

**(1992) 04 DEL CK 0020**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 2147 of 1990 and Civil Writ Appeal No's. 3491 and 3507 of 1989

S.M. Mukherjee

APPELLANT

Vs

University Grants Commission and Others

RESPONDENT

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**Date of Decision :** 07-04-1992

**Acts Referred:**

**Citation :** (1992) 47 DLT 388

**Hon'ble Judges :** S.B. Wad, J;P.K. Bahri, J

**Bench :** Division Bench

**Advocate :** A.K. Ganguly and G.K. Banerjee, for the Appellant;

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## **Judgement**

S.B. Wad, J.

(1) These writ petitions raise common questions regarding the implementation of the recruitment rules of the University Grants Commission and for proper balancing of the claims of the Under Secretaries and the Education Officers in regard to seniority and promotion in the University Grants Commission .

(2) The University Grants Commission was established in 1956 by an Act of Parliament, viz. University Grants Commission Act, 1956. The Statement of Objects and Reasons of the Bill in this regard stated that "the Constitution of India vests Parliament with exclusive authority in regard to coordination and determination of standards in institutions for higher education for research and scientific and technical institutions. It is obvious that neither coordination nor determination of standards is possible unless the Central Government has some voice in determination of standards of teaching and examination in the Universities both old and new. It is also necessary to ensure that available resources are utilised to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities."

(3) The University Grants Commission has the power under the Act to recommend to the Universities measures for improvement of University

education. They have power to conduct inspection of the universities for the implementation of such recommendations. The University Grants Commission recognises the Universities and also confers status of deemed universities on institutions of higher learning and research institutes. For the proper development of universities the University Grants Commission allocates funds to the universities for general and specific purposes. It is the body which coordinates the universities with the Central Government. The University Grants Commission acts as an expert body to advise the Central Government on maintenance of standards in the universities. The Commission is composed predominantly of the educational experts. The Chairman is usually a well-known educationist. Out of 10 members not less than four members are from the teachers of the universities and the remaining members are from the persons who are the Vice-Chancellors of the Universities or experts in Agriculture, Commerce, Engineering, Law and Medicine. Amongst other things the University Grants Commission has the power (Section 26C.) to frame regulations with the prior approval of the Central Government specifying the terms and conditions of service of the employees appointed by the Commission. Such regulations were framed by the Commission in 1958 and then in 1983. The administration of the University Grants Commission is principally manned by the executive officers, such as Section Officers, Under Secretaries and by persons drawn from the universities and Scientific institutions. They can, thus, be broadly described as the Executive, the Educationist and Scientists.

(4) A body like University Grants Commission which oversees the standards of higher education in the Universities is expected to have effective administration to implement the objectives of the Act. The Officers manning such administration should have deep knowledge and experience of the University functioning and its problems. This is not a routine administration but an administration with high function of improving the excellence of University education by persons motivated and devoted to the cause of higher education. However, as the arguments proceeded in these petitions what was discovered was the total chaos in the service and complete negation of the higher purpose for which the University Grants Commission was established. It was seen that the appointments were made in total disregard of the service regulations. Unqualified people were appointed at various rungs of the administration. Adhoc promotions were made almost as a matter of rule. Sometimes even two or three adhoc promotions one after another were given to same person. The appointments so made had no co-relation with the availability of regular vacancies. The Under Secretaries and the Education Officers, which is the feeder post for the post of Deputy Secretary, had no seniority rules. It appears that the administrative or executive wing had the upper hand in various posts of the officers contrary to the service regulations and to the detriment of the educationists and scientists. The most glaring example was of keeping in abeyance the recruitment of education officers year after year and making the said posts available for Section Officers by creating Super numeracy posts in the exact number. These facts were hardly

denied by the University Grants Commission in their counter affidavit and by the Counsel appearing before us. As a matter of fact, the Counsel for University Grants Commission repeatedly requested the Court to lay down the guidelines so as to establish some order in the entire service.

