

(1974) 09 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 168 of 1974

Devi Prasad Shukla

APPELLANT

Vs

Ravi Shankar University, Raipur, Madhya Pradesh and others

RESPONDENT

Date of Decision : 16-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1979) ILR (MP) 888 : (1975) JLJ 41 : (1974) MPLJ 847

Hon'ble Judges : P.K. Tare, C.J.; S.S. Sharma, J

Bench : Division Bench

Advocate : R.S. Dabir, Rajendra Tiwari and O.P. Namdeo, for the Appellant; J.P. Sanghi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sharma, J.

This petition under Articles 226 and 227 of the Constitution of India, has been filed by the petitioner, praying inter alia that the seniority list of Principals of colleges affiliated to Ravi Shankar University, Raipur (Petitioner's Annexure "H") which was issued by the Registrar of the said university vide his memo dated 7-2-1974 be ordered to be corrected.

Excepting for a short controversy, the facts are not very much in dispute in the present case. The petitioner was the Principal of the C.M.D. Post Graduate College, Bilaspur from 1-9-1956, which was affiliated to the Ravi Shankar University, Raipur. This university by its memo dated 11-10-1971 (Petitioner's Annexure "D"), issued an advertisement inviting applications for a temporary post of Development Officer under the University Grants Commission scheme. The petitioner also applied for this post and was appointed to the said post in the university with effect from 18-1-1972. The advertisement was for appointment on temporary basis only upto 31-3-1974. The petitioner was on leave from the said college from 18-1-1972 upto 31-3-1974 but ultimately remained on leave till

24-3-1974 only.

For a proper appreciation of the further facts, we may here refer to some relevant provisions of law. The Madhya Pradesh Vishwa Vidyalaya Adhiniyam, 1973 (Act No. 22 of 1973), published in the Madhya Pradesh Rajpatra (Extraordinary dated 23-4-1973, came into force on 5th May, 1973, vide Madhya Pradesh Government Notification No. 940-XX-VII-73 dated 3-5-1973, issued u/s 1 (3) of the said Act. By virtue of section 2 (1) read with First Schedule of the Adhiniyam, the Ravishankar University Act, 1963 was repealed. Section 34 (3) of this Adhiniyam provides as follows:

On coming into force of this Act, notwithstanding the provisions of sections 36 and 38, the first Statutes and Ordinances shall be drawn up by the Co-ordination Committee. The first Statutes and Ordinances shall come into force from such date as the Kuladhipati may by an order specify:

Provided * * * * *.

In exercise of this power the Kuladhipati ordered that "the Madhya Pradesh Vishwa Vidyalaya First Statutes Nos. 1 to 19 and Madhya Pradesh Vishwa Vidyalaya First Ordinance, Ordinance No. 3, shall come into force from 25th September, 1973." Statute No. 17 refers to the mode of determining the seniority of Principals for the purposes of this Act. Statute No. 19 provides for the preparation and maintenance of seniority list.

Clauses 2 and 3 of this Statute No. 19 are as follows:--

2 All Principals /Professors /Readers/College Professors/Readers in Colleges/ Assistant Professors/Lecturers shall apply for inclusion of their names in the cadre concerned in the prescribed form given in the Appendix through the Principals of the College/Head of Teaching Department by the 15th October each year at the latest....

3 The Registrar shall prepare separate lists showing the seniority inter se of Principals, Professors, College Professors, Readers, Readers in Colleges, Assistant Professors and Lecturers respectively and publish the said lists for objection.

Clause 5 (a) of this Statute No. 19 provides for an opportunity to Principal, Professor etc. who feel aggrieved by any entry or omission made in the said list.

Clause 5 (b) provides for the appointment of a Committee by the Kulpati for dealing with the objections that may be filed to the seniority list. The further sub-clause 5 provide for the procedure and manner of deciding those objections.

The petitioner, as required by clause (2) of Statute No. 19 submitted an application dated 10-10-1973 (Petitioner's Annexure "F") for inclusion of his name in the seniority list. The Registrar, as required by clause (3) of Statute No. 19 prepared a "tentative seniority list of Principals of affiliated Colleges" in which petitioner's name was mentioned at serial No. 1 (petitioner's "G"). In the remarks col. it was mentioned as follows:--

On leave from 18-1-1972 and joined as Development Officer of the University from 18-1-1972.

