

PETITIONER:
YOGENDRA SINGH RAWAT & ORS. ETC.

Vs.

RESPONDENT:
HEMWATI NANDAN BAHUGUNAGARHWAL UNIVERSITY & ORS.

DATE OF JUDGMENT: 05/02/1997

BENCH:
S. SAGHIR AHMAD, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
THE 15TH DAY OF FEBRUARY, 1998

Present:

Hon'ble Mr. Justice S. Saghir Ahmad
Hon'ble Mr. Justice D.P. Wadhwa

Harish Salve, R.B.Mehrotra, Sr. Advs., R.K.Gupta, Uma Datta,
D.K. Garg, M.K.Garg, (R.C.Verma and Chaitanya Siddarth)
Advs. for R.B.Misra, Adv./Advs. with him for the appearing
parties.

J U D G M E N T

The following Judgment of the Court was delivered:
(With CA 627 of 1998 (a) SLP (C) No.266/94)

D.P. Wadhwa. J.

Special leave granted.

The appellants filed writ petitions in the High Court of Judicature at Allahabad praying that they be granted substantive appointments as lecturers in the Hemwati Nandan Bahuguna Garhwal University (for short 'the University') in terms of the Uttar Pradesh State Universities (Second Amendment) Ordinance (No.44 of 1991) which was later passed as Act No.1 of 1992 by the U.P. Legislature called the U.P. State Universities (Amendment) Act, 1992 (for short, the 'amending Act'). A Division Bench of the High Court, however, did not find any merit in the writ petitions and dismissed the same by judgment dated August 20, 1993. Aggrieved, the appellants have come to this Court.

Originally there were eight appellants. Appellants Y.S. Rawat, G.P. Sharma and J.P. Madhwal are stated to be no longer interested in pursuing their appeals. The appellants before us are now Dr. L.P. Lakhera, Shri R.S. Negi, Dr. M.S. Shri Ajay Pal Singh and Dr. Surendra Joshi.

Sub-section (6) of Section 13 of the Universities Act provides that where any matter is of urgent nature requiring immediate action and the same cannot be immediately dealt with by any officer or authority or any other body of the University empowered by or under the Universities Act then to deal with that situation the Vice-Chancellor may take action as he may deem fit. He shall thereafter forthwith report the action taken by him to the Chancellor and also to the officer, authority or other body who or which in the ordinary course would have dealt with the matter. Under sub-

section (8) of Section 13 where exercise of power by the Vice Chancellor under sub-section (6) involved the appointment of an officer or a teacher of the University, such appointment shall terminate on the appointment being made in the prescribed manner or on the expiration of a period of six months from the date of the order of the Vice-Chancellor, whichever is earlier. That would mean that the appointment of a lecturer made by the Vice-Chancellor could not last for more than six months. Section 31 of the Universities Act provides for the appointment of teachers of University. Sub-section (1) thereof provides that the teachers of the University shall be appointed by the Executive Council on the recommendations of a Selection Committee in the manner laid down in that Section. Sub-section (10) of Section 31 provides that no selection for any appointment shall be made except after advertisement of the vacancy in at least three issues of two newspapers having adequate circulation in the State of Uttar Pradesh. Section 49 deals with Statutes and clause (d) lays down that the Statutes may provide for the classification and recruitment (including minimum qualifications and experience) of the teachers of the University. As to what are the qualifications prescribed for a lecturer by relevant Statutes of the University, it will be appropriate to refer to the Ordinance which was subsequently replaced by Act No.1 of 1992, Sub-section (2) of Section 1 of this amending Act provided that this Act shall be deemed to have come into force on November 22, 1991. Sections 2 and 3 of this Act amending the Principal Act, that is the Universities Act, are as follows:

"2. In Section 13 of the Uttar Pradesh State Universities Act., 1973, as amended and re-enacted by the Uttar Pradesh Universities (Re-enactment and Amendment) Act, 1974 hereinafter referred to as the Principal Act:-

(a) in sub-section (6), after the words "where any matter" in words "other than the appointment of teacher of the University" shall be inserted.

(b) in sub-section, the words "or a teacher of the University" shall be omitted.

