

(2009) 09 AHC CK 0181

Allahabad High Court

Case No: None

Dr. Pradeep Kumar Singh
Pourush

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 1, 2009

Acts Referred:

- Uttar Pradesh State Universities Act, 1973 - Section 31

Citation: (2010) 3 AWC 3123

Hon'ble Judges: V.M. Sahai, J; Jayashree Tiwari, J

Bench: Division Bench

Final Decision: Allowed

Judgement

V.M. Sahai and Jayashree Tiwari, JJ.

The present writ petition has been filed by the petitioner Dr. Pradeep Kumar Singh Pourush for grant of writ of mandamus directing the respondent No. 1 to grant Readership and Selection Grade to the petitioner after taking into consideration his past services rendered by the petitioner and also to direct the respondent Nos. 3 and 4 to annex the copy of the Screening Committee Report dated 20.11.2003.

2. In short, the facts as alleged in the writ petition are that the petitioner's educational qualification is M.Sc., M.Phil, Ph.D. He was appointed as Assistant Professor in M.L. Sukhadiya University, Udaipur (Rajasthan) on 28.12.1991 to teach under graduates and post graduates in the department of Physics. The petitioner worked in the said University from 28.12.1991 to 12.4.1993. Subsequently, petitioner applied for the post of Lecturer in Physics in Agra University, Agra and he was appointed as Lecturer in Physics in Agra University, Agra on a probation of one year. The services of the petitioner were confirmed on the said post vide order of respondent No. 2 dated 23.9.1994, copy of which is annexed as Annexure-1 to the writ petition.

3. Petitioner contended that according to Rules, after completion of five years, he became entitled for personal promotion in senior scale. The respondent No. 2 constituted a committee to consider the case of the petitioner vide letter dated 20.9.1997. The said Selection Committee considered the case of petitioner and appointed him as Lecturer in the senior scale of Rs. 3,000-5,000 plus allowances admissible under University Rules w.e.f. 28.12.1996 (copy of order dated 27.10.1997 is annexed as Annexure-2 to the writ petition). The said annexure shows that that Executive Council vide its Resolution No. 12/12 dated 8.10.1997 has appointed the petitioner as Lecturer Senior in scale of Rs. 3,000-5,000 plus allowances as admissible under the University Rules from 28.12.1996. The petitioner joined his services as senior Lecturer in Physics vide joining report of the petitioner dated 28.10.1997 which is annexed as Annexure-3 to the writ petition. According to first Statute of Agra University, Agra (Now Dr. B.R. Ambedkar University) under Statute No. 17.05, the continuous past services rendered in other Universities or its affiliated colleges are counted and included for the purposes of seniority. The petitioner made a representation supported by documents and approached the respondent No. 2 for inclusion of past services rendered in M.L. Sukhadia University, Udaipur (Rajasthan) from 28.12.1991 to 12.4.1993. The respondent No. 2 vide letter dated 6.12.1997 informed the petitioner that the services rendered by him as Lecturer from 20.12.1991 to 20.4.1993 has been included by the Seniority Committee by the University copy of the communication letter dated 6.12.1997 is annexed as Annexure-4 to the writ petition. By this letter petitioner was informed by the Deputy Registrar that on the representation of the petitioner, seniority committee in its meeting held on 8/9.1.1997 has counted the previous services as Lecturer from 28.12.1991 to 12.4.1993 of Udaipur University vide University Acts and Statutes 17.05 (c). The respondent University prepared and published the inter-se seniority list of teachers of the University on 25.11.1997, prepared in accordance with Chapter XVII of the First Statute of Dr. Ambedkar University, Agra in which petitioner was placed at serial No. 41, seniority list is annexed as Annexure-5 to the writ petition. Hence, it is clear from the seniority list that past continuous services of the petitioner were taken into consideration while publishing the inter-se seniority list of teachers.

4. It is further asserted that certain part time Lecturers who were appointed by the University, approached the Hon"ble High Court for their regular appointments and they were directed to be appointed on regular basis. In compliance of the judgment of Hon"ble Allahabad High Court, the Executive Council converted the post of Reader in Physics Department into Lecturer and appointed the petitioner on the said post till regular selection is made. Petitioner represented his case to the Executive Council of the respondent University who considered the case of petitioner and vide order dated 10.7.2000 appointed the petitioner in the grade of Rs. 8,000-13,500 in exercise of its power under clause 3(b) of Section 31 of the U.P. State Universities Act, 1973. Copy of the appointment letter dated 10.7.2000 is annexed as Annexure-6

to the writ petition.

