

## SUPREME COURT OF INDIA

Dr. Abdul Hameed Fazli

Vs.

Adam Malik Khan

(K Ramaswamy and G Pattanaik JJ.)

08.10.1996

### ORDER

This Special leave petition has been filed against the judgment and order of the High Court of Allahabad made on September 4, 1990 in MCWP No. 38618/94. The admitted position is that for one permanent post of lecturer in Islamic studies in the Department of Islamic Studies of Aligarh Muslim University, Aligarh an advertisement was issued pursuant to which the writ petitioners 1,3 and 4, Research Scholars in same department, together with the petitioner and another applied for selection. The Selection Committee constituted by the University conducted the selection and one Abdul Hameed Fazli, a temporary lecturer was selected and posted against the said vacancy on may 19, 1994. The same Committee selected three more persons including the petitioner and kept them in the reserve list. When the temporary vacancy had arisen the petitioner came to be appointed in the said post.

The respondents filed the writ petition on the High Court questioning the appointment of petitioner and the very power of the Executive Committee and the Selection Committee to prepare the select list and keep a reserve list for appointment against vacancies without resorting to the selection as contemplated under Section 29 of the Aligarh Muslim University Act. The Division Bench of the High Court had held that the procedure adopted the University in constituting a committee for recommendation under resolution Item No.58 and recommendation of that Committee for preparing select list and keeping that list alive for filling up the vacancies arising due to retirement etc. are in violation of Section 29(2) (a) of the Act and that, therefore, the resolution and the action of the Executive Council were ultra vires the power. Thus, this special leave petition.

Shri Bimal Roy Jad, learned counsel for the petitioner, strenuously contended that the view taken by the High Court is incorrect. Section 29(2) does not prohibit preparation of reserve list for appointment to meet the contingency of filling up the vacancies that would fall due to permanent incumbent's going on deputation or on his retirement etc.; the selection process would be a tardious process taking long period for selection of the student community would stand to lose their classes. With a view to avoid such contingency, the Executive Council had resolved to recommend the procedure to be followed as policy pursuant to which it was resolved to prepare a reserve select list of candidates to fill up the vacancies that would have arisen. Since a vacancy had arisen in the Department of Islamic Studies, temporary appointment of the petitioner came to be made. This procedure is being followed even after the judgment of the High Court; as per the office proceeding of the University dated September 21, 1996 temporary appointments came to be made to several

Department and, therefore, the view is not correct in law. In support thereof, the learned counsel has placed reliance on a judgment of this court in *Dr. Uma Kant & Anr. v. Dr. Bhika Lal Jain & Ors.* [(1991) supp. 1 SCR 415].

The question is whether the view taken by the High Court is not correct in law? Section 29 of the Act reads as under:

"29. Terms and conditions of service of teachers.-(1) All the teachers of the University of any of its Institutions shall, in the contrary, be governed by the terms and conditions of service as specified in the statutes, Ordinances and Regulations of the University:

Provided that no alteration in the salary, the rate of contribution to the Provident fund and the age of superannuation of a teacher in the service of the University shall be made to his disadvantage except with the previous approval of the Visitor.

(2)(a) All appointments to permanent posts of teachers in the University shall be made by the Executive Council on the recommendation of a Selection Committee in accordance with the provisions of these Statutes after such posts have been duly advertised and the candidates concerned have been interviewed by the Selection Committee decides to consider the case of a candidate otherwise than by an interview.

Except as otherwise provided for in his contract of service every teacher thus selected shall be placed on probation for a period of one year, on the expiry of which period he may confirmed in his post. If his not so confirmed, the expiry of his probationary period as may be practicable or extend the period of his probation for one year at the end of which, if he is not confirmed in his post, his service shall be dispensed with after the expiry of the period of extension of his probation:

Provided that, if a person in the permanent service of the University is appointed on probation to higher post in the same department, he shall not lose his lien on his substantive post, nor shall he be deprived of the Provident Fund Status to which he was entitled at the time of his appointment to the higher post during the period of his probation: Provided further that the service of a teacher appointed on probation may be terminated at any time during the probationary period by giving two months' notice without assigning any reason.