3. In Section 31 of the Principal Act:-

(a) in sub-section (1) words "The selection committee shall meet as often as necessary" shall be inserted at the end:-

(b) in sub-section (3) after clause (b) and the provisions thereto, the following clause shall be inserted, namely:-

(c) any teacher of the Universities who was appointed as lecturer on or before June 30, 1991 without reference to the Selection Committee by way of a short terms arrangement in accordance with the provisions for the time being in force for such appointment, may be given substantive appointment by the Executive Council, if, any

substantive vacancy of the same cadre and grade in the same department is available on November 22, 1991 if such teacher:-

(I) is serving as such on November 22, 1991 continuously since such initial appointment by way of short term arrangement;

(II) possessed on November 22, 1991 the qualification required for regular appointment to the post under the provisions of the relevant statutes in force on the date of the initial appointment:

(III) has been found suitable for regular appointment by the Executive Council."

Therefore, the controversy before the Court was as to what would be the qualifications for a lecturer for the amending Act to be applicable. While the appellants contended that the qualifications would be those as existing when the amending Act came into force, the stand of the University was that the qualifications would be as on the date of the initial appointment of the appellants. The High Court held that the qualification would be those as existing when the initial appointments under Section 13(6) of the Principal Act were made and not when the amending Act came into force and that is November 22, 1991. As to what were the qualifications prescribed for lecturer on the dates when respective appointments came through, we may refer to the relevant Statutes 11.01 of the University. First time the qualifications and appointments of teachers in university was prescribed on June 25, 1978. The statute was amended in the year 1980 and subsequently as under:

"QUALIFICATIONS AND APPOINTMENT OF TEACHERS IN THE UNIVERSITY

11.01 (1) In the case of the Faculties of Arts, Commerce, and Science, the following shall be the minimum following shall be the minimum qualifications for the post of a Lecturer in the University, namely -

(a) a doctorate in the subject of study concerned or a published work of a high standard in that subject; and

(b) consistently good academic record (that is to say, the overall record of all assessments throughout the academic career of a candidate), with first class or high second class (that than 54 per cent marks) Master's degree in the subject concerned or equivalent degree of a foreign University in such subject.

(2) Where the Selection Committee is of opinion that the research work of a candidate, as evidenced either by his thesis or by his published work, is of a very high standard, it may relax any of the requirements specified in sub-clause (b) of Clause (1).

(3) If a candidate possessing a qualification prescribed in sub/clause (a) of Clause (1) is not available or is not considered suitable a person possessing a consistently good academic record (due weightage being given to M.Phil, or equivalent degree or research work of quality) may be appointed on the condition that he will attain the prescribed qualification (namely doctorate or published work as aforesaid) within five years from the date of his appointment:

Provided that where the teacher so appointed fails to attain the prescribed qualification within the said period of five years, he shall not be entitled to yearly increments after such period, until he attains such qualifications.

(4).....

11.01 (1)(b) : Consistently good academic record with first or high second class Master's degree, or an equivalent degree of a foreign University in a relevant subject.

Sub-clause (a) of Clause (7) of Statute 11.01 provided that marks above the mid-point between the minimum percentage or marks fixed by the University for award of first and second divisions are said to be high second class marks. in exercise of power section (1) read with Section 15 of U.P. State Universities Act, 1973, read with Section 21 of the Uttar Pradesh General Clauses Act, the Governor of Uttar Pradesh, amended the First Statute of the University called the 25th Amendment. This was made on March 25, 1997. For existing Statute 11.01 the following was substituted:

"11.01 (1) in the case of Faculty of Arts (except the Departments of Music, Drawing and Painting), and the faculties of Commerce and science the minimum qualifications for the post of a Lecturer in the University shall be Master's Degree or an equivalent Degree or a foreign University in the relevant subject with at least 55 per cent marks of its equivalent grade and consistently good academic record.

(2) In the case of Faculty of Education, the minimum qualifications for the post of a Lecture in the University shall be Master's degree or an equivalent degree of a foreign University in Education (that is an M.Ed. degree) with at least 55 per cent marks or its equivalent grade and consistently good academic record.

(3).....

(4).....

(5) For the purpose of this Statute:-

(a) A candidate (other than a

candidate for Lecturership in the Faculties of Education and Law) having obtained either 55 per cent marks in Bachelor's degree examination and second class in Intermediate examination, or 50 per cent marks in each of the two examinations separately is said to have consistently good academic record;

(b) A candidate for Lecturership in the Faculty of Education having obtained either 55 per cent marks in B.Ed. degree examinations and second class in any other Bachelor's degree examination or 50 per cent marks in each of the two examinations separately, is said to have consistently good academic record;

(c).....

