

SRI RAJ PAL VERMA AND ORS.

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v.

CHANCELLOR OF MEERUT UNIVERSITY (RENAMED
AS CH. CHARAN SINGH UNIVERSITY), RAJ BHAWAN,
LUCKNOW AND ORS.

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MAY 1, 1997

[K. RAMASWAMY, S. SAGHIR AHMAD AND
G.B. PATTANAIK, JJ.]

Service Law :

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U.P. University Act, 1973 :

31(8)(a)—Chancellor of University—Powers of—Executive Council not agreeing with the recommendation made by Selection Committee for appointment of a Professor, referred the matter to Chancellor—Chancellor finding that some seats of Executive Council were vacant, filled up four seats by nomination and remitted the matter to it—Executive Council approved the selections made by Selection Committee—Held, there is no infirmity in the decision taken by the Chancellor in remitting the matter to Executive Council for reconsideration—As regards Chancellor's power, to reconstitute the Council by nomination instead of following the due procedure prescribed under the Act, in view of the long lapse of time it is not necessary to record any finding in this regard.

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S.31(1)—Appointment of Professor—Held, though the person appointed was not qualified for appointment at first instance as he did not possess the Ph.D. degree in Ancient History since 18 years have elapsed and the teacher is at the verge of retirement, the appointment is not disturbed—It is hoped that Executive would look into the deterioration of standards of rectitudes in management of higher educational institutions and would cure the malady—Appellant espoused good cause as a public interest litigant—Public interest litigation.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3693 of 1997.

From the Judgment and Order dated 28.11.94 of the Allahabad High Court in C.M.W.P. No. 38070 of 1994.

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A D.D. Thakur and N.N. Bhat Petitioner-in-person for the Appellants.

R.B. Misra, R.D. Upadhyaya and (Amlan Ghosh) (N.P.) for the Respondents.

The following Order of the Court was delivered :

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Leave granted.

Intervention application is dismissed.

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Here is a classic case of 'delay defeats justice'. This appeal by special leave arises from the order of the Division Bench of the Allahabad High Court, made on November 28, 1994 in Writ Petition No. 38070/94.

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It is not necessary to give in detail all the facts. Suffice it to state that pursuant to an advertisement on March 14, 1978 for selection to the post of Professor, Ancient History, Mr. K.K. Sharma, the 3rd respondent had applied for selection. While the selection was to be made by a Committee consisting of Vice- Chancellor, the Dean and three experts on the subject, of whom one was from outside the University and two from outside the State therein. On the day when the Committee met for selection of the teacher, two of the experts from outside the State did not attend the meeting. They appear to have acted upon the telegram sent by the Vice Chancellor asking them to abstain from the selection Panel. The Vice-Chancellor, the Dean and the local expert Mr. K.K. Nizam from Aligarh University then selected Mr. K.K. Sharma. The matter was referred to the Executive Council. The Executive Council, the appointing authority, did not approve of the selection. Mr. K.K. Sharma was qualified only in modern and medieval Indian history while the candidate was required to possess degree in Ancient History. Accordingly, the matter was referred under Section 31(8)(a) of the U.P. University Act, (10 of 1973) (for short, the 'Act') to the Chancellor. The Chancellor, finding that all the seats of the Executive Council were not filled up, filled up four vacant seats by nomination, instead of following the due procedure and then referred the matter to the Executive Council. The Executive Council approved the selection made by the Selection Committee and pursuant thereto, the third respondent came to be appointed in March 1979 as the Professor in Ancient History. The appointment came to be challenged before the High Court. Several rounds of litigations have since taken place. Ultimately, the

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first appellant who is one of the Professors, challenged the said appointment, as stated earlier, on diverse legal grounds. The High Court has dismissed the matter *in limine*. Since the appellant is appearing in person, we have requested Shri D.D. Thakur, learned senior counsel, to assist the Court. He has graciously accepted and ably assisted us. We express our deep thanks for the valuable assistance given by him.

The only question is : whether the action of the Chancellor in filling up the vacancies by nomination and instead of following the due procedure remitting the matter to the Executive Council for reconsideration of the matter is valid in law? In other words, could he alone decide it? Section 31(8)(a) reads as under :

"In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee. The Executive Council shall refer the matter to the chancellor along with the reasons of such disagreement and his decision shall be final.

In Chapter 5, appointment dealing with "appointment and condition of service of teachers and officers", under sub-section (1) of Section 31 it is provided thus :

"Subject to the provisions of this Act, the teachers of the university and the teachers of an affiliated or associate college (other than a college maintained exclusively by the State Government shall be appointed by the Executive Council or the Management of the affiliated or associated college, as the case may be, on the recommendation of a Selection Committee in the manner hereinafter provided.

