

Court No. - 33

Case :- WRIT - A No. - 10679 of 2021

Petitioner :- Ratnesh Kumar Tripathi And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Hausihla Prasad Mishra, Pradhumn Kumar Pandey

Counsel for Respondent :- C.S.C., Shashi Kant Shukla, Ved Byas Mishra

Hon'ble Ashwani Kumar Mishra, J.

Instructions received by learned Standing Counsel fails to answer the observations contained in the order of the Court dated 23.09.2021.

This petition reflects how the State and their officers are sitting in appeal over the judgments passed by this Court which have otherwise attained finality up to the Supreme Court. The order under challenge declines grant of approval to petitioners' appointment on the ground that the appointment in Degree Colleges affiliated to Sampurnanand Sanskrit University can be made only by the U.P. Higher Education Service Commission, Allahabad.

It would be worth noticing that a bunch of writ petitions were placed before this Court with leading Writ Petition No. 24208 of 2018, highlighting a grievance with regard to non appointment of teachers in Sanskrit Degree Colleges affiliated to Sampurnanand Sanskrit University. By a detailed judgment the writ petition was allowed on 30.03.2019 by observing as under in Paragraph Nos. 42 to 47 of the judgment;-

"42. Sanskrit is perceived as the mother to almost all languages across the globe and Sanskrit Grammar is considered superior to the Grammars of all other languages. It is also called 'Devbhasha'. Even Western Philologists consider Sanskrit Alphabet to be most methodical and scientific with its elements classified first into vowels and consonants and then within each section, according to the manner in which the sound is produced. The Great Sanskrit Scholar Franz Bopp has stated that at one time Sanskrit was the language spoken all over the world. It is in view of its use and historical importance that this classical language merits recognition as heritage language and efforts must be made to promote it. Sanskrit is also the repository of the Ancient Indian Wisdom and Knowledge acquired over Centuries. Recognizing its importance the Sanskrit College was established as far back as in 1791 during the British Rule. The Sanskrit University is the successor of the Sanskrit College and it would be painful to note that even after 72 years of independence the appointment of teachers in Sanskrit Colleges is facing utter neglect at the policy level.

43. The Government Order dated 10.10.2018 merely directs the appointment process in colleges affiliated to Sanskrit University to be stalled in anticipation of change in the appointment procedure. The First Statutes of the Sanskrit University which provides even after its amendment on 28.12.2011 that the process of recruitment would continue, as per the unamended Statute, so long as provisions are not made for sanction of post and grant of pay scale etc. continues to exist in the First Statutes of the Sanskrit University. The

Government Order dated 10.10.2018 is clearly inconsistent with the Statutes of the Sanskrit University. In hierarchy of laws the Statutes of Sanskrit University would stand on a higher pedestal than a Government Order and in the event of a conflict the Statutes would prevail over the Government Order. The Government Order is otherwise not shown to have been issued under any specific provision of the Act of 1973 or the Statutes framed thereunder. The decision of the State contained in the meeting chaired by the Chief Secretary of the State dated 20.5.2013 and the directions issued by this Court in Writ Petition No.16368 of 2013 continues to exist. The stand of the State that the decision of the State contained in the minutes of meeting dated 20.5.2013 was confined to only one case also cannot have the approval of this Court as such a stand would result in selective treatment being offered to one institution without any distinguishing feature. The stand of the State for treating the decision taken in the meeting dated 20.5.2013 to be confined to the petitioner of that case alone is found to be violating Article 14 of the Constitution of India and cannot, therefore, sustain the test of judicial scrutiny.

44. The exercise of power by the State, impugned in this petition, is required to be examined from a different aspect also. The Government Order dated 10.10.2018 states that the task of recruitment of teachers in the colleges is contemplated to be entrusted to an independent Commission. The only Commission existing for recruitment of teachers in the colleges affiliated to Universities established and regulated by the Act of 1973 is the U.P. Higher Education Service Commission. Attempt to include colleges affiliated to Sanskrit University within the purview of the U.P. Higher Education Service Commission started way back in the year 2001 with issuance of Government Order dated 20.12.2001. It was pursuant to this Government Order that Executive Council of the Sanskrit University proposed amendment in the First Statutes of Sanskrit University on 27.3.2003 which came to be approved by the Chancellor on 28.12.2011. A period of nearly 18 years have gone by since initiation of steps to bring colleges affiliated to Sanskrit University within the purview of U.P. Higher Education Service Commission. Essential steps that were required to be undertaken in terms of the Executive Council decision dated 27.3.2003 are yet to be taken. State had sufficient time to take steps for the purpose but no steps have been taken in that regard nor any such endeavour made has been brought on record before this Court. Appointments of teachers in colleges affiliated to Sanskrit University remained in suspended animation for almost 10 years i.e. 2003 to 2013 without any tangible act on part of the State. There is still no clarity as to how the State proposes to deal with the issue. Merely saying that amendments are proposed so as to entrust the task of recruitment to independent Commission would not suffice. The further stand taken by the State that in the interregnum period retired teachers would be engaged to meet the requirement of teachers is found to be yet another decision based on adhocism without any clarity on the course to be adopted for prescribing a substituted appointment procedure. In the backdrop that for almost a decade no appointment of teacher was made in any college affiliated to Sanskrit University due to lack of clarity it would be wholly unjust and arbitrary to allow the State to enforce yet another regime of policy paralysis so as to adversely affect the prospects of Sanskrit Education in the State of Uttar Pradesh.

