

(1989) 01 AHC CK 0078

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9690 of 1986

Vinod Kumar Anand

APPELLANT

Vs

Dr. A.D. Sharma and Others

RESPONDENT

Date of Decision : 12-01-1989

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 19, 2(19), 21, 31, 31(4)

Citation : (1989) 2 AWC 880

Hon'ble Judges : S.K. Dhaon, J;B.L. Yadav, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; S.N. Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

S. K. Dhaon, J.—The Petitioner, a Reader in the department of Economics in the University of Allahabad (hereinafter referred to as the University) challenges the legality of the order dated 20th March, 1986, passed by the Chancellor of the University directing the appointment of Dr. A.D. Sharma (hereinafter referred to as Dr. Sharma) as a professor in Economics.

2. A meeting of the Selection Committee was held on 30th July 1985. Besides Dr. D.S. Kushwaha, the Head of the Department, and the Vice Chancellor two experts, namely Dr. Ayodhya Singh and Dr. R.N. Tripathi participated in the meeting. Out of the 16 candidates in all for interview only 10 were present. These persons were interviewed. The Selection Committee by a majority recommended Dr. Sharma alone for appointment. The Head of the Department recorded a note of dissent. "During the discussion after the interview Dr. Ayodhya Singh stated that out of external candidates No. 10 and 13 are good. But if choice is to be made amongst internal candidates Dr. Sharma may be recommended because he is D. Litt. I informed the members that a panel must be drawn. Dr. Sharma got Readership on the strength of his D. Litt. Thereafter he has no work to his credit. He is junior to Dr. V.K. Anand and Shri D.K. Ghose who were appointed in 1977. There is no logic in giving a single name

recommendation when equally and better qualified and senior readers are there. The recommendation is therefore violative of statutory provisions and is being forced by majority. Only on August 9, 1984, the Selection Committee did not find Dr. Sharma fit for the post. There is nothing to indicate that he has contributed anything thereafter. I disassociate myself with such a recommendation when even a panel is being refused to be drawn and merit and work for the past few years after Readership (by internal candidates) is being ignored."

3. The Head of the Department, on 3rd August, 1985, sent a confidential communication to the Chancellor pointing out therein the irregularities committed by the Selection Committee in its meeting held on 30th July 1985, for selecting a professor in Economics. On 17th October, 1985, the Head of the Department sent another communication to the Chancellor. In this communication there was a reference made to the communication of 3rd August 1985. In this communication the head of department mentioned these material facts. On 30th July 1985, the Vice Chancellor and Dr. Ayodhya Singh (one of the experts were present at the venue of the meeting when he (Head of the Department) reached there. The name of the third expert was not disclosed to him and that expert did not turn up. The Vice Chancellor asked the Head of the Department if he could offer Dr. Ayodhya Singh a Visiting Professorship in Economics in the University as the current assignment of Dr. Singh at Manipur was to come to an end on 30th September, 1985. The Head of Department willy nilly accepted the suggestion of the Vice Chancellor although he could sense the ulterior motive of the Vice Chancellor in making the suggestion. A similar suggestion was made by the Vice Chancellor regarding the second expert Dr. R.N. Tripathi, who was, at that time, without any assignment. The Vice Chancellor handedover a blank piece of paper and asked the Head of the Department to make the proposals. He accordingly made the proposals offering visiting professorship in Economics in the University to the two experts. Under the instructions of the Vice Chancellor the offers to the two Professors to be made by the Vice Chancellor formally were typed out and brought forth by the stenographer. The proposals of the Head of the Department and the letters of offers to be made and to be signed by the Vice Chancellor were dated 30th July 1985. The Vice Chancellor signed the two letters, but later on observed that the letters should not bear the same date as that of the interview. A new set of letters were brought by the stenographer bearing the date 31st July 1985. The Vice Chancellor asked the Head of the Department to write down fresh set of proposals bearing the date of 31st July 1985. The letters containing the offer of the Vice Chancellor were handed over to the two experts. The interview commenced. The Vice Chancellor then made a casual observation to the two experts that he was looking for a suitable person, preferably a retired Professor of Economics, to take over as a full-time Director of the Agro Economic Research Centre of the University. During the course of the proceedings of the selection committee Dr. Sharma entered and whispered some thing in the ears of the Vice Chancellor. The Vice Chancellor thereafter walked out without leaving any