According to the petitioner no objections to his being placed at serial No. 1 in this tentative seniority list of Principals, were filed. This averment in paragraph 9 of the petition has neither been controverted nor it is the case of the respondents that any such objections against the petitioner were filed. Subsequently, the seniority list of the Professors and the Principals of the affiliated colleges, as finalised by the Committee appointed by the Kulpati, was issued vide 2 different memos each dated 7th February, 1974 by the Registrar of the University (petitioner's Annexure G and H). The name of the petitioner was not included in any of these two lists. It may further be mentioned that in the Electoral Roll of Principals of affiliated colleges for election on the University Court u/s 20 (1) (x) of the Adhiniyam (petitioner's Annexure I), the name of the petitioner was mentioned at serial No. 21 under the heading "Principals of Colleges other than (A) and (B) above". In this notification (Annexure I) it has been mentioned to the effect that the electoral roll has been finalised by the committee appointed by the Kuladhipati u/s 5(1) of Statute No. 25. One copy of this electoral roll was issued by the Registrar for being displayed on the staff notice board of the institution and the other for being used for reference of the teachers concerned. In this very notification the time table for election of Principal, on the University Court, was also given. The petitioner's grievance is that the exclusion of his name from the finalised seniority list was arbitrary which is likely to result in so many adverse consequences, examples of which have been given by him in his petition. The petitioner has further contended that he had approached the Kulpati of the University in this behalf who had made a reference to the Kuladhipati u/s 55 of the Adhiniyam.

The respondents' contention is that the duties of the Development Officer could not be said to be for academic purposes. According to them the duties of a Development Officer were of a secretariate or of executive nature. As regards the inclusion of the name of the petitioner in tentative seniority lists and the electoral roll, it has been submitted that the said inclusion was by way of a mistake. According to them the petitioner was not on leave or on deputation for academic purpose and as he was on leave for a term exceeding six months he could not be taken in continuous service during his period of leave. The respondents further relied upon Statute No. 19, clause (5)(d), to say that it was not necessary for the committee to hear the petitioner before finalising the list because it was wholly discretionary for it, whether to call or not to call the parties concerned before finalising the list. As regards the petitioner having moved the matter to the Kulpati, it has been stated that no reference as such to the Kuladhipati was made by the Kulpati, although he was informed of the petition.

Statute No. 17 is with regard to the "Seniority of Principals". Clause (1) of this statute reads as follows :

For the purpose of the Adhiniyam and the Statutes, the seniority of Principal shall

be determined in accordance with the length of continuous service as the Principal of college/colleges affiliated to the University or any other University established under any Central or State Act.

The other clause of this Statute No. 17 which is relevant for determining the question in controversy in the present case is clause (5) which is as follows:--

If a Principal who holds a permanent post as Principal in a college is on leave or deputation, he shall be deemed to be in continuous service in his post during the period of such leave not exceeding six months on any ground whatsoever and during the period of such leave or deputation not exceeding three years for academic purposes.

An analysis of this clause (5) goes to show that it consists of 2 parts; the first being "during the period of such leave not exceeding six months on any ground whatsoever" ; and the second being "during the period of such leave or deputation not exceeding 3 years for academic purposes". In both the said eventualities, if a Principal holds a permanent post as Principal in a college, he shall be deemed to be in continuous service in his post. As stated above this statute No. 17 was brought into force from 25-9-1973. The petitioner was admittedly holding a permanent post as Principal in the G.M.D. Post Graduate College, Bilaspur. After the coming into force of this Statute No. 17 the petitioner remained on leave only till 24-3-1974 and then joined as a Principal. This period viz. from 25-9-1973 to 24-3-1974 did not exceed six months. The period of leave prior to the coming into force of Statute No. 17 cannot be considered for purposes of this clause (5) as it will tantamount to giving a retrospective effect to this statute. Under this part the leave may be on any ground whatsoever. Thus we are of the view that the petitioner's case was covered in the first part and accordingly he would be deemed to be in continuous service.

As stated above, in the second part the period of leave or deputation should not be exceeding 3 years but that leave or deputation should be for academic purposes. The learned counsel for the petitioner contended that the appointment of the petitioner on the post of the Development Officer in the Ravi Shanker University was of an academic nature and he being on leave, it should be treated as leave for academic purposes. As against this the learned counsel for the respondents contended that the post was of a secretariate and executive nature. In support of his contention the learned counsel for the petitioner took us through the extracts from the conference of the Vice-Chancellors convened by the Ministry of Education and University Grants Commission held in 1967 (Petitioner's Annexure "A") and the subsequent letters sent by the University Grants Commission to the University (Petitioner's Annexures "B" and "C"). No doubt the post of the Development Officer is not a teaching post. A perusal of Annexure "A" clearly goes to suggest that the resolution as regards the setting up of development panels was adopted inter alia to reform and improve" higher education. As mentioned therein, "improvement of education means improvement in the performances and achievement of every university

