

(2012) 08 MP CK 0114

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 245, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 297, 298, 299 and 300 of 2012

Vikram Vishwavidyalaya, Ujjain and Others

APPELLANT

Vs

Dr. Parag Dalal and Others etc.

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2012) 08 MP CK 0114

Hon'ble Judges : Shri, J;Shantanu Kemkar, J;Prakash Shrivastava, J

Bench : Full Bench

Advocate : B.L. Pavecha, with Ms. Sadhna Pathak, for The University, for the Appellant; Vivek Dalal, learned counsel for Respondent No. 1 and Shri C.S. Ujjainiya, learned Panel Lawyer for Respondent No. 2 for the State, for the Respondent

Judgement

Shantanu Kemkar, J.—This order shall govern disposal of Writ Appeals No. 274 to 292 and 297 to 300 of 2012 (total 24 cases), as the facts and the question of law are common in all the writ appeals and they being decided by identical orders. For the sake of convenience, facts are taken from Writ Appeal No. 245/2012. The appellants (for short, the University) have filed this intra court appeal u/s 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, challenging the order dated 09.04.2012 passed by the learned Single Judge of this Court in Writ Petition No. 1176/2011 (s).

2. Short facts necessary for disposal of this appeal may be stated, that respondent was appointed as a Contract Teacher initially for a period of one year vide appointment order dated 23.11.2007 filed with the writ petition as Annexure P/1. The said appointment order was containing a condition that the appointment is for one year and it may be further renewed after one year on the basis of assessment, which shall be done by a duly constituted Assessment Committee

appointed by the Kulpati (Vice Chancellor). It also contained a condition that in no case, the appointment will continue beyond the period of three years.

3. The said appointment of the writ petitioner - respondent herein was renewed by the appellants - University for a period of one year vide order dated 15.01.2009 (Annexure P/3) with effect from 23.11.2008. Thereafter, the appellants issued an advertisement for appointment of 59 temporary Guest Faculty, which included the contract posts held by the writ petitioner. In the circumstances, a representation was submitted by all Contract Teachers requesting the University to extend their tenure as Contract Teachers. However, when no appointment order was issued for the further period as Contract Teacher, the writ petitioner filed a writ petition claiming benefit of Clause 4 (b) of the Ordinance No. 4(C) issued by the appellants under the M.P. Vishwavidyalaya Adhiniyam, 1973, seeking direction against the appellants - University to continue the writ petitioner in the service or to appoint him for the next tenure.

4. On being noticed, the University submitted its reply. After considering the reply filed by the University (appellants herein), the writ Court disposed of the writ petition by order passed on 09.04.2012 by directing the appellants to consider the case of the writ petitioner as per Clauses 4 (b) and 4 (c) of the Ordinance No. 4 (C) within a period of eight weeks. Feeling aggrieved, the appellants have filed this appeal.

5. Shri B.L. Pavecha, learned Senior Counsel for the appellants argued that the writ Court has committed error in not considering the fact that the writ petitioners were not appointed under Ordinance No. 4(C) and has also ignored the guidelines for appointment of Contract Teachers issued in the year 2006 and the conditions laid down by the Executive Council in its meeting held on 23.11.2007. It is also the case of the appellants that the appellants - University cannot be compelled to continue with the Contract Teachers and there is no bar for the University to make appointments by way of Guest Faculty instead of continuing the Contract Teachers. According to him, no mandamus could have been issued by the writ Court, when the writ petitioner had failed to establish legally enforceable right and corresponding legal duty of the appellants. He further contended that even otherwise provisions of Ordinance No. 4(C) are enabling provisions and would be attracted only when continuation of contract appointment beyond three years is in contemplation. It is also the case of the appellants that the contract appointments are to be made only as stop gap arrangement and it cannot be made a permanent feature. According to the appellants, now an advertisement has already been issued for making permanent appointments and in the circumstances, the directions issued by the writ Court are redundant.

6. In support of the stand taken by the appellants, they have filed various documents along with the memo of appeal and with the applications for taking additional documents on record. The documents, which have been filed along with this appeal and the applications are guidelines issued by the State

Government on 28.07.2006 (Annexure WA-2), guidelines issued by the Executive Council of the University on 23.11.2007 (Annexure WA-3), copy of the advertisement for filling the posts by way of Guest Faculty (Annexure WA-4), copy of Ordinance No. 4-C (Annexure WA-6), copy of the minutes of the meeting of the Executive Council held on 28.10.2010 (Annexure WA-7), copy of the minutes of Executive Council meeting dated 13.12.2010 (Annexure WA-8), copy of the letter dated 25.06.2012 sent by the second respondent Department of Higher Education (Annexure WA-9), copy of advertisement requesting for filling the unreserved and backlog teaching staff dated 11.07.2012 (Annexure WA-10). A contention has also been raised that the number of writ petitioners, who though have challenged the process for appointment of Guest Faculty, had, in fact, participated in the process for appointment of the Guest Faculty and also got selected as Guest Faculty. A list has been filed as Annexure WA-11 in support of this contention. With the application (IA No. 3192/2012) for taking additional documents on record minutes of the meeting held on 24.10.2010 has again been filed as Annexure WA-8, whereas another document i.e. minutes of the Executive Council meeting dated 13.12.2010 was also filed as Annexure WA-8 along with application (IA No. 2971/2012). A document Annexure WA-12 has also been filed to show that the writ petitioner had submitted his application for being appointed on the post of Guest Faculty. A request for publishing the advertisement for temporary Guest Faculty has also been filed.

7. On the basis of the aforesaid document, learned Senior Counsel for the appellants tried to impress upon us that the learned Single Judge has not at all considered the relevant factors and has mechanically passed the order directing consideration of the petitioners claim under Ordinance No. 4(C).

8. Shri Vivek Dalal, learned counsel for respondent No. 1 - writ petitioner, on the other hand, justified the directions issued by the learned Single Judge directing the appellants to consider the case of the writ petitioner as per Ordinance No. 4(C). He, however, submits that the grounds, which have been raised and urged at this stage, have not been raised by the appellants in reply to the writ petition. He also argued that various documents, which have been filed along with the writ appeal and the applications for taking additional documents on record, ought to have been filed by the appellants before the writ court and by not doing so, the same cannot be considered at this stage.

9. Having considered the submissions made by the learned counsel for the parties, we find that the pleadings of the writ petition and its reply filed before the writ Court are bereft of necessary details and are highly vague. The grounds of attack, which are now being raised, were not raised by the appellants in reply of the writ petition. Although the pleadings in the writ petition are also vague, the fault cannot be totally attributed to the appellants. The various documents, which have been filed for the first time before this Court should have been filed by the appellants before the writ Court. Having regard to the aforesaid deficiencies in the pleadings, there was no occasion for the writ Court to have

examined and dealt with all the issues, which are now being canvassed by learned counsel for the parties in this writ appeal.

10. As observed above, the minutes of the meeting of the Executive Council, Circulars of the State Government and various other documents, which may have some bearing on the issue involved, have now been filed were not before the writ Court. In the circumstances for appropriate adjudication of the matter on the issues canvassed for the first time in this appeal instead of dealing the same in this appeal, we feel it appropriate to dispose of the writ appeal by setting aside the order passed by the learned Single Judge and by remitting the matter back to the writ Court for deciding the controversy involved in the matter afresh. Parties are at liberty to amend their pleadings and file additional documents in support of their respective claims. With the aforesaid directions, this writ appeal and all connected writ appeals stand disposed of.