

PETITIONER:
THE KONCH DEGREE COLLEGE, CONCH JALAUN ETC.

Vs.

RESPONDENT:
RAM SAJIWAN SHUKLA & ANR. ETC.

DATE OF JUDGMENT: 06/02/1997

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO. 5322 OF 1983
O R D E R

IN C.A. No.5321/83

This appeal by special leave arises from the judgment of the Division Bench of the Allahabad High Court, made on October 4, 1982 in civil miscellaneous Writ No.6976/75

The appellant had called for selection of teachers for History subject. The first respondent Ram Sanjeevan Shukla had applied for and was selected. Admittedly, he studied Ancient History as his subject. Therefore, when his selection was sought ratification to the Vice-Chancellor by his proceedings dated May 16, 1975 refused his approval on the ground that Ram Sanjeevan Shukla was unqualified to teach the subject of History since his study was in Ancient History. The respondent had challenged the same in the writ petition. In the meanwhile, one Umesh Chandra Kanchan was appointed as a lecturer in History and he claimed the place of Ram Sanjeevan Shukla. In view of the fact that the Vice-Chancellor had refused approval of the appointment of Ram Sanjeevan Shukla, the High Court had held that the Vice-Chancellor had rightly refused to grant approval of the selection of Ram Sanjeevan Shukla as a lecturer in History. We are informed that subsequently the Department of Ancient History was created and the first respondent has been teaching in the Department, while Umesh Chandra Kanchan has been teaching the History subject. Consequently, both the posts are continuing in the appellants college. We are informed that the post of Lecturer of Ancient History is a temporary post being continued on year to year basis. We are afraid that at this distance of time, it would be very difficult to give acceptance to the contention that the post is a temporary post. For well over 20 years, when the post is being continued, though on temporary basis, it is acquired the status to be of a permanent nature. As a consequence, the respondent, namely, Ram Sanjeevan Shukla in the Ancient History Department requires to be continued and the Government would be liberty to convert it as permanent post.

The appeal is accordingly disposed of. No costs.

IN C.A. No. 5322/83

This appeal concerns two Lecturers, namely, Surendra Narain Saxena and Mithilesh Kumar @ Kantesh both being Lecturers in Hindi. As per the procedure in vogue for appointment in an affiliated college, the advertisements calling applications requires to be made and the selection by duly constituted committee approved by the Vice Chancellor under Section 26(4) of the Kanpur and Meerut Universities Act, 1965 (for short, the 'Act'). In the advertisement published for recruitment, it is not in dispute that instead of publication of vacancy in three local newspapers publication was made only in two newspapers. Consequently, when appointment of S.N.Saxena was sought approval, the Vice-Chancellor under Section 26(4) of the Act neglected it. He challenged the order in the writ petition. In the meantime, when Thakur Das Vaidya, a teacher in service retired, Mithilesh Kumar came to be appointed. His approval also was sought for and the Vice-Chancellor turned it down on the ground that he had not possessed the minimum qualification for appointment as a teacher and, therefore, the recommendation by the appellant-Management was bad in law. Since the High Court set aside the order of the Vice Chancellor and directed regularisation of the service of S.N Saxena, the appellant has come in appeal to this Court. Pending proceedings, a direction was obtained, on an account of the dearth of a qualified teacher to impart education in the subject, permission to reinstate Surendra Narain Saxena who was, in the meanwhile, terminated. As a consequence, he was reinstated and he had been continuing in service. It is true, as rightly pointed out by the High Court, that the advertisement required to be made in view to inform all the candidates who wish to apply for and seek selection to the post which the candidate is qualified to apply for and seek selection.

As regards the qualifications of Surendra Narain Saxena is concerned, indisputably, he was qualified to apply for and seeks selection for appointment as a Hindi Lecturer. He came to be selected and approval was declined on the ground of infraction of the rule, namely, omission on the part of the management to publish the advertisement in three newspapers, instead published only in two newspapers. It is mandatory on the part of the management to ensure that due publicity should be made in the newspapers to put on notice of all intending candidates for selection, the infraction would necessarily be considered mandatory in the light of the object the Act seeks to achieve. The management should be insisted upon compliance of the rigour of the rule. They cannot take shelter that all had applied for selection. But since the respondent has been continuing, was duly qualified and selected and as per the orders of this Court, he was reinstated, we do not, at this distance of time, incline to interfere with the appointment, though the statutory compliance was not made by the appellant-Committee, to invalidate the appointment.

As regards Mithilesh Kumar @ Kantesh is concerned, the Vice-Chancellor has rightly pointed out in his proceedings dated May 31, 1985 of lack of prescribed educational qualification. Thus, while refusing to sanction the approval of Mithilesh Kumar @ Kantesh for a period upto 30.6.1978, the Vice-Chancellor has given directions to advertise the post as he did not possess the minimum qualification prescribed by the statute. Hence, his service is automatically stands terminated on the expiry of the said period. If the management retains Mithilesh Kumar @ Kantesh in service after that date, namely, 30.6.1978, it was illegal and the management is not

empowered to keep him in service on the said post as he is not a teacher either duly select and appointed in Mahavidyalaya or qualified to hold the post. In para 2, it is reiterated that he did not possess the minimum qualifications laid down by the statute and the selection was not in compliance of the provisions of Section 31(3)(b) of the Act. Even at the time of the original appointment, he was not qualified and, therefore, the Management cannot appoint him under the Rules. In the light of the above directions, we do not think that the action taken by the appellant in appointing him as in accordance with law.

It is true, as pointed out by the learned counsel for the appellant, that this Court by an interim order given option to the appellant to take the services of Mithilesh Kumar, "if they so desire". It would be obvious that appellant is solicitous to take the service of the unqualified Mithilesh Kumar to confer unmerited and undue favour on him and the direction to the management to the advertise the post and to select the qualified candidate was deliberately violated, and flouted. At this stage, it is of relevant to note that Section 31(b) and not Section 31(3)(b), as wrongly quoted to mislead the Court, envisages the mode of selection of the affiliated colleges. Sub-section(1) of section 31 says that subject to the provisions of this 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 a Selection Committee in the manner hereinafter provided. The Selection Committee shall meet as often as necessary. Section 31(4)(d) says that the Selection Committee for the appointment of other teachers of an affiliated or associated college other than a college maintained exclusively by the State Government shall consist of - (i) the Head of the Management or a member of the management nominated by him who shall be the Chairman: (ii) the Principal of the college and another teacher of the college nominated by the Principal: (iii) two experts to be nominated by the Vice Chancellor. The first proviso postulates that provided that in the case of college where there is no Principal or other teacher available for being a member of the Selection Committee under sub-clause (ii), the remaining members referred to in this clause shall constitute such Selection Committee. It would, thus, be clear that even for a temporary appointment, the Selection Committee requires to be as per clause (b) of sub-section (3) of section 31 of the Act and the selection is made before approval is sought. It would be obvious that only a qualified and competent Lecturer should be selected and its approval is sought. It does not appear that such a procedure was followed. That apart, as per the statute, as pointed out by the Vice-Chancellor, Mithilesh Kumar does not even possess of the minimum qualifications for the post. The learned counsel repeatedly reiterated that he was qualified without placing any unimpeachable documentary evidence in disproof of the finding by the Vice-Chancellor.

Under those circumstances, the continuance of him cannot be approved by the Vice-Chancellor and, therefore, it cannot be given any direction, as sought for by the appellant for the approval. Learned counsel pointed out the approval was subsequently given. That would relate as per the directions of the Court and, therefore, when the appeal is disposed of, the approval does not have any validity. The appeal is accordingly dismissed. No costs.

JUDIS