(b) In making temporary appointments to posts of teachers-- (i) if the temporary vacancy is for a duration longer than one academic session, it shall be filled on the advice of the selection Committee in accordance with the procedure indicated in the preceding item (a); and

(ii) if the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of-

(A) The Dean of the Faculty;

(B) The Head of the Department; and (C) A nominee of the Vice-Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor:

Provided further that in case of sudden casual vacancies of teaching post caused by death or any other reason, the Dean, may in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice Chancellor and the Registrar about such appointment."

A reading of Section 29 would indicate that all appointments to permanent posts of teachers in the University shall be made by the Executive Council on the recommendation of the Selection Committee in accordance with the provisions of the statute. Such posts shall be duly advertised and the candidates concerned would have an opportunity of being interviewed by the Selection Committee except in cases where such Committee decides to consider the case of a candidate otherwise than by an interview. The object thereby is that all the permanent vacancies should be filled up by advertisement giving opportunity to all eligible persons to claim for selection by the Selection Committee in regular process. This Court in *Ashok Kumar & Ors. v. Chairman, BSRB & Ors.* [(1996)1 SCC 283] laid down as under:

"Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to the post under the State. Therefore, vacant post arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 (1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Board should notify the existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection."

It was reiterated in *Union of India v. Ishwar Singh Khatri* [1992 SCC (L & S) 999] and *State of Bihar v. Secretariat Assistants Successful Examinees Union* [AIR 1994 SC 736]. In the recent judgment of this court in *Prem Singh & Ors. v. Haryana State Elect. Board & Ors.* [JT (1996) 5 SC 219], it has been held that the Selection Committee cannot make selection for future vacancies and fill up posts from the reserve list of candidates; vacancies should be advertised and selection should be duly made giving an opportunity to all the candidates. In *Dr. Uma Kant's case* (supra) relied upon by the learned counsel, the position was that Section 6 of the Rajasthan University Teachers and Officers (Selection for Appointment) Act, 1974 itself gives power to prepare a select list of 50% of the posts advertised so that if any candidate selected does not join the post after appointment, the candidates in the waiting list would be appointed. The candidates in the waiting list would be appointed. The list shall remain valid for six months. Therein, *Dr. Uma Kant* was No.1 in the wait list of candidates and when one of selected candidates did not join, he came to be appointed. When his appointment was challenged, the High Court had set aside the appointment and directed for regular selection. This Court had reversed the view of the High Court holding that since Section 6 gives that power, the appointment of *Dr. Uma Kant* was in accordance with the provisions of the Act and preparation of the select list of 50% of advertised posts was held valid in law. The ratio therein has no application to the facts in this case.

It is seen that Section 29 itself is a source of power for recruitment and the procedure to be

followed. With regard to even the temporary vacancies Section 29(2) (a) itself gives the procedure as to the manner in which the temporary vacancies are to be filled up by selection by a committee constituted in that behalf as envisaged therein. Thereby, the Legislature has given an indication of method through which even the temporary posts could be filled up and the temporary appointments are regulated thereunder. The object thereby would be to streamline the expediency and efficacy in the selection process so that candidates selected should know their rights acquired thereunder. The appointment of temporary candidates after keeping them in the posts for long time unduly creates an expectation of confirmation which is later claimed; they are though belied of their right, many a time. It would generate unnecessary feeling of denial of right to equality with others and a source of nepotism to keep the candidates in the animated expectation of service for obvious reasons. Under these circumstances, the view taken by the Division Bench of the High Court is perfectly legal and unexceptionable. It does not call for interference. Even the appointment subsequently made were in the teeth of the declaration made by the Division Bench of the High Court. We need not express any opinion on that since the same has not been questioned, but that will not be taken as an instance of the validity of the exercise of power by the Vice Chancellor.

The Special Leave Petition is accordingly dismissed. The University is directed to fill up even the temporary posts in accordance with the procedure prescribed under Section 29 itself as expeditiously as possible, preferably within a period of six months from the date of the receipt of this order.