(6) for appointment to the post of Lecturer only those candidates shall be eligible who, besides fulfilling the minimum academic qualifications prescribed for the post of Lecturer, have qualified in a comprehensive test, if any, to be conducted as per scheme of University Grants Commission."

This is Statute 11.01 was further Amended on 31.13.1990 which is known as 26th Amendment. In sub-clause (6) of the First Statute of 1978 as amended in March, 1989, following proviso was inserted:

"Provided that a candidate:-

(1) Who was passed University Grants, Commission or Council of Scientific and Industrial Research or Junior (Research Fellowship Examination: (or)

(2) Who are already been awarded Ph.D or M.Phil Degree; or]

(3) Who will be awarded M.Phil degree upto December, 1990 or Ph.D. degree upto December, 1992 shall not be required to qualify in such a comprehensive test."

Thus, the effect of the amending Act amending the Principal Act and by insertion of clause (c) to sub-section (3) of Section 31 would be that any lecturer who was appointed without reference to the Selection Committee under sub-section (6) of Section 13 would be given substantive appointment on the conditions that (1) a substantive vacancy was available on November 22, 1991; (2) his appointment was on or before June 30, 1991 and was serving as such on November 22, 1991 continuously since his initial appointment; (3) he continued to possess qualifications as prescribed under relevant provisions of the statutes at the time of initial appointment on November 22, 1991; and that (4) he has been found suitable for regular appointment by the Executive Council of the University.

It will also be seen that before March 1989 for appointment as a lecturer, it was necessary that a person should possess a Doctorate degree in the subject and consistently have good academic record. However, before this

date of no candidate having Doctorate degree was available but the Selection Committee was of the opinion that the Research and thesis work published by a candidate was of a very high standard it may relax any such requirement of possessing a Doctorate degree. After May 25, 1989 entire statute 11.01 was substituted and now a candidate must possess good academic record that is he should have obtained either 55 per cent marks in Bachelor Degree Examination, and Second Class in Intermediate Examination or 50 per cent marks in each of the two examinations separately subject of course his possessing consistently good academic record. Apart from possessing good academic record under sub-section (6) it is necessary for a candidate to have passed the qualifying comprehensive test conducted by the University Grants Commission. But then he is exempted from that test if he had already been awarded Ph.D. and M.Phil degree or who would be awarded M.Phil degree upto December 1990 or Ph.D. degree upto December 1992.

In *University of Delhi vs. Raj Singh & Ors.* [1994] Supp. (3) SCC 516, the question before this Court was if the University Grants Commission (Qualifications Required of a Person to be Appointed to the teaching Staff of a University and Institutions affiliated to it) Regulation, 1991 were valid and mandatory and if so was the Delhi University obliged under law to comply therewith. This Court gave the answer in affirmative. It referred to Entries 63 and 66 of List I in the Seventh Schedule of the Constitution of India and to the provisions of the University Grants Commission Act, 1956 vis-a-vis Delhi University Act, 1922. The University Grants Commission Act was enacted under the provisions of Entry 66 of List I of the Seventh Schedule. It entitled Parliament to legislate in respect of "coordination and determination of standards in institutions for higher education or Research and scientific and technical institutions." This Court observed that Entry 66 of List I give power to the Union to see that the required standard of higher education in the country was maintained. It was the exclusive responsibility of the Central Government to coordinate and determine the standards of higher education. The Court then observed that such powers would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. That, however, would not mean the University cannot prescribe qualifications over and above those prescribed by the University Grants Commission.

In *University Grants Commission vs. Sadhana Chaudhary & Ors.* [(1996) 10 SCC 536, this Court considered the recommendations of the University Grants Commission made in 1991 prescribing minimum qualification for the post of Lecturers in the Universities and Colleges which were amended by circulars dated 10.2.1993 and 15.6.1993. The recommendations in the Regulations of 1991 and the two circulars as quoted in the judgment are as under:

"Good academic record with at least 55% marks or an equivalent grade at Master's level in the relevant subject from an Indian University or an equivalent degree from a foreign University. Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lecturers

conducted by UGC, CSIR or similar test accredited by the UGC."