department, every college, every teacher and every pupil". As has further been mentioned in this Annexure-A : "there could be joint committees of students and teachers to deal with specific programmes. The panels in some cases may find it of value to set up what may be called "Extension Cells". Advice about planning of laboratories and libraries, procurement of equipment, use of new teaching and laboratory aids, and even such things as provision of good blackboards, can be much facilitated if expert advice and guidance is readily available." The proposal for the appointment of a Development Officer emanated from University Grants Commission to look after the work of this panel. This Development Officer was supposed to look after the development needs of the university. In view of this, the duties of a Development Officer have to be very much in accordance with the suggestions and observations made in the conference of the Vice-Chancellors (Annexure "A"), which have been particularly quoted above. It was for this reason alone, that the University Grants Commission agreed to give assistance for a period of 5 years, for meeting the salary and other admissible allowances for the post of Development Officer, to such of the universities who desire to appoint one, under the said scheme. It is also pertinent to note that in the advertisement, issued by the university (Petitioner's Annexure "D") the qualifications and experience required, were a Master's Degree in II Division or LL B. Degree and at least 10 years experience of educational administration planning. The respondents in their return merely stated that the duties of the petitioner were of a secretariate nature or of executive nature and did not give the details of his duties which they could have certainly given. In our opinion, the purpose or the creation of this post and the duties that a Development Officer, for achieving the said purposes, would be required to perform, if not all, most of them could be said to be, academic in nature. In the context of things, although he may not be required to teach as such the students of the university, but his functions and duties would very much be connected with the education in the university. For these reasons we are of the view that the leave taken by the petitioner which was much less than 3 years, was for academic purposes and consequently under the second part also he shall be deemed to be in continuous service. Thus under both the parts of clause 5 of Statute No. 17, the petitioner's case is fully covered and he would be deemed to be in continuous service as the Principal and so his seniority as a Principal had to be determined accordingly.

As regards the other contention of the learned counsel for the petitioner regarding the exclusion of the petitioner's name from the final seniority list, we are of the view that his grievance is well justified. Petitioner's name was mentioned at serial No. 1 in the tentative seniority list of the Principals. If the committee felt that his name was included by any mistake or otherwise it should have necessarily given an opportunity to the petitioner to explain as to how he was entitled to be included in the list. In this connection if Clauses 3 to 6 of Statute No. 19 are examined it would appear that the Registrar has to prepare a list showing the inter se seniority of Principals etc. and has to publish the same for objections. Under clause 5 (a) of this Statute No. 19 a right to file objections

has been given to "any Principal/Professor/ College Professor/Reader/Reader in College/Assistant Professor/Lecturer who feels aggrieved by any entry or omission made" in the list prepared and published by the Registrar. This clause further requires stating of reasons with evidence in support of the objections. The objector has further to state if he desires to be heard in person. Under clause 5 (b) the Kulpati has to appoint a committee "for dealing with objections." Subsequent sub-clauses of clause (5) as also clause (6) do not contemplate any objection being raised SUO motu by the committee itself. As mentioned above the committee is constituted to decide the objections as may have been filed under clause 5 (a). The subsequent clauses provide for the procedure of the committee for deciding those objections. Since, no objections by any Principal or Professor were raised to the inclusion of the name of the petitioner at serial No. 1 in the tentative list of seniority; hence we feel inclined to hold that the name of the petitioner could neither have been omitted from the final list nor the committee constituted under clause 5 (b) of Statute No. 19 could have suo motu taken up any objection in that behalf.

Assuming, that even in absence of any objections from any Principal or Professor, the committee could itself examine the correctness of the inclusion of the petitioner's name, then, in that event also, in our opinion, the action of the committee was not justified. The learned counsel for the respondents relying on the word "may" in clause 5 (d) of Statute No. 19 contended that it was discretionary for the committee to call for the parties. In our opinion this argument deserves to be rejected on two grounds. Firstly because, if considered in sequence to other clauses in this behalf it refers to the procedure of deciding objections filed by any principal or professor. This clause 5 (d) does not provide or give a general power to the committee to scrutinize or examine the seniority of every one in the list, irrespective of the fact whether objections have been filed or not. Secondly, even if this clause 5 (d) is held to be applicable to the instant case, then also we are of the view, that in the circumstances, it was quite necessary for the committee to have called the petitioner and should have given him due opportunity to explain as to how he was entitled to be included in the seniority list at serial No. 1.

Lastly, the learned counsel for the respondents submitted that any change in the seniority list at this stage is likely to result in good deal of confusion in the affairs of the university. It may be so, but if the petitioner's rights have been illegally infringed, he would be well entitled to a relief. We may, however, observe that the petitioner had moved the matter to the Kulpati. The respondents have admitted that this position was brought to the notice of the Kuladhipati who seems to have referred the matter to the Education Secretary. The authority then should have considered and examined the whole situation. The respondents did not even show as to what happened to that application which the petitioner had submitted to the Kulpati or what ultimate decision was taken in that matter. Having taken that stand, the respondents cannot now deprive the petitioner of his legal rights.

As a result of the aforesaid discussion we hold that the exclusion of the name of the petitioner from the seniority list of Principals of Colleges affiliated to the university (Petitioner's Annexure-H), finalised by the Committee, was wholly illegal and his name deserved to be included at serial No. 1 of the said final list.

This petition, therefore, is allowed with costs with the directions as given above. Counsel's fees shall be Rs. 200/-, if certified. The amount of security deposit be refunded back to the petitioner.