
(2014) 03 AHC CK 0247

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 64494 of 2008, 63695 of 2010 and 18243 of 2012

Umakant

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2014) 5 ADJ 176 : (2014) 5 ALJ 458 : (2014) 3 ESC 1424 : (2014) 3 UPLBEC 1967

Hon'ble Judges : Arvind Kumar Mishra-I, J; Arun Tandon, J

Bench : Division Bench

Advocate : Shailendra, Namit Srivastava, Kshetresh Chandra Shukla and J.K. Srivastava, Advocate for the Appellant; P.s. Baghel, Ram Gopal Tripathi, V.K. Singh and Gautam Baghel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsels for the parties. These 3 petitions have been filed by persons who had been working as Guest Faculty in various departments of the University of Allahabad. The basic relief in all these petitions is that the petitioners may be continuance as Guest Faculty the University may not insist on fresh selection every year and further to consider the regularization of the petitioners, as their appointment as Guest Faculty is against substantive posts. The petitioners seek quashing of the advertisement published by the University for regular appointment. Some of the petitioners in these 3 petitions are common. We have clubbed these petitions and the same are being decided by this common judgment.

2. We shall first deal with writ petition No. 64494 of 2008 which is first in point of time.

3. By means of this writ petition, the petitioners have prayed, for quashing of the order of the Vice-Chancellor dated 3.12.2008 and for a mandamus directing the

University respondents to comply with the provisions of Ordinance No. 44 and to permit the petitioners to continue as Guest Faculty Lecturers without facing any fresh interview/selection at least for a period of three years and they may be paid salary accordingly.

4. Dr. Umakant and four others had filed writ petition No. 47493 of 2008 against the University for reengaging them as Guest Faculty Lecturers in the academic session 2008-09 also and for restraining the University from making any fresh selection for like nature of appointment. The High Court disposed of the writ petition requiring the Vice-Chancellor to examine the grievance of the petitioners as per the representation made by them.

5. The Vice-Chancellor under the order impugned dated 3.12.2008 rejected their representations. It has been held that the University is bound to engage Guest Faculty Lecturers strictly as per the provisions of the Ordinance of the University of Allahabad which is now a Central University ref: Parliamentary Act No. 26 of 2005. The petitioners were asked to submit their applications in response to the process of fresh selection initiated and if they had already submitted their application, they would be called for interview alongwith other candidates provided they fulfill the conditions mentioned.

6. The petitioners claim that some of them have been working as Guest Lecturer in the respective departments since prior to the University being declared a Central University on 14.7.2005. After it was declared a Central University selections for appointment as Guest Faculty Lecturer was made on 13.9.2006 in which all the petitioners applied and were selected by a Selection Committee. Ref. Pr. 12 of the writ petition.

7. Again for the year 2007-08, on 22.9.2007 petitioners appeared before the Selection Committee and were selected as Guest Lecturer, (ref: Pr. 13 of the writ petition). It is stated that in view of Ordinance No. 44 of the University of Allahabad as notified on 9.2.2006 the term of Guest Lecturer is provided as the terminal date for instruction for the course of study in any academic year but the proviso permits re-engagement for the subsequent year without recourse to procedure for selection subject to maximum 3 consecutive academic years. In view of Ordinance No. 44 petitioners claim a right to continue for 3 academic years without fresh selection.

8. The order of the Vice-Chancellor is stated to be bad for non-consideration of the Ordinance No. 44.

9. Sri V.K. Singh, Senior Counsel for the University points out that Ordinance No. 44 has since been amended/deleted under the resolution of the Executive Council dated 20.1.2009 which amendment is not under challenge.

10. We may record that the unamended Ordinance No. 44 of the Central University provides that Guest Faculty Lecturer shall not continue after the terminal date of the academic year but if the Academic Unit, so desires, it may

continue the Guest Faculty Lecturer earlier selected in the next consecutive academic session without recourse to fresh procedure of the selection but this extension shall not be beyond three consecutive years.

11. The Ordinance No. 44 is not under challenge in the present writ petition. None of the conditions mentioned therein have been questioned on any ground whatsoever. The prayer in the petition is that the petitioners may be allowed to continue for three years on the strength of the selections dated 22.9.2007. This period of three years would admittedly expire in the year 2010. Therefore, for all practical purposes, the writ petition has become infructuous, irrespective of the stand taken by the University that Ordinance No. 44 itself has been amended on 20.1.2009.