(5) When Cw 3507/89 came for admission before the Division Bench, the Division Bench issued notice and directed that no adhoc promotions be made to the post of Deputy Secretary. The said order was later on modified, permitting the University Grants Commission to make promotions on adhoc basis, but strictly complying with the eligibility rules and clarifying that such promotions were subject to the final decision in the writ petitions. As the arguments proceeded the University Grants Commission was directed to file the entire list of Deputy Secretaries appointed on adhoc basis and the duration of their adhoc appointment. They were also directed to file the joint seniority list of all the Under Secretaries and the Education Officers as well as schedules caste officers. With the information furnished it was found that the picture was getting murkier and murkier. Therefore, on 13.11.90 the University Grants Commission was directed to review the entire question of appointment of adhoc appointees who were already working in that capacity for more than six months. Thereafter, The Commission reported the finalisation of the seniority list and the schemes to be put up by the University Grants Commission to the Central Government for regularisation of adhoc appointments at the various ladders of the administration. Since the entire service was in the melting pot, the Court further directed that no appointments adhoc/regular/permanent be made till the disposal of the petition. Pursuant to our directions from time to time the Scheme for regularisation of various adhoc appointments has now been finalised in consultation with the Union of India. Thus, after long persuasion and directions from time to time some semblance of order has now been established in the administration of the University Grants Commission. The University Grants Commission is still working for a proper arrangement for recognising and protecting "the claims of the various sections of administration, viz. educationists and scientists.

(6) It is on this background that the grievance of the petitions are to be appreciated and it is on this background alone that some solutions can be found out for their problems. If the individualistic and personal claims of the Sections of the administration are to be recognised and protected it will set at naught the entire effort made by the Court and the University Grants Commission to set the house in order.

(7) Cw 3491/89 has been filed by M/s. M.M. Chawla, S.P. Gupta, G.S. Bawa and K..C. Verma. They were appointed as Under Secretaries on adhoc basis on 1.10.1983, 26.12.83, 1.2.84 and 19.9.84 respectively. In their writ petition they prayed for a mandamus, directing the respondents to regularise the appointments of the petitioners and confirm them in the post of Under Secretary with effect from their initial appointment with consequential benefits like

seniority and promotion from their due dates. It was submitted in the writ petition that if their service is treated as a regular service from the date of the initial appointment, they will be completing more than five years regular service as Under Secretaries and this will make them eligible for the promotion to the post of Deputy Secretary. According to the 1983 regulations the service rendering eligibility is not less than five years regular service as Under Secretary/ Education Officer.

(8) In Cw 3507/89 filed by Dr. Kanta Kumari the petitioner had prayed for a mandamus directing the respondents to consider the petitioner for adhoc promotion to the post of Deputy Secretary by following the 40 point roster for working out the post available for scheduled castes and scheduled tribes. The petitioner claimed that the memorandum of Government of India, Department of Personnel, dated 2.6.89 should be strictly complied with for the appointment of scheduled castes and scheduled tribe employees and that the office memorandum of the University Grants Commission dated 26.10.89 was violative of Articles 14 and 16 of the Constitution.

(9) Cw 2147/90 has been filed by Dr. S.M. Mukherjee who is an Education Officer. The petitioner has challenged the adhoc appointments to the post of Under Secretary from the post of Section Officers of S/s. M.M. Chawla the petitioner in CW 3491/89) and 11 other Section Officers. They were all matriculates while the education qualification for the post of Under Secretary was a Graduate. The University Grants Commission relaxed the qualification under Rule 6 and made the said adhoc appointments. The petitioner has several grievances about the same. He has submitted that prior approval of the Central Government was not secured before the relaxation was given to the said Under Secretaries. He has submitted that such relaxation had been repeatedly used by the University Grants Commission at all levels of appointments with the result that large number of matriculate officers have reached even the stage of Deputy Secretaries and Joint Secretaries. As against these promotions to the staff working on the executive side, the posts of Education Officers are kept in abeyance and not filled in time. These posts were converted into the posts of Under Secretaries by creating these posts as super numeracy posts. Education Officers are highly qualified officers with Masters degrees and minimum of five years experience as teachers or researchers in the Universities or research institutions. This has resulted into anomalies and humiliating atmosphere in the entire service of University Grants Commission where sometimes the matriculates become the bosses of the highly qualified Education Officers. The chances of promotions of the Education Officers to the post of Deputy Secretary and above are thus seriously jeopardised because of such relaxation of the qualifications laid down by the 1983 regulations. He has taken exception to keeping the posts of Education Officers in abeyance and creation of Super numeracy posts of Under Secretaries as being contrary to service regulations and violative of Articles 14 and 16 of the Constitution. He has prayed for strict compliance with the 1983 Regulations in regard to appointment of Under

Secretaries and further promotions to the post of Deputy Secretaries. As a matter of fact, he contends, that the petitioners in Cw 3491/89 and some others have been irregularly appointed and promoted adhoc right from the posts of U.D.C. to the post of Under Secretary through various promotions.

