

(2009) 09 AHC CK 0137
In the Allahabad High Court

Uccha Shikshit Yuva Kalyan Samiti and Another	APPELLANT
Vs	
Sri R.K. Mittal, Secretary (Higher Education) and Others	RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 60(e)
Uttar Pradesh State Universities Act, 1973 — Section 60(e)
Uttar Pradesh State Universities Act, 1973 — Section 60(e)

Citation : (2009) 09 AHC CK 0137

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabhajeet Yadav, J.—Affidavit filed today on behalf of opp. parties is taken on record.

2. By this contempt application the applicants have sought relief for compliance of judgement and order dated 12.4.2002 passed by this Court in Civil Misc. Writ Petition No. 37014 of 1999 Uccha Shikshit Yuva Kalyan Samiti and Anr. v. State of U.P. and further prayed for initiation of contempt proceeding against the opposite parties for having wilfully flouting the said order passed by this Court.

3. It is stated that by the said writ petition the applicants have sought writ, order or direction in the nature of mandamus commanding the respondents to pay regular pay scale of Rs. 8000-13500/- to the members of petitioners' association. The aforesaid writ petition filed by the applicants was allowed by a Division Bench of this Court vide judgment and order dated 12.4.2002 in the terms of decision rendered by Division Bench of this Court in Writ Petition No. 4812 of 1988 Km. Renu Tiwari v. Director, Higher Education decided on 4.10.1996 reported in 1997(1) AWC 117. It is stated that against the decision rendered by Division Bench of this Court in Km. Renu Tiwari's case the State Government had preferred SLP before Hon"ble Apex Court but the same was dismissed after hearing the parties and condoning the delay by Hon"ble Apex

Court vide judgement order dated 5.5.1997. Thus, the aforesaid order passed by this Court in Km. Renu Tiwari's case had attained finality between the parties after dismissal of the said SLP preferred by the State Government.

4. It is stated that all the members of the association have been appointed in terms of Government order dated 7.4.1998 as teachers in Degree and Post Graduate Colleges affiliated with the State Universities with the approval of Director of Higher Education, Uttar Pradesh. Their term of appointments were liable to be ended by 30th June 1999. However, all the members have filed separate writ petitions for continuance after 30th June 1999 and this Court has permitted the members of the petitioners' association to continue till regular selections are made by U.P. Higher Education Services Commission. It is stated that the petitioners are being paid only Rs. 100/- per lecture maximum of Rs. 5000/- per month in view of the aforesaid Government order dated 7.4.1998, whereas the regular pay scale of lecturers at a relevant point of time was Rs. 8000-13500/-. It is also stated that teachers of Government Degree Colleges and Post Graduate Colleges and their counterparts working in private degree and post graduate colleges are identical and similar in the qualification and periods taught by them and there is virtually no difference between the teachers of private colleges and Government colleges in respect of educational qualification, mode of appointment, nature of duties and responsibilities to be discharged by them. The teachers of Government colleges are appointed on the recommendation of U.P. Public Service Commission whereas the teachers of private colleges are appointed on the recommendation of U.P. Higher Education Services Commission. The salary of teachers of private colleges is paid by the State Government u/s 60(e) of U.P. State Universities Act, whereas the salary of Government teachers is paid by State Government from State Exchequer. Thus, there is no substantial difference between the teachers of Government Degree Colleges and Private Degree colleges.

5. It is stated that having regard to the facts and circumstances of the case this Court has allowed the writ petition filed by the applicants vide judgement and order dated 12.4.2002 in the terms of judgement of this Court in Km. Renu Tiwari's case. Feeling aggrieved by the aforesaid judgement and order passed by this Court the State Government had preferred SLP before Hon''ble Apex Court, wherein interim order was also granted by the Hon''ble Apex Court but during the pendency of said SLP the State Government had moved an application for withdrawal of the said SLP on 5.2.2007, thereupon on 20.3.2007 Hon''ble Apex Court has dismissed the SLP and civil appeal No. 2655 of 2003 arisen out of SLP (Civil) No. 20309 of 2002.

