

(2004) 07 AHC CK 0020

In the Allahabad High Court

Case No : Writ Petition No's. 781 and 782 (S/B) of 2004

Dr. Abha Trivedi

APPELLANT

Vs

Chancellor, Lucknow University and Others

RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31, 31(8), 68

Citation : (2004) 5 AWC 4816

Hon'ble Judges : Pradeep Kant, J;K.S. Rakhra, J

Bench : Division Bench

Advocate : Dipak Seth, for the Appellant; P.C. Agrawal and R.C. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and K.S. Rakhra, JJ.—These are two writ petitions, one filed by Dr. Abha Trivedi and the other by Dr. Pramod Kumar Srivastava against Dr. Nina David and other statutory authorities.

2. The challenge has been made to the order of the Chancellor dated 28.5.2004, by means of which the Chancellor has lifted the embargo placed by the Executive Council in implementing the recommendations of the selection committee in the matter of promotion under the Career Advancement Scheme of the Respondent No. 4 Dr. Nina David on the post of Reader, till such time, the Petitioners of the two writ petitions are considered for such promotion.

3. The relevant facts for the present controversy are that in the department of Western History, the Petitioners as well as Dr. Nina David, Respondent No. 4 were all working as Lecturers. Under the Career Advancement Scheme, along with certain other eligibility conditions, a Lecturer who has been working in the senior scale for five years would become entitled for being considered for promotion to the post of Reader.

4. It is the case of the Petitioners that though they were senior to the

Respondent No. 4 as Lecturers and were eligible for being considered for promotion on the post of Reader under the Career Advancement Scheme, their cases were not considered and the Respondent No. 4 was given the benefit of the aforesaid scheme and thus, an attempt was made by the University to make the Petitioners junior to the Respondent No. 4 in the Reader's grade.

5. Refuting the aforesaid arguments, learned Counsel for the Respondent No. 4 Sri S. K. Kalia has submitted that it is incorrect to say that Dr. Pramod Kumar Srivastava was senior to the Respondent No. 4 Dr. Nina David, whereas he admits that Dr. Abha Trivedi was senior to the Respondent No. 4 as Lecturer but since senior scale in the Lecturer grade was not awarded to Dr. Pramod Kumar Srivastava, which was also not available to the other Petitioner Dr. Abha Trivedi, none of them could be said to be eligible on the date when the case of Respondent No. 4 was considered for promotion on the post of Reader.

6. In support of this submission, learned Counsel for the Respondent No. 4 has also submitted that on 19.2.2004 itself, one selection committee was called for, for considering the case of both the Petitioners for being granted senior scale in the Lecturer's grade and on that date itself, the case of the Respondent No. 4 was considered for promotion to the post of Reader and, therefore, argument is that the Petitioners could not have been eligible for being considered for the post of Reader on that date, and if they being not eligible, were not considered for promotion under the scheme on the post of Reader, no illegality can be said to have been committed.

7. The Petitioners refute the submissions made by the learned Counsel for the Respondent.

8. We do not find that this controversy has any bearing in deciding the present writ petitions.

9. It is on record and admittedly on the date when selection committee met for considering promotion of Dr. Nina David under the Career Advancement Scheme, the Petitioners were not considered, probably because they were not considered eligible.

10. Since we have already observed that this is not the subject matter of the petitions, therefore, we stop here and do not address ourselves on this question.

11. In pursuance to the aforesaid meeting of the Committee, the Respondent No. 4 was found successful for being given promotion on the post of Reader. The recommendations of the selection committee were placed before the Executive Council on 24.2.2004 and the Executive Council accepted the recommendations of the selection committee but instead of issuing promotion order, the Executive Council resolved that the implementation of the aforesaid recommendation/resolution of the Executive Council accepting the recommendations of the selection committee be kept in abeyance till the Petitioners are considered for promotion to the post of Reader as promotion of the Respondent No. 4 at that

juncture could affect the seniority of the Petitioners in the cadre of Reader.

12. Being aggrieved by the aforesaid recommendations, the Respondent No. 4 appears to have made a representation u/s 68 of U. P. State Universities Act, which after affording opportunity to the Petitioners and the University, has been allowed vide impugned orders passed by the Chancellor.

