

Court No. - 35

Case :- WRIT - A No. - 15415 of 2023

Petitioner :- C/M Sri Parashuram Sanskrit

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kushmondeya Shahi, Tanuj Shahi

Counsel for Respondent :- C.S.C., Shesh Kumar Srivastava

Hon'ble Vikas Budhwar, J.

Heard Shri Kushmondeya Shahi, learned counsel for the writ petitioner, Shri Ratandeep Mishra, learned Standing Counsel who appears for the respondent Nos. 1 and 2 and Shri Shesh Kumar Srivastava, learned counsel for the respondent Nos. 3 and 4.

Since according to the learned counsel for the rival parties, affidavits have been exchanged and they do not propose to file any further affidavits, thus with the consent of the parties, the writ petition is being decided at the fresh stage.

The case of the writ petitioner that the writ petitioner is an institution by the name of Sri Parashuram Sanskrit Vishwavidyalay, Jalalabad, Shahjahanpur which is a recognised Sanskrit institution with Sampurnanand Sanskrit Vishwavidyalay, Varanasi, the writ petitioner claims that there is one post of Principal, two post of lecturer, two post of Assistant lecturer and six post of teachers (total 11 posts) sanctioned by the State Government. In para 4 of the writ petition, it is further asserted that the post of lecturer (Literature), Assistant lecturer (Vigyan) and teachers (literature) have fell vacant on account of superannuation of those incumbents who were manning the said post. In para 5, it is further asserted that the State Government authorised the District Inspector of Schools throughout the State by virtue of

the Government order dated 21.04.1998 to verify the sanction strength in the Sanskrit institution and in turn the District Inspector of Schools, Shahjahapur, second respondent has verified the sanctioned strength on 04.12.2017. Post verification of the sanction strength by the second respondent, District Inspector of Schools, Shahjahapur, the writ petitioner, Committee of Management published an advertisement in daily newspapers on 18.08.2018 for making selection on the said post and requested the Vice Chancellor of the Sampurnanand Sanskrit Vishwavidyalay, Varanasi, third respondent to nominate the subject experts as per statute 11.16 of the respondent-University. It is further the case of the writ petitioner that a ban was imposed with respect to recruitment exercise in the Sanskrit institution which was subject matter of challenge in Writ Petition No. 27419 of 2018 which along with the connected writ petitions came to be decided on 30.03.2019 deprecating the ban and permitting the institutions to proceed for the selections on the basis of the provisions available in the statute and the Vice Chancellor of the University concerned was directed to nominate subject experts for constitution of the selection committee as per statute 11.16 of the first statute of the University. According to the rival parties, the judgment of writ court is the subject matter of challenge before a Special Appellate Bench which came to be dismissed on 18.09.2019. The Special Leave Petition was also preferred which came to be dismissed and finally on 07.04.2022, the Vice Chancellor of the University in question proceeded to nominate the subject experts for the petitioner's institution. The writ petitioner being not satisfied with the nomination of the subject experts proceeded to file Writ A No. 14415 of 2022. which was presented before this Court on 09.09.2022. In the said writ petition, this Court proceeded to pass the following order on

19.10.2022:

"1. Heard Shri Kushmondeya Shahi, learned counsel for the petitioner; Shri Ajay Singh, learned Additional Chief Standing Counsel and; Shri Avneesh Tripathi, learned counsel for respondent University.

2. Pursuant to last order, learned Additional Chief Standing Counsel has produced a list of panel of seven experts. Only one subject expert has been proposed in the the subjects Literature, Grammar and New Grammar.

3. The above list is also stated to have been communicated by the State to the University authorities.

4. On the above, learned counsel for University contends, the State should have provided a panel of more than one subject expert in each subject as otherwise difficulties exist with the University in maintaining secrecy and integrity of the selection process. Upon being forced to invite the only expert provided by the State, while the difficulty being cited may be genuine, the University cannot be permitted to not take up the selection process further awaiting empanelment of further subject experts. The rule of necessity and force of circumstance would commend the vacancy be filled up to the best possible.

