

(1997) 11 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 13651 of 1990, 13652 of 1990, 13653 of 1990

Sushil Kumar Verma and Ors.,etc.etc.

APPELLANT

Vs

Committee of Management R M.V.Polytechnic Mathura and another,etc.etc.

RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 — Section 25F

Citation : (1997) 11 AHC CK 0077

Hon'ble Judges : S.H.A.Raza, J and S.Rafat Alam, J

Final Decision : Dismissed

Judgement

S. H. A. Raza and S. R. Alam, JJ.—We are of the view that State Government through Secretary Technical Education is a necessary party to the proceedings. It is accordingly, impleaded as respondent No. 4.

2. Learned Standing Counsel submits that there exists no necessity for filing a counteraffidavit and the writ petition can be heard and decided.

3. The petitioners were appointed as Assistant Teacher for one year i.e. the end of the academic session or till a regular selection takes place. Section 22F of the U.P. Pravidhik Shiksha Adhiniyam, 1962 provides that where the Director is satisfied that for any affiliated institution no candidate possessing all the qualifications laid down in the regulations is available for appointment, he may permit the affiliated institution to employ as a temporary measure any suitable person for a period not exceeding one year. On ad hoc basis. After the end of the year an order was passed that they will continue to work as ad hoc Assistant Teachers till a regular selection takes place. This Court by means of the order dated 23rd May, 1990 while issuing notice to the respondents passed the following orders:

"In view of the facts and circumstances of this case, we direct the respondents not to dispense with the ad hoc appointment of the petitioner for a period of four

months or till the availability of a selected candidate for appointment on the said post whichever is later. The Committee of Management, P.M.V. Polytechnic Mathura is directed to complete the selection proceedings within a period of four months from the date of service of certified copy of this order.

4. Later on 18th/19th May, 1990 the services of the petitioners were terminated w.e.f. 31st May, 1990, as a result of which present writ petitions were filed in which aforesaid orders were passed. The writ petitions were dismissed in default on 20th March, 1997 and the interim orders were vacated. The writ petitions were restored on 31st May, 1997 and since the interim orders were lapsed and were not restored, the petitioners ceased to work as Assistant Lecturer. From the side of the respondents, it has been averred in the first counteraffidavit that there were two conditions in the appointment orders issued to the petitioners, firstly that services of the petitioners would be terminated when a candidate by a Commission would be available or end of the session whichever would be earlier. As no candidate was selected by the Public Service Commission hence second condition would apply. The Principal had already issued a letter dated 18th May, 1990 by means of which the services of the petitioners have been terminated with effect from 31st May, 1990. In another supplementary counteraffidavit, it has been averred in para 13 that in spite of aforesaid interim order dated 23rd May, 1990, containing the directions for the answering respondents to complete the selection proceedings within a period of four months, the institution was faced with a situation that the petitioners had been continuing against the post which had been abolished under the Government Order and unless the petitioners cease to work, the post of Lecturer against the post of Instructor cannot be sanctioned by the authority concerned, hence no appointment of the lecturer could be made therein. In para 15 of the Supplementary counteraffidavit, it was indicated that the State Government and the Director of Technical Education U.P. are not processing the proposal sent by the Polytechnic for the sanction of the post of Lecturer in accordance with the Government Order dated 27th June, 1989, by treating the post of Assistant Lecturer or Associate Lecturer as vacant, in as much as the petitioners and others are under the interim orders of this Court and are holding the said post, thus the order of regular selection on the post of Lecturer in accordance with Government Order dated 27th June, 1989 has been forestalled.

5. By means of the Government order dated 31st December, 1967 the post of Instructors working in the Colleges were designated as Assistant Lecturer or Associate Lecturer.

6. It is evident that the appointment of the petitioners could be made only for one year in accordance with the provisions contained in first Proviso to Section 22F (1) quoted in the foregoing paragraph and the same could not be extended beyond that period. Initially the petitioners were appointed for a year or till the regular selection would be made, but later on 25th July, 1989 an order was passed appointing the petitioners till the regular appointment will be made. In

view of the first proviso to Section 22F (1) the appointment dated 25/7/1989 de hors the statutory provisions and will give no right to the petitioners to continue as Lecturer.