12. We may also refer to the judgment of the Division Bench of this Court in the case of Dr. Kirti Raje Singh v. University of Allahabad and others, 2010 (6) ADJ 860 (DB), wherein it has been held that a Guest Faculty Lecturer has no right to continue till the regular selected candidates join or to claim regularization.

13. After the aforesaid order has been passed, Sri K.C. Shukla, advocate appeared and made a statement that the petitioners have filed amendment applications dated 7.8.2013 and dated 22.7.2013 for an additional relief i.e. for a writ of mandamus directing the respondents not to interfere in working of petitioners till regular selected candidate joins. Copy of the amendment applications has been handed over to the Court which is taken on record. Office may trace out the aforesaid amendment applications and place the same on records.

14. There is absolutely no mention as up to what date petitioners have worked after 2008. Ordinance No. 44 as it then stood has not been questioned in the amendment applications also. The rights of a Guest Lecturer have already been examined in the case of Dr. Kirti Raje Singh (supra). For the same reason, the prayer made under the amendment application cannot be granted.

15. 2nd writ petition No. 63695 of 2010 has been filed by Dr. Uma Kant, Rajnish Kumar Pandey, Dr. Satish Kumar Singh, Dr. Prem Chandra Mishra and Dr. Pankaj Mishra, they seek a writ of mandamus commanding the Allahabad University to consider the claim of the petitioners for regularization pursuant to the decision taken by the Executive Council in its meeting held on 29.10.2009 and as per the assurance given by the Vice-Chancellor in the meeting of the Executive Council on 7.8.2010.

16. We may record that three of earlier petitioners of 1st writ petition namely Dr. Vivek Kumar Pandey, Rajesh Kumar Tiwari and Dr. Uttam Singh have not joined in the second writ petition.

17. In this petition the petitioners No. 1 and 2 have claimed that they had worked as Research Associate for a period of five years. They were again selected as Research Associate in 1997 and have worked as such till March 2002.

18. Petitioner No. 1 was selected as Guest Lecturer in 2006 and 2007 while petitioner No. 2 has been engaged as Guest Lecturer since August 2001 and was selected again in 2006 and 2007.

19. They have been asked to perform examination and other teaching duties, as those performed by other Lecturers. They claim to have acted as part time Lecturers. It is their case that for regularization on the post of Lecturers, a Committee of Professor Raj Nath was constituted by the University. This Committee equated Guest Lecturers with other part time Lecturers. Recommendations of the said Committee were accepted by the Executive Council.

20. The petitioners No. 1 and 2 claim that in the year 2008 an advertisement was issued by the University for making fresh appointment as Guest Lecturer. The petitioners No. 1 and 2 who were already working objected to the same and they had filed writ petition No. 47493 of 2008 which was disposed of on 11.9.2008 asking the Vice-Chancellor to consider their favour. The Vice-Chancellor has rejected their representations.

21. The petitioners No. 1 and 2 with reference to the amendment introduced in Section 31(3)(c) of the U.P. State Universities Act, 1973 vide notification dated 20.5.2004 have claimed that they have become entitled for regular appointment. They have made representation for the purpose which has gone unnoticed as in the meantime the Allahabad University was declared a Central University by Act No. 26 of 2005.

22. In paragraph No. 31, it is disclosed that petitioners No. 3, 4 and 5 were engaged as Guest Lecturers on 7.11.2006 with the approval of the Vice-Chancellor they had filed writ petition No. 29912 of 2009 challenging the advertisement which was published in 2007. What has happened to the said writ petition is not known. These petitioners have also made representation for regularization which has not been considered.

23. However, on a fresh advertisement being published by the University in the year 2010. The petitioners have been compelled to approach this Court again. It is their case that the petitioners are entitled for regularization.

24. Reference has been made to the case of Dr. Shaila Rahmani, Professor Ram Kripal and Dr. Shailendra Tripathi, in whose favour the University has taken a decision to grant scale and designation of Lecturer on the basis of the recommendation of a Screening Committee selectively despite their earlier writ petition No. 45992 of 2005 having been dismissed by the High Court alongwith 9 others. The petitioners draw support from Article 14 of the Constitution of India.