instructions. The proceedings were held up. One of the experts enquired from the Registrar as to whether the proceedings of the Selection Committee should continue or not. Before the Registrar could give a reply Dr. Sharma came in again saying "Sorry I am in again but this time not as a candidate but as a Proctor". Dr. Sharma informed the committee that he had been asked by the Vice Chancellor to convey to it (the committee) that the interview may continue as he was busy with the students. The Vice Chancellor remained absent from the meeting for about 45 minutes and in his absence four candidates were interviewed. After the interviews were over Dr. Ayodhya Singh (expert) said that the candidates at SI. No. 9 and 13 were good but if an internal candidate was to be considered

Dr. Sharma's name be recommended. The other expert and the Vice Chancellor readily and simultaneously endorsed the suggestion of Dr. Ayodhya Singh. The head of the department insisted that in case the committee felt that an internal candidate should be selected he (the head) at least should be heard. The Vice Chancellor observed that he knew Dr. Sharma better than the Head. The Vice Chancellor also observed that he would not permit any argument or discussion. One of the experts, Dr. Tripathi, observed that the Committee were not bothered about the opinion of the Head. The Vice Chancellor then belligerently asked the Head to put his note of dissent. The recommendation of the Selection Committee was not sealed in the presence of the Head and he walked out of the meeting.

The two experts made the following note:

Dr. A.D. Sharma is the best amongst the candidates interviewed and suitable for the appointment and hence recommended.

On 31st July 1985, the Vice Chancellor addressed a letter No. C-VII/VC-85 to the two experts aforementioned. The material contents of the letter were, "The University of Allahabad proposes to offer you the post of visiting Professor under UGC Scheme. You are, therefore, requested to send three copies of your report for further necessary action at our end."

4. On 16th August, 1985, the Secretary to the Governor sent a communication to the Registrar of the University. In it, it was pointed out that the Chancellor had received a complaint from a member of the Selection Committee for appointment to the post of Professor in Economics, the meeting of which was held on 30th July 1985. The Secretary observed:

In his complaint the complainant has stated that:

(1) Something specific was offered in writing by the Vice Chancellor before the interview began to the two experts present in the meeting which was highly objectionable and in the utter contravention of the prescribed norms for fair selection, and which had the intention of winning the undue favour of the concerned experts from a particular candidate.

(2) The Vice Chancellor abstained from the proceedings of the Selection Committee for about 46 minutes and four candidates were interviewed during his

absence.

(3) The name of an internal candidate has been recommended who also happens to be the chief proctor of the University by the Selection Committee--with a dissenting note from the Head of the Department and the Head of the Department was not allowed by the Vice Chancellor to present his view point, either as a member of the Selection Committee or as the Head of the Department.

(4) The recommendation was not sealed in the presence of the Head of the Department, which is a usual practice, and the Head of the Department left the place of the meeting only after it was formally called off by the Vice Chancellor (Chairman).

(5) The candidate recommended by the Selection Committee was not the best one in terms of merit and seniority.

2. I am directed to request you to send a detailed factual report, per bearer, along with the relevant proceedings of the above selection committee for submission to the Chancellor.

5. It appears that on 18th August 1985, the Registrar sent a reply to the Secretary to the Chancellor. However, it appears that the Secretary did not received the reply till 5th October, 1985, as on that date he sent a reminder to the Registrar and asked him (the Registrar) to send his comments latest by 15th October, 1985.

