

(1997) 03 AHC CK 0220

Allahabad High Court

Case No: C.M.W.P. No. 31368 of 1995

Dr. Madhu Gupta

APPELLANT

Vs

Chancellor, University of
Allahabad and Others

RESPONDENT

Date of Decision: March 20, 1997

Acts Referred:

- Uttar Pradesh State Universities Act, 1973 - Section 31(3), 31(8)

Citation: (1997) AWC 49 Supp

Hon'ble Judges: Palok Basu, J; O.P. Garg, J

Bench: Division Bench

Advocate: V.S. Diwedi, for the Appellant; S.N. Upadhyay, for the Respondent

Final Decision: Allowed

Judgement

Palok Basu, J.

While it is true that this writ petition was tagged with pending petitions but on hearing learned Counsel for the parties it transpired that this is more or less based upon the facts involved and peculiar to it and. therefore, with the consent of the parties, this writ petition has been segregated and heard separately.

2. Dr. Madhu Gupta filed this writ petition on 3.11.1995 with the prayer that:

(1) A mandamus should issue directing the Respondents to advertise a post of Analytical Chemistry by proceeding with the interview which is fixed to be held on 5.11.1995.

(2) A certiorari may issue quashing the advertisement No. 1/95.

3. After hearing learned Counsel for the parties an interim order was passed, the relevant portion of which reads as under :...

After hearing counsel for the parties this Court directs that if any selection committee meets on 5.11.1995, the selection process will go on but the result shall not be declared until further orders.

4. Thereafter counter and rejoinder-affidavits were filed. On behalf of the University stay vacating application was also filed and in due course a number of supplementary counter and rejoinder-affidavits have been exchanged. As agreed by the learned Counsel for the parties this writ petition is being heard and finally disposed of at the admission stage under the rules of the Court.

5. The basis for filing of the writ petition by Dr. Madhu Gupta is that she strongly contends that in the Chemistry Department of the Allahabad University there was and has been a post of Lecturer in Analytical Chemistry. According to her, this post is presently vacant and therefore there should be proper advertisement and due process of selection should be followed whereafter only suitable candidate may be appointed. The parallel grievance of the Petitioner however, is that the University has adopted a procedure which is not legal and permissible under the statutes inasmuch as there has been an attempt to allege that the post of Lecturer in Analytical Chemistry in the Department of Chemistry has already been duly Tilled in. This is not only challenged but criticised by the Petitioner's counsel as an illegal attempt which should be thwarted at the outset. On the other hand however, the University counsel contends that in view of peculiar facts and circumstances the University rightly puts before this Court that the aforesaid post of Lecturer in Analytical Chemistry stands duly tilled in by one Dr. V. S. Tripathi and therefore, no fresh advertisement is necessary, in that regard.

6. However, many other additional facts and circumstances are to be taken note of before deciding the main controversy which has been noted above. Dr. Rama Shankar Dwivedi, Senior Advocate assisted by Shri V. S. Dwivedi has been heard at substantial length in support of this writ petition. Shri R. N. Singh, Senior Advocate assisted by Shri P.S. Baghel and Shri A. P. Sahi for the University has also been heard at substantial length.

7. The facts concerning the Post of Analytical Chemistry are noted hereafter to the extent to which they are not denied:

(A) 1966...One Post of Lecturer in Analytical Chemistry was created in the department of chemistry in the Allahabad University.

(B) 1968...(1) An advertisement appeared in the relevant columns of newspapers calling for applications for the said post.

(2) Dr. M. H. N. Srivastava was appointed a temporary lecturer in the aforesaid post of Lecturer Analytical Chemistry.

(C) 1969...(1) Regular selection committee met for selecting formally a lecturer in the said post.

(2) Dr. A. K. Ghosh was selected by the selection committee who joins on the said post of Lecturer in Analytical Chemistry in the said department of chemistry, Allahabad University.

(D) 1987...(1) Dr. Ghosh however left this post as he went to join the Banaras Hindu University in the year 1987 where he unfortunately died.

(2) 30.6.1987...The head of the Department, Chemistry wrote a letter to the Vice Chancellor/Registrar intimating that the Post of Lecturer in Analytical Chemistry has fallen vacant.

