

(2016) 11 ADJ 57 : (2017) 1 AllWC 51 : (2017) 1 ESC 108

ALLAHABAD HIGH COURT

Case No: Civil Misc. Write Petition No. 26144 of 2000.

Smt. Babita Vedic -
Petitioner @HASH
Director of Higher
Education and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 16, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 11 ADJ 57 : (2017) 1 AllWC 51 : (2017) 1 ESC 108

Hon'ble Judges: Sudhir Agarwal and Prabhat Chandra Tripathi, JJ.

Bench: Division Bench

Advocate: A.K. Singh, Ashok Khare, Siddharth Khare and S.N. Srivastava, Advocates, for the Petitioner; C.S.C., Hemendra Kumar, Shailendra, Yogesh Agarwal and Anil Tiwari, Advocates, for the Respondents

Final Decision: Allowed

Judgement

Sudhir Agarwal, J. - Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Prateek Chandra, learned counsel for petitioner, learned Standing Counsel, Sri Hemendra Kumar and Sri Anil Tiwari, Advocates for respondents.

2. The writ petition under Article 226 of Constitution of India has assailed order dated 27/29.4.2000 passed by Director of Higher Education, U.P., Allahabad (hereinafter referred to as "DHE") holding alleged claim of petitioner for appointment on the post of lecturer (Economics) illegal. It has also challenged order dated 09.12.1999 mentioned in the order dated 27/29.4.2000 whereby appointment of Dr. Pushpendra Singh, respondent-3 was approved to be valid and direction for payment of salary to him has been given due recognition.

3. The facts of case in brief are that Thakur Biri Singh Degree College, Tundla, Firozabad (hereinafter referred to as "College") is a recognised institution affiliated to Dr. B.R. Ambedkar University, Agra (hereinafter referred to as "Agra University") and is governed by the provisions of U.P. State Universities Act, 1973 (hereinafter referred to as "Act, 1973) read with U.P. Higher Education Services Commission Act, 1980 (hereinafter referred to as "Act, 1980).

4. There were two sanctioned posts of Lecturer (Economics) in the College. One was already occupied by Dr. Sanjeev Bhardwaj. Vacancy in another post was advertised by Committee of Management of College on 6th January, 1991 along with two other posts of lecturer in "English" and "Foundation Course".

5. Petitioner applied pursuant to the said advertisement for the post of Lecturer (Economics). Selection was initially scheduled on 19th January, 1991 but was postponed to 5th March, 1991. Selection Committee recommended petitioner for appointment on ad-hoc basis to the post of Lecturer (Economics) and one Anil Sharma was kept second in merit list. Documents were forwarded to Vice-Chancellor, Agra University, by Principal, vide letter dated 22nd March, 1991. Pursuant thereto, Agra University vide order dated 18th April, 1991 communicated approval to the appointment of petitioner as ad-hoc Lecturer (Economics) and one Jwala Singh as ad-hoc Lecturer (English). A copy of the said letter has been filed as Annexure No.3 to the writ petition which is addressed to Principal of the College.

6. Secretary, Committee of Management of the College, in turn, issued appointment letter dated 20th April, 1991 appointing petitioner as Lecturer (Economics).

7. In accordance with Section 31(C) (2) of Act, 1980 papers of ad-hoc teachers were forwarded for regularisation. Selection Committee wherein DHE was also Member, communicated selection of petitioner for regularisation vide order dated 23th June, 1992 and made recommendation accordingly.

8. In the seniority list published by University in the year 1992 and 1994, name of petitioner was shown in the list of Lecturers (Economics), working in various affiliated colleges of University, at serial number 67 and 73, respectively. Name of respondent-3, Dr. Pushpendra Singh was not shown in any of the above documents.

9. The then ad-hoc Principal of College also sent a letter to Commission on 20th December, 1991 giving statement of teaching staff of College and therein name of petitioner was also shown as Lecture (Economics) but respondent-3 did not find place therein.

10. On the request of Commission, an affidavit was also submitted by the then Principal of the College informing Commission that vacancy of Lecturer (Economics) was forwarded to Commission vide requisition dated 28th July, 1990.

