

Smt. Tripti Banerjee and anr. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/485702

Court : Allahabad

Decided On : Dec-16-2003

Reported in : 2004(1)AWC715; (2004)1UPLBEC618

Judge : M. Katju and ;Umeshwar Pandey, JJ.

Acts : Uttar Pradesh State Universities Act, 1973 - Sections 60A; Uttar Pradesh Higher Education Service Commission Act, 1980 - Sections 33C

Appeal No. : C.M.W.P. No. 6585 of 1997

Appellant : Smt. Tripti Banerjee and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Khare, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Katju and Umeshwar Pandey, JJ.

1. Heard Sri Ashok Khare, learned counsel for the petitioner and the learned standing counsel.

2. The petitioner No. 1 was appointed as lecturer in Music and the petitioner No. 2 was appointed as lecturer in Economics on ad hoc basis in Rajarshi Tandon Mahila Mahavidyalaya, Allahabad on 7.10.1985 under Section 16 of the U. P. Higher Education Service Commission Act, 1980. Thereafter they were regularised on 17.6.1992 and 20.6.1992 under Section 33C of the Act.

3. The petitioners were not being paid salary from Government grant and hence the petitioners filed a writ petition being Writ Petition No. 1354 of 1993, which was disposed of by judgment dated 18.11.1996 vide Annexure-14 to the writ petition. In this judgment a finding has been recorded that the petitioners were given substantive appointment. The Director of Higher Education was directed to pass formal orders pertaining to creation of posts for the petitioners considering all the facts and circumstances of the case.

4. It may be mentioned that under Section 60A (vi) of the U. P. State Universities Act, 1973 before 1.4.1975 a post of teacher in a degree college could be created by the Vice-Chancellor, but after 1.4.1975 it can be created by the Director, Higher Education. This view was also taken in the aforesaid Writ Petition No. 1354 of 1993 and connected petitions.

5. The petitioners then made representations to the Director of Higher Education but their applications have been rejected by order dated 11.2.1997, vide Annexures-16 and 17 to the writ petition. In these orders it has been stated that because there are very few students in these subjects the posts will not be created.

6. Learned counsel for the petitioner has relied on the G.O. dated 2.2.1985 vide Annexure-13 to the writ petition which is the G.O. issued specifically for this particular college, in paragraph 2 of the same it has been stated that exemption has been granted with regard to minimum number of students in the subject.

7. In our opinion in View of the G.O. dated 2.2.1986, the stand taken in the Impugned orders dated 11.2.1997, Annexures-16 and 17 to the writ petition are not correct and hence these orders are set aside.

8. It may be mentioned that during the pendency of the petition the State Government passed order dated 9.4.1997, 26.4.1997 to cancel the petitioners regularisation orders and in consequence thereto the Director, Higher Education passed order dated 19.4.1997 and 2.6.1997 to the same effect.

9. In our opinion, the State Government has no power to cancel the regularisation under Section 33C of the U. P. Higher Education Service Commission Act. In fact the objection taken in the orders dated 9.4.1997, 26.4.1997, 19.4.1997 and 2.6.1997 were all available to the respondents before the decision of the Division Bench in Writ Petition No. 1354 of 1993 decided on 18.11.1996 and hence we will not allow these objection to be taken at this stage. It may be mentioned that there is no provision in the U. P. Education Act conferring power on the State Government to cancel the regularisation under Section 33C. Hence the orders dated 9.4.1997, 26.4.1997, 19.4,1997 and 2.6.1997 are also illegal and hereby quashed.

10. In the circumstances this petition is allowed. The Director of Higher Education is now directed to take a fresh decision forthwith regarding the petitioner's claim for creation of the post of Lecturer in Music and Lecturer in Economics in the institution. The petitioner No. 1 has retired from service and if the post is created by the Director she shall be paid arrears of salary and pension forthwith. The petitioner No. 2 is still in service. If a post is created for her by the Director she shall be paid arrears of salary forthwith and regular salary hereafter. The petitioners shall also get benefit of revision of salary from time to time and all allowances.