

# **DINESH CHANDRA SHUKLA v. STATE OF U.P. , 2022**

## **SCeJ 0400 , 2022 PLRonline 1194**

Supreme Court of India

*Hemant Gupta, J. V. Ramasubramanian, j.*

### **DINESH CHANDRA SHUKLA v. STATE OF U.P. & ORS.**

CIVIL APPEAL NO. 1913 OF 2022

24th March 2022

#### **Service matter**

**U.P. State Universities Act, 1973 - S.25(1)(c), S.31(8)(a), S.53 - Filling of post of Lecturer in 'Karm Kand' in the Department of Sanskrit in the University.**

**Appointment - Qualification - The parameters to be applied to a case where an incumbent to a post does not fulfil the qualifications prescribed for a post, are different from the parameters to be applied to a case where no specific qualifications are prescribed for a particular post - The question as to what constitutes "relevant subject" should have been left to the experts, before the advertisement was issued, especially when the statutes did not prescribe any specific qualifications - This did not happen in this case - The expression "equivalent qualifications" has a different connotation than the expression "relevant subject" - In view of the fact (i) that the appellant has been teaching the very same subject for the past nearly 16 years; and (ii) that the original Selection Committee which found him eligible for appointment, comprised of Professors from the Department of Sanskrit of which the diploma course in 'Karm Kand' was a part, a direction is issued to the 5th respondentUniversity to regularise the services of the appellant**

#### **Cases referred to :**

Para 14: Punjab University v. Narinder Kumar and Others, (1999) 9 SCC 8

Para 15: Ganapath Singh Gangaram Singh Rajput v. Gulbarga University, (2014) 3 SCC 767

Petitioner Counsel: SNEHA KALITA, Respondent Counsel: SANDEEP DEVASHISH DAS SANJAY KUMAR TYAGI KAMAKSHI S. MEHLWAL

#### **JUDGEMENT**

V. RAMASUBRAMANIAN, J.

1. Aggrieved by the dismissal of his writ petition seeking to quash an order of the

Chancellor of the Mahatma Gandhi Kashi Vidyapeeth University (hereinafter referred to as 'the University'), rejecting his request to be appointed as Lecturer (Karm Kand), the appellant is before this Court.

2. We have heard the learned counsel for the appellant, the learned counsel appearing for the Chancellor of the University, the learned counsel for University itself and the learned standing counsel for the State.

3. The brief facts necessary for the disposal of the above appeal are as follows:

(i) Vide order dated 22.10.1996, the State of U.P sanctioned one post of Lecturer in 'Karm Kand' in the Department of Sanskrit in the University, which is arrayed as the 5th respondent herein. The Chancellor of the University, the Executive Council and the Vice Chancellor of the University are arrayed separately as respondents 2 to 4 herein for reasons not difficult to fathom.

(ii) It appears that one Shri Jai Prakash Pandey was initially appointed to the said post and his services were also regularised. But the regularisation of his services was set aside by the High Court by an order dated 19.08.2006 in Writ Petition No.35149 of 1999.

(iii) Thereafter, the appellant herein was engaged by the University as a Guest Lecturer to teach 'Karm Kand' to the students in the Department of Sanskrit. The remuneration payable to him was fixed at Rs.250/ per lecture subject to a maximum of Rs.5,000/ per month.

(iv) A proposal to fill up the post on regular basis was submitted by the Head of the Department of Sanskrit on 16.10.2006. It was approved by the ViceChancellor on 18.10.2006. Pursuant thereto, the University issued an advertisement bearing Advertisement No.2 of 2006, inviting applications for appointment to one post of Lecturer in 'Karm Kand'. The advertisement also contained invitation for applications for various other posts in various departments. We are not concerned in this case with the posts in other departments for which applications were invited in the same advertisement. Suffice it to say that applications were invited for appointment to 8 posts of lecturers in various subjects, one of which was for appointment to the post of Lecturer in 'Karm Kand'.

