

(2000) 12 AHC CK 0044

Allahabad High Court

Case No: C.M.W.P. No"s. 37396 and 39684 of 1998

Sheela Singh

APPELLANT

Vs

Purvanchal University, Jaunpur
and others

RESPONDENT

Date of Decision: Dec. 20, 2000

Acts Referred:

- Uttar Pradesh State Universities Act, 1973 - Section 21(3), 31(3), 7(9)

Citation: (2001) 1 AWC 664 : (2001) 1 UPLBEC 697

Hon'ble Judges: S.R. Singh, J; D.R. Chaudhary, J

Bench: Division Bench

Advocate: V.K. Shukla, B.K. Singh Raghuvanshi and Ashok Bhushan, for the Appellant;
Pankaj Mittal, Vimal Chandra Misra and Ajit Kumar Singh, S.C., for the Respondent

Final Decision: Dismissed

Judgement

S. R. Singh, J.

Since both the petitions arise out of common cause of action and raise common questions of law, they were taken up together with the consent of the parties counsel for a convenient disposal by common judgment.

2. The advertisement dated 2.11.1998 is sought to be quashed in so far as it relates to the post of Lecturer (General Category) in the Department of Business Administration, Purvanchal University. Jaunpur. The petitioner, it is alleged, is working on the post in question on the basis of appointment orders issued from time to time in her favour for specified durations. Concededly, the posts in question were created on temporary basis for the first time vide Government Order dated 11.12.1997 for a period up to 28.12.1998 and were allowed to continue up to 28.2.1999 vide Government Order dated 30.3.1998. In fact, vide Government Order aforesaid one post of Professor, two posts of Reader and four posts of Lecturers in the Department of Business Administration were created on temporary basis and

extended up to 28.2.1999. There is no document to show further extension.

3. We have heard Sri V. K. Shukla and Sri Ashok Bhushan for the petitioner and Sri Pankaj Mittal counsel for respondents. According to the impugned advertisement, the post in question has been shown to be a temporary post and it pertains to the recruitment year 1998-99. In the advertisement, it is also mentioned that "the post is likely to be permanent." It has been submitted by Sri V. K. Shukla and Sri Ashok Bhushan, learned counsel appearing for the petitioner in their respective cases that the impugned advertisement is liable to be quashed inasmuch as it tends to defeat the petitioner's right to be absorbed u/s 31 (3) (b) of the U. P. State Universities Act, 1973 (in short the Act). It has been submitted that the posts would be deemed to have been created by the University itself in view of Section 7 (9) of the Act and as and when the post is formally created and becomes permanent, the petitioner would be entitled to be given appointment in the substantive capacity without reference to a selection committee as visualised by Section 31 (3) (b) of the Act. Shri Pankaj Mittal, learned counsel appearing for the University, on the other hand, submitted that no post could be created except with the prior approval of the State Government or except in accordance with any special or general order of the State Government and Section 31 (3) (b) of the Act, it has been submitted by Sri Pankaj Mittal, would not apply to the facts of the present case inasmuch as the said provision is attracted only when a teacher is appointed to a temporary post likely to last for more than Six months and such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant. The posts in the instant case were created on temporary basis for a specified duration w.e.f. 11.12.1997 or from the date of appointment, whichever is later.

4. We have given our thoughtful consideration to the submission made at the Bar. It would appear that the petitioner Smt. Sheela Singh was initially appointed on ad hoc basis vide order dated 25.3.1995 for a specified period lasting 31.5.1995. She joined her duties on 30.5.1995. By order dated 16.6.1995, the University extended the appointment for a further period of two months, i.e., upto 31.7.1995 or till regular appointment on the recommendation of the selection committee whichever event might happen earlier. It contained a specific stipulation that the petitioner would have no claim for regular appointment nor would she claim seniority on the basis of the extension of period of her appointment. Petitioner Shasht Srivastava was similarly appointed Lecturer on ad hoc basis in the Department of Master of Business Administration vide order dated 17.2.1995 in the scale of Rs. 2,200-75-2,800-100-4,000 upto May 31. 1995 which was extended upto 31.7.1995 or till regular selection whichever might happen earlier. By order dated 29.8.1995 both the petitioners were appointed afresh for specified period from September 1. 1995 to October 31. 1995 and by order dated 9.11.1995 they were appointed on similar term for specified period from November 8, 1995 to December 31, 1995. By office

