

(1994) 09 SC CK 0115

In the Supreme Court Of India

Case No : Civil Appeal No. 5963 of 1994 (Arising out of S.L.P. (C) No. 14159 of 1993)

Banaras Hindu University and Another

APPELLANT

Vs

Dr N.N. Pandita

RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

Citation : (1994) 5 JT 537 : (1994) 3 SCALE 1001 : (1994) 3 SCC 303 Supp : (1994) 2 UJ 634 : (1994) 3 UPLBEC 1886

Hon'ble Judges : N. P. Singh, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : allowed

Judgement

1. Leave granted.

2. The Banaras Hindu University has filed this appeal, for setting aside an order dated 6.7.1993 passed by the High Court, on a Writ Petition filed on behalf of the Respondent.

3. It appears that the University Grants Commission introduced a scheme in November, 1982 known as "Merit Promotion Scheme for University Teachers", in order to provide reasonable opportunities for career advancement of the teachers. Under the scheme no additional posts are to be created and the existing persons on the basis of critical assessment are promoted to the next higher level and no resultant vacancy is required to be filled.

4. The respondent was appointed on 25.2.1966 as Reader in the Department of Animal Husbandary and Dairying in the Institute of Agricultural Sciences of the appellant-University. After the introduction of the aforesaid "Merit Promotion Scheme for University Teachers", applications were invited from the eligible teachers for promotion to the posts of Reader and Professor under the scheme aforesaid. The respondent made an application for the same. It is the case of the appellant that where in the department there was only one post of teacher it was

difficult, to consider the case for promotion under the merit promotion scheme. On 1.4.1983., the Executive Council resolved that subject to the concurrence of the University Grants Commission in smaller departments atleast one post of Reader/Professor be provided under the scheme irrespective of the cadre wise permanent strength of teachers. The matter was referred to the University Grants Commission for concurrence. In the meantime, the Vice-Chancellor of the University by his order dated 17.9.1983 directed that interview in the Department of Animal Husbandary & dairying where there was only one post of Reader be also held with the clear understanding that the envelope will be opened for the approval of the Executive Council after the resolution aforesaid of the Executive Council is approved by the University Grants Commission.

5. By a communication the respondent was asked to appear before the Selection Committee on 28.9.1993. The Selection Committee sent its recommendation in a sealed cover for the consideration by the Executive Council. As there was only one post of Reader in the Department of Animal Husbandary & Dairying, it was not possible to consider the case of the respondent for promotion in terms of the guidelines issued by the University Grants Commission and because of which resolution of the Executive Council was referred to the University Grants Commission for approval, for applying the aforesaid merit promotion scheme even in departments where there was only one post of Reader.

6. The University Grants Commission vide its letter dated 11.11.1983 informed the University that "the Commission has further decided that in case of the department having only one teacher and where the teacher has done work that merits recognition and encouragement, there could be clubbing of such departments to create a promotion channel under the Merit Promotion Scheme provided the number of teachers promoted will not exceed 1/3rd of the total number of permanent posts of Lecturers/Readers as prescribed in the scheme". In view of the aforesaid approval given by the University Grants Commission, the recommendation of the Selection Committee, in respect of the Respondent was considered by the Executive Council, in its meeting dated 3rd/4th February, 1984. It was resolved that respondent be appointed as Professor in the Department of Animal Husbandary & Dairying under merit promotion scheme, on probation for one year, on a salary to be fixed as per the guidelines of the Merit Promotion Scheme. Accordingly, by an order dated 6.2.1984, the respondent was appointed as Professor in the Department of Animal Husbandary and Dairying under the said scheme and he joined the said post on the same day.

7. It may be mentioned that the Executive Council vide its resolution dated 15th/16th May, 1987 had resolved that the effective date of appointment of teachers appointed for promotion would be the date on which the Executive Council met subsequent to the Selection Committee meeting. However, the respondent after having joined the post of the Professor, pursuance to the resolution of the Executive Council dated 3rd/4th February, 1984, filed a representation on 26th October, 1988 before the Vice Chancellor and the

Executive Council of the University stating that as his selection had been made by the Selection Committee on 28.9.1983 and the Executive Council met on 30.9.1983 and 1.10.1983 and had approved the recommendation made by the Selection Committee for different departments, which promotions have become effective w.e.f. 19.10.1983, even the respondent should be promoted w.e.f. 19.10.1983 instead of 6.2.1984. The said representation was rejected. Ultimately the writ application in question was filed before the High Court. The High Court by the impugned order allowed the said writ application and directed the appellant to give seniority to the respondent w.e.f. 30.9.1983/1.10.1983. The High Court pointed out that as the first meeting of the Executive Council was held on 30.9.1983 and 1.10.1983 after the recommendation of the Selection Committee dated 28.9.1983, the respondent was entitled to be appointed w.e.f. 30.9.1983/1.10.1983, in view of the resolution dated 15/16th May, 1987 of the Executive Council.

8. On behalf of the appellant-University, it was pointed out that the case of the respondent was different from others because no final decision could have been taken in respect of the respondent unless the University had received the approval of the University Grants Commission, details whereof have already been referred to above. It was also pointed out that claim for seniority was made w.e.f. 19.10.1983 by the respondent for the first time on 26.10.1988, after a lapse of more than four and a half years which should not have been entertained by the High Court. On behalf of the appellant, it was also pointed out that as there was no post of Professor in the Department of Animal Husbandary and Dairying till the proposal forwarded by the Executive Council was approved by the University Grants Commission on 11.11.1983 agreeing for clubbing of departments for creation of the promotional channel, it was not possible for the appellant to promote the respondent w.e.f. 30.9.1983/1.10.1983 on basis of the recommendation of the Selection Committee. On behalf of the appellant it was also urged that others on basis of the recommendations of the Selection Committee have been appointed w.e.f. 19.10.1983 whereas in case of the respondent the High Court has directed to appoint him w.e.f. 30.9.1983/1.10.1983.

9. We fail to understand as to how the High Court directed the appointment of the respondent w.e.f. 30.9.1983/1.10.1983 when persons belonging to other departments, whose cases had been considered by the Selection Committee on 28.9.1983 had been promoted w.e.f. 19.10.1983. Apart from that the stand of the University appears to be correct, that the case of the respondent was different from others. The Executive Council of the University first thought it proper to seek the approval of the University Grants Commission in respect of applying the merit promotion scheme to the departments where there was only one post of Reader. That scheme could have been applied only after the approval by the university Grants Commission, on 11.11.1983, which was considered by the Executive Council in its meeting held on 3rd/4th February, 1984.

10. On behalf of the respondent, reliance was placed to the judgment of this Court in the case of N. Nagaraja Vs. Vasant K. Gudodagi and others, . In that case, this Court had to consider as to whether promotion can be granted retrospectively. In certain circumstances promotion can be granted retrospectively, if it does not affect the seniority of the persons who are already in the promotional cadre. But this decision, according to us, is not at all relevant, so far the controversy in the present appeal is involved. Here the only question, which is the subject matter of controversy is as to whether after the receipt of a communication dated 11.11.1983, from the University Grants Commission, the respondent should have been appointed under the Merit Promotion Scheme w.e.f. 30.9.1983/ 1.10.1983. According to us, the communication dated 11.11.1983 issued by the University Grants Commission had to be considered by the Executive Council, which was actually considered on 3rd/4th February, 1984 and thereafter the respondent was promoted under the scheme. The High Court was not required to interfere with the said order.

11. Accordingly, this appeal is allowed and impugned order of the High Court is quashed. However, in the facts and circumstances of the case, the parties shall bear their own costs.