6. Sri P.S. Baghel, Learned Senior Counsel appearing on behalf of the applicant, at the strength of the assertions made in the affidavit filed in support of contempt petition, has submitted that after withdrawal of the aforesaid SLP and civil appeal, the order dated 12.4.2002 passed by this Court in writ petition filed by the applicants has become operative, as such the Vice-President of

applicants" association has filed a copy of the order passed by this Court to the Director, Higher Education on 26.6.2007 which was duly received by him. A copy of the said application is on record as Annexure-10 of the affidavit. The Vice President of the applicants" association has also submitted a representation and copy of the order passed by this Court to the Secretary, Higher Education, Government of Uttar Pradesh on 7.7.2007, the copy of which is also on record as Annexure-11 to the affidavit. It is further stated that the order passed by this Court in Km. Renu Tiwari"s case has been implemented by the Director, Higher Education vide order dated 31.3.1998. A true copy of the order of Director of Higher Education dated 31.3.1998 is on record as Annexure-12 to the affidavit. It is stated that since June-July, 2007 a period of almost two years has passed but opp. parties are sitting tide over the judgement of this Court and are deliberately disobeying and flouting the order passed by this Court, therefore, in this way continuously committing contempt of this Court.

7. Contrary to it Sri. K.R. Singh, learned Standing Counsel appearing on behalf of state-respondents has submitted that the case of applicants was on a different footing than the case of Km. Renu Tiwari and considering the post of ad-hoc teachers in Government Degree Colleges and Post Graduate Colleges are posts within the purview of U.P. Public Service Commission, in Km. Renu Tiwari"s case this Court had directed for equal pay for equal work to the ad-hoc appointees and had further directed to consider the case of regularization of ad-hoc teachers working in the Government Degree Colleges and Post Graduate Colleges under the provisions of U.P. Regularization of Ad-hoc Appointments (on the post within the purview of U.P. Public Service Commission) Rules 1979 as amended from time to time. Whereas finding no legal basis to regularise the services of part time teachers appointed under the Government Order dated 7.4.1998 on honourarium basis, the State Government had preferred a SLP before the Hon"ble Apex Court against the decision rendered by Division Bench of this Court in case of applicants dated 12.04.2002 but during the pendency of said Special Leave Petition, on account of legislative intervention, due to enactment of U.P. Act No. 42 of 2006 whereby the provisions of Section 31-E has been added under the provisions of U.P. Higher Education Services Commission Act, 1980 w.e.f. 26.12.2006 making provisions for absorption of teachers on honourarium basis, the State Government has withdrawn said SLP on 5.2.2007, as a result of which said SLP and Civil Appeal arisen therefrom was dismissed on 20.3.2007.

8. Meanwhile vide judgment and order dated 29.9.2003 passed by the Division Bench of this Court in Writ Petition No. 44332 of 2003 (Malvika Shekhar v. Director, Higher Education Uttar Pradesh, Allahabad and Ors.), this Court has directed the authorities including Secretary and Director of Higher Education Uttar Pradesh, Allahabad and U.P. Higher Education Services Commission that they must see that appointments on honourarium basis are not made any more and any appointment already made are terminated forthwith. The post of lecturer in Degree Colleges and Post Graduate Colleges should be filled strictly in accordance with the provision of the U.P. Higher Education Services Commission

Act, 1980 i.e. by selection through U.P. Higher Education Services Commission. The petitioner of the aforesaid case was appointed on 14.06.2003 on honourarium basis similar to the members of applicant's association. It is further submitted that it is no doubt true that against the aforesaid judgment and order in Malvika Shekhar's case, the aggrieved teacher had preferred SLP before the Hon''ble Apex Court, there upon, while setting aside the said order passed by Division Bench of this Court, the Hon''ble Apex Court has directed this Court to consider once again the Civil Misc. Writ Petition No. 44332 of 2003 filed by Malvika Shekhar in the light of later developments. The observation in this regard has been made by Hon''ble Apex Court in Civil Appeal No. 3075 of 2008, (Suyash Shukla and Ors. v. Director, Higher Education, U.P. and Ors.) vide order dated 28.4.2008 and it was also observed that till the High Court decides the above matter in Writ Petition No. 44332 of 2003, the present status-quo will continue.