By Circular dated 10.2.1993 the UGC granted exemption from appearing in the eligibility test to the following categories:

1. All candidates who have passed UGC/CSIR J.R.F. Examination.
2. All candidates who have already been awarded Ph. D. degree.
3. All candidates who have already been awarded M.Phil. degree up to 31.3.1991.
4. All candidates who will submit their Ph.D. thesis up to 31.12.1993.

By Circular dated 15.6.1993 in respect of candidates falling in category (3) exemption from appearing in the eligibility test was extended to candidates who had been awarded M.Phil. degree up to 31.12.1992.

By a notification dated 21.6.1995, the 1991 Regulations have been amended and the following provision has been added below the requirement regarding clearing the eligibility test for appointment on the post of Lecturer:

"Provided that candidates who have submitted Ph.D. thesis or passed the M.Phil. examination by 31.12.1993 are exempted from the eligibility test for lecturers conducted by UGC, CSIR or similar test accredited by the UGC."

Since the Executive Committee of the University made recommendations in 1992 Statute 11.01 as amended by 26th amendment would apply in the cases of the appellants.

By letter dated July 5/17.6.1992 University informed the appellants that they were not found fit to be regularised on the post of lecturers. The letter is to the following effect:

"Sub: Regularisation of ad hoc lecturers

Sir,

As per the conditions mentioned in Ordinance No.44 dated 22/11/91 the matter regarding the regularisation of all the ad hoc lecturers was put for consideration before the Executive Council on 22/4/1992. The Executive Council after having considered your application for regularisation seriously, did not find you fit to be regularised on the post of lecturer. We regret for the same. For your information you could same. For your information you could not qualify the following conditions:

Recommendation : No

Reason :Not qualified

Were not working on 30/6/1991.

Sd/Dy. Registrar

(Admn.)

For Registrar."

It has been rightly held by the High Court that artificial break in service cannot be taken into account while considering the question that any of the appellants was not working continuously as on November 22, 1991 from the date of his initial appointment on or before June 30, 1991. High Court has also held that opportunity was given to the appellants when the Executive Committee considered their cases. Taking into account the relevant statutes of the University, the High Court was of the view that if any one of the appellants had already been awarded Ph.D. or M. Phil, degree or will be awarded M.Phil degree upto December 1990 or Ph.D. degree upto December 1992 he would be qualified for the post of lecturer. Thereafter the High Court addressed itself to the question if the appellants who had been given short term ad hoc appointments were entitled to substantive appointments. It noted that procedure for making appointments was that the vacancy had to be advertised in accordance with sub-section (1) of Section 31 of the Act and in absence of the advertisement there would be violation of Article 16 of the Constitution and any such appointments would be rendered illegal. The Executive Committee could make appointment only on the basis of the recommendations made by the Selection Committee. The High Court then observed as under:

"All the ad hoc lecturers whose cases were considered by the Assessment Committee on March 7, 1992 and by the Executive Council on April 22, 1992 were given ad hoc appointments without following the rules namely without advertisement of vacancy and without having faced selection committee. They are claiming the benefit of U.P. Act No.1 of 1992 in order to get a substantive appointment and as a corollary they must satisfy the requirement of the said Act and if the requirement of the Act is that they should possess prescribed qualification for regular appointment under the relevant Statutes, they must do so. The fact that at some earlier stage the University made an advertisement in which wrong or lesser qualification was mentioned is wholly irrelevant and that advertisement cannot override the requirement of the amending Act. It has been consistently held that a person not possessing prescribed qualification cannot be appointed in a University or in an affiliated college and if such a person is appointed, the appointment itself becomes illegal."

High Court then concluded that it was clearly of the opinion that in order to get the benefit of the Act 1 of 1992 amending the principal Act the ad hoc lecturers must possess the qualifications required for regular appointment