(10) As the arguments proceeded in the writ petitions with the directions given from time to time the University Grants Commission prepared the scheme for the regularisation of service with the concurrence of the Central Government. Arguments were advanced by the respective counsel taking into consideration the new facts that were brought on record. The Central Government laid down the principle that where an employee has rendered adhoc service for five years or more they should be given benefit of five years service for the purposes of regularisation. This principle was followed by the University Grants Commission and the entire adhoc service/appointments/ promotions were regularised, including the regularisation of Under Secretaries. The entire service in University Grants Commission is now to be taken as a fact after removal of the irregularities and illegalities that had crept in over the years. The exercise was a vast exercise, in some respects akin to the constitution of anew service. It has now been assured that the promotions in future would be strictly made in accordance with the 1983 regulations. We rely on the said assurance of the University Grants Commission and, Therefore, do not find it necessary to give any direction for the strict compliance of the 1983 service regulations .

(11) Dr. Kanta Kumar (CW 3507/89) has prayed that she should be appointed adhoc to the post of Deputy Secretary. Since no adhoc appointments are to be made contrary to service regulations of 1983, the petitioner cannot be granted any relief. Moreover, admittedly, she is not eligible to be appointed to the post of Deputy Secretary as she has not completed five years regular service, as required by the service Regulations. As regards per grievance of the correct application of the 40 point roster for determining the vacancies available for scheduled castes and scheduled tribes and the implementation of the Central Government's office memoranda in regard to clearing the backlog, we direct the University Grants Commission to properly work out the 40 point roster and to see that claims of scheduled castes and scheduled tribe employees are properly protected. Cw 3507/89 is disposed of with this order.

(12) In Cw 2147/90 the grievance of the petitioner, Dr. Mukherjee, is against the relaxation of the qualification of graduation in favor of Section Officers and appointing them as adhoc Under Secretaries. Shri M.M. Chawla , petitioner No. 1 in Cw 3491/89, had got such benefit of relaxation. But the service of all the four petitioners as adhoc Under Secretaries in Cw 3491/89were regularised by the University Grants Commission in June, 1990 during the pendency of the writ petition. The regularisation was done by the University Grants Commission by giving the benefit of five years service as a general principle of regularisation followed by the University Grants Commission in the entire hierarchy of the University Grants Commission administration. The relaxation of educational

qualifications earlier cannot now be reopened. Dr. Mukherjee's other prayer that the promotions should be made strictly in accordance with the 1983 Regulations is already met by the assurance given by the University Grants Commission, which we have noted earlier. Cw 2147/90 is disposed of accordingly.

(13) This leaves us to the claim of the four petitioners in CW. 3491/89. The Counsel for the petitioners in this petition has relied upon the decisions of the "Supreme Court in The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, and Narender Chadha and Others Vs. Union of India and Others, . He has submitted that the continuous service in adhoc capacity rendered by the petitioners from their respective dates of promotions in 1983 and 1984 should be counted for the purposes of regularisation and seniority. He has relied upon proposition "B" at page 745 of the The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, . The proposition reads :

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

(14) He has also relied upon the observations of the Supreme Court in Narendra Chadha's case where it was held by the Supreme Court that the period of continue us officiation by persons promoted without following the procedure laid down in the rules should be counted towards the seniority in the cadre and not doing so would be arbitrary and violative of Articles 14 and 16 of the Constitution. These observations in Narendra Chadha's case were upheld by the Supreme Court in Direct Recruits case. The Supreme Court was faced with a very serious problem of the employees working on adhoc basis for along period of 15 to 20 years. A solution in equity had, Therefore, to be found out by the Supreme Court so as to off-set grave prejudice which would have been caused if the said officers were to be reverted after 20 years service. The Supreme Court availed of the power of relaxation provided by the service rules applicable in that case so as to get over the illegality of the non-compliance of the rules in matters of promotion. Each service has its own peculiarities in regard to the hierarchy and the service rules. So also the problems and difficulties are problems of that service. Service law is an area of administrative law and it has been recognised by all authorities on the administrative law as well as the decisions of the superior Courts that the administrative solution found in relation to one service cannot be made applicable to other services/ administration with the same logic and vigour. Each service/administration is unique in its own way .We may state as a point , uniqueness of the University Grants Commission service that the problem of adhoc promotions was not limited only to the present case, but the entire service was infested with it with the specter of unpredictability and chaos. The petitioners in our case had not worked as adhoc Under Secretaries for a long length of time. such as 15 to 20 years. Even their promotions (and indeed the

