

Dr. Vimal Kumar Lahari Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-29-2011

Judge : Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.

Acts : UP State Universities Act, 1973 - Section 31 (8) (a);

Appeal No. : CIVIL MISC. WRIT PETITION NO.3577 OF 2011

Appellant : Dr. Vimal Kumar Lahari

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Shri. R.N. Singh

Judgement :

1. We have heard Shri R.N. Singh, Senior Advocate assisted by Shri G.K. Singh for the petitioner. Learned Standing Counsel appears for the State respondents. Shri Neeraj Tripathi appears for Chancellor of Mahatma Gandhi Kashi Vidyapeeth, Varanasi. Shri Ajit Kumar Singh appears for the University.

2. The petitioner has prayed for setting aside the order dated 23/28 th December, 2010 passed by the Chancellor, Mahatma Gandhi Kashi Vidyapeeth, Varanasi (the University) in so far as the Chancellor of the University has accepted the recommendations of the Executive Council of the University to cancel the petitioner's selection as Lecturer in Sociology in reserved category of Scheduled Caste by the Selection Committee on the ground that a vigilance enquiry into the conduct of the outgoing Vice Chancellor is pending and that there is possibility of

delay in concluding the enquiry.

3. We are called upon to answer the question, as to whether the pendency of the vigilance enquiry, initiated by the State Government into various functions of Shri K.S. Kushwaha, the then Vice Chancellor of the University close to his retirement, would be a ground on which the Executive Council can disagree with the recommendations of the statutory selection committee and refer the matter to the Chancellor of the University under Section 31 (8) (a) of the UP State Universities Act, 1973 (in short the Act).

4. An advertisement was issued by Mahatma Gandhi Kashi Vidyapeeth, Varanasi being Advertisement No. 2 of 2006 for the posts of Professor, Reader and Lecturer, followed by advertisement No. 6 of 2006. The candidates, who had already applied, were not required to apply, afresh. The petitioner claims to be fully qualified and eligible for being appointed as Lecturer in Sociology. He applied for the post reserved for Scheduled Caste candidate. The interviews were held on 18.11.2007, by a duly constituted selection committee.

5. The Chancellor by his order dated 26.9.2007 restrained the Vice Chancellor from convening any meeting of the selection committees, considering the fact, that he was to retire on 31.12.2007. Aggrieved a writ petition was filed by Dr. Sharad Bansal and another (Writ Petition No. 45924 of 2007) which was disposed of by this Court on 4.10.2007, holding that there could not be any oral direction to postpone the proceedings of the selection committee, which were initiated. Another writ petition filed by Dr. Prem Chandra Vishwakarma challenging the same order was also disposed of on the same terms directing the respondents authority to proceed with the selections. 6. The Chancellor again by his order dated 14.12.2007 restrained the Vice Chancellor to undertake the proceedings for appointments on teaching and non-teaching posts as he was going to retire on 31.12.2007; within a few days. The selection committees had met and had made their recommendations. In Writ Petition No. 63914 of 2007 (Dr. Vinay Shankar Singh and 13 others vs. State of UP and others) an interim order was passed staying the operation of the order of the Chancellor dated 14.12.2007. The Chancellor issued a third restraint order on 19.12.2007 directing that the Vice

Chancellor not to place the recommendations made by the selection committee before the Executive Council for its consideration. The matter, however, was placed before the Executive Council on 24.12.2007, and considering the orders passed by the High Court, the Executive Council was of the opinion that it was fully competent to consider the matter for appointment. The Vice Chancellor retired on 31.12.2007. He was succeeded by the Commissioner, Varanasi Division, Varanasi as the Vice Chancellor, who did not convene the meeting of the Executive Council, and thus the appointment orders could not be issued.

7. In a writ petition filed by Dr. Mrs. Sneh Lata Prabhakar vs. State of UP & others (Writ Petition No. 897 of 2008) connected with Writ Petition filed by Dr. Krishna Kumar Singh vs. State of UP and others (Writ Petition No. 12703 of 2008), and Dr. Sharad Bansal vs. State of UP and others (Writ Petition No. 14220 of 2008), this Court held that there cannot be any presumption that a person will not act fairly prior to his retirement. The operation of the order of Chancellor was stayed and the Executive Council was directed to take a decision on the recommendations of the selection committee to be implemented only after obtaining leave of the Court.

