
(2008) 03 AHC CK 0055
In the Allahabad High Court

Tarun Kumar

APPELLANT

Vs

State of Uttar Pradesh and Dayanand Shiksha Sansthan

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 23

Citation : (2008) 2 UPLBEC 95

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan and Arun Tandon, JJ.—This writ petition has been filed seeking the following reliefs:

(i) Issue a writ or order or direction in the nature of mandamus to punish the respondents for contravention of Article 23 of the Constitution of India in accordance with law.

(ii) Issue a writ or order or direction in the nature of mandamus to pay the amount of compensation of Rs. 15 lacs to the petitioner from the respondents.

2. The aforesaid reliefs had been sought by the petitioner on the ground that nine petitioner, who is duly qualified to be appointed as a teacher (lecturer) in a degree college affiliated to the University and aided by the State Government, had been exploited and forced to work at a meagre amount of Rs. 5,000/= (enhanced to Rs. 8,000/=) per month.

3. The petitioner applied in pursuance of an advertisement dated 22-04-1998 for appointment on honorarium for the subject of Botany in D.S.A. College, Unnao. He was appointed and joined on 01-08-1998. Since then the petitioner had been working continuously. In addition to teaching work, he has also been looking after the other responsibilities as being In-charge of game etc. The petitioner was paid honorarium at the rate of Rs. 5,000/= per month upto 10th September,

2006 and subsequent thereto he is getting a sum of Rs. 8,000/= per month. The petitioner claims that he had been working under compelling circumstances on meagre salary, such an employment has to be termed as "begar" which is prohibited under the provisions of Article 23 of the Constitution of India. Therefore, respondents should be prosecuted for contravention of the mandate of Article 23 of the Constitution of India and petitioner should be compensated by awarding Rs. 15 lacs as compensation.

4. Sri Vishnu Behari Tiwari, learned Counsel for the petitioner contends that in the facts of this case the law laid down by the Hon'ble Supreme Court in the case of Sanjit Roy Vs. State of Rajasthan, as also the law laid down in Mukesh Chandra Vs. State of U.P. and others, is squarely applicable and therefore petitioner is entitled for the aforesaid reliefs.

5. On the other hand, learned Standing Counsel has vehemently opposed the petition contending that the petitioner has not stated the correct facts leading to his appointment on honorarium, which in fact has been an arrangement under special circumstances. The U.P. Higher Education Service Commission duly constituted under the provisions of U.P. Higher Education Service Commission Act, 1980 could not complete the regular selection of teachers for certain reasons. The State Government as a special measure provided for re-employment of retired teachers initially under the Government Order of 1997 on part time basis fixing the remuneration on per lecture basis as prescribed by the University Grants Commission. As sufficient number of retired teachers were not available and some retired teachers were not willing to accept the job, the State Government came with a Government Order dated 17th April, 1998 providing for part time teachers on honorarium basis at the rate of Rs. 100/= per lecturer (as prescribed by University Grants Commission) to the maximum of Rs. 5,000/= in a month. The said Government Order specifically provides that the appointment would be for a fixed tenure and no renewal was to be granted. Though the Government Order did not put any embargo for such a candidate to apply afresh if the post was advertised for the next session. There was a clear cut stipulation that such appointees would not claim regularization. In such a fact situation, as the remuneration had been fixed on per lecture basis and since the engagement of the petitioner is not a full time basis, there is no obligation upon such person to remain on job after he has delivered the particular lecture as assigned to him by the authority concerned, therefore the engagement of the petitioner cannot be termed as a "begar".

6. It is further contended by learned Standing Counsel that if the petitioner had been looking after any other work of the institution on the asking of the management, it was a private arrangement between him and the Committee of Management for which he cannot burden the public exchequer, though he may seek relief against the management. Therefore, according to Standing Counsel the petition is liable to be dismissed.

7. We have considered the rival submissions made by learned Counsel for the

parities and have perused the records.

In *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , the Hon"ble Supreme Court with reference to its earlier judgment in *Dhirendra Chamoli and Another Vs. State of U.P.*, rejected a similar contention observing as under:

This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there should be equality before law and equal protection of law and implicit in it is the further principle that there must be equal pay for equal work of equal value.... It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees.

8. In *Sanjit Roy Vs. State of Rajasthan*, , the Hon"ble Supreme Court considered the case providing exemption from labour laws, the provisions of Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 and held that as the said act deprived the workers of the benefit of the Minimum Wages Act, it was violative of Article 23 of the Constitution of India.

9. While deciding the said case, reliance had been placed upon earlier judgement in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*,

In *Mukesh Chandra Vs. State of U.P. and others*, , a similar view has been reiterated by this Court holding that forcing a person to work for a meagre sum violates Article 23 of the Constitution of India and directions were issued for prosecution of Mandi Samiti guilty of taking "begar" by exploiting helpless unemployed persons.

10. In the instant case, the aforesaid law does not apply at all. It is not the case of the petitioner that he had been working as full time teacher or had ever been appointed as full time lecturer nor he has stated that he had been forced to work in contravention of the terms of his appointment letter or the Government Order under which he has been appointed.

11. For the reasons best known to the petitioner, the institution, where petitioner claims to have been teaching is not impleaded as a party, only the society

running the said institution has been impleaded.

12. We may clarify that it is at the option of such teacher appointed on per lecture basis to take as many lectures as he wants and for each lecture he is entitled to get Rs. 100/= per lecture subject however the maximum of Rs. 5,000/= (now enhanced Rs. 8,000/=), meaning thereby that the day an appointee completes 50 lectures in a month or 80 lectures in a month, he has a right to refuse any further responsibility to teach the students and in such a situation the management would have to make alternative arrangement.

13. It may also be pertinent to mention here that under the statutory provisions there is a complete prohibition for ad-hoc appointment of teachers after the withdrawal of Section 16 of the Commissions Act. The Government Order under which the petitioner claims to have been appointed itself has been a subject matter of challenge before this Court in *Malvika Shekhar Vs. Director, Higher Education and Others*, wherein after making reference to the statutory provisions, the Court came to the conclusion that the appointment on honorarium is void ab initio as it is prohibited under the statute.

14. Another Division Bench of this Court in *Alok Singh v. State of U.P.* (2002) 2 ESC 427 has held that the terms and conditions of appointment as a part time lecture under Government Order dated 7-4-1998 are entirely different vis-à-vis lecturers appointed on regular basis.

15. It is pointed out that the said judgement in *Malvika Shekhar* (supra) had been challenged before the Hon'ble Supreme Court and still pending consideration and the persons working on honorarium have been allowed to continue because of the interim order passed by the Apex Court in the said case.

16. In view of the above, the petition is devoid of merit and is accordingly dismissed. However, if the petitioner feels aggrieved that he is being exploited by the Committee of Management and is being forced to work in contravention of the said Government Order dated 17th April, 1998 or terms and conditions incorporated in his appointment letter, he is at liberty to approach the Civil Court for damages against the management of the college. However, he cannot be permitted to have any claim against the public exchequer.