5. Accordingly, list on 11 January 2023.

6. In the meantime, it is expected-

(i) the University would proceed on the list on seven subject experts communicated to it by the State and make best efforts to provide them for the purpose of selection on the vacancies existing with the affiliated colleges. Such exercise may be carried out expeditiously.

(ii) the State authorities may make further efforts to recommend more subject experts to the University in the subjects Literature, Grammar and New Grammar. In that regard, learned Standing Counsel may obtain further written instructions.

7. It is left open to the parties to file supplementary affidavit on or before the next date to apprise the Court about the selection process. Wherever single subject expert has been made available by the State, Executive Council of the University may by its collective decision, prepare a list of further subject experts who may also be included in the selection process

along with expert empanelled by the State, till such time as more subject experts are made available by the State."

As per the writ petitioner, the executive council of the University concern proceeded to pass a resolution whereby it endorsed the fact that the Vice Chancellor was competent to nominate the subject experts in that regard which resulted into passing of an order dated 15.05.2022. The writ petitioner thereafter got the Writ A No. 14415 of 2022 dismissed as not pressed. The orders passed therein on 02.02.2023 reads as under:

"It is argued by Shri Tanuj Shahi, learned counsel for the petitioners that after filing of the present petition certain subsequent developments were taken place, hence a prayer has been made to dismiss the present petition as not pressed with liberty to file a fresh petition.

Prayer is allowed.

Accordingly, the present writ petition is dismissed as not pressed with liberty as prayed."

In para 11 of the writ petition, it is further asserted that the selection committee so nominated by the Vice Chancellor of the aforesaid University conducted the selections and the papers whereof was forwarded to the respondent University on 27.03.2023 by the writ petitioner, Committee of Management. On 02.05.2023, the Registrar of the University returned the papers of the approval which was subject matter of challenge in Writ A No. 12219 of 2023 by the writ petitioner in which on 28.07.2023 the following orders were passed:

"1. The submission of Shri Shahi, learned counsel for the writ petitioner submits that the order impugned dated 02.05.2023 has been passed by the Registrar of the University though under statute of 11.24, the power vests with the Vice Chancellor. It is further submitted that on the strength of the statutory provisions as well as the decision in Writ A No. 7305 of 2022

(Ram Dev Bharadwaj Vs. State of U.P. and three others) decided 05.08.2022 that if he does not agree with the stand of the Committee of Management then he has two options, either to remit the matter to the Committee of Management of the Institution or to refer it to the Executive Council of the University. Since the order has been passed by the Registrar, so according to the learned counsel for the writ petitioner, it is without jurisdiction.

2. Shri Dev Kaushik, advocate holding brief of Shri Shesh Kumar Srivastava, on the other hand, submits that as per the approval granted, the selection committee was to conduct selections within six months, however the same has been conducted after 11 months.

3. He further submits that in view of the provisions contained under Section 68 of the U.P. State Universities Act, 1973 the petitioner can take recourse to filing a reference before the Vice Chancellor.

4. Shri Dev Kaushik, advocate holding brief of Shri Shesh Kumar Srivastava is appearing for learned counsel for the University seeks time to obtain instructions.

5. Put up this case as fresh on 04.08.2023."

In the meantime, according to the writ petitioner, an order has been passed whereby the approval to the selections made, has been disapproved by the Vice Chancellor by virtue of the order dated 03.08.2022, the writ petitioner herein thereafter withdrew the Writ A No. 12219 of 2023 on 16.08.2023 order whereof is quoted hereinbelow:

"Today, when the matter has been taken up, Sri Shesh Kumar Srivastava, who appears for Respondents 3 and 4 has placed before this Court, the rejection order dated 03.08.2023 of the University in question.

Confronted with the said situation, learned counsel for the writ petitioner Sri Tanuj Shahi submits that the petition be dismissed as withdrawn with liberty to file afresh so as to challenge the order dated 03.08.2023 and 07.04.2023 are being directed to be handed over to the learned counsel for the writ petitioner by Sri Srivastava.

