

(2010) 04 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 29990 of 1998 and 32615 of 1998

Daya Shanker Mishra and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 127 FLR 612

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Advocate : Ashok Khare and A.K. Singh, for the Appellant; Anil Tiwari, S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani and K.N. Pandey, JJ.—Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri A.K. Singh for the petitioners in writ petition No. 29990 of 1998. Sri Prakash Padia, appears for the petitioners in writ petition No. 32615 of 1998. Learned Standing Counsel appears for the State respondents and Sri V.B. Mishra appears for the Sampurnanand Sanskrit Vishwavidyalaya, Varanasi.

2. The petitioners are/were serving as Librarian and Assistant Librarians in Sampurnanand Sanskrit Vishwavidyalaya, Varanasi, By these writ petitions, they have prayed for quashing the Government Order dated 17.6.1998 in so far as it limits the benefits of revised pay scale to the petitioners only w.e.f. 17.6.1998. The petitioners have also prayed for suitable directions commanding the respondents to sanction University Grants Commission (UGC) Pay Scale with effect from 1.1.1996 as has been done with regard to the Assistant Librarian in the State of U.P., and to sanction all other benefits of service, treating the petitioners to be Assistant Librarian right from the date of their initial appointment as Professional Juniors.

3. Sri Ashok Khare, learned Senior Advocate for the petitioners submits that

representation for grant of UGC pay scale to the petitioners was pending for a long time. All the petitioners were initially appointed as Library Assistant or Office Assistant. They were holding the post of Professional Junior/Assistant Librarian, which is equivalent to the post of Assistant Librarian. The State Government has allowed the revised pay scale and has accepted the recommendation to be applicable to the petitioners as Assistant Librarians in the pay scale of Rs. 2200-75-2800-100-4000/- with effect from the date of issuance of the Government Order i.e. 17.6.1998 with the condition that those Professional juniors who do not fulfill the qualifications of Assistant Librarian recommended by the University Grants Commission, shall not be entitled for the pay scale, and they will be allowed to draw the same pay scale, accepted on the recommendation of the pay equivalence committee with effect from 1.1.1986.

4. Sri Ashok Khare, would submit that all the petitioners have the qualifications prescribed by the University Grants Commission for the post of Assistant Librarian. The State Government had allowed the revised pay scales to all the Librarians, Deputy Librarians and Assistant Librarians in the recognized and aided colleges on the recommendations of the University Grants Commission by Government Order dated 29.2.1996 with effect from 1.1.1986. The petitioners were discriminated only on account of nomenclature of the post.

5. Sampurnanand Sanskrit Vishwavidyalaya, Varanasi - respondent No. 3 has filed a counter-affidavit of Sri Krishan Chandra Mehrotra, Incharge Legal Cell, in para 8 of the counter-affidavit it is stated that earlier the post of Professional Junior was called as Cataloguer. Later on, the same was redesignated and renamed as Professional Junior. Mainly, their duty is to perform cataloging work, apart from other necessary work. Again the same post was designated as Assistant Librarian. In para 11 of the counter affidavit it is stated that existence of the Government Order dated 29.2.1996 is admitted, however, at the relevant time, the post in question was not called as Assistant Librarian, as it was not designated so, at that point of time.

6. The Vice-Chancellor of the University in his representation to the State Government relied upon the report of a Committee headed by Justice G.D. Dubey, retired Judge of the High Court. The Committee, chaired by Justice G.D. Dubey, was required to rationalize the designation and pay scale of the various posts in the University including the post of Librarian, Deputy Librarian and Assistant Librarian. The Committee after considering the background and the contentions of the employees of the University found that 16 posts of "Suchikars and Vargakars", were in existence in the University since the year 1963. The Executive Council had determined the eligibility of these employees in the year 1963. In the year 1978, the University, after the approval of the Executive Council passed an order on 10.4.1978 designating "Suchikar" as Professional Assistant Grade-I and "Vargikar" as Professional Assistant Grade-II. By a resolution passed on 24.7.1979, the name of Professional Assistant Grade-I and Professional Assistant Grade-II, were designated as Professional Junior and

Professional Assistant respectively.

7. The Committee recommended that, according to the policy of the University Administration practiced in the past the post of University Librarian the should given the nomenclature as it was given in the Gorakhpur University and Kashi Vishwavidyalaya. According to Government Order dated 23.12.1989. in the Kashi Vishwavidyalaya, four posts of Assistant Librarian and four posts of "Suchikars" were given the pay scale of Rs. 570-1100/-. Thus there was no difference in the pay scale of all these posts. In the same manner, the Government Order dated 22.2.1988 would show that two posts of Senior Professional, one post of Assistant Librarian, three posts of Junior Professional, and three posts of Suchikar were in existence. Out of these posts, only Suchikars had been given the pay scale of Rs. 350-700/-. The Assistant Librarian and Professional Juniors were not given any pay scale.

8. The Committee found that since the Executive Council cannot sanction any post and cannot grant pay-scale to the post, and that since there was no post of Assistant Librarian sanctioned, the post of Professional Junior be treated as Assistant Librarian. The Committee found that the post of Suchikar and Vargikar were treated by the Executive Council as Professional Junior and that the University Administration was also inclined to give the nomenclature of Assistant Librarian to the Professional Juniors, and necessary correspondence were made in this regard. The Committee, therefore, recommended that ail the Professional Juniors in the University be re-designated as Assistant Librarian and that their pay should also be fixed in accordance with the Government Order dated 29.2.1996.

