
(1994) 10 AHC CK 0078
In the Allahabad High Court
Case No : Writ Petition No. 2396 of 1984

Bhagwan Vats

APPELLANT

Vs

Chancellor, Awadh University and Others

RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1994) 10 AHC CK 0078

Hon'ble Judges : S.H.A.Raza, J

Final Decision : Dismissed

Judgement

S. H. A. Raza, J.—The claim of seniority which has permeated, particularly all justiciable categories of services, is also subjectmatter of the dispute, between the two teachers of a degree college, affiliated to Avadh University who have landed in this Court, after exhausting their innings, before the Vice Chancellor and Chancellor of the University.

2. The petitioner was held to be senior, by the ViceChancellor but m exercise of the powers, conferred under Section 68 of the said Universities Act, the Chancellor reversed the decision, by holding respondent No. 2 to be senior than the petitioner.

3. The Avadh University which is also governed by the State Universities Act, 1973, came into existence much later than the Gorakhpur University, which is also governed by the State Universities Act. After coming into existence of Avadh University several degree Colleges affiliated to Gorakhpur University as well as Kanpur University were affiliated to the Avadh University and till before framing of the statutes by the Avadh University various provisions of statutes framed by the Gorakhpur University were made applicable. In the instant case the petitioner has challenged the applicability and interpretation of the some of the statutes as made by the transfer.

4. The petitioner was appointed as lecturer in the Hindi department of Jawaharlal

Nehru Memorial College, Barabanki on 8121971, and in due course was confirmed and is still working in the said college, which was earlier affiliated to Kanpur University. The opposite party No. 2 was also appointed lecturer in the same department of the said college and joined as such on 1491977. Earlier the opposite party No. 2 was first appointed as lecturer in the D. A. V. Post Graduate College, Azamgarh, which was affiliated to Gorakhpur University and he was confirmed as such on 291970 and continued to serve in the said College upto 1391977, viz., the date, previous to his joining as lecturer In Jawahar Lal Nehru Memorial Post Graduate College. Barabanki.

5. As the petitioner was treated as senior most lecturer in Hindi Department of Jawaharlal Nehru Memorial Post Graduate College, the opposite party No. 2 for the first time, on 2851982 made a representation to the Principal of the College, claiming seniority on the basis of continuity of his services, since 1968, by urging that his services under the previous employer be counted towards the seniority. After reminder the representation was decided by the Principal, holding the petitioner to be senior. In appeal, the ViceChancellor upheld the decision of the principal. The opposite party No. 2, thereafter made a reference to the Chancellor, Avadh University, who after considering the case of the petitioner, set aside the order passed by the Vicechancellor, and also vide order dated 3041984 said, that opposite party No. 2 was entitled to count the earlier service to seniority in view of the provisions of relevant statutes, particularly Statute No. 18.10 (o) of the first Statute of the Gorakhpur University.

6. The first Statute of Avadh University came into force on 1541978 and till then the first Statute of the Gorakhpur University, which itself were enforced with effect from January 28, 1977 were applicable, whereas the opposite party No. 2 joined the Jawahar Lal Nehru Memorial Post Graduate College as lecturer on 1491977, after enforcement of the first Statute of the Gorakhpur University, but prior to enforcement of first Statute of Avadh University. The petitioner who was already a lecturer in the University even before coming into force of first statute of Gorakhpur University, claimed the seniority ; particularly in view of Statute 18.01 of the Gorakhpur University which reads as hereunder :

"18.01.The Statute contained in this Chapter shall not effect the inter se seniority of teachers employed in the University from before the commencement of these Statutes.

7. Statute 15.06 of the Avadh University reads as under :

"Statute contained in this chapter showing effect the inter se seniority of the teachers employed from before the commencement of these Statutes.

7A. Section 49 (a) para 1508 (b) provides:

"In the same cadre, seniority of a teacher shall be determined according to the length of his continuous service in a substantive capacity in each cadre.

8. It is to be noticed that subclause (b) and (c) of para 15.08 of Chapter XV of

Avadh University is identical with the Statute of Kanpur University and Gorakhpur University on the same matter.

9. The opposite parties have placed reliance on Statute 18.10 of the Gorakhpur University which is the basis of Chancellor's decision which reads as under :

"18.10 (e) Service in a substantive capacity in another University or another degree or PostGraduate College, whether affiliated to or associated with the University or another University established by law, shall be added in the length of service".

