

SUPREME COURT OF INDIA

Committee of Management

Vs.

The Director of Higher Education

C.A.No.917-918 of 2010

(Madan B.Lokur and Deepak Gupta,JJ.,)

05.12.2017

JUDGMENT

Madan B.Lokur,J.,

1. The primary question for consideration is whether Dr. Ramesh Chandra Mishra, Dr. Ravindra Nath Mishra and Dr. Bachau Prasad Pathak (the respondents) were appointed as ad hoc Lecturers with the Lala Laxmi Narain Degree College, Sirsa, Allahabad (for short the College). In our opinion, the answer is in the negative and for this reason, the appeals must be allowed.

Facts

On 12th January, 1988 an advertisement was issued by the College for appointment to the post of Lecturers. It was stated in the advertisement that the appointment would be on an ad hoc basis and that the application for appointment should be received by the College on or before 31st January, 1988.

3. There is no dispute that the respondents did not apply in terms of the advertisement dated 12th January, 1988. However, much later, each of them submitted a letter on different dates between August 1988 and December 1989 to the effect that they had come to know that a post of a part-time Lecturer is lying vacant in the College and as such they may be considered for appointment against the part-time post. The College considered and accepted the application sent by the respondents and they were appointed to the post of part-time Lecturer for a fixed period of three months on a fixed salary. They continued as such till the end of April 1990.

4. After the period of appointment was over, the respondents filed Writ Petition No. 35210 of 1991 in the Allahabad High Court for a declaration that they are ad hoc Lecturers and that they should be paid appropriate salary as ad hoc Lecturers.

5. In response, the submission made by the College to the writ petition was that the respondents had not been appointed against any advertisement, that they were only part-time Lecturers and that they had not been working from May 1990 onwards.

6. The writ petition was disposed of by the High Court by a judgment and order dated 21st August, 1995. We have gone through the decision rendered by the High Court and it appears to us that the High Court proceeded on the erroneous basis that the appointment of the respondents to the post of part-time Lecturers was made pursuant to the advertisement dated 12th January, 1988. Proceeding on this erroneous basis, the High Court expressed the view that the respondents were entitled to the pay scale as applicable to the ad hoc appointees and not to part-time Lecturers.

7. The High Court also adverted to the provisions of the Uttar Pradesh Higher Education Services Commission Act, 1980 (for short the Act) and directed the Directorate of Higher Education to enquire into the payment of salary to the respondents as ad hoc Lecturers and to take steps for payment of outstanding salary to them. The High Court noted the view of the College that the respondents were not functioning since May 1990 and also that this was disputed by the respondents. Finally, the direction given to the Directorate of Higher Education was to dispose of the entire matter within a period of two months in the light of the submissions made. The operative portion of the judgment and order dated 21st August, 1995 passed by the High Court and which was discussed in detail before us reads as follows:

“Further the petitioners moved an application on 27.4.92 for payment of salary for the period after 30.4.90 supported by certificate from Principal of College showing that petitioners had actually worked as lecturers even after 30.4.90. This fact has not been controverted by the respondents as such, is accepted as fact. The other claims and counter claims made by the petitioners and the college authorities cannot be decided in the summary jurisdiction. We, therefore, direct the Director of Higher Education to enquire into the matter of payment of salary to the petitioners as ad hoc lecturers and take steps for payment of outstanding salary to the petitioners. According to the respondents they are not functioning since the month of May, 1990, which is however, being disputed by the learned Advocate for the petitioners. The Director of Higher Education is further directed to give personal hearing to the petitioners in the matter of payment of salary to the petitioners. It is only upon the hearing of the petitioners he shall pass necessary orders. The College Authorities are further directed to take into consideration the candidature of the petitioners who have rendered service from 1989 to April, 1990 according to the respondents in the case of filling up the future vacancies as a special case, if there exists any regular vacancies. It is desired that the Director of Higher Education will dispose of the entire matter within a period of two months from the date of the production of a certified writ petition.”

8. In compliance with the order passed by the High Court, the Director in the Directorate of Higher Education passed a detailed order on 6th August, 1996. It was held that the

respondents had not applied in terms of the advertisement dated 12th January, 1988. It was also held that the respondents had been appointed as part-time Lecturers only and there was no provision in the Act to regularise the services of part-time Lecturers. It was also held that there was nothing on record to suggest that the respondents had put in any work with the College from May 1990 onwards or that their appointment was extended beyond April 1990.

9. Feeling aggrieved by the order passed by the Director on 6th August, 1996, the respondents filed Writ Petition No. 27057 of 1996 challenging the said order. During the pendency of this writ petition, the Special Secretary, Government of Uttar Pradesh passed an order on 8th September, 1997 to the effect that the respondents should be considered to have been appointed as ad hoc Lecturers; that they should be considered to have been continuously working after April 1990 and finally their regularization should be considered. It was added that the payment of salary to these respondents should be made by the College from their own resources.

10. Feeling aggrieved by the order dated 8th September, 1997 the College filed Writ Petition No. 33357 of 1997.

11. Both these writ petitions, that is Writ Petition No. 27057 of 1996 and Writ Petition No. 33357 of 1997 came to be heard and disposed of by the High Court by a judgment and order dated 12th November, 1998. The writ petition filed by the respondents was allowed while the writ petition filed by the College was dismissed by the High Court.

12. Being aggrieved, the College preferred two petitions for special leave to appeal in this Court which were admitted for final hearing and numbered as Civil Appeal Nos. 7224-7225 of 1999.

