teaching employees for "non-grantee colleges" shall be-

(a) For teachers:

(i) Kulapati or his nominee not below the rank of University Professor. - Chairman

(ii) Chairman of the Governing Body or his nominee from amongst its members who are not teachers of the college. - Member

(iii) Two experts of the subject Concerned nominated by the Kulapati. - Members

(iv) Principal of the College. - Member

(b) For Principals:

(i) Kulapati or his nominee not below the rank of University Professor. - Chairman

(ii) Chairman of the Governing Body or his nominee from amongst its members who are not teachers. - Member

(iii) One educationist nominated by the Executive council. - Member

(iv) Coordinator/Dean/Director College Development Council or in his absence one of the Deans of Faculties in which instructions are imparted in the College nominated by Kulapati. - Member

(v) Principal of the College. - Member Secretary

(C) For Non-teaching posts:

(i) Nominee of Kulapati - Chairman

(ii) Chairman, Governing Body or his nominee, from amongst its members who are not teachers: - Member

(iii) Registrar or his nominee not below the rank of Deputy Registrar. - Member

(iv) Principal of the College. - Member Secretary

In no case the Committee constituted under 17(2)(a) shall transact business at a meeting unless Chairman, atleast one subject expert and two other members are present. In case of the Committee constituted under 17(2)(b) and 17(2)(c) no business shall be transacted at a meeting of the Committee unless the Chairman and three members are present.

(3) The Committee shall, having regard to the nature of duties of post, select candidates as per rules and shall prepare a panel of such candidates in order of merit.

(4) The Panel and the recommended order of merit should have the full concurrence of atleast one expert.

(5) The panel prepared under sub-section (3) shall contain the names of the candidates having atleast two names more than the number of posts proposed to be filled up.

(6) The panel drawn under sub-section (3) shall be submitted to the Governing Body.

(7) The Governing Body shall make the appointment to the posts of teachers or other employees in order of merit from the panel prepared under sub-section (3).

7. From the aforesaid provisions, it is clear that there is no provisions in the Statute No. 28 College Code that teachers appointed in accordance with the aforesaid Statute shall require approval from the Executive Council of the University.

8. Section 24 of the Madhya Pradesh Vishwavidhyalaya Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam of 1973") prescribes powers and duties of Executive Council. Section 24(xii) is in regard powers to admit College to the privileges of the University, which is as under:

(xii) to admit colleges to the privileges of the university on the recommendation of the Academic Council and with the previous sanction of the [Commissioner

Higher Education] and subject to the provisions of this Act and Statutes and to withdraw any of these privileges and to take over the management of the colleges in the manner and under conditions prescribed by the Statutes and Ordinances;

9. Section 24(xxv) is in regard to inspection of affiliated colleges, which is as under:

(xxv) to arrange for and direct the inspection of affiliated colleges, recognized institutions and halls and to issue instructions for maintaining their efficiency and for ensuring proper conditions of employment for members of their staff, and payment of adequate salaries, and, in case of disregard of such instructions, to modify on the recommendations of the Academic Council the conditions of affiliation or recognition or taking of such other steps as it deems necessary and proper in that behalf;

10. Section 24(xxvi) is in regard to preparation of a College Code, which is as under:

(xxvi) to prepare a college Code laying down therein the terms and conditions of affiliation of colleges other than Government colleges;

11. From the aforesaid provisions, it is clear that there is no express provision in Section 24 of the Adhinyam of 1973 that there must be approval of the staff appointed by an affiliated College in accordance with the College Code by the Executive Council of the University.

12. The Hon'ble Supreme Court in the case of The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, has held as under that an authority vested with the power to act under the statute alone has power to exercise its discretion:

27. Similar view has been reiterated by this Court in Pancham Chand and Others Vs. State of Himachal Pradesh and Others, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

13. From the aforesaid judgment of the Hon'ble Supreme Court, it is clear that it is well settled principle of law that the authority which has a power under the Statute has to exercise its discretion in accordance with law and no other authority has power to interfere in the matter.

14. In the present case, the Statute No. 28 College Code prescribes procedure

for appointment of teaching staff in an affiliated "Non-grantee College" and the petitioner - Institution has appointed the teaching staff in accordance with the aforesaid Statute. In such circumstances, the direction issued by the University to the petitioner - Institution that it should get approval of the staff from the Executive Council of the University is contrary to law.

15. Consequently, the petition of the petitioner is allowed. The condition No. 2 imposed vide notification Annexure P/1 dated 11/07/2011 against the petitioner - Institution by the respondent - University is hereby quashed. The University is further directed that it shall not mention the aforesaid deficiency in its communication about the petitioner - Institution. No order as to costs.