order dated 8.1.1996 issued pursuant to the Vice Chancellor's order dated 2.1.1996, appointment was from 2.1.1996 to 31.3.1996 ; by order dated April 8, 1996 issued pursuant to the Vice Chancellor's order dated 27.3.1996 for three months from 1.4.1996 to 31.6.1996 and by order dated 26.8.1996 issued pursuant to the Vice Chancellor's order dated 22.8.1996 from 1.8.1996 to 31.10.1996 or till regular selection whichever event was to happen earlier. The period of appointment of Smt. Sheela Singh was extended, vide order dated 28.11.1996 issued pursuant to the Vice-Chancellor's order dated 20.11.1996 from 1.11.1996 to 31.1.1997. There is no such extension of the services of Shashi Srivastava nor is there any order extending the services of Smt. Sheela Singh beyond 31.1.1997.

5. It would thus appear that the petitioner in each of the two writ petitions was given appointment from time to time for a specified durations. In the counter-affidavit filed on behalf of the University, it has been stated that one post of Professor, two posts of Reader and four posts of Lecturer were created for the purpose of Post Graduate classes in the Department of Business Administration. A perusal of the order dated 11.12.1997 being Annexure 1 would indicate that the posts were created w.e.f. the date of the order or the date of appointment, whichever is later, for limited period up to 28.12.1998. By subsequent order dated March 30, 1998, posts created vide order dated 11.12.1993 were allowed to continue up to 28.2.1999 on same terms and conditions. One of the conditions stipulated in the order dated 11.12.1997 that the University would bear the expenses for the posts out of its own resources and the Government would not sanction any grant for that purpose. There is no document on record to show creation of temporary posts prior to December 11. 1997 by which posts were created for a specified duration up to 28.12.1998 which period was subsequently extended up to 28.2.1999. Appointment of Miss Shashi Srivastava came to an end on 31.10.1996 and that of Smt. Sheela Singh on 31.1.1997. Clause (a) of Section 31 (3) of the Act has no application to the facts of the present case inasmuch as clause (a) of subsection (3) of Section 31 enables the Vice Chancellor to appoint a teacher, other than a Professor. In officiating capacity in consultation with the Dean of the Faculty "in a vacancy caused by the grant of leave to an incumbent for a period not exceeding ten months without reference to the Selection Committee" and clause (b) of sub-section (3) of Section 31 applies where any teacher is appointed after reference to a selection committee to a temporary post likely to last for more than six months, or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding ten months. Prerequisite conditions for the applicability of sub-section (3) of Section 31 are not satisfied in the present case. The argument that the University would be deemed to have created the post cannot be accepted in view of specific prohibition contained in Section 21 (3) which clearly provides that "no post shall be created either in the University or in any institute or constituent college maintained by the University except with the prior approval of the State Government or except in accordance with any general or special order of the State

Government." Appointment made by the University from time to time prior to 11.12.1997 was thus against no posts temporary or permanent. The impugned advertisement seems to have been issued after the State Government sanctioned the temporary posts vide Government Order aforestated. Since the posts were created for specified duration upto 28.2.1999, the impugned advertisement clearly mentioned that it was for the recruitment year 1998-99. In our opinion, therefore, petitioners acquired no right to the posts created by the Government Order aforestated and no exception can be taken to the impugned advertisement. Section 7 (9) of the Act no doubt permits the University "to institute teaching posts required by the University and to appoint persons to such posts" but Section 31 (3) (b) of the Act would not be attracted to teaching posts so instituted by the University u/s 7 (9) of the Act. In other words teachers appointed to such posts are not entitled to claim any right under clause (b) of Section 31 (3) of the Act.

6. The petitions are misconceived and are accordingly dismissed with costs on parties.