The Petitioner has admittedly joined the chemistry department as a Research Associate in Analytical Chemistry being provided stipend by the C.S.I.R. in the year 1987.

8. As noted above there is no dispute on the facts mentioned above. However, the Petitioner's case is that two advertisements were made one, Advertisement No. 4/89 and another Advertisement No. 1/91 concerning the said vacant post because of Dr. Ghosh having resigned from the said post. According to University's stand however this advertisement did not mean specific vacancy for the post of Lecturer Analytical Chemistry. Again, admitted fact is that in the year 1993 a regular advertisement appeared indicating that eight posts are vacant in the Department of Chemistry.

9. The Petitioner contends that one of these posts should have been treated as an advertisement for the aforesaid vacant post of Lecturer in Analytical Chemistry whereas the University's stand is that no such specialized advertisement was made and the published advertisement should not and could not have been treated as an advertisement for the post of Lecturer Analytical Chemistry.

10. Be that as it may, the Petitioner's counsel raised certain grievance concerning the selection committee which met regarding the aforesaid eight posts. However, again it is admitted that ten candidates were recommended by the resolution of the selection committee dated 3.3.1994, the Executive Council however recommended only seven names and did not agree with the recommendation for one post which was consequently referred to the Chancellor under Clause (a) of Section 31(8) of the State University Act (for short the Act).

11. The Petitioner's representation dated 17.5.1995 came to be disposed of by the Chancellor's order dated 30.4.1995. There is of course a mention in the order of the Chancellor that the post of Lecturer Analytical Chemistry was not advertised. The Petitioner's counsel contends that once the Petitioner was assured of the fact that the vacancy which was caused due to resignation of Dr. Ghosh as noted above was not advertised, she could logically have legitimate expectation of an advertisement in that behalf. The University's counsel however says that once it was known that there was no specialized advertisement the Petitioner should have challenged that

order by a separate writ petition then and there.

12. However, for the reasons hereinafter appearing this question is of no importance if a look is had as to the existence of the said vacancy and its method of filling.

13. In reply to the contention of the Petitioner that the latest two advertisements should not be permitted to be filled in by selection through the selection committee, it was contended that these two posts have fallen vacant subsequent to the aforesaid eight posts. It is said by the University that on 4.3.1994 one Dr. G. D. Pandey got a personal promotion to the Reader cadre and therefore a post in the Lecturer's cadre has fallen vacant. Likewise, on 15.3.1994 one Dr. Harihar Mishra who was working as Reader under personal promotion with lien on the post of Lecturer unfortunately died and therefore a vacancy arose in the post of regular Lecturer. It is contended that these two posts which have been advertised now which is under challenge in this writ petition have got nothing to do whatsoever with the alleged post of Lecturer in Analytical Chemistry in the Department of Chemistry.

14. Having thus noted the stand of the University as to the vacancies now under challenge, the stand of the University has to be scrutinised as to what has happened to the post of Lecturer Analytical Chemistry in the Chemistry Department which was vacated by Dr. Ghosh.

15. A detailed supplementary counter-affidavit described as a second supplementary counter-affidavit narrates at page 3 the position concerning one Dr. Vijay Shankar Tripathi who is said to be now a regular Lecturer in the Department of Chemistry. The relevant extract as against said Dr. V. S. Tripathi should be noted here for ready reference:

(17) Dr. V. S. Tripathi:

(A) Appointed as Lecturer 23.9.1979.

(B) Promoted as Reader under personal promotion scheme.

(C) The appointment was through statutory selection committee.

(D) The Chancellor quashed the appointment of Dr. V. S. Tripathi.

(E) Dr. V. S. Tripathi filed writ petition in the High Court which has been allowed on 17.3.94 quashing the order of the Chancellor.

(F) Dr. V. S. Tripathi had specialization in Analytical Chemistry and was working as temporary Lecturer.

(G) On 20.2.1987 the post of Lecturer in Analytical Chemistry fell vacant after Dr. A. K. Ghosh left for Banaras Hindu University.

