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Dr. Pradeep Kumar Srivastava Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-03-2001

Reported in : 2001LabIC4091

Judge : D.S. Sinha and ;Lakshmi Bihari, JJ.

Acts : Uttar Pradesh Higher Education Services Commission Act, 1980 - Sections 13, 13(1), (5) and (6), 14, 16 16(1) and 31C; Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1992 - Sections 3; Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1997 - Sections 31C(2); Uttar Pradesh State Universities Act, 1973 - Sections 20

Appeal No. : C.M.W.P. No. 44405 of 1998

Appellant : Dr. Pradeep Kumar Srivastava

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;B.N. Agarwal, Adv.

Advocate for Pet/Ap. : R.G. Padia and ;Prakash Padia, Advs.

Disposition : Petition dismissed

Judgement :

D.S. Sinha, J.

1. Heard Dr. R. G.Padia. the learned Senior Advocate appearing for the petitioner and SriB. N. Agarwal, the learned standing counsel of the State of U. P., representing the respondent Nos. 1, 2 and 3.

2. Relying upon Section 31C of the Uttar Pradesh Higher Education Services Commission Act, 1980, thereinafter called the 'Principal Act'), as amended by the Uttar Pradesh Higher Education Services Commission (Amendment) Act. 1992, (hereinafter called the 1992 Amendment Act), and the Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1997, (hereinafter called the 1997 Amendment Act), the petitioner prays for issuance of a writ, order or direction, including a writ in the nature of mandamus, commanding the statutory selection committee, constituted under Section 31C (2) of the 1997 Amendment Act, Directorate of Higher Education, Allahabad through its Director, to consider his case for regularisation on the post of lecturer in Economics in Sri Murli Manohar Town Degree College, district Ballia. (hereinafter called the 'institution').

3. While entertaining the petition, this Court passed an order dated 4th January, 1999 which is extracted below :

'..... Meanwhile thestatutory Selection Committee. constituted under Section 31C (2) of the U. P. Higher Education Services Commission (Amendment) Act. 1997. Directorate of Higher Education, Allahabad Is directed to consider the question of regularisation of petitioner or to show cause by filing a counter-affidavit by 15th March, 1999. List on 22.3.1999.

4.1.1999.

Sd/. B. Dikshit

Sd/. A. Chakrabarti'.

4. In response to the order of the Court dated 4th January. 1999, the respondent No. 2 has opted to show cause by filing counter-affidavit instead of considering the question of regularisation of the petitioner. The principal stand taken by therespondent No. 2 Is that the alleged appointment of the petitioner on the post of lecturer In Economics in the institution was void ab initio. Therefore, the claim of

the petitioner for consideration of his regularisation under Section 31C of the Principal Act on the post is not tenable.

5. Undisputed acts and events constituting the facts of the case are as below.

6. For the purpose of his appointment, the selection committee made recommendation in favour of the petitioner on 10th October. 1991. Following the recommendation of the selection committee, the managing committee of the institution met on 16th October, 1991 and passed unanimous resolution approving the selection of the petitioner and directing requisite further steps to be taken.

7. Exercising the power under Section 16 of the Principal Act, the managing committee of the Institution Issued on 25th November, 1991 an appointment letter to the petitioner, and the petitioner Joined the post on the same day.

8. For the proper appreciation of the controversy raised herein. It would be apposite to extract below the Section 3 of the 1992 Amendment Act and Section 31C of the Principal Act, as amended by the 1992 Amendment Act and 1997 Amendment Act.

'3. Omission of Section 16.--Section 16 of the Principal Act shall be omitted.'

'31C. Regularisation of other ad hoc appointments.--(1) Any teacher, other than a Principalwho-

(a) was appointed on ad hoc basis after January 3, 1984 but not later than November 22. 1991 on a post :

(i) which after its due creation was never filled earlier, or

(ii) which after Its due creation was filled earlier and after its fallingvacant, permission to fill it was obtained from the Director ; or

(iii) which came into being in pursuance of the terms of new affiliation or recognition granted to the college and has been continuously serving the college from the date of such ad hoc appointment up to the date of commencement of the Uttar Pradesh Higher Education Services Commission (Amendment) Act. 1992 :

(b) was so appointed after three months of the notification to the Commission under subsection (1) of Section 16 as it stood before its omission by the Act referred to in clause (a) , or if appointed within such period, no recommendation was made by the commission within such period ;

(c) possessed on the date of suchcommencement, thequalifications required forregular appointment to thepost under the provisions ofthe relevant statutes in forceon the date of such ad hocappointment.

