

Dr. Giridhar Pandit Vs State of U.P. and Others

Court: Uttarakhand High Court

Date of Decision: June 27, 2005

Acts Referred: Constitution of India, 1950 " Article 226

Uttar Pradesh Higher Education Services Commission Act, 1980 " Section 12(2), 16, 16(1)

Uttar Pradesh Reorganisation Act, 2000 " Section 35

Citation: (2006) 1 AWC 1107

Hon'ble Judges: Prafulla C. Pant, J; M.M. Ghildiyal, J

Bench: Division Bench

Advocate: S.N. Babulkar, for the Appellant; K.P. Upadhyay, S.C., for the Respondent

Judgement

Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the

nature of certiorari, quashing the impugned order dated 20.6.1992 (Copy Annexure-10 to the writ petition), passed by respondent No. 2,

whereby respondent No. 2 has refused to regularize the services of the petitioner. Further, mandamus has been sought, commanding the

respondents to regularize the services of the petitioner.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioner was appointed as Lecturer in Political Science in Deo Prayag Maha

Vidhyalaya, Deo Prayag, vide order dated 22.6.1983 (copy Annexure-1 to the writ petition), issued by the Manager of the College in pursuance

to the resolution dated 20.6.1983, passed by the Management Committee. In pursuance to said order, the petitioner joined his duties in the college

on 1.7.1983. The said college was a private institute. On 5.11.1984, the institute got published an advertisement, inviting applications for lecturers

in Political Science in accordance with the provisions of U.P. Higher Education Service Commission and Selection Boards Act, 1980. The

petitioner applied afresh in compliance of said advertisement and got selected. Consequently, an appointment letter dated 10.1.1985 (copy

Annexure-4 to the writ petition) was issued in favour of the petitioner. Subsequently, approval was given to the appointment for a period 1.7.1989

to 30.6.1991 and again for the period ending 30.6.1992, by the Vice Chancellor of H.N.B. Garhwal University, which was communicated vide

letter dated 20.8.1991 (copy Annexure-7 to writ petition) by the authorities concerned. It appears that meanwhile the name of the college changed

and was renamed as "Omkanand Saraswati Mahavidyala", Deo Prayag. The college was recognized by the State Government with said name

and style, vide order dated 1.7.1989, when it was affiliated to aforesaid university. According to the petitioner, his appointment was made on

recommendation of duly constituted Selection Committee and he served for long period of 8 years since 10.1.1985. However, petitioner's

services were terminated allegedly against the law. Infact, the State Government issued an ordinance (copy Annexure-9 to the writ petition) on

22.11.1991, wherein regularization of ad hoc teachers in Degree Colleges was provided and Selection Committee for said purpose was

constituted to screen the ad hoc appointments. The respondent No. 2, vide impugned order dated 20.6.1992 (copy Annexure-10 to writ petition),

informed that the claim for regularization of petitioner's services has been rejected on the ground that the Management Committee of the College

has made appointment without issuing requisition for vacant post as required u/s 16 of the aforesaid Act of 1980. It is further mentioned in said

letter that the petitioner did not fulfil also the essential qualifications, required as per the Statute of H.N.B. Garhwal University. Petitioner has

challenged the said order on the ground that the refusal of regularization and termination of his services in consequence thereof is alleged to be

arbitrary and illegal. The said writ petition was originally filed before the Allahabad High Court, wherefrom it has been received on transfer u/s 35

of U.P. Reorganization Act, 2000.

3. On behalf of respondent Nos. 1 to 3, a joint counter-affidavit has been filed before the Allahabad High Court, wherein it has been admitted that

temporary affiliation was granted to Omkanand Saraswati Maha Vidyalaya, Deo Prayag by His Excellency the Governor of the State, for the

period 1.7.1989 to 30.6.1992. It is further stated that the college is governed by U.P. State Universities Act, 1973. and the statute of H.N.B.

Garhwal University. In the counter-affidavit, attention of the Court has been drawn to Section 16(1) of U.P. Higher Education Service Commission

and Selection Boards Act, 1980, which reads as under:

16. (1) Where the management has notified a vacancy to the Commission in accordance with Sub-section (2) of Section 12 and the Commission

fails to recommend the names of suitable candidates in accordance with Sub-section (1) of that section within three months from the date of such

notification the management may appoint a teacher on purely ad hoc basis from amongst the persons holding qualification prescribed therefor.

