

PETITIONER:
THE COMMITTEE OF MANAGEMENT, VASANTA COLLEGE FOR WOMEN

Vs.

RESPONDENT:
TRIBHUWAN NATH TRIPATHI & ORS.

DATE OF JUDGMENT: 21/11/1996

BENCH:
N.P. SINGH, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:
THE 21ST DAY OF NOVEMBER, 1996

Present :
Hon'ble Mr. Justice N.P.Singh
Hon'ble Mr. Justice Suhas C.Sen
A.K.Chitale, Sr. Adv., Niraj Sharma, Adv. with him for
the appellant
S.K. Gupta, and Anil Kumar Jha, Advs. for the
Respondents

J U D G M E N T

The following Judgment of the Court was delivered:
SEN, J.

Leave granted.

Vasanta College for Women, Rajghat Fort, Varanasi, is an educational institution run by and under the control of Krishnamurthi Foundation India. The post of Lecturer in English fell vacant in the College. An advertisement was issued by the College on 12.8.1989 in a number of newspapers inviting applications for the post. The eligibility requirement for the post according to the advertisement, was:

- (a) A good academic record and at least a high Second Division in the Master's Degree in the relevant subject from a recognised University.
- (b) A Doctorate or M.Phil. Degree or an equivalent published work showing an ability to carry out independent research work. DESIRABLE: A good working knowledge of Hindi and English.

Tribhuwan Nath Tripathi was one of the candidates for the post. Tripathi had a Master's Degree in English, but did not have any Doctorate or M.Phil Degree. Tripathi had a claim that he had registered himself for Ph.D. in March, 1996 on the research topic "Non-Romanticism in Modern British Poetry". He had several publications and books to his credit which were as under:-

Publications:

- (i) Research Papers
- (a) "Romanticism and Neo-Romanticism".
(Accepted for publication)
- (b) "Surrealism and the English

Neo-Romantics"

(Accepted for publication)

(c) "Treatment of Love in the Poetry of David Gascoyne"

(Sent for publication)

(d) "Nature in the Hands of Dylan Thoman"

(Under publication)

(ii) Books

Learning English

PartIV (1987)

PartIII (1988)

PartIV (1988)

PartV (1988)

(Bharati Pustak Mandir, Calcutta)

A Selection Committee was constituted to interview the candidates. The Selection Committee comprised of two external expert members and two representatives of Banaras Hindu University - One was an expert in the subject for which interview was conducted and the other expert was nominee of the University, who may or may not be an expert in the subject. But, when the interview by the Selection Committee was held on 8.11.1989, the two representatives of BHU failed to turn up. The other two members of the Selection Committee, however, proceeded with the interview and selected Tripathi for the post of Lecturer in English. After the Selection Committee had selected Tripathi for the post of Lecturer in English, the Manager of the College wrote a letter dated 10.11.1989 to the Deputy Registrar of the BHU, asking him to seek the approval of the Vice-Chancellor to ad hoc appointment of Tripathi as Lecturer in English with effect from the date he took over charge. Officer on Special Duty (Acad. & Exams.) of the BHU wrote a letter dated 23rd December, 1989 seeking clarification as to why the appointment letter issued to Tripathi mentioned that he had been offered ad hoc appointment as Lecturer only and further continuation had been made conditional. It was pointed out that the Selection Committee had recommended Tripathi for appointment as a Lecturer. The Selection Committee had also mentioned that Tripathi's research work and publications were assessed equivalent to Ph.D. On January 8, 1990, the Manager of the College replied to the letter dated 23rd December, 1989:-

"You will recall that the Managing Committee of our College had requested the Banaras Hindu University to permit them to invite one expert from outside for selection of Lecturers. This was approved by the Executive Council of the BHU and made applicable to all the affiliated colleges. Accordingly we have been inviting external experts out of the panel of names supplied to us by the BHU for this purpose. Our Managing Committee has resolved as a policy matter that permanent appointments should be made only when both experts are present in the selection. Temporary or ad hoc appointments can be made even when one of the experts is absent. In this case we had invited two external experts for the Selection

Committee but both were unable to turn up on account of certain disturbances in the city in spite of having conveyed their acceptance. Therefore, the selection was held only with the University nominee and one subject expert in the committee. The candidate selected did not have a Ph.D. and had stated in the interview that he has started writing his thesis and will be completing his Ph.D. shortly. In view of the above facts, we have decided to offer Shri T.N. Tripathi an ad hoc appointment and this has also been approved by the University."

It may be mentioned that Tripathi had been offered an ad hoc appointment by the Manager by letter dated 18.11.89 which was accepted by Tripathi by a letter dated 27.11.89 in which he pointed out that he was not a candidate for ad hoc appointment and there must have been some mistake which should be clarified. It was stated by Tripathi that he was the only candidate with published work in English Grammar and had appeared before the Selection Committee. He was an aspirant for the permanent post. He requested the college to allow him to wait for the result of the interview for the permanent post.