45. It is otherwise always open for the State to introduce a new mechanism of recruitment for teachers in colleges affiliated to Sanskrit University and as soon as such mechanism comes into existence, in accordance with law, the appointment procedure can be substituted and would be regulated accordingly. However, so long as a new procedure is not introduced, it would not be appropriate to allow the State to enforce a scheme of adhocism and thereby stall all appointments of teaching staff in the colleges affiliated to Sanskrit University. The exercise of power in stalling the appointment process, in view of the deliberations and discussions above, would have to be termed as wholly arbitrary and unsustainable in law.

46. So long as the amended procedure is not introduced for appointment of teachers in colleges affiliated to Sanskrit University, the applicable provision of the First Statutes of Sanskrit University would continue to regulate the appointment of teachers in the colleges affiliated to Sanskrit University. Even otherwise sufficient regulatory measures exist in law for the purposes. The appointment of teacher in a college affiliated to Sanskrit University can only be made against the post sanctioned in accordance with law and after obtaining approval from the District Inspector of Schools concerned in accordance with the Act of 1971. The Statutes of Sanskrit University prescribes the procedure for such appointment under Clauses 11.15 to 11.24. After the approval is granted to such appointment by the Vice Chancellor of Sanskrit University the Inspector is required to pass orders for release of salary to such teachers. The scale of pay for such teachers is already prescribed vide Government Order dated 19.3.2010. The appointment

of teachers in colleges affiliated to Sanskrit University, therefore, must continue to be made as per the existing statutory framework till a different appointment procedure is introduced in law.

47. In the facts and circumstances, noticed above, the writ petitions succeed and are allowed. The Government Order dated 10.10.2018 stands quashed. A direction in the nature of Mandamus is issued to the State Government to allow recruitment of teachers in colleges affiliated to Sanskrit University as per the provisions of the First Statutes of the Sanskrit University in terms of the Executive Council decision dated 27.3.2003, as approved by Chancellor on 28.12.2011 and clarified in the minutes of the meeting chaired by the Chief Secretary of the State of Uttar Pradesh dated 20.5.2013. Teachers appointed in the colleges affiliated to Sanskrit University, after obtaining permission from the concerned District Inspector of Schools and approval of the Vice Chancellor shall be entitled to payment of salary as per the grade of pay prescribed in the Government Order dated 19th March, 2010. The Vice Chancellor of the Sanskrit University shall provide subject experts to the colleges and facilitate holding of recruitment as per Clause 11.15 to 11.24 of the First Statutes of Sanskrit University and also consider and grant approval to appointments made as per it. Appointment of teachers in colleges affiliated to Sanskrit University which are approved by the Vice Chancellor of Sanskrit University shall be granted financial approval by the Inspector in terms of the Act of 1971. Requisite orders in terms of the above direction would be issued at the competent level within a period of six weeks from the date of presentation of certified copy of this order. Necessary action in terms of the aforesaid directions would not be deferred merely on account of on-going Parliamentary Elections in view of the law laid down by this Court in Pratima Bhardwaj Vs. State of U.P. & Others, reported in 2012 (5) ADJ 639.

A Special Appeal filed by the State against the aforesaid judgment being Special Appeal Defective No. 535 of 2019 was dismissed on 18.09.2018. An SLP preferred before the Supreme Court no. 29487 of 2019 has also been dismissed on 24.08.2021 and the interim order granted by the Supreme Court during pendency of the Special Leave to Appeal (Civil) No. 29487 of 2019 has been dismissed vide following orders;-

"Heard learned counsel for the parties.

We are not inclined to interfere with the impugned order passed by the High Court. The Special Leave Petition is, accordingly, dismissed.

Consequently, the interim order granted on 27th January, 2020 stands vacated.

All pending applications stands disposed of. "

Notwithstanding the finality of judgment delivered by this Court in the case of Triveni Sanskrit Mahavidyalaya it appears that the state is still not permitting appointments to be made in these colleges. Government Orders issued from time to time during pendency of the dispute either before this Court in Special Appeal or before the Supreme Court have lost its efficacy Once the judgment of this Court has been affirmed by the Supreme Court. The plight of Sanskrit Institution as also the teachers appointed therein however continues to face the utmost neglect inasmuch neither any procedure consistent with laws has yet been evolved nor the appointments already made are being given effect to by the State.

Before proceeding any further it will, therefore, be appropriate

to call upon the Additional Chief Secretary of the Department of Higher Education to clarify as to how the State proposes to proceed in compliance of the directions issued by this Court after it has attained finality and why personal responsibility of the officers be not fixed for acting in utter breach of the direction issued by this Court. In the meantime, the District Inspector of Schools shall revisit the matter relating to grant of financial approval to petitioners' appointment and shall pass necessary orders keeping in view the earlier order passed by this Court on 29.03.2021.

It is clarified that this Court has not adjudicated petitioners' appointment on merits and the question as to whether anyone else has been appointed against the vacant post is left open to be examined by the Inspector, at the first instance.

Post as fresh, once again, on 08.11.2021.

Order Date :- 18.10.2021

Abhishek Singh