(H) Subsequently Dr. V. S. Tripathi got substantive appointment as permanent Lecturer in Chemistry Analytical according to the provisions of Section 31(3)(b) of the U.P. State Universities Act, 1973 because the University took a view that "if the writ petition filed by Dr. V. S. Tripathi was to be decided in his favour, he was fully entitled to get the benefits of getting appointment against a permanent post according to the provisions of Section 31(3)(b) of the U.P. State Universities Act, 1973." (See internal page 5 of the Slate's II supplementary counter-affidavit marked by the Court with red pencil under signature today).

16. The Petitioner however, has filed the agenda of the Executive council of the Allahabad University fixed for 26.11.1994. Item No. 4 of the said agenda concerned the teachers' appointments in which at S1. No. 10 is included the matter of Dr. V. S. Tripathi. Translated into English this agenda would read as under:

(10) Dr. V. S. Tripathi, Lecturer, Chemistry Department : Dr. V. S. Tripathi's appointment was done through Selection Committee on 22.9.79. On the Chancellor's declining said recommendation, Dr. Tripathi obtained an interim order from High Court in a writ petition. On 17.3.1994 the High Court set aside the Chancellor's order. In this manner he continues to be in employment from the date of his original appointment. Dr. Dadri Vishal Agarwal has left for Jabalpur University on 31.1.1985 and due to this one post of Lecturer is lying vacant. Dr. Agarwal has submitted his resignation w.e.f. 1.2.1987. Therefore, treating the earlier period of employment as on probation, the name of Dr. Tripathi has been recommended for appointment to the permanent post thus vacated by Dr. Badri Vishal Agarwal.

This resolution was confirmed in the meeting of the Executive Council dated 16.10.1994. The appointment of Dr. V. S. Tripathi therefore has been approved as Lecturer in the Department of Chemistry.

17. Having thus noted the resolution of the Executive Council and also the approval to the said resolution it is impossible to concede to the stand of the University that Dr. Tripathi was appointed as a Lecturer in Analytical Chemistry in the Department of Chemistry in Allahabad University. The vacancy caused by Dr. A.K. Ghosh in 1987 has to be duly advertised and filled in.

18. It is equally true that there may be some basis to justify the stand of the University that the present two vacancies which are under challenge in this writ petition, may be relating to the general posts of Lecturer in the Chemistry Department, not of the post of Lecturer in Analytical Chemistry. This being so, and selection process having been completed for these two posts under the interim order of this Court, the Petitioner's claim that these two advertisements should be quashed, cannot be sustained.

19. In view of this conflicting result emerging from University's pleadings, an order has to be passed by this Court which should be in consonance with the provisions of the Act keeping in view the pending vacancy caused in the Chemistry Department

on the post of Lecturer in Analytical Chemistry for which there may be a legitimate expectation of the Petitioner because she has been working as a Research Associate and hopes that if a proper selection is made after due advertisement she may be selected on the one hand, and, the earlier order of the Division Bench on the basis of which University appears to have regularised the appointment of Dr. V. S. Tripathi, on the other.

20. During the course of argument it was pointed out by Shri R.N. Singh that even recommendation of the Executive Council concerning the initial eight posts was declined by the Chancellor and has thus become sub judice through various writ petitions in this Court. He said that interim orders have been obtained by those whose names were recommended by the Executive Council and hot contest is being made by the University concerning those claims and therefore it is not very certain as to whether those posts will be again advertised or not but he did say that in the near future there is going to be vacancy in the Chemistry Department due to retirement of some Lecturer.

21. In view of what has been discussed above interest of justice will be met if a mandamus is issued to the University to advertise one post of Lecturer in the Analytical Chemistry in the Department of Chemistry in the Allahabad University, as soon as the next advertisement is made concerning the vacancy which will fall first after this judgment.

22. Consequently, writ petition succeeds and is partly allowed. A mandamus is issued to the Allahabad University to advertise a post in the Department of Chemistry i.e., the post of Analytical Chemistry in the said Department on the vacancy falling first after this judgment.

23. The interim order dated 3.1.1995 is vacated. Parties will bear their own costs.