(v) Unfortunately, a controversy erupted, when the then Chancellor of the University issued an oral order restraining the ViceChancellor from convening the meetings of Selection Committees pursuant to the aforesaid advertisement, on the ground that the Vice-Chancellor was due to retire on 31.12.2007. But the High Court, by an order dated 04.10.2007 passed in a writ petition, made it clear that statutory functions performed by the Vice Chancellor cannot be put on hold by oral orders of the Chancellor. Thereafter, a written order was issued by the Chancellor on 14.12.2007. However, the said order was challenged in another writ petition and the same was stayed by the Allahabad High Court, paving the way for the Selection Committees to proceed further pursuant to the Advertisement No.2 of 2006.

(vi) As a consequence, the Selection Committees in respect of various posts held meetings and made recommendations. Some of these recommendations were accepted by the

Executive Council by its Resolution dated 24.12.2007.

(vii) Since the ViceChancellor retired in the meantime before the recommendations were implemented, a batch of writ petitions came to be filed. A spate of interim orders came to be passed pursuant to which the Executive Council decided to refer the recommendations of the Selection Committees to the Chancellor under the proviso to Section 31(8)(a) of the U.P. State Universities Act, 1973.

(viii) In the case of the appellant, the Selection Committee had recommended his candidature for appointment to the post of Lecturer in 'Karm Kand'. But the Executive Council disagreed with the Selection Committee on the ground that the ViceChancellor failed to request the Chancellor to nominate subject experts in the Selection Committee. It is relevant to note here that the Selection Committee shortlisted only two persons, one of whom was the appellant and other Dr. Jai Prakash Pandey. The said Dr. Jai Prakash Pandey had secured only 49.2% marks as against the minimum prescription. Therefore, he was not issued with any interview call letter.

(ix) Agreeing with the decision of the Executive Council, the Chancellor passed an order dated 23/28.12.2010 annulling the recommendation made by the Selection Committee for the appointment of the appellant.

(x) The appellant challenged the said order of the Chancellor by way of a writ petition in Writ Petition No.6389 of 2011. By an Order dated 02.12.2011, the said writ petition was allowed and the matter remanded back to the Chancellor. The reason why the matter was remanded back to the Chancellor was that admittedly there was no University in the country awarding a post graduate degree in 'Karm Kand' and that, therefore, there were actually no experts in the subject of 'Karm Kand', as sought to be projected by the Chancellor. Since the question whether subject experts were at all available in the field of 'Karm Kand' went to the root of the matter, the High Court thought fit to remand the matter back to the Chancellor.

(xi) Pursuant to the aforesaid direction, the Chancellor considered the matter and passed a fresh order dated 24.08.2012, rejecting the recommendation of the Selection Committee. This order was challenged by the appellant by way of a fresh writ petition in Writ Petition No.63137 of 2012. By the Order dated 14.05.2015 impugned in this appeal, the Division Bench of the Allahabad High Court dismissed the writ petition of the appellant on the ground that after the order of remand, the Chancellor had consulted a few experts and found that the subject of 'Karm Kand' is altogether different from the subject Sanskrit and that therefore, with the qualifications that the appellant possessed, he could not have been selected for appointment. It is against this order of the High Court that the appellant is before us.

4. Before we proceed to consider the core issue arising for consideration, we are obliged to take note of the fact that admittedly the appellant was engaged as a Guest Lecturer on remuneration of Rs.250/ per lecture subject to a maximum of Rs.5000/ per month from the year 2006. Ever since then the appellant has been teaching students undergoing a one

year diploma course in 'Karm Kand' for the past nearly 16 years.

5. The next thing we have to take note of before we take up for consideration the issue arising in the above appeal, is that the appellant, and perhaps the entire selection process undertaken in 2006 by the University, became victims of the crossfire between the Chancellor and the ViceChancellor. Admittedly, the post was originally filled up by a person who was actually the purohit to the then Governor of State of Uttar Pradesh. But his appointment was set aside by Allahabad High Court by an order dated 19.08.2006. It is only thereafter that Advertisement No.2 of 2006 came to be issued, inviting applications for appointment to the post.