It is further stated that Committee of Management did not send requisition of the post to the U.P. Higher Education Service Commission and

Selection Board, before the appointment was given to the petitioner. As such, his appointment was against the provisions of law. In the counter-

affidavit, attention of Court has also been drawn to para 11.13 (1) of the Statute of H.N.B. Garhwal University (25th amendment) and para 11.01

(5) of said statute in which minimum qualification for a lecturer in degree college is prescribed. In this connection, it is also stated on behalf of

respondents No. 1 to 3 that the petitioner obtained following degrees and percentage of marks, which did not fulfil the requisite qualification,

particularly in view of percentage of marks in Intermediate and Bachelor of Arts:

(a) Intermediate 39.8%

(b) B.A. 39.2%

(c) M.A. 56%

(d) Ph.D. In the year 1981.

However, the approval given by the Vice-Chancellor regarding appointment of the petitioner for the period 1.7.1989 to 30.6.1992 is not denied.

It is alleged on behalf of the respondents, that said approval does not confer any right with the petitioner to get his services regularized. Defending

the order of termination, it has been stated that petitioner's services were terminated in accordance with provisions of Section 31C(4) of U.P.

Ordinance No 43 of 1991, which reads as under:

31C (4) A teacher appointed on ad hoc basis referred to in Sub-section (1) who does not get a substantive appointment under that sub-section

and a teacher appointed on ad hoc basis who is not eligible to get a substantive appointment under Sub-section (1) shall cease to hold the ad hoc

appointment on December 21, 1991.

Lastly, it is stated that said date of December 21, 1991, was extended up to 30.6.1992.

4. A separate counter-affidavit was filed on behalf of respondent No. 4, i.e., Committee of Management, by it's the then Manager Shri R.S.

Rawat, on 11.7.1993 in which it has been alleged that the petitioner is a close relative of Mr. Prem Lal Vaidya, the then Manager of the college

who held said office in the year 1983-1984. It is further stated in this counter-affidavit that though the petitioner alleges himself to have been

appointed on 22.6.1983 but the college itself came into existence only in July, 1984. To cover up the anomaly, it is alleged fresh appointment

dated 10.1.1985 which has been claimed by the petitioner. It is also alleged in this counter-affidavit, by the Manager of the college that the

petitioner with the help of Shri Vaidya, the then Manager, without following the provisions of U.P. Higher Education Service Commission and

Selection Boards Act, 1980, got issued illegal appointment letter in his favour as lecturer in Political Science. It is also alleged in the counter-

affidavit of Committee of Management that said appointment was never approved by the Committee of Management before. Till 30.6.1989,

students used to appear in the examination as private candidates as the affiliation to college was granted only thereafter. It is further alleged in Para

8 of this counter-affidavit that petitioner taking advantage of the situation himself used to pose as Principal and Manager of the Institute and thereby

succeeded in getting temporary approval from the Vice Chancellor. Challenging Annexure-8 to the writ petition, it has been stated that the

Experience Certificate dated 30.6.1992, is a fabricated document. Apart from the above pleas, it is also stated in the counter-affidavit that neither

the petitioner possesses the requisite qualification for appointment as Lecturer in degree college nor Selection Committee, constituted under U.P.

Higher Education Service Commission and Selection Board Act, 1980 was noticed regarding the vacancy before making any ad hoc

appointments. As such it is stated that impugned order (Annexure-10), was rightly passed by respondent No. 2.

5. In the rejoinder-affidavit, the petitioner has reiterated the contention of the writ petition and it is stated that in view of the judgment passed in Dr.

Siya Ram Singh v. Director, Higher Education (copy Annexure-RA-3 to the rejoinder-affidavit), the present petition also deserves to be allowed,

as the similarly situated petitioners have been given relief by the Allahabad High Court.