25. This Court made a query as to under which statutory provision/scheme such regularization is being asked for. Learned counsel for the petitioners could not refer to any statutory provision where-under their services could be regularized.

26. We may record that Allahabad University Act i.e. Act No. 26 of 2005, the first Statute and Ordinance of the Central University do not admit of any such

regularization. The Vice-Chancellor and for that purpose the Executive Council has no authority of law to constitute a Committee for such regularization.

27. We may record that all the petitioners have been appointed as Guest Faculty Lecturers in pursuance to the advertisement which specifically stipulated that appointment was time bound and was not to confer any right whatsoever of regularization. The University has already initiated the process for regular appointment against vacant posts. Ordinance No. 44 (g) of the Allahabad University which earlier permitted continuance of Guest Faculty Lecturer for 3 academic sessions at best has been deleted under resolution of the Executive Council dated 20.1.2009.

28. We may further record that the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , has specifically opined that no attempt should be made to regularize the services of persons who have not been appointed in accordance with law. Appointment as Guest Faculty Lecturers in fact is not contemplated by the Act No. 26 of 2005. Such appointment of Guest Faculty Lecturers was only resorted to ensure that teaching does not suffer in the University in terms of the guidelines of the University Grant Commission.

29. In the case of Dr. Kirti Raje Singh v. University of Allahabad and others, 2010 (6) ADJ 860 (DB), a division Bench of the High Court has held that Guest Faculty Lecturer has no right to continue till the regular selected candidates join or to seek regularization.

30. So far as the grant of designation and scale of Lecturer to Guest Lecturer whose earlier writ petition No. 45992 of 2005 was dismissed is concerned, it may be recorded that this Court in the writ petition No. 29241 of 2011 Dr. Mohini Verma v. Union of India and others, has passed a detail interim order holding such decision of the University was per se illegal and has refused to grant parity on that basis. The order passed by us reads as follows:

The newly added respondent Nos. 4 to 6 are represented by Sri V.K. Singh and Sri D.K. Singh, Advocates. It is pointed out that respondent No. 4 Dr. Narendra Kumar Pandey has already expired.

Let the name of respondent No. 4 be deleted from the array of respondents and a note in that regard be made by the office on the memo of writ petition.

So far as respondent Nos. 5 and 6 are concerned, Sri R.N. Singh, learned Senior Advocate has made an application for further time being granted to file counter-affidavit. Application is allowed.

Let counter-affidavit be filed by 3rd April, 2014, when the matter shall be listed next.

Dr. Mohini Verma, the petitioner was appointed as Tabla Accompanist, in Chaudhary Mahadeo Prasad Degree College, Allahabad affiliated to the University

of Allahabad, which at the relevant time was a State University under the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act, 1973"). Petitioner seeks a writ of mandamus commanding the University-authorities to re-designate her as Lecturer at par with the 12 Technical post holders, who have been re-designated as lecturer and for payment of salary in the pay-scale of Lecturer from the same date.

Petitioner, by means of the amendment application has prayed for quashing of the order dated 15th December, 2009 and the order passed by the Vice-Chancellor dated 22nd July, 2010 (Annexure Nos. 6 and 16 to the present writ petition). Amendment application has already been allowed by the Court.

From the records of the present writ petition, we find that parity is being claimed by the petitioner in the matter of re-designation as Lecturer basically against respondent No. 4 Dr. N.K. Pandey, who has since expired, and respondent Nos. 5 and 6 and 12 other persons.

We find that the 12 technicians, the petitioner and respondent Nos. 5 and 6 alongwith Dr. N.K. Pandey were also appointed on a Class III post covered by Category-C-II, Appendix-I of the Calendar of the University of Allahabad, which at the relevant time was a State University.

Respondent Nos. 5 and 6 alongwith Dr. N.K. Pandey filed writ petition before the High Court claiming re-designation as Lecturer and payment of salary of the said post in accordance with the provisions of Section 31(3)(c) of the Act, 1973, being Civil Misc. Writ Petition No. 45992 of 2005 [Dr. Narendra Kumar Pandey and others v. The Registrar, University of Allahabad and others).