under the provisions of the relevant statutes as laid down in sub-section (ii) of clause (c) of Section 31 of the Act. High Court said that the qualifications prescribed prior to the amendment would not get revived. High Court did not rely on Single Judge decision of that court in Writ Petition No.25255 of 1992 Dr. Siya Ram Singh vs. Director Higher Education where benefit or regularisation had been given to ad hoc lecturers of the affiliated colleges under Ordinance No.43 of 191 which was also promulgated on November 22, 1991 with similar provision as in the present case. In that case the initial ad hoc appointment itself having been held to be illegal, regularisation had been refused by the authorities. It was also found that the petitioners therein did not possess the prescribed qualifications. As to the reasoning of the learned single Judge, the High Court not only distinguished that judgment but rather disapproved the same. It also noticed that in the case before the learned Single Judge the question was appointment to the affiliated 14.10.91 for almost six months was an artificial break in his service not to be taken into account. In Intermediate and B.A. examinations he got 45.3% and 45/5% marks respectively. His claim that he did work from 1.4.91 to 13.10.91 without pay due to financial constraints in the University is not acceptable. Moreover no vacancy in the post of lecturer in Geography was available on 22.11.91. His claim for substantive appointment could not be recommended. His having obtained a Degree of Doctor of Philosophy in 1990 did not advance his case for his getting substantive appointment.

Shri R.S. Negi was appointed on 2.11.91 as found by the High Court and he was not working as such on 30.6.91. In his affidavit filed in these proceedings he submitted a certificate of the Registrar of the University stating that R.S. Negi had submitted his thesis on 2.11.94 and he was awarded degree of Doctor of Philosophy in Geology in the Year 1996. At the relevant time no post of lecturer in his subject was available. Negi, therefore, could not fulfil the qualifications prescribed and was not recommended for colleges of the University while in the present case appointment was in the University itself which was governed by separate enactment. The High Court then examined the individual cases of the appellants and found that they did not possess the requisite qualifications and further that their cases had been considered by the Executive Committee who did not find them suitable to be given regular appointments. The High Court, therefore, by judgment dated August 20, 1993 dismissed the writ petitions holding that these lacked merit and vacated the interim orders passed in favour of the appellants. When the matter came to this Court in special leave petitions while granting leave stay was declined.

Keeping the aforesaid parameters in view, we may now consider the cases of each of the appellants.

Dr. L.P. Lakhera as found by the High Court was appointed as a part-time lecturer on 16.8.1990 for two months. He was given fresh appointment on 14.10.91. He was, therefore, not working on 30.6.91. It could not be said that break in service from 30.4.91 to substantive appointment.

Dr. M.S. Sati was appointed as part-time lecturer on 8.11.1990 for two months and his appointment came to an end on 8.1.91. He was given fresh appointment as part-time lecturer for two months on 14.2.91 which ended on 14.4.91. He was thereafter appointed on regular basis for six months on 11.9.91. In his affidavit filed in this Court Dr. Sati submitted a certificate from the Registrar of the

University certifying that he had submitted his thesis in Geology on 3.9.94. He was awarded degree of Doctor of Philosophy in 1996. Assuming that there was an artificial break in his service Dr. Sati had neither qualified in the comprehensive test of the UGC nor was he awarded M.Phil degree in December 1990 or Ph.D. degree in December 1992. He obtained 45% marks in the Intermediate examination and 60% in B.Sc. examination. Since he did not fulfil the qualifications prescribed his name was not recommended for substantive appointment.

Shri Ajay Pal Singh was appointed as lecturer on 2.11.91. Earlier he had been appointed on 7.9.88 for a period of two months. In this affidavit filed in this Court he stated that he submitted his thesis for D.Phil in 1993 and was awarded D.Phil degree in 1993. In support of his claim that he had submitted his thesis he has not filed any certificate from the Registrar of the University. He obtained 48% marks in Intermediate and 52% in B.A. examination. No post in his subject was also available on 2.11.91. Since Sri Singh did not fulfil the criteria for substantive appointment his case was not recommended.

Dr. Surendra Joshi was appointed as part-time lecturer on 13.8.90 for two months, which appointment continued upto 25.7.91. He was given fresh appointment on 15.6.91 which continued upto 25.7.91. After about nearly one and a half months Dr. Joshi was again appointed on 11.9.91 and that appointment continued upto 11.3.92. In his case it could be said that he was working continuously from 30.6.91 till the date of the commencement of the Ordinance. In Bachelor's degree Dr. Joshi passed in third division though Intermediate in the second division. He obtained degree in D.Phil in 1988. As he did not fulfil the criteria he was not recommended for substantive appointment by the Executive Committee.

We are therefore of the view that the High Court was right in coming to the conclusion that the appellants did not satisfy the requisite qualifications or the criteria as laid for their appointment as lecturers in the University. We do not find any infirmity in the orders of the Executive Committee of the University not recommending the appellants for substantive appointment as lecturers in the University. These appeals, therefore, fail and are dismissed.