

(2004) 10 AHC CK 0167
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16755 of 2001

Chandra Bhushan Dwivedi (Dr.)

APPELLANT

Vs

Rajyapal and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Citation : (2005) 1 AWC 105 : (2005) 1 UPLBEC 77

Hon'ble Judges : M. Katju, Acting C.J.; Sunil Ambwani, J; K.N. Ojha, J

Bench : Full Bench

Advocate : P.S. Baghel and Bhagwati Prasad, for the Appellant; G.K. Singh, Neeraj Tripathi and Amit Tiwari, for the Respondent

Final Decision : Disposed Of

Judgement

M. Katju, A.C.J., Sunil Ambwani and K.N. Ojha, JJ.—This Full Bench has been constituted in pursuance of the reference made by a Division Bench dated 22.4.2002 since the Division Bench felt that there was a conflict of opinion between two earlier Division Benches in A.K. Kalia v. Chancellor, Lucknow University 1995 (2) AWC 832 and M.P. Joshi v. University of Kumaon, Nainital (2000) 3 UPLBEC 2459.

2. We have heard learned Counsel for the petitioner and Shri G.K. Singh, learned Counsel appearing for the respondents.

3. The question in this case is about interpretation of the clause (7) of Statute 11.12-B of the 1st Statute of Gorakhpur University. Clause (7) reads as follows :

"Personal promotion on the post of Reader or Professor as the case may be shall take effect from the date of taking over charge of the said post."

4. Sri P.S. Baghel, learned Counsel appearing for the petitioner submitted that clause (7) has to be read alongwith clause (4) of the Statute 11.12-B which states :

"The Selection Committee, constituted under clause (a) of sub-section (4) of

Section 31 of the Act, shall consider the Self Assessment Report, Service Record (including Character Roll) and such other relevant records as may be placed before, or as considered necessary, by it. The meeting of the Selection Committee for considering cases of personal promotion shall be held at least once every year."

5. Learned Counsel submitted that since clause (4) states that the meeting of the Selection Committee for considering cases of personal promotion shall be held at least once every year, the seniority of teachers who get promotion on the basis of personal promotion should not be counted from the date when they took over charge but from the date when the candidate became eligible. We cannot accept this submission.

6. It is a well settled principle of interpretation that when the language of a statutory provision is clear the literal rule of interpretation must be applied and we cannot depart from the plain and grammatical meaning. In our opinion the language of clause (7) is clear and plain.

7. In *Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another*, (vide paragraph 13) the Supreme Court observed :

"It is well settled principle in law that the Court cannot read anything into statutory provision which is plain and unambiguous. A statute in an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said."

8. In our opinion, clause (4) cannot be regarded as mandatory and has to be held as directory. There may be various reasons why a Selection Committee meeting could not be held every year e.g. there may be disturbances, law and order problem, etc.

9. At any event, clause (4), even if treated as mandatory, cannot whittle down the force of clause (7) which is plain and simple. We, therefore, hold that the seniority of a teacher promoted on personal promotion shall be calculated from the date he takes over charge after the grant of such personal promotion.

10. The matter shall now be listed before the appropriate Division Bench for deciding the case in the light of the observations made above.