6. A meeting of the Executive Council of the University was convened on 9th September, 1985 and one of the items for consideration was the recommendation of the Selection Committee for the post of Professor of Economics. However, the meeting was postponed to 27th October, 1985. On 25th October, 1985, the Vice Chancellor sent a communication to the Secretary to the Chancellor stating therein that a meeting of the Executive Committee was scheduled to be held on 27th October, 1987, and the consideration of the recommendation of the Selection Committee relating to the appointment of Professor of Economics was on its agenda. The Vice Chancellor pointed out that unless the Chancellor desired otherwise, the Executive Council will consider the recommendation of the Selection Committee and take a decision which will, of course, be subject to the decision of the Chancellor. The Secretary the Chancellor, on 26th October, 1985, wrote to the Vice Chancellor. The material portion of the communication was:

...As I had informed you personally when you last met me in Lucknow, until the Chancellor conveys a decision on the matter pending before him it would nither be appropriate for you to place the matter before the Executive Council nor would it be in order for the Executive Council to take any decision on it. The consideration of the item before the Executive Council, therefore, be postponed till the Chancellor's orders are received... .

In view of this direction of the secretary, the Executive Council, in its meeting held on 27th October, 1985, did not consider the recommendation of the Selection Committee. On 22nd November 1985, the Secretary to the Chancellor sent a communication to the Registrar of the University stating therein that the proceedings of the Selection Committee may be put up before the next meeting of the Executive Council for its decision and whatever decision is taken by the Executive Council should be communicated to the Chancellor. Further, the Secretary also made it clear that no offer of appointment should be made to any candidate till the decision if any is taken by the Vice Chancellor. The proceedings of the Selection Committee, which were summoned by the Chancellor, were also sent under a sealed cover to the Registrar. There is nothing on record to indicate as to when the said communication was received by the Registrar of the University. There is also nothing on record to indicate as to what was the date of the next meeting of the Executive Council after 22nd November 1985. Further, there is nothing to indicate as to whether any meeting of the Executive Council was convened prior to 30th November 1985. Indeed, the affidavits filed by the Vice Chancellor, the Registrar and the record of the University produced before us are conspicuously silent on the aforesaid questions.

7. The Chancellor purported to exercise the powers vested in him under the proviso to Sub-section 8(a) of Section 31 of the U.P State Universities Act, 1973 (hereinafter referred to as the Act) on the ground that the Executive Council failed to take a decision on the recommendation of the selection committee within a period of four months from the date of meeting of such committee. The question is, whether the chancellor could exercise the power under the said provision in the instant case? On a thoughtful consideration our answer is in the negative. In the expression "teacher of the University", as defined in Section 2(19) of the Act, a Professor is included. In Section 19(f) the Selection Committee for appointment of Teachers of the University are considered to be one of the authorities of the University. Section 21 enumerates the powers and duties of the Executive Council, one of them being to appoint officers, teachers and other employees of the University. Section 31 mandates that subject to the provisions of the Act the teachers of the University shall be appointed by the Executive Council. Sub-section (4) of Section 31 talks of the composition of the Selection Committee for the appointment of a teacher of the University. Sub-section 8(a) of Section 31 provides that in the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement and his decision shall be final. The proviso is relevant and may be extracted:

Provided that if the Executive Council does not take a decision on the recommendations of the Selection Committee within a period of four months from the date of the meeting of such committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.

8. The statutory power of appointing a teacher is that of the Executive Council. This is so as under the Statutes the Executive Council has been constituted as the principal executive body of the University. Therefore, there can be no two opinions that in a normal situation the appointment of a teacher has to be made by the Executive Council. However, the Legislature has not conferred this power upon the Executive Council in an absolute form. Such a power is hedged in with "subject to the provisions of the Act". We have, therefore, to read the terms of the proviso afore quoted. The crucial words in the proviso are "does not take a decision". These words clearly imply that the Executive Council has failed to perform its statutory duty. It is further implicit that the Executive Council was free to take a decision and yet it did not take one. It follows that there should be no impediment in the way of the Executive Council in taking a decision. In the instant case, it is crystal clear that the Executive Council has a right under the statutes to take a decision on the recommendation of the Selection Committee on any date after 30th July 1985 and before the expiry of a period of four months thereof. It is also the settled legal position that the time of four months available to the Executive Council was to be computed from 31st July 1985, and, therefore, a period of four months was to come an end on 30th November, 1985. In the instant case, as already indicated, the Secretary to the Chancellor had, in his communication dated 26th October, 1985, restrained the Vice Chancellor from placing the matter before the Executive Council. This restraint order, it appears from the said communication, was orally and personally issued to the Vice Chancellor on some date anterior to 26th October, 1985. The Vice Chancellor was made free to place the matter before the Executive Council only through the communication dated 22nd November, 1985, sent by the Secretary to the Chancellor. It is thus apparent that at any rate between 26th October, 1985 and 22nd November, 1985, the Executive Council could not even consider the recommendation of the selection committee much less take a decision thereon. In the absence of any statutory prohibition, express or implied, justice and fair play demanded that the Chancellor should have made it clear to the University that while computing the period of four months as laid down in the provision the period during which he (the chancellor) had restrained the Executive Council from taking a decision would be excluded. To put it differently, the Chancellor was under an obligation to fix an extended time limit while sending the communication dated 22nd November 1985, so as to enable the Executive Council to exercise its normal statutory functions.