7. The respondent Nos. 1 and 2 were faced with a piquant situation as they were forced to allow the petitioners to work under the interim orders of this Court. In spite of the Government orders that the post of the Instructors have been abolished by the order of the State Government and it was provided that out of the three Instructors, two would be appointed as Lecturers. The State Government refused to sanction the post for the aforesaid reason, as a result of which the orders passed by this Court to hold the selection within four months could not be made possible. If we allow the petitioners to continue as ad hoc teachers till regular selection would be made, the regular selection would never be held. It was vehemently pleaded by the learned Counsel for the petitioner that taking a compassionate and lenient view, this Court should consider the regularisation of the petitioners under the general law as they have worked for a period of seven years. This cannot be done, firstly for the reason that their appointment beyond one year de hors the rule, secondly the petitioners ceased to work after the dismissal of the writ petition and vacation of the interim order which was not restored. How this Court would direct the respondents to regularise the services of the petitioners who have not worked since 14th May, 1997. There is another aspect of the matter which deserves consideration. As the posts upon which the petitioners were working have been abolished by the State Government and the State Government has not been allowing the selection to take place, in view of the pendency of the present writ petition, may be for the reason that holding of the selection would serve no useful purpose, as the Court may allow the regularisation of the services of the petitioners.

8. It is a matter of concern for this Court that in various services ad hoc appointments are made without proper selection, even on the post which are within the purview of the Public Service Commission. The talented and meritorious young men are denied an opportunity to participate in the test and interview and their right to seek employment is taken away, by such reckless appointment which de hors the rule. The post of the Lecturer in the Polytechnic comes within the purview of the Public Service Commission and the appointment can only be made through Public Service Commission. In the instant cases, the appointments were made against the provisions of the Act and the Government Orders. In such a situation this Court cannot order regularisation of the services of petitioners. Learned Counsel for the petitioners asserted that in a similar situation in the case of A.K. Jain and another v. Union of India and others, 1987 (Suppl.) SCC 497, Hon'ble Supreme Court ordered the regularisation of the services of the doctors for medical services although appointment could be made only with the consultation of Public Service Commission. Similar orders were passed by Hon'ble Supreme Court in the case of Lecturers of Banaras Hindu University where statutory provisions for selection through proper selection committee under the Banaras Hindu University Act were considered not

necessary to be followed. But such directions and orders passed by the Supreme Court were on the facts and circumstances of those cases and later on Hon''ble Supreme Couk clarified in various judgments that the aforesaid decisions should not be treated as binding precedent, under Article 141 of the Constitution of India.

9. We are of the view that as the second appointment of the petitioners dated 2571989 de hors the rule, the post upon which they were appointed were with in the purview of the Public Service Commission and without holding a proper selection, inviting applications from the eligible candidates, the petitioners could not have been appointed, hence the services of the petitioners cannot be regularised.

10. It was vehemently canvassed by the learned Counsel for the petitioners that the petitioners have worked for considerable period of time and if their services would not be regularised, they would be thrown away on the street and as they have become average they would not be able to seek any employment in the Polytechnic in question or anywhere. The contention is misconceived. The question of age bar would come in their way, if they services rendered by them would not be computed. Whenever proper selection would be held for the selection of the post of Lecturer in the Polytechnic in question, the services rendered by them would be computed in determining their age.

11. Before parting with this judgment we direct State Government by issuing a writ in the nature of mandamus commanding the respondents to consider the sanction of the post of Lecturers in terms of their earlier decision. As there exists vacancy, the regular selection shall be held in accordance with rules with in a period of six months from the date of presentation of a certified copy of this order to the authorities concerned. Whenever selection would take place, the petitioners would be allowed to participate in the selection. If they are eligible in terms of the qualification, the age bar would not come in their way and the same would be relaxed in favour of the petitioners and their experience as Assistant Lecturers would also be taken into account by the Selection Committee U.P Public Service Commission.

12. With the observations aforesaid, the writ petition is dismissed.