11. Committee of Management also passed a resolution accepting recommendation of Commission for regularisation of petitioner in its meeting dated 9th August, 1992. Later on, petitioner was also confirmed as Lecturer (Economics) w.e.f. 1st July, 1993.

12. All of a sudden, DHE issued a show cause notice dated 15.12.1999 to the College with reference to representation of respondent-3, forwarded by Principal of College, vide letter dated 5th July, 1999, to Authorised Controller/ District Magistrate of the College, stating that there is serious discrepancy with respect to second and third post of lecturer. The second post of Lecturer (Economics) was requisitioned to Commission on 28th July, 1990. Due to non-availability of selected candidate from Commission, steps for ad-hoc appointment were taken by Management and advertisement was published on 6th July, 1991 in different newspapers. Interview was held on 19th January, 1991. Selection Committee selected and recommended sole candidate Dr. Pushpendra Singh and recommendation was accepted by Committee of Management on the same day i.e. 19th January, 1991. Consequently, appointment letter was issued to Dr. Pushpendra Singh on 28th June, 1991 and he joined on 1st July, 1991. Since then he was continuously working on the said post. Petitioner Smt. Babita Vedic, neither ever applied nor appeared in the said interview. It appears that subsequent selection held on 5th March, 1991 pursuant whereunto appointment letter was issued to petitioner on 6th March, 1991 and her joining dated 12th March, 1991 must be against third post since second was already filled in by respondent-3. It was enquired as to when third post was created, when requisition sent to Commission, when vacancy was advertised and in what manner selection was held. It also said that petitioner was appointed against 3rd post which was not valid. The subsequent requisition and payment of salary etc. was illegal.

13. Petitioner submitted a reply dated 21st January, 2000 to the aforesaid show cause notice dated 15th December, 1999 giving all the details. A supplementary reply dated 27th January, 2000 as well as 8th February, 2000 was also submitted to office of DHE.

14. A representation was also given to District Magistrate who was Authorised Controller in the College and under his directions an investigation was made by Sub-Divisional Magistrate, Tundla who found several illegalities and fraud committed by respondent- 2 and 3 with regard to the alleged appointment of respondent-3.

15. The impugned order then has been passed by DHE holding appointment of petitioner forged and fictitious while recognising appointment of respondent-3.

16. The contention of petitioner is that all documents pertaining to appointment of respondent-3 are forged and manufactured. Findings recorded by DHE are incorrect and perverse. He has illegally ignored documents submitted by petitioner. DHE has no jurisdiction or authority to adjudicate legality and validity of selection which took place in 1991 in accordance with provisions of Act, 1980 and Removal of Difficulties Order as well as Act, 1973 and the Statutes framed thereunder. Respondent-3 was never selected or appointed and got no approval from University. His claim for appointment is without any

approval of Authority.

17. We find that respondent-3 Dr. Pushpendra Singh filed a writ petition No.14043 of 1995 stating that an advertisement was published in daily newspaper, Dainik Jagran, on 14th January, 1991 for making ad-hoc appointment of Lecturer (Economics). Dr. Pushpendra Singh applied and after his selection was appointed vide appointment letter dated 28th June, 1991 and joined on 30th June, 1991. He further said that there were two teachers already working as Lecturer (Economics) but due to increase of strength of students an additional Lecturer was required by College for which requisition was sent to Commission and having not received any recommendation for three months, Management proceeded to make ad-hoc appointments as a result whereof, he was selected and appointed. However, he was terminated by order dated 19th April, 1995 and this order of termination was challenged in the aforesaid writ petition. Respondent-3 made following prayers in the aforesaid writ petition:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order of termination dated 19.4.1995 passed by respondent no.1 (Annexure-4).

(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to interfere in the working and functioning of the petitioner as ad-hoc lecturer in Economics.

(iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to pay month to month salary to the petitioner as and when it falls due."