The writ petition is dismissed as withdrawn with liberty to file afresh.

The order dated 03.08.2022 is kept on record."

Questioning the orders dated 02.05.2023 and 03.08.2023 passed by the third and fourth respondent with a further prayer to approve recommendations made by the Selection Committee for appointment on the post of lecturer, Assistant Lecturer and teacher the present writ petition has been filed.

Post entertaining of the said writ petition, a short counter affidavit has been filed by the law officer of the respondent-University sworn on 01.10.2023 to which a rejoinder affidavit has been filed on 11.10.2023. An amendment application was filed whereby the resolution of the Executive Council dated 17.07.2023 was questioned which came to be allowed on 12.10.2023. Since the counsel for the parties do not wish to file any further response thus the writ petition is being decided at the fresh stage.

Shri Shahi, who appears for the writ petitioner, writ petitioner submits that the order impugned in the writ petition cannot be sustained, particularly, in view of the fact that though by virtue of the order dated 07.04.2022 nominating the subject experts, the clause No. 7 of the same provided that the selections were to be done within a period of six months from the issuance of the order dated 07.06.2023 but the writ petitioner questioned the said order in Writ A No. 14415 of 2022 in which on 19.10.2023 this Court required the respondents to seek instructions, on 15.12.2022 pursuant to the resolution of the Executive Council of the respondent University, the authority and the power to nominate the subject experts was held to be possessed with Vice Chancellor and on the basis of the subject experts nominated on 07.04.2022, the selections were held and on 27.03.2023, the documents were forwarded thus the consideration of approval

of the selections ought to have been made on the merits by the respondent-University. He submits that the writ petitioner were, *bona fide*, contesting the matter in the earlier spell of litigation, however, the time limit of six months may be a policy decision of the University but the University can in an appropriate case reconsider the case of the writ petitioners while granting relaxation in this regard, particularly, when there is nothing on record to suggest that the selections were held by the selection committee who were not nominated by the Vice Chancellor in that regard.

Shri Shesh Kumar Srivastava, who appears for the respondent University on the other hand submits that it is policy decision of the University for conducting selections within a period of six months from the date of nomination of the subject experts and the said decision is after deliberation as virtually by fixing the time limit, the chances of any manipulation stands eliminated and, of course, it is the University which has to take a conscious decision and it is within the realm of the University to fix the time limit and it is not open for the writ petitioner to insist that the time limit be extended, particularly, when the said time limit was not questioned before the Writ Court.

Shri Ratandeep Mishra, learned Standing Counsel who appears for the State official respondents adopt the submission of the learned counsel for the writ petitioner. At the stage, Shri Shahi submits that though he has not challenged the said provision which stipulates six months period but the case of the writ petitioner is to be dealt separately and sympathetically in the light of the fact that there is no allegation that selections have been conducted by a selection committee not authorised by the Vice Chancellor, he submits that he shall represent his cause before the fourth respondent, Vice Chancellor of the respondent-University and he may be directed to consider the

case of the writ petitioner sympathetically and looking into the fact that the writ petitioner was litigating his right before the Court.

To such a submission, Shri Shesh Kumar Srivastava has no objection, however, he submits that the order which has been impugned be not disturbed at this stage, however, the writ petitioner may approach the Vice Chancellor, fourth respondent who shall deal with the matter.

To such a submission, learned counsel for the writ petitioner gracefully accepts and has no objection to the same.

Considering the submission of the rival parties as well as stand taken by them, the writ petition is being **disposed of** granting liberty to the writ petitioner to approach the fourth respondent raising all his grievances before it and the fourth respondent shall decide the same within a period of two months from the date of the production of the certified copy of the order and the order which have been challenged herein shall abide by the final orders passed by the fourth respondent.

Since the writ petition has been decided on the concession of the parties thus the same may not be a precedent in future cases.

The document dated 15.12.2022 produced by Shri Shesh Kumar Srivastava who appears for the University is taken on record and marked as Appendix-A.

Order Date :- 1.11.2023

A. Prajapati