The writ petition was contested by the Allahabad University, it was case of University that Dr. Narendra Kumar Pandey alongwith other petitioners (i.e. respondent Nos. 5 and 6 to this petition) had not been appointed after publication of any advertisement and after following any procedure prescribed by law. It was also their case that they had not been appointed as part-time teachers. They were only Class-III employees not covered by Section 31(3)(c) of the Act, 1973, so as to be eligible for being redesignated as lecturers. It was also the case of the University before the High Court that said petitioners were not entitled to the benefit of Government Orders.

A Division Bench, after hearing learned counsel for the parties, vide judgment and order dated 5th December, 2006, dismissed the writ petition No. 45992 of 2005, after recording following findings:

(a) Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 were not appointed after publication of any advertisement or after following any procedure prescribed by rules.

(b) They were not appointed as part-time teachers, so as to be provided benefit of Section 31(3)(c) of the Act, 1973.

(c) The petitioners were not entitled to be considered for being re-designated as lecturers.

After recording the aforesaid findings, the Division Bench held that no person can claim absorption or regularisation merely on the strength of his continuance and there has to be adherence to Rule of equality in public employment, which is the basic feature of the Constitution of India. In support of the same, reference was made to the Constitution Bench Judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

The Division Bench also took note of the fact that by the time, the writ petition came to be heard, the University of Allahabad had already been made a Central University by an Act of Parliament of 2005, known as the "University of Allahabad Act, 2005", which came into force w.e.f. 14th July, 2005 and accordingly, it all recorded as follows:

no direction can be given to the Executive Council to consider the cases under the provisions of the Act, is not required to examine it in this petition.

We may record that u/s 5(d) of the University of Allahabad Act, 2005, so far as the existing officers and staff, who were working on 14th July, 2005, it was provided as follows:

5. Effect of incorporation of Allahabad University.....

.....

(d) every person employed by the University of Allahabad immediately before the appointed day shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes.

What logically follows is that so far as the staff including Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6, who were working on Class III post covered by Category-II, Appendix-1 of the calendar of the University of Allahabad are concerned, they had to be continued on similar terms and conditions with same privileges till altered by amendments to be made in the Statute. The Act, 2005 itself contemplates that the University, on its own including the Executive Council, will have no power to alter the designation, salary etc. of the existing staff except by amendment in the Statute.

We further find that in a selective manner, a legal opinion was obtained in the case of Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6. On the basis of the legal opinion so obtained, the Executive Council is stated to have constituted a Selection Committee and re-designated Dr. Narendra Kumar

Pandey and respondent Nos. 5 and 6 as lecturers, although their writ petition had already been dismissed by the High Court on 5th December, 2006, referred to above.

We are surprised to note that in the legal opinion, which was so tendered, there is absolutely no mention of the dismissal of the writ petition filed by Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 being writ petition No. 45992 of 2005, which was so hotly contested by the University itself. The learned counsel for the University or the private respondents could not furnish any reason whatsoever as to how the case of Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6, could be considered on the basis of legal opinion selectively, to the exclusion of all other similarly situate employees for such designation of Lecturer.

In these circumstances, we prima facie find that the grant of status of lecturers alongwith pay-scale to Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6 is patently illegal discriminatory and in teeth of Section 5(d) of Act, 2005.

The question that arises, is that if we refuse the relief prayed for by the petitioner on the ground that there can be any negative equality and the High Court may not issue any order asking the University-authorities to perpetuate the same illegality, as per the law laid down by the Apex Court repeatedly [Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another, is this Court to permit the hostile discrimination to continue. Will this Court permit others to enjoy the benefit of illegal orders made by the University, but for the petitioners, it shall lay its hands off. The answer, in our opinion, has to be a "No". We are conscious of the fact that such discrimination in an establishment like University and associate degree colleges only breeds discontent in the mind of persons, complaining discrimination. The Court cannot be a mute spectator and we cannot ask the petitioner to suffer at the hands of the University only because the University decides to act selectively and confer illegal benefit upon persons like Dr. Narendra Kumar Pandey and respondent Nos. 5 and 6, who had lost earlier before the High Court and who in terms of Section 5(d) of the University of Allahabad Act, 2005 could not have been designated as lecturers except by amending the Statutes.