5. From the aforesaid material, it is clear that petitioner is continuously working as Lecturer since 13.4.1993 in the respondent University. The petitioner applied for appointment on the post of Lecturer in Physics to U.P. Higher Education Service Commission, Allahabad, petitioner was selected as Lecturer in Physics and was placed in Agra University, Agra in pay scale of Rs. 8,000-13,500. The petitioner joined Agra College, Agra on 31.3.2001 as Lecturer in Physics, copy of the appointment order dated 28.3.2001 issued by respondent No. 4 and joining report of petitioner on 31.3.2001 are annexed as Annexure-7 to the writ petition. The services of the petitioner were confirmed on 31.3.2002 by the order of respondent No. 4 dated 24.4.2002, copy of the confirmation order is annexed as Annexure-8 to the writ petition. The petitioner is continuously working in Agra College Agra, since then, after performing 9 years of continuous service, he became entitled to Selection Grade Rs. 12,000-18,300. On the representation of the petitioner to respondent No. 1 on 19.3.2002 and 14.12.2002 to the point that since petitioner has completed more than 9 years continuous service, hence he is entitled for Readership and Selection Grade. Respondent No. 1 on the representation of the petitioner by his order dated 30.4.2003 and directed the respondent No. 4 that if petitioner fulfils the condition of Senior/ Selection Grade under the Career Advancement Scheme then his case should be referred before the Screening Committee and thereafter papers may be forwarded to the Finance Controller (Higher Education) for necessary action and for fixation of grade. Thereafter, case of the petitioner was referred to the Screening Committee consisting of five members out of which three experts nominated by the Vice Chancellor of the respondent University, one nominee of the respondent No. 1 and the nominee of the Managing Committee and Principal of the College. Since respondent No. 4 is not only the Principal of the College but also holds the post of Secretary to the Managing Committee of the College. Thus, respondent No. 4 represented both the respondent Nos. 3 and 4 in the Screening Committee simultaneously. The Screening Committee held its meeting on 20.11.2003.

6. It is further contended that the Screening Committee has approved the case of the petitioner for grant of Readership and Selection Grade. The respondent Nos. 2, 3 and 4 are requested to annex the copy of the recommendation of the Screening Committee so far as it relates to the petitioner. Despite the recommendation of the Screening Committee in favour of the petitioner, the respondent No. 1 did not take any decision and hence petitioner made several representations to the respondent No. 1 through the respondent No. 3. Petitioner was served copy of the order dated 7.10.2005, passed by the respondent No. 1 through respondent No. 3 and by the said order respondent No. 1 refused to grant the Readership/ Selection Grade to the petitioner by not counting his past continuous service as Lecturer, copy of the order dated 7.10.2005 is annexed as Annexure-10 to the writ petition. The order passed by the respondent No. 1 is arbitrary and without any reasoning for disagreeing with the recommendation of the Screening Committee and hence illegal, the petitioner

made representation and reminder to respondent No. 1 on several dates, i.e., 7.11.2005, 10.12.2005, 19.1.2006 and lastly on 20.3.2006 by speed post but received no response from the respondent No. 1, copy of the representations and reminders are annexed as Annexure-11 to the writ petition. The order passed by the respondent No. 1 dated 7.10.2005 is absolutely illegal, arbitrary and contrary to judgment of Hon"ble Apex Court and Hon"ble Allahabad High Court, inasmuch as the respondent No. 1 has ignored the continuous past services of the petitioner.

7. Counter-affidavit filed by the State of U.P. through Director of Higher Education, U.P., Allahabad and respondent Nos. 2, 3 and 4. It is stated therein:

It is evident from above that petitioner"s services includes services rendered in Raj as than and that is not to be taken into account for the purposes of fixation of salary in revised higher scale of pay. It is further submitted that direction were given to the college vide letter dated 3.4.2003 to fix petitioner"s salary taking into account his services rendered in the State as per rule. It is further submitted that petitioner"s pay has accordingly been fixed. It is reiterated that petitioner is not entitled for getting his salary fixed taking into account his services rendered in Raj as than. Therefore, writ petition is devoid of merit and liable to be dismissed.

It is further submitted that seniority and grant of revised higher salary are governed by two different Act of laws. Services rendered beyond the State of U.P. may be fit for being computed towards determination of seniority under Statutes 17.05 (c) of the Agra University, Agra but such services are not accountable towards granting of higher revised pay scale.

8. In reply to the counter-affidavit filed by the respondents, a rejoinder-affidavit has been filed on behalf of the petitioner wherein it has been contended that the contention raised by the respondents in counter-affidavit is not just and reasonable and not in accordance with the legal position. The contention of the respondent No. 1 is that the services rendered as Lecturer outside the State of U.P. shall not be taken into consideration for the purposes of grant of Selection Grade/Readership is wholly arbitrary and illegal in view of the observations made by the Hon"ble Apex Court in [Sharadendu Bhushan Vs. Nagpur University, Nagpur and Others](#), wherein it has been held by the Hon"ble Supreme Court that the services rendered in the college affiliated to the University outside the State shall be regarded a continuous service for the purpose of determining his seniority and cannot be denied higher grade.

9. It is further contended that the Hon"ble Allahabad High Court has followed the same in case of Dr. Ajeeta Bhattacharya and the respondent No. 1 himself has taken into consideration the past services of Lecturer rendered outside the State of U.P. for grant of senior scale. Copy of the compliance order dated 5.5.2000 is annexed as Annexure-R.A. 3.