6. A supplementary-counter-affidavit, is filed on behalf of the Government of Uttaranchal in which it has been stated that since the Management of

Omkanand Saraswati Degree College, made a request to the Government to take over and provincialise the college in the year 2001, the

Government has taken over said college and it has become a Government Degree College with the same name (Omkanand Saraswati Degree

College, Deo Prayag). In this connection, it is further stated that since on 16.8.2001, when the institute was transferred to the Government, the

petitioner was not in service, as such the Government of Uttaranchal is not liable to make payment of salary to the employees, whose services

were not amalgamated as per the terms of Government order dated 25.6.2003. It is further stated in this supplementary-counter-affidavit that

service of another appointee, Smt. Pragya Penuly who was appointed in his place on ad hoc basis, earlier by the Management, after the

petitioner's services were terminated, she too has also filed another writ petition before the Allahabad High Court. An additional-rejoinder-

affidavit, filed in response to said counter-affidavit is also on the record, in which again the contents of the writ petition have been reiterated and

reliance has been placed in the judgment passed by the Apex Court in State of U.P. and Others Vs. Dr. Deep Narain Tripathi and Others, and it is

contended that petitioner is entitled to the relief sought by him in the writ petition.

7. We heard learned Counsel for the parties and perused the affidavits, counter-affidavits, rejoinder-affidavits and supplementary-affidavits. We

also perused the original record, summoned, pertaining to provincialization of the college.

8. The original record, which is summoned by the Court at the time of argument through standing counsel, pertaining to the Omkaranand Saraswati

Government Degree College, shows that the college in question has been taken over by the Government of Uttaranchal and it has become

Government Degree College with said name. The record shows that at present one Shri G. N. Lohni is the Principal in the aforesaid college. The

registers produced of the aforesaid college show that since November, 1995, the petitioner's name is not shown in any of the salary registers. As

such, he doesn't appear to have been working in the college for more than ten years. Between the period 1995 to 2001, registers show that one

Lalita Prasad Pandey, Lecturer in Sanskrit was officiating as Principal of the College. From the supplementary-counter-affidavit, filed on behalf of

the Government of Uttaranchal read with Government order No. 2304/ek0l0fo0/2001 dated 16.8.2001, it is established that the Omkaranand

Saraswati Maha Vidyala is no more a private institute and is a Government Degree College.

9. Before further discussions, it is pertinent to mention here that letters pertaining to the appointment of petitioner relied by him and those by the

respondent Nos. 1 to 3. Annexure-1 to the writ petition is copy of appointment letter, relied by the petitioner himself reads as under:

izcU/k rU= ds 20 twu] 1983 ds izLrko ds vuqlkj MkÃ-Â¿½ fxj/kj iafMr dh fu;qfDr izkpk;Z ,oa izoDrk jktuhfr foKku in ij bl "krZ ds lkFk dh tkrh

gS] d{kk izkjEHk gksus rd os laLFkk dh LFkkiuk dk;Z djsaxs A rFkk fu"qYd Isok;sa laLFkk dks nsaxs A MÃ-Â¿½ fxj/kj if.Mr ls vuqjks/k gS fd

os ,d llrkg ds Hkhrj dk;ZHkkj xzg.k dj ysa rFkk izLRkko 5 ds vuqlkj nks izoDrk M- yfyrk izlkn ik.Ms; rFkk fouksn if.Mr dk Hkh mfpr le; ij

dk;ZHkkj xzg.k dj nsa A

gÃ-Â¿½ izseyrk oS|

Ã-Â¿½ izseyrk oS|Ã-Â¿½

O;oLFkkid nsoiz;kx egkfo|ky;

nsoiz;kx] fVgjh x<+okyA

Annexure-2 to the writ petition shows that on 20.6.1983, a meeting of the Management Committee was held and vide its resolution No. 4,

petitioner was appointed as Lecturer in Political Science/Principal/Development Officer of the college. Annexure-4 to the writ petition is another

letter of appointment relied by the petitioner which reads as under:

p;u lfevr dh 23-12-84 dh lLrqfr ds vk/kkj ij MkA~A~A½ fxfj/kj iafMr dh fu;qfDr vksadjkuUn ljlLorh egkfoly; esa izoDrk jktuhfr foKku in ij :

700&1]600 ds osrueku ij dh tkrh gS A MkA~A~A½ iafMr dks fu;ekuqlkj HkA~A~A½ks ns; gksaxs A