13. Learned Counsel for the Petitioners made an attempt to nullify the aforesaid order of the Chancellor by saying that since the promotion of the Respondent No. 4 was made under the Career Advancement Scheme, the provisions of the U. P. State Universities Act could not have been made applicable and thus recourse to Section 68 could not have been taken for challenging the recommendations made by the Executive Council and, therefore, the order passed by the Chancellor is wholly without any authority and without jurisdiction.

14. We have gone through the Career Advancement Scheme which has been filed as Annexure-1 to the counter-affidavit filed by the Respondent No. 4. The Career Advancement Scheme applies to the State Universities and Associated/ Affiliated Colleges (Except the colleges affiliated to Sampurnanand Sanskrit University, Varanasi). It has come into force from July 27, 1998. Teachers who have become eligible for Senior Scale/Selection Grade/Reader (Promotion/Professor) (Promotion) under the Career Advancement Scheme in force prior to July 27, 1998, shall be covered by the provisions of the Government order dated 7th January, 1989 and Statutes made earlier in this behalf and Government order dated March 17, 1990, as given in the scheme itself.

15. The criteria and eligibility conditions for being promoted on the senior scale of lecturer provide that for moving into the eligibility zone of Lecturer (senior scale), there should be a credit of four years" service as Lecturer for those with Ph.D. degree, five years for those with M. Phil degree, and for rest of the Lecturers six years experience as Lecturer and for eligibility to move into the grade of Reader, the minimum length of service as Lecturer (senior scale) shall be uniformly five years. Leaving other conditions mentioned in the scheme, reference can be given to Clause 13, which reads as under:

13. (i) The Selection Committee constituted u/s 31 of U. P. State Universities Act for Career Advancement/ Promotion shall consider all relevant material and record required under the Statutes to be placed before it.

(ii) In case of University, the recommendations of Screening/ Selection Committee shall be submitted to the Executive Council for decision.

If the Executive Council does not agree with the recommendation made by the Screening/Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement and the Chancellor's decision shall be final:

If the Executive Council does not take a decision on the recommendation of the Screening/Selection Committee, within a period of four months from the date of

meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.

(iii) In case of affiliated or associated colleges (other than college maintained exclusively by State Government) the recommendations of the Screening/ Selection Committee shall be submitted to the Head of the management of the college for decision of the management.

If the management does not agree with the recommendation made by the Screening/Selection Committee, the management shall refer the matter to the Director, Higher Education along with the reasons of such disagreement and the decision of the Director, Higher Education shall be final. If the management does not take a decision on the recommendation of the Screening/Selection Committee within a period of four months then also the matter shall stand referred to the Director, Higher Education and his decision shall be final.

(iv) In the cases of colleges maintained exclusively by the State Government the recommendations of the Screening/ Selection Committee shall be submitted to the State Government for decision and its decision shall be final.

16. The aforesaid provisions obviously provide the same provisions as given in State Universities Act, 1973, as amended from time to time, with respect to the consideration of the recommendations of the selection committee in the matter of granting promotion under the scheme and specifically thus provide that in case, the Executive Council does not agree with the recommendation made by the Screening/Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement and the Chancellor's decision shall be final and that if the Executive Council does not take a decision on the recommendation of the Screening/ Selection Committee within a period four months from the date of meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision will be final. These provisions are reproduction of Section 31(8) of the U. P. State Universities Act.

17. u/s 68 of the Act, a decision taken by the Executive Council is amenable to the jurisdiction of the Chancellor. It is immaterial as to whether the decision has been taken on the recommendations given under the Scheme or under the provisions of the State Universities Act or Statues framed thereunder. Right to invoke jurisdiction of the Chancellor is not dependent on the source from which the matter had come before the Executive Council. Besides, the Career Advancement Scheme has been itself made part of the Statute and, therefore, it is not open to plead that the resolution passed by the Executive Council would not be amenable to the Chancellor u/s 68 of the Act. Argument, therefore, that the Chancellor has no jurisdiction to entertain the representation of the Respondent No. 4, lacks merit and is rejected.