If two equals have been made unequal because of any illegal act of an authority, which answers the description of "State" within the meaning of Article 12 of the Constitution of India and further if this Court under Article 226 of the Constitution of India, cannot refuse to confer same benefits upon the left behind as the same would amount to perpetuating the illegality than it is the duty of the Court to strike at the order/action of the authority, which has created the divide amongst the two, who were equal earlier and to see that illegal benefits are withdrawn from the beneficiary of illegal acts. In our opinion, this is the real intent of Article 14 of the Constitution of India. Scales of balance of justice must remain equal for all similarly situate.

We deem it fit and proper in the facts of the case at this stage to provide that the

University shall revisit the matter in respect of grant of status of lecturers alongwith salary to all such persons, who were working on a post covered by Category-C-II of the Calendar of the University of Allahabad on 14th July, 2005 when the University of Allahabad Act, 2005 was enforced and the University of Allahabad was declared to be a Central University. To respondent Nos. 5 and 6, there should be no further payment of salary as lecturers. Till the next date of listing, they may be paid salary of the post on which they were working on 14th July, 2005, as per the pay-scale amended upto date. The University shall take appropriate decision in light of what has been recorded above qua others also by the next date after affording opportunity of hearing to them.

List this matter on 3rd April, 2014.

31. For the reasons recorded above, which we reaffirm we see no good ground to grant the reliefs prayed for.

3rd WRIT-A No. -18243 of 2012

32. Dr. Uma Kant, Rajnish Kumar Pandey, Dr. Satish Kumar Singh, Dr. Prem Chandra Mishra and Dr. Pankaj Mishra who had filed writ petition No. 63695 of 2010, have filed this writ petition for quashing of the advertisement dated 14.2.2012 as well as for declaring the cut of date i.e. 31.12.1997 mentioned u/s 31(3)(c) of the U.P. State Universities Act, 1973, as arbitrary and void. The petitioners have also prayed for quashing the circular dated 4.10.2002.

33. The nature of the appointment of the petitioners as Guest Lecturer has already been noticed above. Except for referring to the resolution of the Executive Council which talks of constitution of a Committee in the matter of regularization of Guest Faculty, no other statutory provision could be referred to for the purpose of claiming any right to continue on the strength of their appointment as offered which was tune bound.

34. We hardly see any good reason to interfere with the process of regular selection which has been initiated by the University under advertisement dated 14.2.2012 at the behest of the petitioners. Therefore, relief No. 1 is denied.

35. So far as relief No. 2 is concerned, we may record that there are valid reasons for fixing 31.12.1997 as the cut of date under the provision of Section 31(3) (c) of the Act as amended vide U.P. Act No. 23 of 2004.

36. The State Universities Act initially did not contemplate any ad hoc appointment of teacher in an University. It contemplated only short-term arrangement in matter of urgency and leave vacancy, vide U.P. Act No. 1 of 1992 Lecturers, who were appointed on or before 30th June, 1991 by way of short-term arrangement without reference to selection committee and have been serving up to the date of the order, were provided the benefit of regular appointment on availability of substantive vacancy, and by the same Act system of appointment of teachers by way of short-term was done away with.

37. However, in certain Universities provision for appointment of part time lecturers was made in the interest of teaching or for other reasons on half of the initial pay.

38. The State Government issued Government Order dated 09th October, 2000 to the Universities to omit the provisions pertaining to appointment of part time teachers. However, to avoid any legal challenge to such decision, the State decided to amend Section 31 vide U.P. Act No. 23 of 2004. It was further decided to provide substantive appointment by executive council to such teachers of the University, who were appointed as part time Lecturers on or before 31st December, 1997.

39. This date of 31st December, 1997 has been chosen, according to the Standing Counsel, with reference to the issuance of the Government Order dated 09th October, 2000 inasmuch as subsequent to 2000 the University cannot offer appointment as part time Lecturers in terms of the Government Order and on that date the earlier appointees would complete nearly 3 years; of service so as to have some semblance of continuity or a right to be offered substantive appointment.

40. The cut-off date as mentioned in sub-section 3(c) of Section 31 of the said Act cannot be said to be arbitrary or without any basis.

41. So far as the challenge to the circular dated 4.10.2002 is concerned, we may record, that it has lost all its efficacies in view of the fact that Allahabad University has been declared to be a Central University under Act No. 26 of 2005. The Central University has decided to make regular appointment in accordance with its Statutes and the Ordinances applicable. No relief as prayed need be granted.

42. All the writ petitions are, accordingly, dismissed. Interim order, if any, stands discharged.