

**याचिका संख्या-31014 ऑफ 2005**

**कमेटी ऑफ मैनेजमेंट डी०एन० (पी०जी०) कॉलेज, मेरठ व अन्य बनाम्  
उ०प्र० राज्य व अन्य**

**आदेश दिनांक-16.04.2007**

**मुख्य बिन्दु- उ० प्र० उच्चतर शिक्षा सेवा आयोग अधिनियम 1980  
भारत के संविधान के अनुसार सही है।**

H.N.Singh

B.Narayan Singh

Advocate

Ch.no.17

High Court Allahabad.

Phone no. 2616003

Mob. No. 9335103578

cin no 31014/05

mo 20114  
18/4/7-

Date of application 18-4-7  
Date of ... 19-4-7  
Date of ... 19-4-7  
Date of ... 19-4-7



Cashier of  
Accountant

Signature of Govt. Servant  
Granting the receipt.  
Designations: . . . . .

RECEIPT FOR PAYMENT BY GOVERNMENT

(Form No.1, Chapter-III, Paragraph 26, Financial Hand Book  
Volume V, Part-I)

Receipt No: . . . . .

Place: . . . . . *Sy. No - 20114*  
Department and office: . . . . . *City - No. 23/14/09*  
Received from: . . . . . *Mr. Singh*  
the sum of Rupees: . . . . . *14*  
on account of . . . . . *2007*

Cashier of  
Accountant

Signature of Govt. Servant  
Granting the receipt.  
Designation: . . . . .  
*18/4/10*

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

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CIVIL SIDE  
ORIGINAL JURISDICTION

DATED ALLAHABAD THE : 16.04.2007.

PRESENT

THE HON'BLE YATINDRA SINGH, . . . . . JUDGE.

THE HON'BLE VIJAY KUMAR VERMA, . . . . . JUDGE.

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1. CIVIL MISC. WRIT PETITION NO. 31014 OF 2005.
2. CIVIL MISC. WRIT PETITION NO. 39057 OF 2004.
3. CIVIL MISC. WRIT PETITION NO. 45023 OF 2006.
4. CIVIL MISC. WRIT PETITION NO. 67607 OF 2006.
5. CIVIL MISC. WRIT PETITION NO. 69984 OF 2006.
6. CIVIL MISC. WRIT PETITION NO. 6060 OF 2007.
7. CIVIL MISC. WRIT PETITION NO. 16967 OF 2007.

Order on the Petition of Committee of Management, D.N.  
(P.G.) College, Meerut & others.  
. . . . . Petitioners.

In re :

1. Committee of Management  
D.N. (P.G.) College Meerut,  
Meerut through its Honorary Secretary.
2. D.N. Gupta, Honorary Secretary  
Committee of Management  
D.N. (P.G.) College Meerut, Meerut.
3. Dr. Harendra Kumar, Principal  
D.N. (P.G.) College Meerut, Meerut. . . . . Petitioners.

V E R S U S

1. State of Uttar Pradesh through the Secretary  
Higher Education U.P. Lucknow.
2. U.P. Higher Education Service Commission, Allahabad.
3. Directorate of Higher Education,  
U.P. at Allahabad. . . . . Respondents.

Counsel for the Petitioners : Sri Ashok Khare  
Sri Shailendra, Sri Arvind Singh  
Sri Rajesh Kumar Singh  
Sri R.P. Srivastava  
Sri K.C. Shukla

Counsel for the Respondents : Sri D.K. Tripathi  
MS. Subhas-Rathi, Sri H.N. Singh  
Sri B.N. Mishra, Sri C.B. Yadav

S.C.

BY THE COURT  
(DELIVERED BY HON'BLE YATINDRA SINGH, J.)

1. Civil Misc. Writ Petition No. 31014 of 2005  
Committee of Management DN (PG) College, Meerut vs. State of UP and others
2. Civil Misc. Writ Petition No. 39057 of 2004  
Committee of Management Nank Chand Anglo Sanskrit (PG) College and others vs. State of UP and others
3. Civil Misc. Writ Petition No. 45023 of 2006  
Committee of Management Gauriganj Degree College Educational Trust vs. State of UP and others
4. Civil Misc. Writ Petition No. 67607 of 2006  
Committee of Management Kooba Post Graduate College Azamgarh vs. State of UP and others
5. Civil Misc. Writ Petition No. 69984 of 2006  
Committee of Management Bayalsi Shaikshik Samiti Jaunpur vs. State of UP and others
6. Civil Misc. Writ Petition No. 6060 of 2007  
Committee of Management DAV (PG) College Azamgarh and another vs. State of UP and others.
7. Civil Misc. Writ Petition No. 16967 of 2007  
Committee of Management Jagatpur Mahavidyalay, Jagatpur, Varanasi vs. State of UP and others.

