

Dr. Alok Kumar Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-19-2002

Reported in : 2002(3)AWC1859; [2002(93)FLR1079]; (2002)2UPLBEC1373

Judge : M. Katju and ;Rakesh Tiwari, JJ.

Acts : Uttar Pradesh Higher Education Service Commission Act, 1980

Appeal No. : C.M.W.P. No. 52730 of 2000

Appellant : Dr. Alok Kumar Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Awadhesh Kumar Singh, ;R.K. Singh, ;A.P. Pandey and ;H.R. Misra, Advs. and ;R.P. Shukla, S.C.

Advocate for Pet/Ap. : Krishan Ji Khari, Adv.

Disposition : Petition dismissed

Judgement :

M. Katju, J.

1. Heard learned counsel for the parties.
2. We have perused the writ petition, counter-affidavit and rejoinder-affidavits.

3. The petitioners were appointed as ad hoc lecturers in pursuance of advertisement (copy of which is Annexure-1 to the petition). They had applied vide Annexure-2 to the petition and thereafter given appointment on emoluments of Rs. 100 per lecture but not exceeding Rs. 5,000 per month. Petitioners continued as ad hoc Lecturers after getting approval from the Director of Higher Education.

4. Subsequently the posts were advertised for making regular selection through the U. P. Higher Education Service Commission. In paragraph 38 of the petition, it is stated that petitioners have completed about two years service. They have prayed that the impugned advertisement (copy of which is Annexure-1 to the petition) be quashed and respondents be restrained from making any selection on the basis of the said advertisement and petitioners should be allowed to continue to work.

5. Stay Vacation Application along with the counter-affidavit has been filed by Dr. Smt. Gayatri Singh and Sri Anand Shanker Chaudhary. In paragraph 5 of the counter-affidavit of Dr. Smt. Gayatri Singh, it has been stated that the U. P. Higher Education--- Service, Commission, Allahabad vide letter dated 28.11.2000 recommended the name of candidates selected by the Commission to the Director of Higher Education, and on that basis, the name of Dr. Smt. Gayatri Singh was recommended vide letter dated 19.1.2001 by the Director of Higher Education to Secretary/ Manager/ Authorised Controller of Swami Sahjanand Mahavidyalaya Pir Nagar, Ghazipur for appointment as Lecturer in Geography.

6. Similar, in the stay vacation application filed by Anand Shanker Chaudhary, it is stated that the deponent has been selected as Lecturer in Ancient History by the Commission and his name was recommended to be appointed as Lecturer, and accordingly the Director of Higher Education vide letter dated 22.11.2001 directed the Manager T. D. College, Jaunpur to appoint the deponent as Lecturer in Ancient History vide Annexure No. 1 to the affidavit.

7. The Joint Director of Higher Education has also filed a counter-affidavit on behalf of the State Government, Allahabad and we have perused the same. In paragraph 5 (a) of the same, it is stated that selections, were made in accordance with the relevant rules. In paragraph 5 (h) of the same. It is stated that in view of

unavailability of adequate number of duly selected Lecturers, the State Government evolved a Scheme vide Government Order dated 7.4.1998 to ensure that teaching should not be adversely affected. Its basic aim was to engage candidates for a very short span of time on the basis of payment of honorarium. Engagement under the Scheme of the Government Order dated 7.4.1998 is wholly contractual and the candidates engaged are to perform teaching work on per hour basis, i.e., Rs. 100 per period or maximum honorarium of Rs. 5,000 per month. If the management is availing the service of the candidates beyond the ambit or terms and conditions of the Government order dated 7.4.1998, the liability in this regard lies wholly on the College Management and the State Government has no concern with it. The candidates engaged under the Government order dated 7.4.1998 are not subject to any disciplinary action and they are also not called to discharge duties or perform functions and shoulder responsibilities as required from the full time regular teachers. They are free to come or not to come to the college and do any other business or profession.

8. The Government order dated 7.4.1998, only provides a summary process of selection on local arrangement and the advertisement was localised. In view of the transitory nature of such engagement, highly qualified persons generally refrain from such job. Such candidates cannot be equated with full time regular teachers appointed by the U. P. Higher Education Service Commission. It is stated in paragraph 5 (p) of the counter-affidavit filed by the State Government that petitioners participated in the selection process in pursuance of the impugned advertisement and hence they cannot challenge the same.

9. In view of the averments made in the counter-affidavit of the State Government, it is evident that the petitioners are working only on contract basis without any regular selection through the Commission, and they cannot be equated with regularly selected teachers. Hence, they have no right to the post. Their appointment was under the Government order dated 7.4.1998, to deliver lectures for a very short span of time and they cannot claim regularisation. Their duties and function are also different from the regularly selected teachers. These appointments were made only due to the shortage of regularly selected candidates so that the teaching work may not suffer. However, the appointees cannot claim

any right to continue. Only those, who have been regularly selected by the Commission have a right to continue. The petitioners were only appointed on payment of honorarium for very short span of time on contract basis and they have no right to the post. In paragraph 29 of the counter-affidavit of the State Government, it is stated that selection process initiated in pursuance of the impugned advertisement have been completed and the select list had been sent to the Director of Higher Education for issuing placement orders in favour of the selected candidates.

10. In paragraph 37 of the same, it is stated that the Government order dated 7.4.1998, has not been issued under the provisions of the U. P. Higher Education Service Commission Act. 1980, rather it has been issued under the executive power of the State Government. Hence, in our opinion, the petitioners appointed under this Government order have no right to continue. The process of regular selection is quite different and designed to select the most qualified and best-suited persons, while the appointments under the Government order dated 7.4.1998 are not of this nature and their duties are different.

11. In view of the above, we are of the opinion that the petitioners have no right to continue as they are not regularly selected candidates. The petition is dismissed. Interim order, if any, is vacated.

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