promotions of many others) right from the stage of Clerk were done by relaxation of qualifications at various ladders of promotions .This fact is not disputed by the University Grants Commission. The promotions of the petitioners in the present case were regularised during the pendency of this writ petition and they were subject to the final directions by the Court. In order to do away with ad-hocism and to put the entire service under University Grants Commission at all levels of hierarchy, the University Grants Commission followed the principle of giving five years benefit for the purposes of regularisation of service. The benefit of the adhoc service was not to be made available to any member of the University Grants Commission service for the purposes of seniority. If the petitioners and their class are to be given the benefit of seniority their entire adhoc service, it will start a chain of litigation affecting the entire hierarchy of the service in the University Grants Commission. It will revert the entire service under University Grants Commission into total chaos as before. We are supported in our approach by the principle laid down by the Supreme Court in the Directs Recruits case at point "J" (at page 745). The said principle reads :

" THE decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."

(15) The other principles laid down in the Direct Recruits case at page 745 are also useful to some of the present problems. The quota rule should ordinarily be followed strictly. If it becomes impossible to adhere to the existing quota rule it should be substituted by appropriate rule, failing which by the Executive instructions. In such case where adherence to the service rules is impossible and the quota rule has broken down the appointees regularly appointed should not be pushed down below the appointees from the other source .

(16) It has been admitted by the University Grants Commission that right from the year 1983 to 1990 the posts of Education Officers were kept in abeyance and the said posts were treated as super numeracy Under Secretary posts .adhoc appointments were made in such super numerary posts. the University Grants Commission could not justify this course of action during the course of arguments. What was faintly suggested was that the direct recruitment of the Education Officers takes time and, Therefore, in the interest of service, those posts were utilised for the Under Secretaries posts by making them Super numerary posts. We are of the opinion that this practice followed by the University Grants Commission year after year was highly pernicious and destructive of the sound administration in the service. Super numerary posts are "Shadow posts" made to meet rare contingency created by unforeseen circumstances in a given service. This cannot be converted into a regular practice so as to benefit one section of the service to the detriment of the others. Dr. Mukherjee is quite right in his submission that through this practice and the practice of relaxation of qualifications repeatedly and indiscriminately, upper

hand has been secured by the executive wing of the service. The clear implication of this is that the basic object of establishment of University Grants Commission, viz. maintenance of standards of excellence in the Universities is taken out of the purview of the educationists and scientists and put in the hands of the executive officers who have neither the qualifications nor the experience of University service. The "impossibility" of adherence to existing rules, mentioned in the Direct Recruits case, could only reasonably mean impossibility because of the circumstances beyond the control of the service. It cannot be used as an indirect cover for the deliberate disregard of the service rules. Thus. if the ratio of the Direct Recruits case and the Narendra Chadha's case, is applied in the light of the peculiar facts of the University Grants Commission service, IT would be clear that the petitioners cannot claim benefit of their service as adhoc Under Secretaries for the purposes of seniority.

(17) Dr. Mukherjee and other Education Officers were directly recruited against the substantive vacancies, enjoying the benefits of regular service much prior to the petitioners. The petitioners, Therefore, cannot claim any seniority over them.

(18) One question that was examined during the arguments was whether any regular/substantive post of Under Secretary was available when the petitioners were promoted adhoc. The information supplied at the time of arguments does not show that such a regular post was available when Mr. M.M. Chawla, who was promoted first amongst the four petitioners in 1983. The super numerary post cannot be equated with a regular post being only a "shadow post" and thus no regular post was available for the petitioners at the relevant time. Mr. M.M. Chawla, who perhaps has a better claim than the other petitioners, was not even a Graduate in 1983, which is the basic educational qualification for the post of Under Secretary. He became a graduate in 1987.

(19) None of the petitioners have regular service of five years or more for being eligible to be appointed to the regular post of Deputy Secretary. As and when they would complete five years regular service they may become eligible for being considered to the post of Deputy Secretary. Cw 3491/89 is, therefore, dismissed. There shall be no order as to costs.