

A

STATE OF U.P. AND ORS.

v.

DEEP NARAIN TRIPATHI AND ORS.

APRIL 8, 1996

B

[A.M. AHMADI CJ, N.P. SINGH AND  
SUJATA V. MANOHAR, JJ.]

*Service Law :*

C

*Uttar Pradesh Higher Education Services Commission (Amendment) Ordinance, 1991 (later replaced by U.P. Act 2 of 1991)—Section 31-C—Substantive appointment of ad-hoc appointee—Denial of—Post of lecturer—Ad-hoc appointment duly made under relevant statutes—The appointment stood valid for 7 years—Plea that the appointment did not exist since very inception as per provisions of U.P. Higher Education Services Commission Act, 1980—Held, the plea cannot be taken in the facts and circumstances of the case.*

D

*Statute of Gorakhpur University—Statute 11. 13(1)(2)(c).*

E

*State University Act, 1973—Section 50(1-8).*

F

The respondent was selected as an *ad-hoc* lecturer in 1985 in a College affiliated to Poorvanchal University. The College was earlier affiliated to Gorakhpur University. The selection was duly made by Selection Committee who recommended his name to the Managing Committee which was accepted, and he was appointed. Later in 1986, the appointment was also approved by the Vice Chancellor.

G

In 1991, Uttar Pradesh Higher Education Services Commission (Amendment) Ordinance, 1991 was promulgated. Section 31-C thereof provided that *ad-hoc* appointment of a teacher between 3.1.84 and 30.6.91, who on the date of commencement of the ordinance possessed the qualification required for regular appointment to the post under the provisions of relevant statutes in force on the date of such *ad-hoc* appointment, may be given substantive appointment by the management of the College. Selection Committee was to consider the case of such *ad-hoc* teachers. The case of the respondent was placed before the Selection

H

Committee, which did not recommend him for substantive appointment and his services were terminated w.e.f. 30.6.1992. A

The respondent challenged the termination order in the High Court. The State contended that initial appointment itself of the respondent was illegal because he did not possess the requisite qualification for being appointed as lecturer and there was no provision for relaxation of qualification under the statutes of Poorvanchal University. B

High Court allowed the case of the respondent, holding that as per Section 50(1-8) of State Universities Act, 1973, until making of First Statute of Poorvanchal University, the statutes of Gorakhpur University were to be applicable. The statutes of Gorakhpur University had provision for relaxation of any qualification. C

The State approached this Court in appeal and contended that the appointment did not exist since very inception, as U.P. Higher Education Services Commission having come into force, no *ad-hoc* appointment could have been made. D

Dismissing the appeal, this Court

**HELD :** 1. The stand that *ad-hoc* appointment could not have been made, as the U.P. Higher Education Services Commission Act, 1980, had come into force, cannot be taken on behalf of the appellant State in the facts and circumstances of the case. It is an admitted position that the *ad-hoc* appointment of the respondent had been held to be valid till 1992 and only when the Selection Committee constituted under Section 31-C did not recommend for substantive appointment of the respondent, the impugned order was issued on 26.6.1992. In this background it is not possible to hold that in the eye of law, the *ad-hoc* appointment of the respondent did not exist since very inception. [83-F-H; 84-A] E F

2. Once it has been found that under the relevant statutes of the Gorakhpur University, which were applicable, there was a provision for relaxation of any qualification and the power under the said provision had been exercised, which was approved by the Vice-Chancellor of the University. It was no more open to the Selection Committee constituted under Section 31-C to say that there was no provision for relaxation under the requisite qualification for being appointed as a lecturer on substantive G H

A basis. [84-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6902 of 1996.

B From the Judgment and Order dated 17.10.94 of the Allahabad High Court in C. Misc. W.P. No. 24381 of 1992.

T.N. Singh for R.B. Misra for the Appellants.

R.K. Jain, Ms. Shashi Kiran for M.M. Kashyap for the Respondents.

C The Judgment of the Court was delivered by

N.P. SIGH, J. Leave granted.