MkA~A~A½ iafMr ls vuqjks/k gS fd 10 fnu ds Hkhrj dk;ZHkkj xzgu dj ysa A MkA~A~A½ iafMr dh fu;qfDr dk vuqeksnu dqyifr vFkok "kklu }kjk fj/kkZfjr

izfA~A~A½;kuqlkj gksxk A

gA~A~A½ izseyrk oS|

A~A~A½izseyrk oS|A~A~A½

vksadjkuUn ljlLorh egkfoly;

nsoiz;kx] fVgjh x<+oky

i=kad@vksA~A~A½lA~A~A½eA~A~A½foA~A~A½@eseks@fu;qfDr@"kkS{kf.kd@84&85@fnukad 10-1-1985A

izfrfyi % 1- mDr dks lEcU/kr

2- mDr dh O;fDrxr i=koyh

3- egkizcU/kd] vksadjkuUn ,tqds"kuy lkslk;Vh

4- dk;kZy;] vksadjkuUn ljlLorh egkfoly; nsoiz;kx

gA~A~A½ izseyrk oS|

A~A~A½izseyrk oS|A~A~A½

izcU/kd

vksadjkuUn ljlLorh egkfoly;

nsoiz;kx] fVgjh x<+oky

Annexure-5 to the writ petition is the letter submitted by the Principal to the Manager, informing him that he has taken over charge of Lecturer of

Political Science as well as that of the Principal on 10.1.1985 in response to the appointment letter dated 10.1.1985 (Annexure-4 quoted above).

An Annexure at page 27 of the supplementary-affidavit dated 9.12.2004, filed on behalf of the State of Uttaranchal and Director, Higher

Education is the photocopy of the appointment letter dated 10.1.1985, issued by the then Manager of the college, reads as under:

p;u lfevr ds 23-12-1984 dh laLrqfr ds vk/kkj ij MA~A~A½ fxfj/kj iafMr dh fu;qfDr vksadjkuUn ljlLorh egkfoly; esa izkpk;Z ds :i esa :A~A~A½

1]200&1]900 osrueku ij dh tkrh gS A MA~A~A½ iafMr dks "kkldh; fu;ekuqlkj HkRrs ns; A

MkÃ-Â¿½ fxfj/kj iafMr ls vuqjks/k gS fd os 10 fnu ds Hkhrj dk;ZHkkj xzg.k dj ysaa A MkÃ-Â¿½ fxfj/kj iafMr dh fu;qfDr dqiyr vFkok "kklu }kjk

fu/kkZfjr izfÃ-Â¿½;kuqlkj gksxk A

Ã-Â¿½izseyrk oS|Ã-Â¿½

izcU/kd

vksadjkuUn ljLorh egkfo|ky;

nsoiz;kx] fVgjh x<+oky A**

The abovementioned letter shows that the petitioner was appointed as Principal in the pay scale of Rs. 1,200-1,900 on 1.1.1985 while the

Annexure-4 to the writ petition, shows that on the same day, by the same person, petitioner was appointed as Lecturer in the pay scale of Rs.

700-1,600. The report of taking charge does not make clear which of the appointments relinquished by the petitioner out of the two. Learned

Counsel for the petitioner argued that infact being the senior most Lecturer, he was given officiating charge of the Principal. However, the above

mentioned letter does not indicate this nor officiating charge has been directed to be given in aforesaid letters. Not only this, Annexure-1 to the

counter-affidavit dated 11.7.1993, filed on behalf of Committee of Management, shows that following letter of appointment was issued on behalf

of the Committee of Management of Omkaranand Saraswati Maha Vidyalaya on 16.2.1990:

vksadjkuUn ljLorh egkfo|ky; nsoiz;kx] fVgjh x<+oky

vkns"k

fuEu O;fDr;ksa dh fu;qfDr egkfo|ky; esa iw.kZr% rnFkZ ,oa LFkk;h vk/kkj ij rhu ekg vFkok fo"ofo|ky; }kjk izLrkfor p;u lfevr }kjk p;fur O;fDr ds

dk;ZHkkj xzg.k dju] nksuksa esa ls tks igys gks] rd ds fy, dh tkrh gS tks fcuk fdh iwoZ lwpuk leklr dh tk ldrh gS A

fo"os"kjkuUn

izca/kd

vksadjkuUn ljLorh egkfo|ky;