9. Section 68 of the Act empowers the Chancellor to give his or her decision on the question whether any decision of any authority is in conformity with the Act or the Statutes or the Ordinances made there under. Such a power can be exercised upon a reference made or even suo motu. In the instant case, the Head of the Department of Economics, a member of the Selection Committee, had made a reference to the Chancellor. The Selection Committee is an authority within the meaning of the Act. The Chancellor had taken cognizance of the reference. He had entertained it and there is a presumption that he restrained

the Executive Council from taking a decision on the recommendation of the Selection Committee. It is no body's case, nor can it be, that the Chancellor had no jurisdiction to pass a restraint order. It is obvious that such a power is implied in Section 68 of the Act.

10. The Chancellor has been conferred with two independent powers, one under the proviso to sub-Section 8(a) of Section 31 and the other u/s 68. The streams emanating from these powers flow in different channels and the two cannot meet. It is not and it could not be the intention of the Legislature to empower the Chancellor to create a situation for exercising power under the proviso by exercising power u/s 68. If such a situation or interpretation is countenanced it may lead to unhealthy results. Some Chancellor may some day decide not to allow the Executive Council of a particular University to appoint any teacher or professor in any Department or in any particular Department by merely issuing an interim direction to the Executive Council so that the period of four months may elapse. Such an exercise of power for the purpose of usurping the jurisdiction of the executive council will not only be an arbitrary exercise of power but also be an abuse of the power. Legal malice will be attributed to the use of such a power in no time, such a view or construction should be eschewed. An implied limitation into the statutory power of the Chancellor u/s 68 should be read. Therefore, whenever the Chancellor, in exercise of powers u/s 68, forbids the Executive Council to take a decision on the recommendation of the Selection Committee for a temporary period, that period should be excluded for computing the period of four months within the meaning of the proviso.

11. The Chancellor was head of the University, the Executive Council was duty bound to obey his order of injunction. The chancellor restrained the Executive Council from considering the recommendation of the Selection Committee to preserve the proceedings pending before him u/s 68. The chancellor could dispose of the matter while exercising powers u/s 68. He did not do so. He vacated the order of injunction and directed the Executive council to exercise its normal statutory power of considering the recommendation of the Selection Committee with a view to making an appointment of a Professor of Economics. In these circumstances, the Executive Council had a right to compute a period of four months from 30th July, 1985, after excluding the period during which it had been restrained from taking any decision by the Chancellor. Likewise, the Chancellor had a corresponding duty to give to the Executive Council an extended period of limitation so as to enable it to perform its statutory function.

12. It is true that in the instant case the chancellor passed the impugned order on 20th March, 1986. However, the Chancellor did not give any direction that the Executive Council was free to take a decision on the recommendation of the Selection Committee after excluding the time spent by him in passing the order of injunction and vacating the same. It appears that no attempt was made by the Vice Chancellor to convene a meeting of the Executive council for the purpose of considering the recommendations of the Selection Committee dated 30th July

1985, for appointing a Professor in Economics after the receipt of the communication dated 22nd November 1985, from the Secretary to the Chancellor. It also appears that the chancellor took the stand that four months were to be computed without any interruption or break from 30th July 1985, and that is why in the communication of the Secretary dated 22nd November, 1985, a specific direction was given that the matter should be placed in the next meeting of the Executive Council. It was implicit in the communication that the next meeting should take place before the expiry of a period of four months from 30th July, 1985. In any view of the matter, the University, including the Vice Chancellor, honestly and bonafide believed that the Executive council could take a decision only within a period of four months from 30th July 1985, viz. till 30th November 1985.