8. The Executive Council considered the recommendations of the selection committees in its meeting held on 9.4.2008 and decided to refer all the recommendations to the Chancellor under Section 31 (8) (a) of the Act, for the reason, that a period of four months had passed after the recommendation of the selection committees.

9. The Commissioner, Varanasi Division, Varanasi functioning as Vice Chancellor was not inclined to refer the matter to the Chancellor and thus one more writ petition was filed by Dr. Nisha Singh (Writ Petition No. 21156 of 2008). In the meantime the Chancellor by his order dated 7.7.2008 sent the entire matter back to the Executive Council for its re-consideration. The Chancellor divided the recommendations into two parts namely, those recommendation of the selection committees, which had met in the last three months of the tenure of the earlier Vice Chancellor, and those which were made earlier.

10. So far as the petitioner is concerned, the recommendations were made for his selections on 10.9.2007, i.e three months before the tenure of the then Vice

Chancellor came to an end. Instead of taking a decision in the matter, the Executive Council deferred the matter on the ground that the matter is subjudice before the High Court and that the permission of the High Court has not been obtained. One Shri Anukul Chand Rai filed the Writ Petition No. 3657 of 2009 for a direction to the University to issue appointment orders to those, who were recommended by the selection committees in the month of September, 2007 and whose recommendation was accepted and approved by the Executive Council on 24.12.2007. The Court by its judgment and order dated 5.4.2010 directed the Executive Council to consider all the recommendations on merits with necessary follow up action. The Executive Council of the University in view of the judgment of the High Court dated 5.4.2010 considered the recommendations in its meeting held on 26.5.2010 and decided to refer the matter to the Chancellor under Section 31 (8) (a) of the Act.

11. The petitioner was recommended for appointment on the post of Lecturer in Sociology in Scheduled Caste category. The Executive Council had decided to refer the matter to the Chancellor, after observing that some vigilance enquiry is pending in respect of the selections. The Chancellor had agreed with the recommendations of the Executive Council and communicated his order to the University on 28.12.2010.

12. Shri R.N. Singh, learned counsel for petitioner submits that⁵ some complaint was made in respect of selections/appointments during the tenure of Shri S.S. Kushwaha, the then Vice Chancellor on which a vigilance enquiry was initiated by the State Government. A letter in that regard was sent by the Superintendent of Police (Vigilance), Varanasi to the Registrar of the University on 10.4.2008. In this letter, it is stated that in pursuance of the State Government's letter dated 22.1.2008, an open enquiry is being conducted by the Vigilance Establishment against Prof. S.S. Kushwaha, Vice Chancellor, Mahatma Gandhi Kashi University, Varanasi. The Superintendent of Police (Vigilance Establishment) U.P. Varanasi requested for certain information from the University such as the name, permanent address, date of birth, the date of appointment, the date of retirement of the then Vice Chancellor, the date on which he was appointed in Mahatma Gandhi Kashi Vidyapeeth, Varanasi; the rules applicable to him. The Superintendent of Police

also asked for the details of the appointments made post-wise, department-wise and date-wise and the advertisements, if any, and also requested in particular for the details of appointments made on the post of Reader in Psychology Department and if any comparative chart of candidates was prepared.

13. Shri R.N. Singh submits that the vigilance enquiry initiated by the State Government is a fact finding enquiry conducted by the vigilance establishment of the State on the allegations of irregularities committed by a public servant. The official acts and the statutory consequence of the official acts do not get stayed during the pendency of such enquiry. There is no complaint regarding any corrupt practice or any material irregularity in the selection of the petitioner as Lecturer in Sociology, in Scheduled Caste category. The complaint, if any, which may be inferred from the letter of the Superintendent of Police (Vigilance) dated 10.4.2008, is with regard to post of Reader in Psychology. In the absence of any allegation, which may affect the petitioner's selection, the pendency of the vigilance enquiry cannot be a ground on which the petitioner's appointment may be deferred. In the case of petitioner's selection the validity of the composition and quorum of the selection committee is not in dispute. There are no allegations of any favouritism, nor there is any complaint by any individual, who had either participated or could be a candidate for the selection. The reason of disagreeing with the recommendation of the selection committee thus has nothing to do with the petitioner's candidature and the merits of the selection. Shri Singh submits that the Chancellor has completely misdirected himself in cancelling the recommendations of the selection committee for petitioner's appointment.