Hon'ble Yatindra Singh, J  
Hon'ble Vijay Kumar Verma, J

(Delivered by Hon'ble Yatindra Singh, J)

1. These writ petitions involve with the constitutionality of the UP Higher Education Services Commission Act, 1980 (the Commission Act)

#### THE FACTS

2. The UP Higher Education Services Commission, Allahabad (the Commission) published the advertisements no. 38 and 39 on 24.4.2005 for selection of the principals and lecturers for under graduate and post graduate colleges (referred to as the Colleges). The petitioners are the committees of management of different colleges and have challenged the process of selection on the ground that the Commission Act is ultravires the Constitution.

3. We have heard Sri Shailendra, Sri Rajesh Kumar Singh, Sri Arvind Singh,

Sri RP Srivastava and Sri KC Shukla counsel for the petitioners, Ms. Subhas Rathi, standing counsel and Sri HN Singh for the Commissioner.

### **DECISION: THE COMMISSION ACT IS INTRA-VIRES**

#### **The Right to Establish Educational Institution**

4. The question regarding right to establish educational institutions has been decided in TMA Pai Foundation versus State of Karnataka (2002) 8 SCC 481 (the TMA Pai case). In this case eleven questions were referred to the larger bench. The larger bench chose not to answer four of them and the remaining seven were reformulated into five questions by the Chief Justice (paragraph 235 of the TMA Pai case). The eleventh question referred to larger bench is as follows:

'Q. 11. What is the meaning of the expressions "education" and "educational institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?'

Out of the five questions reformulated by the Chief Justice of India the first question formulated is as follows:

'1. Is there a fundamental right to set up educational institutions and if so, under which provision?'

5. While answering the question no. 11 and the reformulated question no. 1, the Supreme Court explained that right to establish and maintain the educational institution falls under Article 19(1)(g) and Article 26 (a) of the Constitution. Apart from these two articles some rights are also conferred under Articles 29 and 30 of the Constitution but the petitioners here are claiming rights to establish and maintain educational institution under Article 19(1)(g) and Article 26(a) of the Constitution.

6. Article 19(1) (g) is subject to Article 19(6) and Article 26(a) is subject to

public order and morality. In substance, the rights conferred under these articles are not absolute but subject to reasonable restrictions. The question is, whether the Commission Act, by selecting the teachers and principals, imposes unreasonable restrictions on the rights conferred under these articles or not. The counsel for the petitioners submit that:

- (i) The University Grant Commission (UGC) had already laid down minimum standard for appointment of teachers and uniformity in the standard of teaching has already been achieved, it is unreasonable on the part of State to make appointments in the colleges.
- (ii) The UP State Universities Act, 1973 (the State University Act) was applicable to appointment for undergraduate and post graduate colleges. This Act provided sufficient safeguard for appointments of teachers. This procedure coupled with the minimum qualification set up by the UGC ensures uniformity and by not permitting the management to appoint the teachers is unreasonable restriction.

#### **Restrictions Are Reasonable**

7. In the TMA Pai case, reformulated question no. 3 is as follows:

'3. In case of private institutions (unaided and aided), can there be government regulations and, if so, to what extent?'

The Chief Justice answered this question in paragraph number 71 to 73 of the TMA Pai case. There is no disagreement among the judges on this point.

8. The West Bengal Higher Education Commission Act (the WB Commission Act) is similar to the Commission Act and the appointments there are also made on the recommendations of the West Bengal Higher Education Commission. Brahmo Samaj Educational Society was claiming itself to be a minority in West Bengal and challenged the vires of the WB Commission Act. This matter was dealt in Brahmo

Samaj Educational Society and others versus State of West Bengal and others: (2004) 6 SCC 224 (the BrahmoSamaj case). In this case, the Supreme Court neither decided the issue of minority/ denominational status of Brahmo Samaj, nor declared the WB Commission Act as ultravires. The court disposed it off with the direction to the State to reconsider the matter in the light of paragraphs no. 71 to 73 of the TMA Pai case. The counsel for the petitioners, relying upon the BrahmoSamaj case and paragraph 71 to 73 of the TMA Pai case submit that the Commission Act is ultravires the Constitution. Does the Commission Act as it stands today imposes unreasonable restrictions?.