6. But it is of interest to note that the advertisement did not specify particularly that a candidate applying for the post of Lecturer in 'Karm Kand' should hold a Master's Degree in 'Karm Kand'. In fact the order of the Chancellor dated 24.08.2012 which became the subject matter of the writ petition, specifically concedes as follows: "there is no mention of the subject Karm Kand in the Statutes of the Mahatma Gandhi Kashi Vidyapeeth nor any Ordinance under Section 51/52 nor any Regulations under Section 53 of the U.P. State Universities Act, 1973. The order of the Chancellor only relied upon Statute 11.01(1) of the University First Statutes, 1977, which stipulated that the minimum qualifications required for appointment to the post of Lecturer in the University or a Master's Degree or equivalent degree in relevant subject with at least 55% marks and consistently good academic record and NET or Ph.D. degree".

7. In his order dated 24.08.2012, the Chancellor held that the appellant did not hold a Master's degree in 'Karm Kand'. But before he came to such a conclusion, the Chancellor as well as the High Court ought to have verified (i) whether the Statutes prescribed any specific qualifications necessary for appointment to the post of Lecturer in 'Karm Kand'; and (ii) if not, what should be considered as "relevant subject and by whom".

8. It must be pointed out at this stage that in the first instance, the Executive Council took a stand that the selection of the appellant was vitiated primarily on account of noninclusion of subject experts in the field of 'Karm Kand'. The appellant was not held by the Executive Council to be a person not possessing the prescribed qualifications for appointment. This is why the order of remand passed by the High Court on 02.12.2011 specifically directed the Chancellor to consider whether or not there were subject experts in 'Karm Kand' to be included in the Selection Committee. Instead of confining himself to the said question, the Chancellor seems to have taken the opinion of one Professor Gaya Ram Pandey, Head of the Department of Sanskrit to come to the conclusion that 'Karm Kand' and Sanskrit are two separate subjects and that while 'Karm Kand' is a practical subject, Sanskrit is not. The said Professor Gaya Ram Pandey also seems to have provided information to the effect (i) that a few universities such as Banaras Hindu University, Sampurnanand Sanskrit University, Lucknow University, and Lal Bahadur Shashtri Rashtriya Sanskrit Vidyapeeth have included 'Karm Kand' as a subject in their courses; and (ii) that, however, according to the information from the Registrar of Lal Bahadur Shashtri Rashtriya Sanskrit Vidyapeeth, there is no post of Lecturer in 'Karm Kand'. In his order dated 24.08.2012 the Chancellor also recorded that certain universities teach the subject of Karm Kand/Paurohitya and

provide degrees like Acharya (M.A) and Vidyavaridhi (Ph.D.).

9. Obviously the consultations made by the Chancellor with certain persons and the information gathered by him before passing the order impugned before the High Court, were beyond the scope of order of remand passed by the High Court. The information collected by the Chancellor not only enlarged his original objections to the selection of the appellant but was also gathered behind the back of the appellant.

10. In the course of hearing of the above appeal, we raised a pointed query to Shri Sandeep D. Das, learned counsel appearing for the University as to whether the Statutes of University prescribed any specific qualifications for appointment to the post of Lecturer in 'Karm Kand' or at least whether Advertisement No.2 of 2006 indicated the qualifications. He had no alternative but to concede that the statutes do not contain any prescription regarding the post of Lecturer in 'Karm Kand'. He also conceded that the advertisement did not indicate any specific qualification except that the aspirant should hold a post graduate degree in the relevant subject.

11. In the absence of any specific prescription, the University ought to have referred the question of what constitutes relevant subjects, before the process of selection began. Neither the University nor the Chancellor took a stand in the first instance that the appellant was not qualified in the "relevant subject". Their initial objection was that the Selection Committee did not include the subject experts nominated by the Chancellor. After it was pointed out that there were no subject experts in 'Karm Kand', as no University was offering a specific course in 'Karm Kand', the High Court thought fit to remand the matter back to the Chancellor, to ascertain whether subject experts were actually available and whether the failure of the Vice Chancellor to seek nomination of such experts from the Chancellor vitiated the whole process. Finding that the answer to the said question was too difficult to be provided, the Chancellor went on a detour to find out what are the differences between the subject of Sanskrit and the subject of 'Karm Kand'. This was clearly erroneous and the High Court unfortunately omitted to notice this mistake.

12. Admittedly, the appellant has been teaching 'Karm Kand' for the past nearly 16 years in the same University. Though the learned counsel for the University stated that his continuance was on account of an interim order of status quo passed by this Court, we notice that the interim order of status quo was passed only on 14.09.2015. Unless the appellant was continuing as on that date, the order of status quo would have meant nothing for him.