14. In the counter affidavit filed on behalf of the University represented by Shri Ajeet Kumar Singh, it is stated in paragraph-22 that the Chancellor had considered the entire aspect of the matter; the recommendations of the selection committee; the decision of the Executive Council and the order of the High Court. It is not correct to say that the information sought in the letter of Superintendent of Police (Vigilance) Varanasi dated 10.4.2008 is only regarding the appointment of Reader in Sociology. There is no basis to say so. There is no question of judging the selection by the vigilance department. The enquiry into serious allegations of irregularities regarding administrative and financial work of the Vice Chancellor is

being conducted by the vigilance establishment of the State Government, and thus the rejection of the recommendation of the selection committee made in favour of the petitioner is justified, and there is no illegality in it.

15. The Executive Council in its meeting dated 26.5.2010 after receiving the orders of the High Court dated 5.4.2010 in Dr. Krishna Kumar Singh (Writ Petition No. 12703/2008), divided the recommendations into two parts. The first part included the matters in which (i) the recommendations in which the experts were not called in the concerned subject; (ii) the recommendations in which one expert in the subject was short; (iii) the recommendations in which the prescribed number of subject specialists and the representatives of the Scheduled Caste/Scheduled Tribe were not present. The second part of the consideration related to the promotions of Readers and Professors under the Career Advancement Scheme.

16. In respect of petitioner's selection the Executive Council observed that in the selections held by the Selection Committee dated 17.11.2007, the petitioner is placed at serial No. 1, and Smt. Kavita Kanodia at serial no.2 (waiting list); so far as subject of Sociology is concerned, and since information has been sought by the S.P. Vigilance in respect of all the appointments made by the Vice Chancellor, in his working period, taking into account the loss which may be caused to the students, the matter may be referred to the Chancellor under Section 31 (8) (a) of the Act. The Chancellor has, by his order dated 23.12.2010, found the reference as disagreement by Executive Council with the recommendations of the Selection Committee, on the ground that since the matters are pending in the vigilance enquiry the petitioner's recommendation by the selection committee be turned down.

17. In Dr. Mohd. Suhail vs. Chancellor, University of Allahabad and others (1994) 2 UPLBEC 787 this Court had held that Section 66 of the UP State Universities Act has been overriding effect after the selection made by the Selection Committee. Section 66 provides as follows:-

66. Proceeding not to be invalidated by vacancies, etc.- No act or proceeding, of any authority or body or committee of the University shall be invalid merely by reason of-

- (a) any vacancy or defect in the constitution thereof, or
- (b) some person having taken part in the proceedings who was not entitled to do so, or
- (c) any defect in the election nomination or appointment of a person acting as a member thereof, or
- (d) any irregularity in its procedure not affecting the merits of the case.

18. The Court held that the proceeding of any committee of the University including the selection committee shall not be held invalid merely by reason of any irregularity in the constitution of selection committee or any vacancy and even if there was any irregularity in the constitution of the selection committee because some one participated in the selection who could not have participated the proceeding will not be invalidated. Where the selection committee has been duly constituted, the measurement of merit is to be left by the statutory committee consisting of experts.

19. In *Km. Neelima Misra vs. Dr. Harinder Kaur Paintal and others* AIR 1990 SC 1402 the Supreme Court, after clarifying the difference between purely administrative function and quasi-judicial function, held that where an administrative order involves civil consequence, it must be made consistently with the rules expressed in the Latin Maxim, '*audi alteram partem*,' meaning thereby that the decision maker should afford to any party to a dispute an opportunity to present his case. The Supreme Court, thereafter in the matter of appointment of teachers where Executive Committees do not agree with the recommendations of the selection committee, held that the power is not quasi-judicial, but administrative in nature and that with the shift of the approach towards fairness in the administrative action, the duty is caused upon such authorities to act fairly. For fairness it is not necessary that there should be any resolution of the lis, inter-se between the parties. The duty to act judicially or to act fairly may arise in widely different circumstances. The nonadjudicative administrative decision making is now covered under the general rubric of fairness in the administration. Paragraphs 24, 25, 26, 27, 28 and 29 read as follows:-

