

(2003) 08 AHC CK 0182

Allahabad High Court

Case No: C.M.W.P. No. 30848 of 2001

Saleem Akhtar Khan

APPELLANT

Vs

Vice Chancellor, Aligarh Muslim
University and Others

RESPONDENT

Date of Decision: Aug. 4, 2003

Acts Referred:

- Aligarh Muslim University Act, 1920 - Section 13(6), 36B

Citation: (2003) 6 AWC 4668

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: N.A. Khan and Party in Person, for the Appellant; Dilip Gupta, Arun Pundir, Arun Kumar Advs. and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard the Petitioner in person and the standing counsel.

2. The present writ petition has been filed by the Petitioner challenging the office memo dated 21.7.2001, by which the Departmental Promotion Committee (D.P.C.) has not recommended the Petitioner and has recommended 39 other persons for appointment as Assistant (Administration) in various Departments of the University.

3. The Petitioner was appointed on 13.2.1985 by the General Selection Committee on the post of U.D.C. The grievance of the Petitioner is that since 1985 he has not been promoted on the post of Assistant (Administration), even though he has put in more than 18 years of service. He alleges that vide order dated 31.3.1998 eighty applications were invited for considering the case of promotion of candidates by the D.P.C. In pursuance thereof, the Petitioner submitted duly filled up proforma on 4.4.1998.

4. The Petitioner submits that the Assistant Registrar (Administration) had sent letters on 7.6.2001 for test and interview for the post of Assistant (Administration). Assistant Registrar was interested, but the Petitioner was not coming in the eligibility criteria alleging mala fides against the Assistant Registrar. He states that on 25.6.2001 another letter was issued in which some juniors, who are having less qualification, were called during the period 3.7.2001 to 5.7.2001 and thereafter a select list was published on 21.7.2001. He states that his name at serial No. 6 of the select list was removed from the list and was substituted by one Liyakat Ali.

5. The other contention of the Petitioner is that the persons at serial Nos. 9, 27, 30 and 34 in the select list are having qualification of only P.U.C. for the post of A.F.A. with eight years on probation on the post of U.D.C. which is also given in the proforma annexed as Annexure-1 to the writ petition. He further states that the employees at serial Nos. 31 to 38 do not have any experience of five years on the post of U.D.C. He also states that incorrect facts have been given in the counter-affidavit that twelve employees alleged to have been working since 1992. They have only experience of three and a half years on the post of U.D.C.

6. Thus, the contention of the Petitioner in short is that the persons mentioned at serial Nos. 31 to 39 in the office memo dated 21.7.2001 had not completed five years on the lower post. In so far as the person mentioned at serial No. 9 is concerned, he had passed P.U.C. Examination in 1968. He was eligible to be considered for promotion to the post of Assistant (Administration).

7. The counsel for the Respondents states that qualification for the post of Assistant (Administration) a candidate should either possess a Bachelor Degree from a recognised University and he should have working experience for at least five years continuously in the next lower post of the concerned cadre or relaxation in approved qualifications should be given only for academic qualifications. If a candidate is Intermediate/P.U.C. and has worked for atleast eight years, he could also be considered for promotion. The relaxation in approved qualifications are annexed as Annexure-1 to the writ petition and are to be given upto the extent of next lower degree/certificate. Thus, if a candidate is Intermediate/ P.U.C. and has worked for atleast eight years, he should also be considered for promotion.

8. It is also submitted that for promotion to the post of Assistant (Administration) seniority alone is not the criteria. He submits that the Petitioner had appeared for the written test and also appeared before the D.P.C. His name was not recommended by the D.P.C. and as such he was not promoted to the post of Assistant (Administration).

9. Rebutting the averment that the persons mentioned at serial Nos. 31 to 39 in the office memo dated 21.7.2001 are not eligible, as they have not completed five years in the next lower post. The detailed chart is given as follows:

~~8~~16.1992
~~8~~210.1992
~~9~~32.1992
~~3~~04.1993
~~3~~57.1995
~~8~~01.1995
~~3~~3.1996
~~3~~8.1996
~~9~~91.1994

10. From the perusal of the above chart, it is apparent that these persons have worked as U.D.C. and have completed more than five years in the next lower post.

11. In so far as the candidates mentioned at serial Nos. 17 to 30 are concerned, it is submitted that they had passed the P.U.C. Examination in the year 1968 and it is wrongly stated by the Petitioner that they are only High School. Having passed P.U.C. Examination in year 1968, they were eligible to the post of Assistant (Administration) in view of the relaxation as they had worked as U.D.C. for more than eight years as U.D.C.

12. Sri Dilip Gupta, counsel for the Respondents has argued that the persons mentioned at serial Nos. 9, 17 and 30 were appointed on the post of U.D.C. on 4.8.1989 and 11.9.1991 respectively.

13. The counsel for the Respondents further submits that the promotion have been made to the post of Assistant (Administration) in accordance with law and all the averments to the contrary are incorrect and the recommendations of an expert like the Selection Committee should not be normally interfered with by the High Court in exercise of its writ jurisdiction. He also submits that no material has been placed before this Court by the Petitioner by which mala fide could be established. Reliance has been placed on the decisions of the Apex Court in [Dr. Angshula Sarkar Vs. State of U.P. and others](#), ; Dalpat Abasaheb Solanki v. B. S. Mahajan AIR 1990 SC 434 and [Osmania University represented by its Registrar, Hyderabad, A.P. Vs. Abdul Rayees Khan and Another](#), wherein the Apex Court has held that the Court has found it not necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates.

14. Lastly, it is submitted by the counsel for the Respondents that the Petitioner has an alternative remedy of filing an appeal to the Executive Council u/s 36B of the Aligarh Muslim University Act, 1920 as amended from time to time and also a representation to the visitor of the University u/s 13(6) of the aforesaid Act.

15. Admittedly, the Petitioner has not been found fit by the Selection Committee. The Petitioner had participated in the written test and had also appeared before the D.P.C., but his name was not recommended by the D.P.C. and has therefore, not been promoted. Merely because he was not selected, he cannot turn around and challenge the selection process after participation in the selection. No malice could be established against the members of the Selection Committee.

16. The writ petition, therefore, fails and is dismissed. However, looking at the long service of the Petitioner, it is directed that his case in the next P.U.C. Examination be considered sympathetically. No order as to costs.