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Desh Deepak Tripathi Vs. State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Aug-16-2001

Reported in : 2001(4)AWC2493; [2001(90)FLR1131]; (2002)1UPLBEC187

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

Acts : Uttar Pradesh State Universities Act, 1973 - Sections 21(3)

Appeal No. : C.M.W.P. No. 7985 of 1995

Appellant : Desh Deepak Tripathi

Respondent : State of Uttar Pradesh and ors.

Advocate for Def. : S.C. and ;R.R. Singh, Adv.

Advocate for Pet/Ap. : C.P. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

D.S. Sinha, J.

1. Heard Shri C. P. Gupta, the learned counsel appearing for the petitioner, and Shri Sandeep Mookherji, the learned standing counsel of the State of U. P., representing the respondent No. 1.

2. Armed with the order dated 16th January, 1989, passed by the Vice-Chancellor of the Purvanchal University, Jaunpur (W.P. Annexure-4), the resolution dated 5th January, 1991 passed by the Executive Council of the University (W.P. Annexure-6), certificate dated 30th January, 1992, issued by the Registrar of the University (W.P. Annexure-5), the office order dated 8th February, 1991, issued by the Registrar of the University (W.P. Annexure-7), the order dated 14th May, 1992, passed by the Vice-Chancellor of the University (W.P. Annexure-8), and the communication dated 9th June, 1992, of the Registrar of the University (W.P. Annexure-9), the petitioner, a routine clerk Of the University, appointed vide ofder dated 25th May, 1989 (W.P. Annexure-3) on ad hoc basis and on one year's probation with effect from 1st June, 1989, clamorous to get himself treated asUniversity Engineer and appointed on the said post, indirectly and clandestinely, with the unholy blessings of the high and mighty authorities of the University, and seeks assistance of this Court in furtherance and implementation of his surreptitious plan.

3. The order dated 16th January. 1989, passed by the Vice-Chancellor (Annexure-4) directs the Registrar to entrust to the petitioner all the engineering works with immediate effect,

4. The resolution dated 5th January, 1991, passed by the Executive Council of the University (Annexure-6) resolves to give to the petitioner the post of University Engineer. However, it directs the grade, pay and seniority of the petitioner to continue to be that of clerk. It further directs that as and when the post of Engineer is regularised in future, petitioner should be absorbed on that post.

5. The certificate -dated 30th January. 1992, issued by the Registrar (Annexure-5| proclaims the petitioner as University Engineer. The office order dated 8th February, 1991, issued by the Registrar (Annexure-7) purports to convert the nomenclature of the post of clerk held by the petitioner as Engineer. However, it directs his seniority to be maintained in the clerical cadre and clarifies that the petitioner shall be entitled to the salary payable to a clerk.

6. The order dated 14th May. 1992, passed by the Vice Chancellor (Annexure-8) directs the Registrar to direct the petitioner to sit in the office of the University

Engineer.

7. Vide communication dated 9th June. 1992 (Annexure-9) the Registrar directs the petitioner to be present everyday on the site of construction of buildings of the University.

8. Sub-section (3) of Section 21 of the Uttar Pradesh State Universities Act. 1973. (hereinafter called the 'Act'), ordains that no post shall be created either in the University or in any institute orconstituent college maintained by the University except with the prior approval of the State Government or except in accordance with any general or special order of the State Government.

9. The pleadings in the writ petition and annexures appended thereto, clearly indicate that there is no duly sanctioned post of University Engineer. Shri C. P. Gupta, learned counsel of the petitioner also, very fairly, concedes that the post of University Engineer neither is in existence nor was ever created in accordance with the provisions of Sub-section (3) of Section 21 of the Act, although efforts for its creation are on. Thus, in the absence of any duly created post of the University Engineer, the resolution of the Executive Council and the various orders passed by the authorities of the University, referred to above, are totally illegal and without jurisdiction. These orders could not and cannot confer upon the petitioner any legally cognizable and judicially enforceable claim qua the alleged post of University Engineer. Indeed, the alleged post of University Engineer does not exist in the eye of law.

10. However, the learned counsel of the petitioner submits that the petitioner is fully qualified for the post of University Engineer. That may be so. But, mere possession of qualification for a post does not confer any legal title for the post. Unless a candidate for any post passes through the process of selection, held in accordance with law, and is duly selected, he cannot claim the post. Indisputably, in the instant case, neither there was any occasion for holding the selection for appointment to the post of University Engineer, nor was any selection indeed held.

11. From the averments made in the petition, it transpires that the' University is pursuing steps for creation of the post of University Engineer, and the matter for

mandatory prior approval of the State Government, is pending with the State Government. As and when the post of University Engineer is dulycreated and the University decides to fill up that post, it shall hold a regular selection after notifying and giving opportunity to all the eligible candidates responding to the advertisement. Whenever such selection takes place, the petitioner shall be at liberty to participate in the same, in accordance with law.

12. Under the circumstances, noticed above, the Court is of the opinion that instant petition is misconceived and lacks merit. Accordingly, it is dismissed summarily.

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