On 29.11.89 the Manager of the College informed Tripathi in writing that the post against which he had been appointed was a permanent post, but temporary appointment was offered as he had not completed his M.Phil/Ph.D. Degree. He further wrote:-

"You had mentioned in the interview that you are writing your Ph.D. thesis and will be submitting it shortly. You will be considered for a permanent appointment after successful completion of your Ph.D."

Tripathi was asked to join duty latest by December 15, 1990 failing which it would be presumed that he was not interested in accepting the offer. On the December, 1989, the Deputy Registrar of BHU informed the Manager of the College that ad hoc appointment of Tripathi had been sanctioned. On 12th December, 1989, Tripathi joined as Lecturer in English on ad hoc basis. On 23rd December, 1989, O.P. Tandon, an Officer special Duty at BHU pointed out to the Manager of the College that Tripathi had been recommended by the Selection Committee for appointment as Lecturer in English. The appointment letter issued to Tripathi mentioned that he had been offered ad hoc appointment as Lecturer until 30th April, 1990 and further continuation had been made conditional. The proceedings of the Selection Committee also mentioned that "his research work and publications are assessed equivalent to Ph.D." In view of that what had been stated above, it was not clear why Tripathi was not appointed on probation and instead given ad hoc appointment. On 4th January, 1990, management of the college passed a resolution for permanent appointment of Anita Singh and for ad hoc appointment of respondent although only one expert was present at the meeting. On 8th January, 1990, it was pointed out on behalf of the college in reply to the University's letter dated 23rd December,

1989 that due to the absence of one expert, permanent appointment could not be given to Tripathi. On 27th March, 1990, Tripathi sought permanent appointment and explained that delay in getting the Ph.D. thesis paper.

On 1st May, 1990, the period of ad hoc appointment of Tripathi was extended upto 31st October, 1990 or permanent appointment whichever was earlier. On 20th April, 1990, the University had issued a certificate that pre-submission seminar of Tripathi's Ph.D. thesis had been held. A copy of the certificate had been forwarded to the management. On 16th July, 1990, Tripathi filed a writ petition in the Allahabad High Court seeking a writ of Mandamus for permanent appointment and also an order against termination of his service. On behalf of the appellant-College, an advertisement was given in Employment News dated 25-31, August, 1990 inviting applications for permanent Lecturers in English, Geography and History. The required qualification was, at least a high second class M.Phil./Ph.D. or equivalent published work indicating the candidate's capacity in independent research work. It was stated in the advertisement that if no suitable candidate with M.Phil./Ph.D. was available, a candidate with good academic record with at least two years' research/practical experience may be appointed on the condition that he/she will have to complete the Ph.D. within eight years of appointment.

On 5th October, 1990, Tripathi informed the management of the College that he had completed the research work and his thesis had been submitted on 4th October, 1990 and a certificate of University was enclosed. Thereupon, the management of the College sent him an interview call letter, But, Tripathi did not apply for the post pursuant to the advertisement nor did he turn up for the interview. But, he filed a second writ petition No. 32900/90 challenging the advertisement dated 31st August, 1990. This was followed by a letter to the management not to hold any selection in view of the pendency of the writ petition. No interim order was passed by the Court. On 29th December, 1990, Madhu Kapoor was appointed Lecturer in English as a probationer. On 2nd January, 1992, her appointment was confirmed. On the 10th October, 1993, Madhu Kapoor gave a three months notice of resignation. On 9th October, 1993, management directed that Madhu Kapoor give a three months notice of resignation. On 9th October, 1993, management directed that Madhu Kapoor be relieved with effect from the January, 1994 and fresh advertisement was issued in Employment News dated 6-12 November, 1993 inviting applications to the post of lecturer in English. On 11th January, 1994, the High Court on the application of Tripathi passed an interim order that any selection or appointment shall be subject to the writ petitions filed by Tripathi. Tripathi claimed that in January, 1991, he had obtained a Ph.D. degree from BHU. The title of his thesis was "Neo-Romanticism in Modern British Poetry".

When the writ petition filed by him was taken up for hearing, the High Court held that there was no reason why Tripathi should not have been appointed to the post of Lecturer in English and the management was directed to appoint Tripathi. The Court also directed that Tripathi's appointment pursuant to the advertisement dated 12th August, 1989 "shall be deemed to have been made on permanent basis and shall entail the consequences in accordance with law".

The Committee of Management of the College has come up in appeal and has contended that when appointment of Madhu Kapoor was made, Tripathi had not challenged the

appointment. Madhu Kapoor functioned as Lecturer for more than three years and there is no reason why Tripathi should be reinstated. The writ-petitioner would not have had any if Madhu Kapoor continued to work as a Lecturer in the College.

The basic point is that Tripathi did not have the requisite qualifications for appointment as Lecturer. He did not have a Ph.D. Degree when he appeared for interview. That is why an ad hoc appointment was given to him. This was done on the basis of representation made by Tripathi before the Selection Committee that he would get his Ph.D. Degree shortly. But he failed to get the same even within the extended time of appointment and, therefore, the management had no alternative but to issue fresh advertisement for the post of Lecturer. The ad hoc appointment was extended once and had not been extended thereafter. A fresh appointment was made. Madhu Kapoor functioned as Lecturer in English till she voluntarily resigned after three years.