13. The Civil Appeals filed by the College were disposed of by this Court by an order dated 16th April, 2003. It was held that the order dated 8th September, 1997 issued by the Special Secretary could not be sustained and the High Court was in error in upholding that order. Accordingly, it was held that Writ Petition No. 33357 of 1997 filed by the College challenging the order dated 8th September, 1997 deserves to be allowed. It was also held that insofar as Writ Petition No. 27057 of 1996 is concerned (wherein the order dated 6th August, 1996 was challenged by the respondents) it deserved to be heard afresh by the High Court and accordingly the said writ petition was remanded to the High Court for a fresh hearing in accordance with law. Both the Civil Appeals were disposed of on the above basis.

14. Strangely enough while both the Civil Appeals were pending in this Court, the Secretary, U.P. Government passed an order dated 26th February, 2001 once again regularising the services of the respondents and fixing their pay. This order was challenged by the College by filing Writ Petition No. 12748 of 2004. By the impugned judgment and order dated 1st November, 2004 the High Court remanded the matter relating to the regularization of the respondents to the Director of Education for passing a speaking order after considering the provisions of Section 31- C of the Act.

15. It may be noted that in the meanwhile, pursuant to some other and unconnected regular selection process, the College had already regularly engaged some Lecturers including one of the respondents. The High Court directed that in case the respondents are regularised pursuant to judgment and order dated 1st November, 2004 then the candidates selected by the regular process may have to be adjusted elsewhere.

16. Against both the directions of the High Court, the College preferred Civil Appeal Nos. 917-918 of 2010 while regularly selected candidates also challenged the judgment and order dated 1st November, 2004 since they would be directly affected. The appeal filed by the regularly selected Lecturers is Civil Appeal No.919 of 2010.

17. By an order dated 28th February, 2005 this Court granted an interim stay of the impugned judgment and order passed by the High Court. On 14th May, 2009 this Court modified the interim order passed on 28th February, 2005 by requiring a report to be filed whether the respondents fulfil the requirements of Section 31- C of the Act.

18. In compliance with the order dated 14th May, 2009 the Director of Higher Education passed an order on 1st December, 2009 to the effect that the respondents “who were appointed as part-time teachers, substantially fulfil the requirements of Section 31(C) of the U.P. Higher Education Service Commission Act, 1980.”

19. A reading of the order dated 1st December, 2009 gives a clear indication that even as recently as 2009 the Director of Higher Education was of the view that the appointment of the respondents was only on a part-time basis and not on an ad hoc basis. Since the respondents were not appointed on an ad hoc basis (even if they fulfilled the requirements of Section 31-C of the Act), they had no right to be regularized since they were not so appointed.

20. On these broad facts, we heard all the affected parties on the merits of the case.
Findings

21. In our opinion, the High Court erred in taking the view that it did. There is absolutely no doubt that the respondents had not applied for the post of ad hoc Lecturer pursuant to the advertisement dated 12th January, 1988. On the contrary, the respondents moved independent applications to the effect that they had come to know through reliable sources that the post of a part-time Lecturer was available. It is on the basis of these applications that the respondents were appointed on a part-time basis for a fixed period by the College and on a fixed salary. There is absolutely no question of the respondents having been appointed on an ad hoc basis or on any basis other than part-time or pursuant to the advertisement dated 12th January, 1988. The High Court completely overlooked this aspect of the matter.

22. The provisions of the Act also do not come to the rescue of the respondents. Section 16 and Section 31-C of the Act were placed before us for consideration. These provisions read as follows:

“16. Appointment of ad hoc teachers.- (1) Where the management has notified a vacancy to the Commission in accordance with sub-section (2) of Section 12, and the Commission fails to recommend the names of suitable candidates in accordance with sub-section (1) of that section within three months from the date of such notification, the management may appoint a teacher on purely ad hoc basis from amongst the persons holding qualification prescribed therefor.

(2) xxx xxx xxx”

“31-C. Regularisation of other ad hoc appointments. - (1) Any teacher, other than a principal who -

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

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

(ii) which after its due creation was filled earlier and after its falling vacant, 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 appointed on ad hoc basis under sub-section (1) of Section 16 as it stood before its omission by the Act referred to in clause (a), whether or not the vacancy was notified by the Commission.

(c) possessed on the date of such commencement, the qualifications required for regular appointment to the post or was given relaxation from such qualification under the provisions of the relevant Statutes in force on the date of such ad hoc appointment;

(d)

(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 not 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 sub-section (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) to (5)”

23. A bare perusal of these provisions makes it quite clear that they deal with the procedure of ad hoc selection and regularization of those selected on an ad hoc basis. These provisions have absolutely no application to the appointment of part-time Lecturers or their regularization. In fact the statute does not at all provide for regularization of part-time Lecturers.

24. There is also nothing on the record to indicate that the respondents had worked beyond 30th April, 1990. It was only their submission that they had worked beyond April 1990 but nothing was placed on record to even give a suggestion that the respondents had worked beyond April 1990.

25. Under these circumstances, the question of regularization of the respondents including the correctness of the order passed by the Secretary, U. P. Government on 26th February, 2001 simply did not arise. The respondents had absolutely no right in their favour and the only option available to the High Court was to have dismissed the writ petition filed by the respondents and to have allowed the writ petition filed by the College and set aside the order dated 26th February, 2001 regularising the services of the respondents.

Conclusion

26. On the facts placed before us, we find that they were not correctly appreciated by the High Court. Consequently, we dispose of these appeals by holding that the respondents were appointed only on a part-time basis as Lecturers and not on an ad hoc basis; the respondents did not work in the College beyond April 1990; the respondents had no right to be regularised as Lecturers in the College and there is no merit in the claim made by the respondents.