10. When the petitioner was appointed as lecturer there could not have been any dispute between him and opposite party No. 2. When the opposite party No. 2 entered in the service of Gorakhpur University the Statute framed by Gorakhpur University were still applicable. The petitioner was senior to all the teachers of the department, if any, before the opposite party No. 2 entered in the services of college in question Statute 18.10 of the Statutes framed by the Gorakhpur University provided the rules for determining the seniority of teachers which means, that it will apply if seniority has either not been determined or is to determine Statute 18.10 (c) provides that seniority of teachers of an affiliated college shall be determined by the length of continuous service from the date of appointment in substantive capacity. In view of Statute 18.10 (d) service shall be counted from the date of taking charge pursuant to substantive appointment. Statute 18.10 (e) undoubtedly provides that services in a substantive capacity in another degree College even affiliated to the same or another University, shall be added towards the length of service. It is to be noticed that Statute 18.10 (e) only mentions "in the length of service" but not continuous service. But in this case it is not necessary to enter into this question as there was no break in the service of opposite party No. 2, who joined the Jawahar Lal Nehru Memorial Post Graduate College at Barabanki from the next day and that too in substantive capacity. When opposite party No. 2 joined Jawahar Lal Nehru Memorial Post Graduate College, he was governed by first Statute of Gorakhpur University, which Post continued even after he has joined the said College. The inter se seniority of the petitioner and opposite party No. 2 was not determined earlier nor was there any question of determination earlier or automatic determination. On the date of his joining Jawahar Lal Nehru Memorial Post Graduate College at Barabanki, which too substantively, he became entitled to benefit of Statute 18.10 (e) extracted above which was applicable even in the cases of those who were governed by different Statutes and were in services of any other College affiliated to any of the University which was within the purview of State Universities Act, the analogy of voluntary or involuntary transfer which keeps a person at bottom would not apply in such a case, in view of the specific provisions of the Statute. Even on the date of joining in Jawahar Lal Nehru Post Graduate College inter se seniority not having been determined, the opposite party No. 2 providing his length of service and then became senior by virtue of his length of continuous service which he otherwise would have not got in view of

the later date of appointment in the college.

11. Learned counsel for the petitioner placing reliance on a Division Bench judgment of this Court, in which one of us was a member (Justice S. H. A. Raza) in re : MaheshChandra v. State of U. P. and others, reported in 1989 SCO 330 contended that although the said case pertained to the Statute framed by Lucknow University which were substantially similar to the Statute before us, the petitioner's case was governed by it and as such he was also entitled to seniority on the same grounds. There is no such similarity between the said case and the instant case and even on facts the said case is distinguishable. In the said case the petitioner was appointed on ad hoc basis for two months and after break he was appointed on ad hoc basis against leave vacancy which continued from time to time. In the meantime the respondents were also appointed and the temporary appointment continued. In regular selection the respondents were selected against the permanent vacancy and in due time were also confirmed. The petitioner of the said writ petition was appointed on the very day against the temporary vacancy, but as the same became vacant by virtue of the amendment in the Act, he was deemed to have been appointed substantively, with effect from the same date but was confirmed after completion of the probation. He claimed seniority by virtue of his being senior in age. The respondents were appointed against permanent vacancies and were confirmed on it much before confirmation of the petitioner and by virtue of holder of permanent post substantively, they were senior to the petitioner, which seniority was maintained because of the provisions to this effect in the new Statute. The seniority having stood determined could not have been opened. Further, a temporary junior appointee who was substantively appointed with effect from the same date cannot reopen the question of seniority or make him senior to regular appointee. The question of seniority in the said case stood determined between the parties to the writ petition and could not have been reversed as against the Statute, on the ground of age. Statute 18.01 in such circumstances was applicable.

12. In the instant case as indicated earlier, there was and could not have been determination of inter se seniority and the respondents claimed seniority not by virtue of age, but long continuation of services, which protected and given weightage by the Statute.

13. In view of the aforesaid position the ratio of the case of Mahesh Chandra v. State of U. P. and others, (supra) is not applicable to the petitioner.

14. The Principal and the ViceChancellor did not consider the statute 18.10 (c) alongwith statute 18.01, but were led away only by the fact of continuance of service in a particular college. Their decision was manifestly wrong and the same was against the statute. The decision of the Chancellor being in conformity with the statutes, which was applicable does not suffer from any infirmity.

15. The writ petition is devoid of merit, it is accordingly dismissed.