24. In the light of those considerations, we revert to the central issue, that is with regard to the nature of the Chancellor's power under S. 31(8)(a). It may be noted that the Chancellor is one of the three authorities in the Statutory Scheme for selecting and appointing the best among the eligible candidates in the academic field. The Chancellor is not an appellate authority in matters of appointment. He is asked to take a decision, because the Executive Council who is the appointing authority has no power to reject the recommendation of the Selection Committee and take a decision deviating therefrom. The Chancellor's decision is called for when the Executive Council disagrees with the recommendation of the Selection Committee. What is referred to the Chancellor under S. 31 (8)(a) of the Act, is therefore, not a dispute between the Selection Committee and the Executive Council on any issue. Nor it is a dispute between two rival candidates on any controversy. What is referred to the Chancellor is the recommendation of the Selection Committee with the opinion, if any, recorded thereon by the Executive Council. In fact, even without any opinion of the Executive Council, the matter stands automatically remitted to the Chancellor if the Executive Council delays its decision on the recommendation of the Selection Committee. The proviso to S. 31(8)(a) provides for this contingency. It reads :

"Section 31(8)(a) xxxx xxxx Proviso : Provided that if the Executive Council does not take a decision on the recommendation of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final."

25. The matter thus goes to the Chancellor for decision since the Executive Council could not take a decision on the recommendation of the Selection Committee. The Chancellor in the circumstances has to examine whether the recommendation of the Selection Committee should be accepted or not. If any opinion by way of disagreement has been recorded by the Executive Council on that recommendation, the Chancellor has also to consider it. He must take a decision as to who should be appointed. It is indeed a decision with regard to appointment of a particular person or persons in the light of the recommendation and opinion if any, of the two statutory authorities. Such a decision appears to be of an administrative character much the same way as the decision of the

Executive Council with regard to appointment.

26. In matters relating to public employment whether by promotion or direct recruitment, only requirement to be complied with is the mandate of Arts. 14 and 16 of the Constitution. There shall be equality of opportunity and no discrimination only on' ground of religion, race, caste, sex, descent, place of birth or residence or any of them. The eligible candidate has a right to have his case considered in accordance with law. In the instant case, that requirement has been complied with by the Selection Committee. There is no further right with the candidates to make representation to the Executive Council and much less to the Chancellor. Reference however, was made to the observation of this Court in *Dr. G. Sarana v. University of Lucknow*, (1976) 3 SCC 585 at p. 592: (AIR 1976 SC 2428 at p. 2433). While dismissing the writ petition challenging the recommendation made by the Selection Committee of the Lucknow University for appointment of a candidate as Professor, it was observed that "the aggrieved candidate has remedy by way of representation to the Executive Council and an application for reference under S. 68 of the Act to the Chancellor". We have carefully perused the decision and that observation. We find that it is of little assistance to the present case. We are concerned with the scope of S. 31(8)(a) of the Act which was not considered in that case. Apart from that, S. 31 confers no such right to make representation to the Executive Council or to the Chancellor against the recommendation of the Selection Committee. There is no provision in the Section for hearing any candidate or the Executive Council. There is also no provision for receiving evidence. The material in respect of every candidate has already been collected and collated by the Selection Committee. Every material is on the record and the Chancellor has no power to take further evidence. The Chancellor is authorised to take a decision and he must take it on the available records since the Executive Council has not taken a decision on the recommendation of the Selection Committee. The decision of the Chancellor in the exercise of this Statutory function does not, in our opinion, expressly or impliedly require the application of the principles of natural justice. See also the observations of K. N. Singh, J. in *R. S. Dass v. Union of India*, 1986 (Suppl). SCC 617 at p. 633 : (AIR 1987 SC 593 at Pp. 603-4).

27. It has been argued that the order of the Chancellor becomes final and binding which is one of the features of judicial power. It is true that the conclusiveness of the decision without the need for confirmation or adoption by any other authority is generally regarded as one of the features of judicial power. But it must be added that the order made by a statutory authority even if it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive is not, by itself a decisive factor to hold that the power is judicial. Prof. DeSmith makes a similar point in his book 'Judicial Review of Administrative Action' (4th Edition p. 82).