(d) Is not related to any member of the management or the principal, of the college concerned in the manner mentioned in the explanation to Section 20 of the Uttar Pradesh State Universities Act, 1973 ;

(e) has been found suitable for regular appointment by a selection committee constituted under sub-section (2) ;

may be given substantive appointment by the management of the college, if any substantive vacancy of the same cadre and grade in the same department is available on the date of commencement of the Act referred to in clause (a).

(2) The selection committee consisting, the following members namely :

(i) a member of the commission nominated by the Government who shall be the Chairman ;

(ii) an officer nor below the rank of Special Secretary, to be nominated by the Secretary to the Government of Uttar Pradesh in the Higher Education Department ;

(iii) The Director ;

shall consider the cases of every such ad hoc teacher and on being satisfied about his eligibility in view of the provisions of subsection (1), and his work and conduct on the basis of his record, recommend his name to the management of the college for appointment under sub-section (1).

(3) Where a person recommended by the commission under Section 13 before the commencement of the Act referred to in subsection (1) does not get an appointment because of the appointment of another person under sub-section (1) In the vacancy for which he was so recommended, the State Government shall make suitable order for his appointment in a suitable vacancy in any college and the provisions of subsections (5) and (6) of Section 13 and of Section 14 shall mutatis mutandis apply.

(4) A teacher appointed on ad hoc basis referred to in subsection (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 after March 31. 1992.'

9. At the out set, it may be noticed that Section 16 of the Principal Act from which themanaging committee of the Institution derived the power to appoint the petitioner on 25th November. 1991 stood repealed with effect from 22nd November. 1991, and indeed, the managing committee had no power to appoint the petitioner. Accordingly, the stand taken by the respondent No. 2 that the appointment of the petitioner was void ab initio is not devoid of substance, and has to be upheld. It is upheld accordingly.

10. A bare perusal reveals that sub-section (1) of Section 31C of the Principal Act contemplates that for being eligible to claim the benefit of regularisation of ad hoc appointment, the incumbent must be a teacher, other than a Principal, who was appointed on ad hoc basis after January 3, 1984 but not later than November 22, 1991 on a post which was never filled earlier after its due creation, or which was filled earlier after its due creation and after its falling vacant, permission to fill it was obtained from the Director ; or which came into being in pursuance of the terms of new affiliation or recognition granted to the college and has been continuously serving the college from the date of such ad hoc appointment up to the date of commencement of the 1992 Amendment Act.

11. Clearly, infer alia, the appointment of the claimant--incumbent must have been during the period between 3rd January. 1984 and 22nd November, 1991 and he must have been continuously serving the college from the date of such ad hoc

appointment up to the date of the commencement of the 1992 Amendment Act, which is, indisputably, 22nd November, 1991.

12. In the Instant case, admittedly, the petitioner was appointed on 25th November, 1991, which was after 22nd November, 1991. Obviously, the petitioner having been appointed on 25th November. 1991 he does not satisfy the requirement of continuous service in the college up to the date of commencement of the 1992' Amendment Act which, as noticed earlier, is 22nd November, 1991 Thus, the petitioner, It cannot be gainsaid, does not satisfy the statutory conditions precedent for being eligible to claim the benefit of Section 31C of the Principal Act. That being so, the question of consideration of the claim of the petitioner for regularisation is not maintainable.

13, For what has been said above, in the opinion of the Court, the claim of the petitioner for regularisation of his ad hoc appointment has rightly not been considered by the respondent No- 2. He is not entitled to any relief in this petition. The petition is devoid of substance. Accordingly, it is dismissed. There is no order as to costs.

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