

PETITIONER:
STATE OF U.P. & ANR.

Vs.

RESPONDENT:
DR. S.K. SINHA & ORS.

DATE OF JUDGMENT 02/12/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 AIR 768 1995 SCC Supl. (1) 456
JT 1995 (1) 491 1995 SCALE (1) 36

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Leave granted.
2. Heard learned counsel for the parties. This appeal by special leave arises from the judgment and order of the Division Bench of the Allahabad High Court dated January 28, 1993, in CMWP No.451/ 84. One Dr.L.B. Sinha while he was working as a Lecturer in Economics in Chowdhary Mahadeo Prasad Degree College, Allahabad, proceeded at the instance of the University Grants Commission to prosecute his further studies for improvement of his prospects. In that leave vacancy, Dr.Sunil Kumar Sinha, respondent No. 1 in this appeal, was appointed. Ms appointment letter dated 23.11.82, reads thus:

"I am glad to inform you that the Management ha been pleased to select and appoint you as temporary Lecturer in Economics in our College against the leave vacancy of Shri L.B. Sinha in the grade of Rs.700-1400 on an starting salary of Rs. 700/- per month.

Please note that the post is purely temporary terminable within 24 hours notice and payment of your salary will be made on receipt of the amount from UGC.

3. The respondent No. 1 joined the post. When on completion of the studies, Dr.L.B. Sinha reported to the duty, the

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Management gave notice to the first respondent on January 5, 1984 communicating that Dr.L.B. Sinha in joining the duty on January 10, 1984 and that, therefore, his appointment would stand cancelled. Impugning this communication, the 1st respondent filed the writ petition on January 9, 1984. Therefore, the U.P. State University (validation of Appointments) Act, 1984 which replaced the Ordinance, by s.2 validated certain appointments made in excess of the number

of posts advertised, and they were deemed to have been always valid and legal. But keeping in view all the circumstances of the case, we directed that the appellant shall be entitled to his full salary and other emoluments admissible to him in case he was not getting the same from 1.4.1993. But whatever pay and emoluments he was getting prior to that would be deemed to be sufficient to meet the ends of justice and he would not be entitled to claim any arrears of salary or any other emoluments. Accordingly, the writ was issued. It is contended for the State that since the 1st respondent was appointed on the leave vacancy and the regular incumbent Dr.L.B.Sinha has reported to the duty on January 10, 1984, the appointment cannot be said to be valid and s.2 of the Validation Act had no application. It is also contended that in the vacancy of Dr.L.B.Sinha who is a permanent had a lien on the post and had proceeded on leave to prosecute his further studies. The 1st respondent was appointed in place of Dr.L.B.Sinha. Although he returned to service, the High Court had not considered this aspect of the matter. Mr. A.K.Srivastava, learned counsel for the 1st respondent contended that initial appointment in 1980 on the temporary vacancy and thereafter on a regular selection though he was continuing right from November 3, 1982 and at such a distance of time, he cannot be displaced. He sought to place reliance not only on s.2 of the Validation Act but also on sec.31(3)(b) of the U.P.State Universities Act, 1973. The question, therefore, is whether s.31(3)(b) of U.P. State Universities Act, 1973 or s.2 of the Validation Act have any application to the facts of this case. The 1st respondent appointed in leave vacancy, due to Dr.L.B.Sinha proceeding on leave to improve his career prospects by his studies as a Doctor in Economics. The appointment order clearly mentioned the same. The 1st respondent also is entitled for payment of salary only on receipt of the amount from University Grant Commission. In other words, the appointment and payment of the salary are only consequent to Dr.L.B. Sinha proceeding on leave for further studies. Since Dr.L.B.Sinha on his returning from leave, he is entitled to occupy the post and the respondent shall have given place to Dr.L.B.Sinha. Section 2 of the Validation Act reads thus:

"Notwithstanding any judgment, decree or order of any Court or order of any officer or authority or anything contained in the Uttar Pradesh State Universities Act, 1973 or Statutes framed thereunder, the appointment of every teacher made in any University governed by the said Act or any affiliated or associated college here of during the period July 1, 1978 and the date of commencement of this Act, in excess of the number of posts advertised shall be and be deemed always to have been valid and validity such appointment shall not be called in question before any court, tribunal, officer or authority merely on the ground that the post was not separately advertised or that the prescribed procedure was not followed."

