(1994) 12 AHC CK 0044

In the Allahabad High Court

Case No : Civil M. W. P. No. 516 of 1995

U.S.Upadhyaya APPELLANT

Vs

State of U.P.Others RESPONDENT

Date of Decision : 13-12-1994

Acts Referred:

Gorakhpur University Act, 1956 — Chapter 16 Part 3 Para 13.24, Chapter 16 Part 3 Para 16.24
Uttar Pradesh State Universities Act, 1973 — Section 49

Citation : (1994) 12 AHC CK 0044

Hon'ble Judges : Palok Basu, J and S.K.Jain, J

Final Decision : Allowed

Judgement

1. Dr. U. S. Upadhyay has filed this writ petition under Article 226 of the Constitution of India with the prayer that a writ in the nature of certiorari may be issued quashing the impugned order, dated 11111994 passed by the Principal, Madan Mohan Malviya Engineering College, Gorakhpur whereby the petitioner has been directed to superannuate on 301194. The further prayer in this writ petition is that a writ in the nature of mamus be issued coming the respondents not to retire the petitioner on 30th November, 1994 permit him to continue in service till 30th June, 1995.

2. When this writ petition was filed on 22111994, the opposite parties were granted time to file counter affidavit which has been filed. A rejoinder affidavit has also been filed by the petitioner. As suggested by both the'' parties, this writ petition is disposed of at the admission stage.

3. Sri U.N. Sharma assisted by Sri Suneet Kumar on behalf of the petitioner, Sri S. N. Upadhyay on behalf of Madan Mohan Malviya Engineering College, Gorakhpur sting counsel on behalf of State of U. P. have been heard at length. It may be mentioned here that Sri Dilip Gupta appearing on behalf of Gorakhpur University has informed the Court that since Madan Mohan Malviya Engineering College is the principal respondent, this writ petition has to be defended by that

College not by Gorakhpur University.

4. It may be said at the outset that the learned counsel for the parties have put all the relevant material through the petition the affidavits have rendered sufficient assistance for coming to the conclusion to which this court is adverting hereinafter.

5. Dr. U. S. Upadhyay is admittedly a Lecturer in Mathematics in the Applied Sciences Department of Madan Mohan Malviya Engineering College, Gorakhpur, for short the College hereinafter. This college is affiliated to the University of Gorakhpur, for short the University hereinafter. It is also not in dispute that the petitioner has during the pendency of this petition completed the age of 60 years on 301194.

6. The only question for determination is as to whether the petitioner has to give up the job of serving the college on that very day or ho can get all the benefits of the proviso added to subclause (3) of paragraph 16.24 in Chapter 16 Part III of the First Statutes of the University. For ready reference the said proviso may be usefully quoted here :

"Part III

Age of Superannuation:

16.24 (3) No extension in service beyond the age of superannuation shall be granted to any teacher after the date of commencement of these statutes :

Provided that if the date of superannuation of a teacher does not fall June 30 the teacher shall continue in service till the end of the academic session i. e. June 30, following he will be treated as on reemployment from the date immediately following the date of his superannuation till June 30, following."

7. The pleading on the part of the petitioner indicates that the petitioner should be covered by the provisions contained in paragraph 16.24 of the First Statute because there is no provision in the memorum of Association of the College which may be interpreted to be contrary to the aforesaid paragraph. In this connection, reliance was placed by the learned counsel for both the sides on paragraph 1324 of the First Statute which reads as under :

"13.24. The provisions of the Statutes relating to the affiliated colleges shall not apply to the Madan Mohan Malviya Engineering College, Gorakhpur in so far as they are in consistent with its Memorum of Association."

8. Sri Umesh Narain Sharma argued that so far as the Memorum of Association of the college is concerned it has no where made any provision that the teacher in the college would not get the benefits available to a teache1 of affiliated college by taking recourse to paragraph 16.24 as noted above.

9. Sri Upadhyay on behalf of the college has contended that on combined reading of some of the provisions contained in the Memorum of Association would not

permit the petition to plead argue that a teacher in the college would get the benefits extendable by the aforesaid provision 16.24. Reliance has been placed on clause X of the Byelaws. It is provided therein that the college shall abide by the directives issued by the State Government from time to time regarding performance function with regard to finances conduct of business of the aforesaid society managing the college. In this connection it was further argued that by clause 25, the society managing the college is empowered to :

(iii) frame, with the approval of the State Government, byelaws which may provide for all or any of the following matters :

(a) ....

(b) ....

(c) ....

(d) ....

(e) the classification methods of appointment the determination of the terms conditions of the teachers other staff of College/Institute as laid down in the service rules.

(iv) to (ix) (not incorporated here);

(x) to appoint such of the sanctioned staff as may be required for the efficient management of the affairs of the college regulate their requirement :

Provided that in the exercise of its powers discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

10. Next reliance was placed 3 by Sri Upadhyay on a byelaw No. 9 of the Model ByeLaws which according to the learned counsel have been adopted by the college. Subclause (2) of byelaw 9 reads as follows :

"Subject to the provisions of the Rules the Byelaws, all appointments to posts under the College/Institute shall ordinarily be made on probation for a period of one year in case of the Principal/ Director the Professors two years in case of all other teaching, nonteaching administrative staff after which period the appointee, if confirmed, shall continue to hold his office subject to the .provisions of the Rules Byelaws, till he attains the age of superannuation."