18. Initially, this Court while entertaining the writ petition, passed an ex-parte interim order on 25th May, 1995 which reads as under:-

"The college Thakur Biri Singh Degree College has now come within the grant-in-aid scheme of the State Government. The petitioner was appointed under Section 16 of the Act. The appointment letter dated 28.6.1991. The Committee of Management appears to have made the appointment looking at the need and necessity of the students. The petitioner apprehends that he will not be paid salary by the opposite parties.

Sri R.K. Saxena, learned Standing Counsel prays for and is granted six weeks time to file a counter affidavit. Sri Hemendra Kumar, learned counsel for the petitioner may file rejoinder affidavit within two weeks thereafter.

List this writ petition for admission/ final disposal in the week commencing 21st August, 1995.

In the meantime the respondents are restrained from interfering in the working of the petitioner as a teacher in Economic in the aforesaid college and shall continue to make payment regularly month-wise. This interim order will operate till 30th September, 1995."

19. The aforesaid writ petition filed by respondent-3, ultimately, was dismissed on a statement made by his counsel on 14th May, 1998 that it has rendered infructuous and dismissed accordingly. The order passed by Division Bench on 14th May, 1998 reads as under:-

"Heard Sri Hemendra Kumar for petitioner. It is submitted by him that the writ petition has been rendered infructuous and it may be dismissed as such. Considering the said submission, the writ petition is dismissed as infructuous."

20. The result of dismissal of writ petition No. 14043 of 1995 is that termination order dated 19th May, 1995 remained as such and would have its consequences in full swing.

21. From the above averments made by respondent-3 in above writ petition, in para 8, it is evident that he was not selected or appointed against one of two sanctioned posts of Lecturer (Economics) where-against petitioner Smt. Babita Vedic was appointed on 6th March, 1991 and respondent-3 himself claimed and stated before this Court in para 8 of the writ petition No. 14043 of 1995, sworn on the basis of personal knowledge, that he was appointed when Management needed an extra Lecturer (Economics) due to increase of strength of students. It is not the case of respondent-3 or Management that such post where-against respondent-3 claimed to have been appointed, was sanctioned or created by DHE at any point of time though college is in grant-in-aid and power to sanction a new post/ creation of posts is vested in DHE and not the Management.

22. In the counter affidavit filed before this Court, respondent-3 in this case has taken a totally different stand and challenged all the documents filed by petitioner as forged and fictitious.

23. We find that the stand taken by respondent-3 in his own writ petition has now been completely changed and a new case has been set up by him. This aspect has not been considered by DHE while passing the impugned order. DHE has completely failed to notice that respondent-3 in his earlier petition No. 14043 of 1995 has admitted his appointment on a new post asserting that two sanctioned posts were already filled in. At the time when respondent-3 filed writ petition No. 14043 of 1995 and put up his claim the facts disclosed therein are more reliable being his own discussion than subsequent different stand taken by him. It appears that the record of said writ petition was not placed before DHE, and he had no occasion to look into the said matter and also to examine the factum as to when respondent-3 was terminated and order of termination has attained finality, having not been set aside by Court or by any competent Authority, then the question of recognition of appointment of respondent-3 cannot arise. In the entire counter affidavit filed by respondent-3, he has said nothing about the aforesaid order of termination as also details of writ petition filed by him and the ultimate fate it had. He has clearly conceded whole set of facts and is guilty of misrepresentation and fraud.

24. Respondent-3, therefore, having already been terminated by order dated 19th May, 1995 and that order has attained finality, we find that DHE in taking a view that respondent-3 was correctly appointed and documents pertaining to appointment of petitioner are not correct and trustworthy and in recording findings otherwise which cannot be sustained, has erred in law. In the absence of sanctioned post by competent authority, respondent-3 even otherwise had no claim on the post of Lecturer (Economics) in the College.

25. In the result, writ petition is allowed. Impugned order is set aside. Since respondent-3 was already terminated and that order has attained finality after dismissal of his writ petition No.14043 of 1995, appointment of petitioner which was made earlier to the alleged appointment of respondent-3, is valid and would be entitled to all consequential benefits.

26. Parties shall bear their own cost.