13. The parameters to be applied to a case where an incumbent to a post does not fulfil the qualifications prescribed for a post, are different from the parameters to be applied to a case where no specific qualifications are prescribed for a particular post. The question as to what constitutes "relevant subject" should have been left to the experts, before the advertisement was issued, especially when the statutes did not prescribe any specific qualifications. This did not happen in this case. In fact the question whether subject experts were available at all in 'Karm Kand', itself became a matter of controversy. The entire controversy appears to have arisen as a result of the tug of war in the year 2006 between

the then Chancellor and the then Vice Chancellor, making the appellant a victim in the line of fire. Unfortunately, the High Court omitted to take note of all this.

14. The expression “equivalent qualifications” has a different connotation than the expression “relevant subject”. In *Punjab University v. Narinder Kumar and Others*, (1999) 9 SCC 8, this Court was concerned with the interpretation of the expression “relevant subject”. But in that case the advertisement itself prescribed “the essential qualifications” under one head and “desirable specialisation” under another head. Therefore, this Court found that though the words “relevant subject” did not throw any light on the question as to what are the relevant subjects for the post of a Lecturer in any specified subject, the column dealing with “desirable qualifications” threw light upon what was relevant. Therefore, cases in which a clue is available in the advertisement itself may stand on a different footing than cases where there is no such clue.

15. In *Ganapath Singh Gangaram Singh Rajput v. Gulbarga University*, (2014) 3 SCC 767, this Court was concerned with a case where applications were invited for appointment to the post of Lecturer in MCA, from candidates holding a post graduate degree in the “relevant subject”. As a matter of fact, this Court found that candidates with Masters’ degree in Computer Applications were available, but a candidate with Masters’ degree in Mathematics was selected. This Court found fault with the decision of the Board of Appointment in selecting the candidate with a Master’s degree in Mathematics with a flawed reasoning that Mathematics is one of the subjects taught in MCA.

16. In the case on hand no candidate was available with a post graduate degree in ‘Karm Kand’ and the Selection Committee which comprised of a representative of the Department of Sanskrit found the appellant to possess a Master’s degree in the relevant subject. The appointment itself was to the post in the Department of Sanskrit.

17. In fact, during the pendency of the writ petition before the High Court, the Academic Council of the University held a meeting on 22.08.2013. Agenda No.10 for the said meeting related to the qualifications for appointment to the post of Lecturer in ‘Karm Kand’. The recommendation made by the Head of the Department of Sanskrit was accepted by the Academic Council. Agenda Item No.10 of the said meeting of the Academic Council reads as follows:

*“Agenda No.10: Recommendations of Department of Sanskrit. Prof Uma Rani Tripathi Head of the Department, Department of Sanskrit gave the information related to the recommendation of the Department of Sanskrit by apprising that the Academic Qualification of the Karm Kand and for the post of Professor of Sanskrit be kept one and the same as well as the Specialized experience of karm kand be stipulated as compulsory which was passed unanimously”*

18. If only the High Court had looked into the minutes of the meetings of the Academic Council it could have easily appreciated that the appellant was entitled to succeed.

19. Under Section 25(1)(c) of the U.P. University Act, the Academic Council is empowered to advise the Executive Council with regard to the qualifications required to be possessed by

persons imparting instructions on particular subjects. Therefore, the minutes of the meetings of the Academic Council dated 22.08.2013 has clinched the issue in favour of the appellant. Hence it is time for the University to put an end to this 'Yuddh Kand' and allow the appellant to move from 'Karm Kand' to 'Karm Phal Kand'.

20. Therefore, the appeal is allowed, the impugned order of the High Court is set aside and the writ petition filed by the appellant before the High Court is allowed, as prayed for. In view of the fact (i) that the appellant has been teaching the very same subject for the past nearly 16 years; and (ii) that the original Selection Committee which found him eligible for appointment, comprised of Professors from the Department of Sanskrit of which the diploma course in 'Karm Kand' was a part, a direction is issued to the 5th respondent-University to regularise the services of the appellant. There shall be no order as to costs.