nsoiz;kx] fVgjh x<+oky**

i=kad@vksÃ-Â¿½lÃ-Â¿½eÃ-Â¿½foÃ-Â¿½@Vhfpax@,Ã-Â¿½ihÃ-Â¿½@90&91@laÃ-Â¿½ 13@fnukad 16-2-1990A

izfrfyi % 1- MkÃ-Â¿½ fxfj/kj iafMr&rÃ-Â¿½izÃ-Â¿½ jktuhfr foHkkx

2- MÃ-Â¿½ yfykr izlkn ik.Ms;&rOizÃ-Â¿½ laLd`r foHkkx

3- fouksn iafMr&rOizÃ-Â¿½ bfrgkl foHkkx

4- n{kk ldykuh Ã-Â¿½tks"khÃ-Â¿½ rÃ-Â¿½izÃ-Â¿½ vFkZ"kkL= foHkkx

5- MkÃ-Â¿½ vfuy dqekj uSFkkuh rÃ-Â¿½izÃ-Â¿½ fgUnh foHkkx

6- dqÃ-Â¿½ lqjs[kk /;kuh&rÃ-Â¿½izÃ-Â¿½ vaxzth foHkkx

d`rs izca/kd

vksadjkuUn ljLorh egkfo|ky;

nsoiz;kx] fVgjh x<+oky A**

As such, aforesaid last appointment letter, shows that the petitioner was appointed on 16.2.1990 on ad hoc basis for three months as Lecturer of

Political Science in the aforesaid college. Later on, it appears that the appointment of the lecturers were approved by the Vice-Chancellor, vide its

letter dated 22.9.1990, which is Annexure-7 to the supplementary-affidavit dated 9.12.2004 filed on behalf of the State of Uttaranchal. This letter

discloses that the petitioner has been shown as Principal of the College and has been directed to do teaching work in Political Science in addition

to his duties. Vide said letter dated 22.9.1990, the Manager of the college has been informed that approval has been given only for the period

1.7.1989 to 30.6.1990 and 1.7.1990 to 30.6.1991. It appears that in follow up action of said approval, the petitioner issued following order

(copy Annexure-6 to the writ petition), showing himself Manager as well as Principal of the college:

vksadjkuUn ljLorh egkfo|ky; nsoiz;kx] fVgjh x<+oky

i=kad@vksÃ-Â¿½lÃ-Â¿½eÃ-Â¿½foÃ-Â¿½@fu;qfDr&tu@dÃ-Â¿½iÃ-Â¿½ 6@5@fnukad 17-11-1990 A

dk;kZy;kns" k

dqy lfpo x<+oky fo"ofok|ky; Jhuxj x<+oky ds i=kad e0foÃ-Â¿½oÃ-Â¿½@tuÃ-Â¿½@90&91@laÃ-Â¿½ 22-9-1990 ds vuqlkj egkfo|ky; ds fuEu f" k{kdksa dk

Isokvksa dk dqyifr egksn; us fnukad 1-7-89 ls 30 twu 1990 rFkk 1 tqykbZ 1990 ls 30 twu 1991 rd ds fy, rnFkZ vuqeksnu bl izfrcU/k ds lkFk

fd;k gS fd ;fn bl chp mPprj f" k{k Isok vk;ksx }kjk p;fur O;fDr dk;Z Hkkj xzg.k dj ysrs gSa rks iwoZ dk;Zjr f" k{kdksa dh Isok;sa Lor% leklr

gks tk;sxk A

vr% iwoZ fu;qfDr;ksa dks la"kkf/kr dj fuEu fu;qfDr;kWa 1-7-89 ls 30 twu 1990] 1-7-90 ls 30-6-91 rd vLFkbbZ ,oa rnFkZ rkSj ij mijksDr

izfrcU/k ds lkFk le>h tkrh gS tks fcuk fdlh iwoZ lwpuk ds dHkh Hkh leklr dh tk ldrh gS A

gÃ-Â¿½ viBuh;