9. It is further submitted that not only this but on 4.4.2008 a Division Bench of this Court in leading Misc. Writ Petition No. 5210 of 2007 (Anurag Tripathi and Ors. v. State of U.P. and Ors.) has decided about 274 writ petitions in a group. In the said petitions the question of regularization of part time teachers under the provisions of Section 31-E of U.P. Higher Education Services Commission Act appointed in Private Degree Colleges and Post Graduate Colleges affiliated with the State Universities was inter alia under consideration besides other claims of such part time teachers appointed under the Government Order dated 7.4.1998. This court has held that subject to the final orders to be passed by Supreme Court in SLP No. 84/2004, the part time teachers appointed strictly in accordance with the Government Order dated 7.4.1998 would be entitled to continue on same terms and conditions as were applicable at the time of their first appointment (subject however to the revision of maximum amount prescribed on per lecturer basis) till regularly selected candidates join. However, in so far as, the question of regularization of part time teachers u/s 31-E added by U.P. Act No. 42 of 2006 is concerned it was held that appointment being contrary to the provisions of Section 12 of U.P. Higher Education Services Commission Act is illegal and void as such can not be regularized under the provisions of Section 31-E added by U.P. Act No. 42/2006 by referring several decisions of Hon''ble Apex Court including State of U.P. Vs. Neeraj Awasthi and Others,

10. Ultimately, in concluding part of decision, this Court has issued following directions:

(a) Part-time teachers appointed under the Government Order dated 17.04.1998 would continue to function as such till regularly selected candidates recommended by the Commission joins, or in terms of the final judgment of the Hon''ble Supreme Court in SLP (Civil) No. 84 of 2004 whichever is earlier.

(b) Such Part-time teachers shall be entitled to payment at the rate provided for under the Government Order on per lecture basis subject to the maximum prescribed, they are not entitled to salary at par with regular Lecturers.

(c) Absorption u/s 31-E of the Commission's Act shall not be effected in favour of any part-time teacher till the Hon''ble Supreme Court considers and decide the Special Leave Petition.

(d) Absorption, if any, of part-time teachers u/s 31-E of the Act subsequent to the judgment of the Hon''ble Supreme Court (if it is decided in favour of part-time teachers) would be considered against such substantive vacancies which had not been advertised by the Commission till the enforcement of Act No. 46 of 2006.

(e) The director of Higher Education shall ensure that all existing vacancies are requisitioned by the Manager/Principal of the recognized affiliated and aided Degree Colleges within the time specified above and the Commission in turn shall ensure that regular selection are made against the said vacancies within one year from the date the requisition is received after following the procedure prescribed. The Director shall direct placement of the selected candidates immediately thereafter. There should be no complaint to this Court that selections could not be made by the Commission because of absence of Chairman/other member/other facilities being not made available by the State.

11. In wake of subsequent developments and legal position, learned Standing Counsel has submitted that it is very difficult for the State functionaries to give effect to the decision rendered by this Court in Writ Petition filed by the applicants as any step towards regularization of part-time teachers under the provisions of Section 31-E of the U.P. Higher Education Services Commission Act would be contrary to the direction of this Court and direction of Hon''ble Apex Court in aforesaid cases. Learned standing Counsel has also submitted that besides the aforesaid legal provision as incorporated under the provisions of Section 31-E of U.P. Higher Education Services Commission Act, there does not exist any other legal provision under which the claim of regularization of members of applicants' association could be considered by the State functionaries in pursuance of direction given by this Court in the writ petition filed by the applicants, which would not come in conflict with the aforesaid direction given by this Court in Anurag Tripathi's case. Thus, he submitted that in given facts and circumstances of the case non-compliance of judgment and order dated 12.4.2002 passed by this Court in Writ Petition No. 37014 of 1999 filed by the applicants in no stretch of imagination can be regarded as willful and deliberate disobedience and defiance of the order passed by this Court, therefore, the State functionaries/opposite party should not be asked and compelled to comply with the order passed by this Court contrary to the another decision of this Court and direction of Hon''ble Apex Court on the similar and identical subject in issue.

12. I have considered the rival submission of learned Counsel for the parties and also perused the decisions referred by the parties. In my opinion the submissions of learned Standing Counsel have some substance and requires to be examined by this Court before framing the charges against the opposite parties.

Accordingly, the parties are directed to bring on record the existing status of special leave to appeal (civil) No. 84 of 2004, before the Apex Court and further development in Writ Petition No. 44332 of 2003 filed by Malvika Shekhar by the next date of listing. List on 10.09.2009.

13. On that day the Director, Higher Education, shall remain present before the Court but Secretary, Higher Education need not appear before the Court unless again directed by this Court.