D The State of Uttar Pradesh has filed this appeal for setting aside the judgment of the High Court holding the appointment of the writ petitioner - respondent (hereinafter referred to as the respondent) as a Lecturer in Sanskrit in Sri Bajrang Maha Vidyalaya, Dadar Ashram, Sikandarpur, as valid.

E The institution aforesaid is a duly recognised Degree College and is affiliated to Purvanchal University, Jaunpur. Earlier it was affiliated to Gorakhpur University. Its teachers and employees are being paid salaries through the State fund. A permanent vacancy arose on the retirement of Dr. Sudarshan Tripathi. It is said that a requisition was made to the Uttar Pradesh Higher Education Services commission (hereinafter referred to as Commission). Since no recommendation was made by the Commission for filling up the post, an advertisement was issued by the Management of the institution on 6.8.1985 for the post of the Lecturer in Sanskrit. Pursuant to F the said advertisement, several persons including the respondent applied and they appeared before the Selection Committee. The Selection Committee found the respondent as the most suitable person and recommended his name to the Managing Committee. The Managing Committee accepted G the recommendation of the Selection Committee and issued a letter of appointment to the respondent. The respondent joined the said institution. The appointment of the respondent was approved by the Vice Chancellor on 10.4.1986. There is no dispute that since the date of appointment the respondent had been working as a Lecturer in the said institution. In the H year 1991 the Uttar Pradesh Higher Education Services Commission

(Amendment) Ordinance, 1991 (U.P. Ordinance No. 43 of 1991) was promulgated which was later replaced by U.P. Act 2 of 1991. Section 31-C which was introduced by the Ordinance aforesaid provided that any teacher other than a Principal who was appointed on *ad-hoc* basis after 3.1.1984 but not later than 30.6.1991 on a post as specified in the said Section which includes a post which has fallen vacant, then if the person who had been appointed on *ad-hoc* basis between the period aforesaid and who on the date of such commencement possessed the qualification required for regular appointment to the post under the provisions of the relevant statutes in force on the date of such *ad-hoc* appointment, may be given substantive appointment by the management of the College. In the said Section there is also a provision for a constitution of Selection Committee to consider the cases of such *ad-hoc* teachers. In view of the provisions aforesaid the case of the respondent was placed before the Selection Committee, but by an order dated 26.6.1992 issued by the Director of Education (Higher Education) respondent was informed that no substantive appointment was being given to him in terms of Section 31-C aforesaid and because of that it shall be deemed that the services of the respondent had been terminated w.e.f. 30.6.1992. This communication was challenged by the respondent before the High Court.

In the counter affidavit which was filed to the writ petition in question, a stand was taken on behalf of the respondents of that writ petition that the initial appointment of the respondent as an *ad-hoc* Lecturer in the College in question itself was illegal because the respondent did not possess the requisite qualifications for being appointed as the Lecturer. In this connection, reliance was placed on the provisions of the U.P. Higher Education Services Commission Act 1980 which prescribed the conditions for the appointment of a Lecturer on *ad-hoc* basis on recommendation of the Selection Committee by the management of the College.

The High Court in the impugned order has pointed out that when the respondent had been appointed on an *ad-hoc* basis on the recommendation of the Selection Committee, by the management of the College which had been approved by the Vice Chancellor on 10.4.1986, there was no occasion for the respondents to the writ petition, to question the initial appointment of the petitioner, in the year 1992. The High Court has said that admittedly the case of respondent along with others was placed before the Selection Committee constituted under the provisions of Section 31-C

A aforesaid treating the respondent to have been appointed on *ad-hoc* basis after 3.1.1984 and before 30.6.1991. According to the High Court, the only question which had to be examined in the said writ petition was as to whether the Selection Committee was justified in taking the view that as the respondent did not possess the requisite qualifications required for regular appointment to the post in question under the provisions of the relevant statutes in force on the date of such *ad-hoc* appointment, he was not entitled to be given substantive appointment by the management of the College. The High Court pointed out that the Selection Committee constituted under Section 31-C aforesaid for regularisation of the Lecturers who had been appointed on *ad-hoc* basis between the period mentioned