10. We have heard learned Counsel for the petitioner, learned standing counsel and learned Counsel for the respondents.

11. The crux of the dispute in the present petition is that whether the services rendered as a Lecturer in a college beyond the State of U.P. can be counted for holding the continuous regular service as Lecturer and whether those services can be considered for the grant of Selection Grade to the petitioner or not, in accordance with the Rules in Career Advancement Scheme. It is provided that a Lecturer after completion of five years in the senior scale who do not have Ph.D. Degree or equivalent published work, and who do not meet the scholarship and research standards but fulfil the other criteria for the post of Reader by Direct recruitment given in these Statutes and have a good record in teaching and preferably have contributed in various ways such as to the corporate life of the institution, examination work or through activities and have completed two reliesher courses each of at least three to four weeks duration will be placed in the Selection Grade subject to the recommendations of the Selection Committee which is the same, as for promotion to the post of Reader. They will be designated as Lecturers in the Selection Grade.

12. Provided that Lecturer in the Selection Grade could offer himself for fresh assessment after obtaining the Ph.D. Degree and fulfilling other requirements for promotion as Reader and if found suitable could be given the designation of Reader. For the post of Reader, the Lecturer in Senior Scale must have completed five years, in clause (c) of the said scheme it is provided that for movement from senior scale Lecturer into grade of Reader or Selection Grade Lecturer the total number of years of continuous service rendered in the feeder cadre of Lecturer/Lecturer Senior Scale or equivalent posts of teaching and research would be nine years for those with Ph.D. degree ten years for those with M.Phil degree and published work equivalent to Ph.D. Degree and eleven years for others.

13. According to scheme, 9 years continuous service as Lecturer for a candidate with Ph.D. Degree is required for selection to the post of Readership Selection Grade. In [Sharadendu Bhushan Vs. Nagpur University, Nagpur and Others](#), it has been held by the Apex Court:

...Placement in Senior Scale-Criteria -- Experience of University teaching upto degree classes for 5 years cannot mean length of service within a University-Experience gained by the Lecturer while teaching in another University has to be taken into account. Decision of Bombay High Court, reversed.

In the said case, in paras 1 and 2 it has been held that we find no basis for finding recorded by the High Court that the University did not commit any error in denying to the appellant the benefit of the grade of the Lecturer (Senior Scale) under the scheme framed by the University Grants Commission and accepted by the Central Government by not taking into account the experience of University teaching in

colleges affiliated to the Calcutta University. The High Court failed to appreciate that while framing the criteria for the placement in senior scale, the University itself used the words "Experience of University teaching upto degree classes for a period of five years". The High Court obviously fell into error in assuming that length of service within the University was the basis. We find it difficult to subscribe to this view on the criteria framed by the University for the purpose of Lecturer (Senior Scale) which reads:

A Lecturer shall hold at least a Master's Degree not lower than a Second Class with an experience of University teaching upto Degree Classes for a period of not less than five years. Provided that there shall be an equitable distribution of such posts in different subjects.

The contention advanced by the learned Counsel for the University based upon the averment in para 2 of the counter-affidavit that in view of the clarification made by the Additional Director of Education by his letter dated 15.11.1965, the appellant was not entitled to the benefit of the service with a college affiliated to the Calcutta University cannot be accepted. It appears from para 2 of the counter-affidavit that the clarificatory letter of the Additional Director of Education was with regard to the determination of seniority. That was not the question before the High Court and merely because there was a break of two years service between the date of resignation of the appellant from a college affiliated to Calcutta University and the date of his employment as a Lecturer in M.M. Science College affiliated to the Nagpur University, could not be regarded a continuous service for the purposes of determining his seniority was not ground for denial of the higher grade. In terms of the criterion laid down by the University itself, a Teacher is entitled to the benefit of the higher grade if he has the teaching experience of not less than five years. The emphasis in the circular is on the experience granted by the Teacher while in the employment of a University and not on the continuity of the service.

In the premises, we allow the appeal with costs. The judgment and order of the High Court are set aside. We order the Nagpur University to issue a direction to the M.M. Science College, Nagpur to accord to the appellant the benefit of the higher grade of Lecturer (Senior Scale) to which he is entitled, taking into account the period of his service in colleges affiliated to the Calcutta University.

14. In view of the aforesaid judgment of the Hon^{ble}. Apex Court, it is clearly established that experience gained as Lecturer in University beyond the State of U.P. will also be counted as experience as Lecturer in University and contention of the Director that services rendered as Lecturer beyond the State of U.P. cannot be considered are apparently arbitrary and not in consonance with the law laid down by the Hon^{ble} Supreme Court.

15. In view of the legal position as laid down by the Hon^{ble} Apex Court, the contention of the petitioner is that his continuous service be counted including the

service rendered at M.L. Sukhadlya University, Udaipur (Rajasthan) and he appears to be entitled for getting the selection grade/Reader Scale.

16. In view of the above, the writ petition thus succeeds and is allowed. The order dated 7.10.2005, passed by the Director of Education (Higher Education), U.P., Allahabad (Annexure-10 to the writ petition), is quashed. A writ of mandamus is issued to the Director to count the past services of the petitioner and fix his salary as senior Lecturer in senior scale, grant him selection grade of Reader which has now been upgraded as Professor counting his past services and further to give him all consequential benefits of service.

There shall be no order as to costs.