9. In the counter-affidavit of Dr. R.K. Baslas, the Director of Higher Education filed in writ petition No. 29990 of 1999, it is stated that the qualification and pay scale of teaching staff and those of Librarians, Deputy Librarians and Assistant Librarians in the U.P. State Universities/Colleges are recommended by the University Grants Commission, whereas those of other employees of the State Universities are exclusively governed by the provisions of the order of the State Government issued from time to time. It is further stated in the counter affidavit that the posts of Class III and Class IV categories in the State Universities are created by the specific orders of the State Government. Twelve posts of Cataloguers in the University concerned were created by the State Government by an order dated 5.6.1992. The appointment to the post of Cataloguers is made by direct selection and there is no provision of promoting any other employee of the University to these posts. The Executive Council had the power u/s 21 (VII) of the Act to make appointment on Class III and Class IV posts.

10. In paragraph 4 (H) of the counter-affidavit, it is stated that petitioner Nos. 1, 2, 4, 6 and 11 in writ petition No. 29990 of 1998 were initially appointed on the post of Library Assistant, the petitioner Nos. 3, 5, 8 and 9 were initially appointed as Office Assistant, petitioner No. 7 was appointed on the post of copy holder and petitioner No.10 was on the post of Stenographer. All these posts

were non-technical in nature and ministerial posts. The petitioners have not disclosed their academic qualification on the date of their initial appointment. In paragraph 4 (I) of the counter-affidavit, it is stated that the State Government has sanctioned the pay-scale of Rs. 2200-4000/- to the Assistant Librarian in the Universities, as recommended by the University Grants Commission, and through another order dated 17.6.1998, the State Government on the recommendation of the equivalence committee also allowed the same pay scale of Rs. 2200-4000 and designation of Assistant Librarian to those Professional Juniors working the Universities, who had possessed the educational/academic qualification as applicable to the post of Assistant Librarian. In paragraph 4(J) of the counter affidavit, it is stated that the petitioners have never been appointed as Cataloguers or Professional Juniors nor any can be promoted to the said post belonging to a different cadre as such they were not entitled to be given the pay scale of Rs. 2200-4000/-. In para 4 (K) of the counter affidavit, it is stated that the University vide its order dated 1.7.1998 has wrongly given the pay scale of Rs. 2200-4000/- to the petitioners and the State Government vide letter dated 9.4.2002; has asked the University to furnish relevant details with regard to appointment of the petitioners to take appropriate decision.

11. In para 5 of the counter-affidavit, Dr. Baslas, states that the promotion of the petitioners on the post of Professional Juniors was illegal, as there was no provision for the promotions of ministerial staff to the post of Professional juniors, and as such designation of Assistant Librarian and UGC pay scale admissible to the post of Assistant Librarian were not admissible to them.

12. The petitioner Nos. 10 and 11 of writ petition No. 29990 of 1998 have retired on 30.4.1997 and 31.5.1992 respectively. In para 7 of the writ petition, the petitioners have given their qualification. Each of the petitioner Nos. 1, 2, 4, 5, 6, 7,8,9 and 11 has Acharya Degree along with Bachelor Degree in Library Science. The qualification of petitioner No. 3 is Acarya Degree, Bachelor Degree in Library Science, Master of Education and Doctorate Degree, and the qualification of petitioner No. 10 was Master Degree in Sociology and Bachelor Degree in Library Science.

13. In writ petition No. 32615 of 1998, both the petitioners have degree of Acharya and Bachelor Degree of Library Science, and thus both of them are qualified for being appointed as Assistant Librarian.

14. From the letter of the Vice Chancellor dated 23.10.1997 based upon the recommendation of the Justice G.D. Dubey's Committee, we find that all the petitioners were qualified and held the minimum qualifications for appointment as Assistant Librarian.

15. We take judicial notice of the fact that Sampurnanand Sanskrit Vishwavidyalaya, Varanasi, has price-less collection of thousands of books and manuscripts in Sanskrit and Pali language. The Library of the University is part t of national heritage and is being looked after and managed by petitioners. There

are no other posts of librarians in the University.

16. The University for the historical reasons, may have appointed the petitioners as "Suchikars" and "Vargikars" and thereafter as Professional Juniors, they petitioners were in fact appointed as Professional Juniors and are discharging duties as Assistant Librarian. The State Government by Government J Order dated 29.2.1996 allowed the UGC pay scale to all the Librarians, Deputy Librarians, and Assistant Librarians in the Government and non-Government aided colleges with effect from 1.1.1986. There was no post of Assistant Librarian or Librarian in the Sampurnanand Sanskrit Vishwavidyalaya, Varanasi. The State Government, therefore, erred in discriminating the petitioners as against the award of revised pay scale of Assistant Librarian working in other Universities land aided Colleges, depriving them of the UGC pay scale with effect from 1.1.1986.

17. Sri Ashok Khare submits that the revised pay scale recommended by the UGC were made arbitrarily applicable to the petitioners with effect from 17.6.1998, on the date when the Government Order was issued. The State Government was conscious and aware that there was no post of Librarian, Deputy Librarian and Assistant Librarian and that Professional Juniors qualified to hold the posts of Assistant Librarian were working and was subsequently designated as Assistant Librarian. There was no justification confining the applicability of UGC pay scale with effect from 17.6.1998.

18. Both the writ petitions are consequently allowed. All the petitioners are held entitled to revised UGC pay scale applicable to the post of Assistant Librarian with effect from 1.1.1986, and thereafter the pay scale revised by the UGC and its recommendation accepted by the State Government from time to time. The persons, who have retired," will also be entitled UGC pay scale with effect from 1.1.1986 and other consequential benefits.

19. The State Government will pass necessary orders and pay the arrears within a period of three months from the date a certified copy of this order is produced by the petitioners before the concerned authority of the State Government.