C aforesaid, was under the impression that there was no provision in the statute of the Purvanchal University for granting relaxation which impression according to the High Court was not correct. In that connection it was said :

D ".....the Committee was under impression that there was no provision in the Statute of Purvanchal University for granting relaxation but this is not a correct reading of the requisite provisions, Section 50(1-8) of the State Universities Act, 1973 runs as follows :

E "(1-8) Until the First Statutes of the Purvanchal University are made under this section, the statutes of the University of Gorakhpur, as in force immediately before the establishment of the said University, shall apply to it subject to such adaptation and modifications as the State Government may by notification provides."

F Admittedly, the first statute of the Purvanchal University has not been published so far, therefore, the statute of Gorakhpur University shall apply to the present case. Therefore under the specific provisions referred to above the statutes of Gorakhpur University, Gorakhpur are applicable to the present case."

G Then reference was made to Statute 11.13(1)(2) of Gorakhpur University and it was pointed out that there was a provision for relaxation of any of the qualifications prescribed in sub-clause (b)(c) of clause 2 of the relevant statute in question. As such it could not be said that there was no provision

H for relaxing the qualifications. In this background, according to the High

Court the Selection Committee was under mis-apprehension that there was no provision for relaxation of the minimum qualifications when the respondent was initially appointed on *ad-hoc* basis. Thereafter the High Court observed :

"This Court is not required to go into the question as to whether the relaxation could be given by the selection committee or not, once it is found that there was a provision for granting relaxation which the Regularisations Committee wrongly thought that there was no such provisions.

Now coming to the merits of the case, we find that the discretion has been left to the selection committee to grant relaxation, if it was of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard."

In other words, the High Court was of the view that there being a provision for relaxation of any qualification under the statutes framed by the Gorakhpur University which were in force on the relevant date, as no statutes had been framed by the Purvanchal University and power of relaxation having been exercised which had been approved by the Vice Chancellor of the University, there was no occasion for the Selection Committee under Section 31-C aforesaid to say that in the absence of a provision of relaxation under the statutes of the Purvanchal University, the respondent did not possess the requisite qualifications on the date of his initial appointment on *ad-hoc* basis.

It was not stated on behalf of the appellant-State that on the date of the appointment of the respondent on *ad-hoc* basis the statutes framed by the Gorakhpur University were not in force. The primary objection which was raised on behalf of the State during the hearing of the appeal was that as the U.P. Higher Education Services Commission Act 1980 had come into force no *ad-hoc* appointments could have been made. In that connection, reference was made to different provisions of the aforesaid Act. According to us, this stand cannot be taken on behalf of the appellant - State in the facts and the circumstances of the present case. It is an admitted position that the *ad-hoc* appointment of the respondent had been held to be valid till 1992 and only when the Selection Committee constituted under Section 31-C aforesaid did not recommend for substantive

- A appointment of the respondent, the impugned order was issued on 26.6.1992. In this background, it is not possible for this Court to hold that in the eye of law, the *ad-hoc* appointment of the respondent did not exist since very inception. The High Court has rightly pointed out that not only the said appointment was approved by the Vice Chancellor of the University in exercise of his statutory power under the relevant provisions of the Act in force, but the case of the respondent was placed for consideration as to whether a substantive appointment be given to him under the provisions of Section 31-C. Once the High Court has found that under the relevant statutes of the Gorakhpur University which were applicable, there was a provision for relaxation of any qualification and the power under the said provision had been exercised, which was approved by the Vice Chancellor of the University, it was no more open to the Selection Committee constituted under Section 31-C to say that as there was no provision for relaxation under the Purvanchal University, respondent did not possess the requisite qualifications for being appointed as a Lecturer on substantive basis.
- D

The appeal accordingly fails and is dismissed. In the facts and circumstances of the case, there shall to no order as to costs.

K.T.

Appeal dismissed.