9. The objects and reasons of the Commission Act (Appendix-1) show that this Act was enacted on the recommendation of the Vice Chancellors and was to apply to the affiliated and associated colleges only. This has been done on the ground that

- The selection committees of the individual colleges were expensive;
- Often selection meetings were postponed because a common date did not normally suit the members of the selection committee.
- There were complaints of favouritism.

10. The Commission Act as originally enacted was very comprehensive. The word 'appointment' is defined under section 2(a) of the Commission Act. (see Appendix-2). It provided an inclusive definition and included all appointments except the appointment under section 31(3) of the State Universities Act. Section 2(c) of the Commission Act (see Apperdix-2) defines the word 'college' and it included all colleges to whom affiliation or recognition has been granted by the University. Section 24 of the Act provided some exemption to the minority institution but even here the minority nstitution was required to take approval

before making appointments. Thus, the Commission Act as originally enacted had very wide application but now it has been curtailed.

11. The Commission Act has been amended by the UP Act No. 30 of 2004. It has amended the definition of word 'appointment' and 'college' as well as section 24 of the Commission Act (see Appendix-2). The appointment is no longer as wide as it used to be. The appointment is now confined only to the posts described under section 60-E of the State Universities Act. Section 60-E of the State Universities Act (Appendix-3) is titled as 'Liability in respect of salary'. Under this section, the State Government is liable for payment of salary against certain posts mentioned therein. Amended section 2(a) read alongwith section 60-E of the State Universities Act clarify that now the Commission can only make appointments in respect of the posts for which the State Government has undertaken liability to pay the salary.

12. Section 2(c) which defines the word 'college' has also been amended. Section 24 has also been suitably amended. The net result of the amendment of these two in the definition is that the Commission neither makes any appointment in any minority institution, nor any approval of the commission is required by the minority institution before making any appointment

13. The Commission Act as it stands has been altered. Earlier the Commission was not making any appointment in the minority institution but its approval was required. Now the approval of the Commission is no longer required in the minority institutions. Earlier the word 'appointment' provided inclusive definition. Now it has been confined to the word 'appointment' for which the State Government is liable to pay the salary. The Commission Act was enacted in order to reduce expenses, wastage of time and eradicate complaints of favouritism in the selection of the

candidate and now the Commission is only required to make appointment in respect to those posts for which it is liable to pay salary. These appointments can only be made by the Commission if the candidate fulfils the minimum qualification prescribed by the statutes of the different universities. It would have been better if the State had left the appointments to the Committee of management but in case it does not do so then it can not be said that the State has imposed unreasonable restriction by entrusting right to make the appointment to the Commission. In our opinion it is reasonable restriction within the meaning of Article 19(6) as well as article 26(a) of the Constitution.

### CONCLUSION

14. Our conclusion is that the UP Higher Education Commission Act, 1980 as it stands today is intra-vires the constitution. The writ petitions have no merit and are dismissed.

Date: 16.4.2007  
BBL

Sd/- Yogendra Singh

Sd/- Vijay Kumar Verma

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19/4/07

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B. Mehta

19/4/2007  
Section Officer

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High Court, Allahabad

**Appendix-1****Statement of object and Reasons of the Commission Act**


The question of establishing a Services Commission for the selection of teachers to the institutions of higher learning has been under consideration of the State Government for quite sometime. Recommendations in this direction were also made in the Vice Chancellor's Conference in 1975. The University Grant Commission, however, expressed the view that, in the first instance, the proposed Commission may be confined to the selection of teachers in affiliated and associated colleges only. It has accordingly been decided to establish a Higher Education Services Commission.

Accordingly to the existing procedure, every college governed by the Uttar Pradesh State Universities Act, 1973, has its own Selection Committee with certain nominees of the Vice-Chancellor therein. It has been brought to the notice of the State Government that the meetings of these Selection Committees are quite expensive. Sometimes, the meetings have to be postponed because a common date does not normally suit all the members. Complaints of favouritism in the selection of candidates have also been made from time to time. The proposed Commission, it is expected, shall be free from the above shortcomings.