18. Learned Counsel for the Petitioner Sri H. L. Srivastava and Sri Gaurav Mehrotra were specifically asked about the power and authority under which the

Executive Council after accepting the recommendations of the selection committee, without showing any disagreement to the said recommendations, was competent to defer the implementation of such duly accepted recommendations, that too for an undisclosed and uncertain period but we have not been able to get any answer from the learned Counsel for the Petitioners, rather they have admitted very candidly that there is no such provision either in the Statute or under the Act or in the Scheme itself. That being so, it does not require any further discussion that once Executive Council has accepted the recommendation of the selection committee, the implementation of the same could not have been deferred, that too on the ground that those persons who were not interviewed or considered for promotion on the post of Reader would lose their seniority in case they are considered subsequently.

19. We have not been able to find any such provisions under which such authority could be exercised by the Executive Council.

20. Learned Counsel for the Respondent Sri S. K. Kalia submits that the selection committee under the scheme ought to be held every year.

21. True, if the selection committee for considering the promotion under the Career Advancement Scheme is not held at regular intervals and expeditiously within reasonable time, as may be provided in the Scheme and if the University is allowed to hold the selection committee with respect to particular teachers without considering the case of other teachers who may be otherwise eligible, the same would not be a fair consideration for promotion to the next cadre and would smack of arbitrariness which may also affect the seniority of teachers who are entitled to be considered at any time prior to the promotion of any particular Lecturer in senior scale or to the post of Reader or on the post of Professor.

22. In the instant case, there appears to be a dispute regarding the eligibility of the Petitioners and with respect to the seniority of Petitioner No. 2 vis-a-vis Respondent No. 4, the Petitioner No. 1 admittedly being senior to the Respondent No. 4, in the Lecturer grade.

23. Since we have found that the resolution of the Executive Council staying the implementation of the recommendations of the selection committee, which was accepted by the Council itself, is not supported by any law, therefore, order passed by the Chancellor needs no interference.

24. Sri Gaurav Mehrotra asserts that though the Petitioner Dr. Abha Trivedi was eligible on the date of meeting of the selection committee, which recommended for promotion of the Respondent No. 4 in the Readers' grade, i.e., 19.2.2004, but she was wrongly excluded from consideration. For showing the eligibility of the Petitioner Dr. Abha Trivedi, he urges that once selection committee has recommended her for grant of senior scale in Lecturers grade, that will relate back to the date of eligibility or 27.9.1998, whichever is later and, therefore, she became eligible for consideration for promotion on the post of Reader. This argument is being refuted by Sri S. K. Kalia saying that the recommendations of

the selection committee are confidential in nature and they do not have any life and force unless accepted by the Executive Council.

25. It has further been submitted by Sri Kalia, that mere recommendations made by the selection committee would not entitle the incumbent to have the appointment or promotion and it is only after the deliberations made by the Executive Council and the Executive Council accepts the recommendations, the right accrues in favour of such incumbent for being appointed or promoted. It is a different matter that once recommendations made by the selection committee are accepted by the Executive Council, the consequence of entitlement of scale as well as designation of the senior scale would ensue, as per law, but unless the recommendations of the selection committee are accepted by the Executive Council, no one can say that any vested right has accrued in his/her favour.

26. Certain other arguments are also being raised relying upon certain provisions of the Scheme by Sri S. K. Kalia, saying that Dr. Abha Trivedi was not eligible for being promoted on the date of selection of the Respondent No. 4. Sri Gaurav Mehrotra has reiterated his reply that the Scheme makes the Petitioner eligible on the date when the candidature of Respondent No. 4 was considered.

27. In view of the counter claims raised by the parties and in view of the fact that the said questions are not necessary to be decided and adjudicated upon in the present writ petition, we leave these questions for the University to decide.

28. However, we provide that case of the Petitioners, in case they are found eligible under the terms of the Scheme, be considered for promotion under the Career Advancement Scheme at the earliest without any delay. The question whether they are eligible for the said purpose or not shall be decided by the University as we have restrained ourselves from entering into this question, which is not relevant for being adjudicated upon in the present controversy. The question of inter se seniority between the parties is also being left open and would be considered in accordance with law.

29. The Respondent No. 4 shall be given the benefit of promotion on the post of Reader forthwith by implementing the recommendations of the selection committee, which already stand duly accepted.

30. The writ petitions are dismissed with the aforesaid observations. Costs easy.