The contention of Tripathi is that the writ petition was filed long before Madhu Kapoor was appointed. His case is that the Selection Committees had recommended him for appointment on permanent basis. The Committee had taken into consideration the fact that he did not have a Ph.D. degree, but considered his published work as equivalent to Ph.D. It was for the Selection Committee to assess the merit of the candidate. It was not the case of the management that the Selection Committee had erred in its assessment. The case of the management was that the two nominees of BHU, one whom was for the management to arrange a proper meeting of the Selection Committee. The management did not call for another meeting of the Selection Committee but implemented its decision in its own way. The selection Committee recommended Tripathi to be appointed on permanent basis. The management appointed Tripathi on ad hoc basis on the plea that the two experts from BHU had failed to attend the meeting. If the meeting was not held properly, then the college authorities should not have acted on the basis of the recommendation of the Selection Committee at all. In fact, no attempt was made by the College authorities to convene another meeting of the Committee to assess the merit of the candidates. In other words, the management accepted the decision of the Selection Committee and Tripathi was allowed to function as Lecturer in English on ad hoc basis from 12th December, 1989 to 31st October, 1990. Tripathi had duly completed his Ph.D. thesis. There was some delay in obtaining the degree because of fracture suffered by his supervisor, but ultimately, he obtained his Ph.D. Degree. His prayer is to regularise his appointment.

At the point of time when Madhu Kapoor was appointed as Lecturer in English, Tripathi's ad hoc appointment stood terminated. Tripathi's had accepted the ad hoc appointment after making some protests but actually worked on ad hoc basis and even got an extension of the appointment on ad hoc basis. It was clearly explained to Tripathi at the time of his appointment that if he obtained his ph.D. within a short time, his appointment will be made permanent. It has been stated on behalf of the appellant that the appointment was given on the basis of an assurance given by Tripathi to the Selection Committee. Unfortunately, Tripathi could not get his Ph.D. Degree within a reasonable time after his appointment. The management of the College, thereafter, decided not to grant any further extension to the ad hoc appointment of Tripathi and proceeded to advertise the post once again and appointed Madhu Kapoor as Lecturer. It is true that Tripathi had writ petitions challenging advertisement and termination of his service. Tripathi could

not get any interim orders as a result of which Madhu Kapoor's appointment was made unconditionally on permanent basis.

What happened thereafter was a fortuitous event. Madhu Kapoor after only three years' service resigned. The post was readvertised. During the three years' tenure of Madhu Kapoor, the respondent did not question the validity of Madhu Kapoor's appointment at all nor did he stake any claim to the post occupied by her. The resignation of Madhu Kapoor could not give rise to any right to the respondent. It is true that in the meantime, he had obtained Ph.D. It is also true that the conditions of recruitment had been relaxed to enable an otherwise qualified person to obtain a Ph.D. Degree within a period of eight years from the date of appointment. But the case of the respondent has to be seen on the basis of the rules on force at the time of his appointment.

The respondent's contention that he had published works equivalent to Ph.D. at the time of appointment cannot be accepted. He stated that he had submitted four papers. But the papers were not published on the date of his appointment. He had not given any particulars about the journals or persons to whom he had submitted his papers for publication. The only concrete thing he stated was that he had written four books on English Grammar for school children. But these were elementary works which could not be treated as equivalent to Ph.D. in English.

The respondent that the Selection Committee was satisfied as to the quality and standard of the work done by him. The College management has pointed out that the experts from BHU failed to attend the Selection Committee meeting. The other expert who was in the Committee was the Supervisor of the respondent himself. In any event, the appellant-College being the appointing authority was entitled to appoint the respondent on ad hoc basis giving a chance to him to obtain his Ph.D. Degree within a reasonable time.

We are of the view that the contention of the appellant-College must be upheld. Although, there was considerable laxity on the part of the College authorities in the way they have handled the case, we are of the view that without strong grounds being made out, it would not be right to unseat the person who has now been appointed as Lecturer in English pursuant to the second advertisement. The writ-petitioner was not qualified to be appointed as Lecture when he made his application pursuant to the advertisement dated 12th August, 1989. Even then he was appointed on ad hoc basis and was given a chance to acquire the requisite qualification within a brief period. His ad hoc appointment was extended once and thereafter it was not extended. The petitioner did not have any subsisting right for continuation of service at that point of time. His position has not improved by the acquisition of the Ph.D. Degree in January, 1991 after he ceased to be a lecturer even on an ad hoc basis. He could have applied in response to the advertisements that were issued subsequently. He chose not to do so. We do not find any merit in the writ petition. There is no reason to treat him as Lecturer even after the period of ad hoc appointment was over and Madhu Kapoor functioned as lecturer in English for a period of more than three years.

In that view of the matter, this appeal is allowed. The order of the High Court dated 23.12.1994 is set aside. There will be no order as to costs.

JUDIS