28. Taking all these factors into consideration, we would sum up our opinion in this way. The power of the Chancellor under S. 31(8)(a) is purely of administrative character and is not in the nature of judicial or quasi-judicial power. No judicial or quasi judicial duty is imposed on the Chancellor and any reference to judicial duty, seems to be irrelevant in the exercise of his function. The function of the Chancellor is to consider and direct appointment of a candidate on the basis of the relative performance assessed by the Expert Selection Committee and in the light of the opinion, if any, expressed by the Executive Council. His decision nonetheless is a decision on the recommendation of the Selection Committee. Such a power cannot be considered as a quasi judicial power. And we see nothing in that to justify our thinking that it must conform to the principles of natural justice. The contention urged to the contrary is, therefore, unacceptable to us. We also do not agree with the contrary view taken by the High Court in the Full Bench decision in L. N. Mathur case (AIR 1986 All 273) (supra).

29. The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi judicial exercise of power is liable to be quashed being violative of Art. 14 of the Constitution. As stated in E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555) "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the

whim and caprice of an absolute monarch." The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi judicial. See *Mrs. Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 at pp. 283-84: (AIR 1978 SC 597 at P. 624); *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 at pp. 740-41 : (AIR 1981 SC 487 at Pp. 498-499); *Som Raj v. State of Haryana*, (1990) 1 JT 286 at p. 290 (AIR 1990 SC 1176 at P. 1180).

20. In the present case there is no complaint made by any person regarding the non-availability of the vacancy; the category in which the vacancy falls; the qualifications and eligibility of the petitioner and the constitution of the selection committee. The vigilance enquiry conducted by the Vigilance Establishment under the orders of the State Government as only a fact finding enquiry into some complaints with which the selection of petitioner, has not been correlated. Learned counsel for the State states that the enquiry report has been submitted and is under consideration of the State Government, but nothing has been brought on record to show that there is any finding in the enquiry report which relates to and may affect petitioner's selection.

21. The background of the case will demonstrate that the Chancellor for the reasons best known to him, did not have any faith in the Vice Chancellor to act fairly. He was passing repeated orders restraining the Vice Chancellor to hold and conclude selections, inspite of the directions of the High Court to conclude the proceedings. The High Court had to intervene on four occasions to allow the selection proceedings to be concluded. If there was any complaint of any irregularities which could have vitiated the selections, the same should have been brought on record by the Chancellor. The circumstances, in which the Executive Council met under the orders of the Court to consider the recommendation of the selection committees, would clearly shows that it was prejudiced against the previous Vice Chancellor. The reasons for not placing the trust on the office of Vice Chancellor have not been brought on record. The anxiety of the Vice Chancellor to fill up the teaching posts could not be, in the absence of any positive material, misunderstood and co-related with any corrupt motive.

22. Nothing has been brought on record nor any material, which may have been found or discovered in three years, after the previous Vice Chancellor completed his term on 31.12.2007 has been brought on record, to justify the apprehension of the Chancellor. So far as petitioner's appointment is concerned, there is no complaint, or even a doubt expressed on record to consider his selection to be invalid.

23. We find substance in the contention of learned counsel for the petitioner that when in the same order the Chancellor has approved appointment of some of the lecturers namely Dr. Arvind Pratap Singh and Dr. Rekha to be promoted as Lecturer in senior scales, Dr. Sushil Kumar in Games and Physical Instructor and Dr. Kundan Singh were approved for grant of senior scale, the pendency of vigilance enquiry, could not be a ground to agree with the Executive Council to cancel the selections. If the vigilance enquiry, into nonspecific allegations, was pending, it could have, as accepted by the Chancellor, affected the entire selections. The selective approval of some of the teachers in the same selections is thus not only discriminatory, but also contradictory with the reasons given by the Chancellor.

24. The writ petition is allowed. The order of the Chancellor, Mahatma Gandhi Kashi Vidyapeeth, Varanasi dated 23/28.12.2008 in so far as the petitioner is concerned, is set aside. The Chancellor is requested to take a decision on the disagreement conveyed by the Executive Council afresh, without taking into account the ground of the pendency of the vigilance enquiry. If any material is brought to the notice of the Chancellor with regard to the recommendation of the selection committee made in favour of the petitioner for appointment on the post of Lecturer in Sociology in the SC category, it will be open to him to consider its consequence and effect on the selection of the petitioner. The decision in this regard may be taken after taking into account the past history of the selections pending finalisation for more than three years, very expeditiously and if possible within a period of eight weeks.