**Statement of object and reasons of UP Act No. 30 of 2004**

In Section 24 of the aforesaid Act it was provided that the appointment and conditions of service of teachers in the degree colleges established and maintained by Minorities based on religion or language shall be regulated with the approval of the Commission and the concerned University. Since the appointment of teachers was being delayed in obtaining the approval of the Commission, it was further decided to amend the said section 24 to omit the provision for obtaining the approval of the Commission for the appointment of the said teachers.

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## Appendix -2

in 2(a), 2(c) and 24 of the Commission Act have been amended by UP  
of 2004. These sections before amendment and after amendment are as

### Amendment

"appointment" in relation to a teacher does not include an appointment  
under sub-section (3) of Section 31 of the Uttar Pradesh State Universities  
Act, 1973;

### Amendment

(b) "Appointment" in relation to a teacher means the appointment of a  
person to a sanctioned post described under Section 60-E of the Uttar  
Pradesh State Universities Act, 1973; excluding the appointment in a grant-  
aided college established and administered by a minority referred to in  
clause (1) of Article 30 of the Constitution or a college exclusively  
maintained by the State Government.

### Amendment

2(c) "College" means an affiliated or associated college to which the  
privileges of affiliation or recognition, as such has been granted by a  
University, and includes a college maintained by a local authority but does  
not include a college maintained by the State Government; or a College  
imparting medical education;

### Amendment

2(c) "College" means an affiliated or associated college to which the  
privileges of affiliation has been granted by a University governed by the  
Uttar Pradesh State Universities Act, 1973, excluding a college established  
and administered by a minority referred to in clause (1) of Article 30 of the  
Constitution or a college exclusively maintained by the State Government or

a college running self-finance course as defined in clause (18) of Section 2 of the Uttar Pradesh State University Act, 1973.;

#### **Before Amendment**

**24. Exemption to minority Institutions.-** Notwithstanding anything contained in this Act, the management of any college established by a minority based on religion or language which the minority has the right to administer, shall be entitled to appoint, dismiss, remove, terminate the services of or reduce in rank a teacher or take other disciplinary measures subject only to the approval of the Commission and of the University concerned.

#### **After Amendment**

**24. Exemption to minority Institutions.-** Notwithstanding anything to the contrary contained in any other law for the time being in force, no appointment of a teacher in a college established and maintained by a Minority based on religion or language made otherwise than in accordance with the provisions of this section as it was in force immediately before the commencement of the Uttar Pradesh Higher Education Services Commission (Second Amendment) Act, 2004 shall be deemed to be invalid or ever to have become invalid merely on the ground that such appointment was not made in accordance with the provisions of this section, as it was in force immediately before the commencement of the said Act as if the provisions of this Act as amended by the said Act were in force at all material times.

**Appendix-3****Section 60-E of the UP State Universities Act, 1973**

**60-E. Liability in respect of Salary. -** (1) The State Government shall be liable for payment of salaries against such posts of teachers and employees of every such college that was taken i grant-in-aid list by the State Government on or after March 31, 1975;

Provided firstly that the Director of Higher Education or an officer authorised by him to sanction grant-in-aid to the college has paid the salary against such posts within one year after the college was taken in grant-in-aid list:

Provided secondly that the posts in a grant-in-aid college which were created after the college was taken in grant-in-aid list with the permission of the Director, Higher Education or by the State Government and were duly filled with the approval of the Director of Higher Education or an officer authorised by him after March 31, 1975:

Provided thirdly that the State Government shall not be liable for payment of salaries of teachers and employees of a college where permission to create posts was granted by the Director of Higher Education or by the State Government on the condition that the management of the respective college shall bear the liability of payment of salary against the posts so created:

Provided fourthly that the colleges in which affiliation for certain number of subjects of undergraduate and post graduate courses has been accorded by the Chancellor under self-financing scheme, the State Government shall not be liable to pay salary of teachers and employees appointed in connection with imparting instruction in such course.

(2) The State Government may recover any amount in respect of which any liability is incurred by it under sub-section (1) by attachment of the income from the property belonging to or vested n the college as if that amount were an arrear of land revenue due from such college.

(3) Nothing in this section shall be deemed to derogate from the liability of the college for any such dues to the teacher or employee.