13. In the order of the chancellor the opening words are that the University of Allahabad has made a reference under Sub-section 8(a) of Section 31 of the Act because the Executive council failed to take any decision on the recommendation of the selection committee within a period of four months. This clearly indicates that the chancellor has taken the stand that his jurisdiction under the proviso is attracted merely because a period of four months has elapsed from the date of the meeting of the Selection Committee even though the Executive Council had been made ineffective by the Chancellor himself.

14. As discussed above, the Executive Council was entitled to exclude the period during which the order of injunction issued by the Chancellor was operative. As shown above, the chancellor and the University including the Vice Chancellor all along were under the impression that the period of four months expired on 30th November, 1985. We have no hesitation in taking the view that on the facts and in the circumstances of the instant case the Chancellor could not exercise jurisdiction under the proviso to Sub-section 8(a) of Section 31. The impugned order, therefore, is liable to be set aside on this ground alone.

15. Even on merits, it will be seen that in the impugned order the Chancellor did not advert at all to the charges levelled by the head of the department in his representation with regard to the irregularities and illegalities during the course of the meeting of the Selection Committee. It is to be remembered that the Secretary to the chancellor himself had, in his communication dated 16th November 1985 to the Registrar, catalogued the five grounds which formed part of the complaint of the Head of the Department. We have quoted above in extenso the said communication of the Secretary. Again, the Chancellor did not advert at all to the complaint of the Head of the Department that instead of a panel of three candidates only one particular candidate had been recommended by the Selection Committee. In this connection we may refer to Sub-section (7-A) of Section 31 which provides that it shall be open to the Selection committee to recommend one or more names but not more than three names. We have gone through the biodata of the candidates who had appeared before the Selection Committee. We are deliberately refraining from expressing any opinion

on the merits of any particular candidate. However, we do feel that some of the candidates, including the Petitioner, were entitled to be considered for appointment by the Executive council. Another feature in the impugned order is that the Chancellor did not make any enquiry as to whether the third expert had been invited at all. It is true that Section 66 of the Act may be used for the purpose of curing the defect in the composition of the selection committee, but nonetheless the Chancellor as the head of the University, in our opinion, should have made due inquiries as to whether the third expert had been nominated and invited at all. These are the additional grounds on which the impugned order stands vitiated.

16. We have not examined the allegations of malafides made by the Petitioner against the two experts. Indeed we cannot do so as the Petitioner has failed to take steps to serve the two experts with the notices of this writ petition even though they have been arrayed as Respondents to the writ petition. However, we cannot ignore the fact that by his communication dated 31st July 1985, the Vice Chancellor did offer visiting Professorship in Economics to the two experts. It may be a coincidence that the offer was made on the very next day of the meeting of the selection committee. We may content ourselves by merely observing that likelihood of bias is enough to vitiate any proceeding.

17. The question now is, what order should be passed by us? That matter has become pretty old. During this intervening period many more qualified candidates must have come into existence, both in the University and outside. In such matters the interest of the University and the students should be paramount. Having given the matter our anxious consideration, we have gone to the conclusion that this is a fit case where a fresh advertisement should be issued for the appointment of a Professor in Economics, a fresh Selection Committee constituted and a fresh selection made by that committee. We hope and trust that the University and its Vice Chancellor, in particulars will act with utmost speed.

18. This petition succeeds and is allowed. The order dated 30th March, 1986, passed by the Chancellor appointing Dr. A.D. Sharma as Professor of Economics is quashed. The consequential letter of appointment issued to Dr. Sharma is also quashed.

19. The parties are directed to bear their own costs.