11. The last provision on which reliance was placed on behalf of the opposite party is contained in Byelaw 17 which may be quoted as under :

"Arty matter not covered by the above rules Byelaws will be governed by the relevant rules applicable to the employees of the State Government for time being in force till the Board frames its rules Byelaws."

12. The learned counsel for the respondents emphatically, argued that the

qualifying clause ''till he attains the age of superannuation'' while quoting the byelaw No. 9 (2) leaves no room for doubt that the teacher such as the petitioner must be taken to go out of employment on the date he attains the age of superannuation. Except the provisions noted above, the learned counsel has not been able to place reliance on any rule, byelaw or statute which may be brought to support his argument. He was however drawn the attention of the court to the fact that State Government had appointed on Steering Committee exercising its powers under U.P. State Universities Act Memorum of Association which committee had recommended that a teacher in the college may not be able to invoke the provisions of paragraph 16.24 quoted above.

13. Before taking up detailed discussion, it may be mentioned here that there is a salutary object behind the proviso to subrule (3) in para 16.24. The reemployment of the retiring teacher till 30th June next year enables the students to go on getting uninterpreted guidance from the teacher who has been teaching them for the last several months or years as the case may be. It may be mentioned here that this proviso was brought in by amendment was not in existence in the First Statutes. There does appear justifiable reason to treat a teacher of affiliated college or atleast the college, respondent in this petition as equal to the rest of the teachers who are imparting education in the University or other degree college affiliated to the University. It may be mentioned here that the college is one of the faculties in the Gorakhpur University by virtue of Regulation 7.01 of First Statutes of Gorakhpur University which for ready reference may be quoted here :

"XVII

The Faculty :

7.01 : The University shall have the following Faculties, namely :

(a) Faculty of Agriculture. ''

(b) Faculty of Arts.

(c) Faculty of Commerce.

(d) Faculty of Engineering Technology.

(e) Faculty of Law.

(f) Faculty of Medicine.

(g) Faculty of Science.

(h) Faculty of Education. !

Note :(i) The Regional College of Engineering Technology, Gorakhpur shall constitute the Faculty of Engineering Technology. (ii) The Baba Ragau Das Medical College Gorakhpur, shall constitute the Faculty of Medicine."

14. There is no dispute that what was earlier known as Regional College of Engineering Technology is now the Madan Mohan Malviya Engineering College, Gorakhpur. Thus, a retiring teacher in the college would be imparting education in the same faculty of the college till 30th June next as there is no contrary byelaw or provision in the First Statutes which would prevent such a teacher in the college to be deprived of the benefit of the provisions contained in para 16.24 quoted above,

15. The learned counsel for the college argued that Steering Committee report should be adhered to so that financial discipline is maintained. In the instant case the State Government forwarded the report of the Steering Committee to the College alongwith a letter dated 841992 to the college intimating that State Government has accepted the said report that the date of employment of a teacher of the college should not be extended beyond the superannuation date. The learned counsel for the college argued that after having sent the said communication, the State would not release the funds for paying salary to the teacher till 30th June next therefore, it was not possible for the college to continue such teachers after they reach their age of superannuation.

16. This argument has a fallacy inherent in it. There is no reason on the basis of which a teacher in the college a teacher in the University or other affiliated Degree Colleges can be distinguished for extending the said benefit. As mentioned above, the State or the University could have formulated Statutes or College could have made byelaws preventing the applicability of the provisions contained in para 16.24 to the case of a retiring teacher of the college. Acceptance of committee''s decision can at best be termed as administrative instructions on departmental decision. It cannot have force of law to do away with the provisions of the First Statutes contained in Paragraphs 16.23 to 16.26. It may be mentioned here that by virtue of Paragraph 17.13 the provisions "of Statutes 16.23 to 16.26 relating to the superannuation of teacher of University mutatis mutis apply to the teachers of an affiliated college." Power to draw such a statute flows from the provisions contained in Section 49 of State Universities Act, 1973. The State Government, in the face of these statutory provision, cannot issue administrative instructions on the basis of Steering Committee Reports. Therefore, a combined reading of the First Statutes of the University, the byelaws of the college the provisions of the State Universities Act would indicate that a teacher in the college would stand on the same footing as any other teacher in an affiliated degree college for the purposes of continue teaching till 30th June next. Therefore, the provisions of paragraph 16.24 would be available to a retiring teacher of the college as well.

17. In view of the aforesaid discussion, this writ petition succeeds is allowed. The respondents are directed to continue the services of the petitioner till 3061995 in accordance with provisions contained in Chapter 16.24 by reemploying him pay his salary other benefits accordingly. The parties will bear their own costs.