The details as to the constitution of the Selection Committee and manner of selection are not material for the purpose of this case. Section 31(8)(a) postulates that in the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision thereon shall be final. The proviso is not necessary for the purpose of this case, hence omitted. The contention of Shri D.D. Thakur is that since the statute attaches finality to the decision of the Chancellor

A in the matter of selection of a teacher, on disagreement between Selection Committee and the Executive Council, the appropriate authority to decide the legality of selection and approval of the selection would be by the Chancellor. Therefore, he has no power, by necessary implication, to remit the matter to the Executive Council for reconsideration. He alone can decide it. The Chancellor has derelicted in the performance of the statutory duty which is in violation of Section 31(8)(a) of the Act. Though plausible, we find it difficult to give acceptance to the said contention. It is seen that when there is a difference of opinion on the selection of a teacher of the University or affiliated college for appointment as a Professor or Lecturer, as the case may be, between the Selection Committee and the Executive Council which is the appointing authority, the matter shall be referred to the Chancellor. The Chancellor shall consider the reasons given by the Executive Council for its disagreement with the Selection Committee and then he is entitled to take a decision in an appropriate manner. He should articulate his major premise by a reasoned order. In case the Chancellor feels that some material circumstances have not been considered by the executive committee or the same escaped their attention, instead of himself taking a decision, he may remit the matter to the Executive Council to reconsider the matter in terms of his guidance, and may also express his opinion for such a course of action. He may also himself take a decision in which event it shall be final. In the later case, the Executive Council, on remittance and fresh consideration may still disapprove of the selection. In case the Executive Council expresses opinion thereafter, the Chancellor is entitled to take his own decision. The decision then shall be final and, of course, subject to judicial review and the intermediary action of remittance taken by the Chancellor is not final. Under these circumstances, we hold, on principle, that there is no infirmity in the decision taken by the Chancellor in remitting the matter to the Executive Council for reconsideration. It is true that the Chancellor has reconstituted the committee by nomination, instead of following the due procedure prescribed under the Act and loaded in favour of Mr. Sharma which may be open to grave doubt on the propriety of the course of action taken by the Chancellor. Though, *prima facie*, we are in agreement with Shri D.D. Thakur, in view of the long lapse of time, it is not necessary to record any finding in this regard.

He then contends that the entire operation to be a success was done behind the screen by Mr. B.C. Sharma, the Vice-Chancellor to benefit the third respondent, Mr. K.K. Sharma and, therefore, it is vitiated by *mala*

fides. He contends that till the last date prescribed to submit the application, K.K. Sharma did not have Ph.D. degree. To facilitate him, the Vice-Chancellor extended the last date of the application so as to enable the third respondent to become eligible to submit the application for selection. This is not disputed. He prevented the outside experts to participate in the selection by sending telegrams requesting them not to attend the selection as respondent No. 3 was not qualified. Thus, the respondent No. 3 came to be selected. It is but a stage-managed affair due to caste consideration.

It is very unfortunate and sad to notice that centres of learning of yester years have become caste infected and caste oriented clusters and the autonomy of management given to them sanctioning power gives impetus to camouflage the blatant misconduct generating deleterious effect on true and congenial atmosphere, honest learned and secular outlook for further education. Politicisation and division of staff on caste lines is another debilitating factor which need urgent attention for remedy. Teachers are at the receiving end and are discouraged and demoralised. Honest and effective performance of the duties in teaching and in the management of the Universities is sagging and disappearing. Centres of learning meant to prepare the students with broad, enlightening and secular breed to improve excellence, higher learning, rational thinking and scientific temper with objectivity and fairness, are breeding people with narrow mind and cynical attitude. Objectivity and secular outlook would be brought back on board only when teacher becomes Guru and serves as Guru Devo Bhava but not as caste demon. The true teacher scintilates the young receptive minds with scientific thought and encourages rational thinking and makes him progressive minded man to occupy any chosen faculty, profession, avocation, service to serve the society with pride of his *alma mater*.

The third respondent came to be appointed as late as in March 1979 and 18 years have passed and we are informed that he is on the verge of retirement next year. Though he was not qualified for appointment at the first instance as he did not possess the Ph.D. degree in Ancient History, the subject to be taught, nonetheless, since the time has run out, we decline to disturb the appointment of the third respondent the observation that there is deterioration of standards of rectitudes in management of higher educational institution with the fond hope that the Executive would look into and cure the malady and restore the lost glory of the educational

A institutions. University is the centre of learning and the students look to the teacher as real *Guru Devo Bhava* with all respect, reverence in the heart, as the true guide, mentor, friend and philosopher. Before parting with the matter, we are inclined to place on record our appreciation for the good cause espoused by the appellant as public interest litigant.

B Thus, we are constrained to dismiss the appeal. No costs.

R.P.

Appeal dismissed.