Ã-Â¿½MÃ-Â¿½ fxfj/kj iafMRÃ-Â¿½

d`rs&izda/kd@izkpk;Z

vksadjk ljLorh egkfo|ky;

nsoiz;kx] fVgjh x<+oky**

izfrfyi % 1- MÃ-Â¿½ fxfj/kj iafMr&izkpk;Z rÃ-Â¿½izoDrk jktuhfr"kkL=

2- MÃ-Ã½ yfyrk izlkn ik.Ms;&rnFkZ izoDrk laLd`r

3- fouksn iafMr&rnFkZ izoDrk bfrgkl

4- Jhefr n{kk tks"kh&rnFkZ izoDrk vFkZ"kkL=

5- MÃ-Ã½ vfuy dqekj uSFkkuh&rnFkZ izoDrk fgUnh

6- dqÃ-Ã½ ehrk pVthZ&rnFkZ izoDrk vaxzth Ã-Ã½3-9-90 lsÃ-Ã½

Ã-Ã½MÃ-Ã½ fxfj/kj iafMrÃ-Ã½

d`rs&izca/kd@vkpk;Z

10. Learned Counsel for the petitioner argued that after the approval of the Vice-Chancellor, the respondent No. 2 had no authority, refusing the

regularization of the petitioner and the order dated 20.6.1992 (copy Annexure-10 to the writ petition) is illegal and bad in law. In support of the

contention on behalf of the petitioner, our attention was drawn to the judgment and order passed on 17.7.1992 in Writ Petition No. 25255 of

1992, Dr. Siya Ram Singh v. Director Higher Education (along with other connected matters) . We have gone through said judgment. It is true that

the order passed by respondent No. 2, refusing the regularization of the ad hoc lecturers was quashed by the learned single Judge of the Allahabad

High Court, holding that requirement of notifying vacancy to the Commission u/s 16 of U.P. Higher Education Service Commission and Selection

Board Act, 1980 before making ad hoc appointments, is directory. With due regard to the learned single Judge of Allahabad High Court, we are

of the view that since the state ex-chequer is burdened on account of appointment made by the college as such if the requirement of the compliance

of aforesaid provisions is given complete go by the private institutes can play with the standard of education by recruiting unqualified teachers and

favouring their kiths and kins. As such it cannot be said that refusal of regularization of petitioner"s services was without basis. As far as question of

giving opportunity to petitioner, before refusal of his regularization is concerned, it was the petitioner himself who has presented and referred his

case to Vice-Chancellor for regularization and there is no violation of principle of natural justice, as he himself was acting as Principal of the college

at that point of time. Moreover, it has been categorically stated in the counter-affidavit of the respondent Nos. 1 to 3, that petitioner did not fulfil

the minimum qualification, as required under the statute of the University, and he had not obtained marks more than 50% in Intermediate and

Graduation. In this regard, Shri S. N. Babulkar, learned Counsel for the petitioner also relied on the judgment passed by the Apex Court in State

of U.P. and Others Vs. Dr. Deep Narain Tripathi and Others, in which the Supreme Court has refused to interfere with the judgment of the

Allahabad High Court in the matter of ad hoc teacher who did not fulfil the minimum qualification. The perusal of said judgment, clearly shows that

there was a relaxation power with the University and due to the approval of the appointment, the Apex Court treated it to have been relaxed for

the purposes of Dr. Deep Narayan Tripathi and others who are governed by the statutes of Gorakhpur University and Purvanchal University.

Learned Counsel for the petitioner, failed to show us the analogous provision in the statute in the H.N.B. Garhwal University with whom

Omkaranand Saraswati Degree College was affiliated.

11. As discussed above, in the present case, not only there is violation of Section 16(1) of U.P. Higher Education Service Commission and

Selection Board Act, 1980, as to requirement of notifying the vacancy but also the minimum qualification required in Paras 11.13 and 11.01 (5), of

Statute of the University were ignored in the appointment of the petitioner. Apart from this, other serious allegation in the counter-affidavit filed on

behalf of respondent No. 4 is that since Shri Prem Lal Vaidya, uncle of the petitioner was Manager of the college, he got himself appointed by

making undue favour. As such, in our opinion, it is not a fit case to exercise a discretionary power of writ jurisdiction to quash the impugned order

for protecting the continuance of the petitioner in service. Mere approval by the Vice Chancellor for a short period would not by itself bind the

Selection Committee of the Commission to regularize the services of the petitioner even after being found that the initial appointment of the

petitioner was not legal. Therefore, in our opinion, the writ petition is liable to be dismissed. The same is dismissed. The original record of the

college be returned.