A reading thereof would clearly indicate

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that the appointment of every teacher made in any University is governed by the U.P.State University Act, 1973 or any affiliated or associated college thereof during the period of July 1, 1978 and the date of commencement of this Act, in excess of the number of posts advertised, shall be and be deemed always to have been valid and validly made and such

appointment shall not be called in question before any Court, Tribunal, Officer or Authority merely on the ground that the post was not separately advertised or that the prescribed procedure was not followed. In other words, the intendment of the Validation Act appears to be that when appointment was made in excess of the number of posts advertised and was duly selected and he was continuing in the post either for want of vacancy or there was proper advertisement made or the prescribed procedure was not followed then the incumbent who is continuing between the aforesaid dated namely, July 1, 1978 and October 1, 1984 the date on which the Ordinance has come into force, their appointments stood validated and declared to be valid. It is not the case that any such appointments has been made to the first respondent. The order of the appointment clearly indicates that the appointment was made on a leave vacancy due to Dr. L.B.Sinha proceeded on leave for his further prospects in his career.

The next question is whether s.31(3)(b) also gets attracted to the facts of this case. Section 31 reads thus:

"Appointment of Teachers (1) Subject to the provisions of the Act, the teachers of the University and the teachers of an affiliated or associated 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 Selection Committee shall meet as often as necessary."

5. Section 31(3)(b) of the Act reads thus:

"Where before or after the commencement of this Act, any teacher is appointed (after reference to a Selection Committee) to a temporary post likely to last for more than six months, and such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant or any post of the same cadre and grade is newly created or falls vacant in the same department, then unless the Executive Council or the Management, as the case may be, decides to terminate his services after giving an opportunity to show cause, it may appoint such teacher in a substantive capacity to that post without reference to a Selection Committee; Provided that this clause shall not apply unless the teacher concerned holds the prescribed qualifications for the post of the tune of such substantive appointment, and he has served continuously, for a period of not less than one year after his appointment made after reference to a Selection committee; Provided further that appointment in a substantive capacity under this clause of a teacher who had served, before such appointment, continuously for a period of less than two years, shall be on probation for one year which may be extended for a period not exceeding one year, and the provisions of subsection (2) shall apply accordingly."

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6. The purpose of s.31(3)(b) appears to be that after the commencement of the Act, any teacher is appointed to a temporary post likely to last for more than six months, and such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding 10 months and such post subsequently becomes permanently vacant or any post of same cadre and grade is newly created or falls vacant in the same department, then unless the Executive Council or the Management, as the case may be, decides to terminate his services after giving an opportunity to show cause, it may appoint such teacher in a substantive capacity to that post without reference to a Selection Committee. In other words, it would be seen that an incumbent was regularly selected but was continuing in a temporary post which was subsequently made permanent or a post which became vacant for a period exceeding 10 months and later the post becomes permanent and temporary incumbent is continuing only on the same post or a newly created post or a post carrying the same grade or falls vacant in the same department, the Management without reference to the Selection Committee, fresh selection has been made. Such is not the case here. As stated earlier, Dr.L.B. Sinha has proceeded on leave and returned to the post, the question of vacancy does not arise. The contention that a post has become vacant and instead of filling up that post, somebody seems to have been appointed which is respondent No.7, the appointment was not challenge in the High Court. We cannot go into that question.

7. Mr. A.K. Srivastava, learned counsel for the 1st respondent has placed reliance on the order made by this Court in C.A.4895/89 dated 4.8.93 Uttam Kumar v. U.P. Higher Education Service Commission, Allahabad. In that case, the regular incumbent was continuing on temporary post and the approval was not given by the State Government. On those facts, this Court has directed that since the incumbent has served for about 15 years, the termination of his service at such distance of time is not just. Those facts have no application to this case.

8. In future, if there is any vacancy in the department, the case of the 1st respondent may be considered according to rules. If there is any age bar, the authority would relax the age qualification at the time of selection.

9. The appeal is allowed. No costs. In the interim order passed by this court on May 13, 1994, the Management was directed that the payment of salary to the first respondent will be subject to the adjustments to be made at the time of the final order. Though we are negativating the claim of the 1st respondent for his continuance since he is already in appointment, the State is directed to reimburse the payment made by the Management respondent No. 5. If there is any arrears of salary due and payable to respondent No. 1, the same may be paid within three months from the date of the receipt of this order.

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