
(2012) 02 AHC CK 0055
In the Allahabad High Court
Case No : Writ Petition No. 331 (S/B) of 2010

Dr. Ashish Kumar

APPELLANT

Vs

Chhatrapati Shahuji Maharaj Medical University, U.P.,
Lucknow and Others

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Chhatrapati Shahuji Maharaj Medical University Act, 2002 — Section 13(6)

Citation : (2012) 2 ADJ 584

Hon'ble Judges : Ritu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—This writ petition by Dr. Ashish Kumar challenges the decision of the Vice-Chancellor, Chhatrapati Shahuji Maharaj Nagar, Lucknow (hereinafter referred to as "the CSMMU") contained in Registrar's letter dated 23.2.2010 and also the consequential orders and actions contained in letter of the Registrar dated 23.2.2010, the decision of the Executive Council, CSMMU dated 10.12.2009 and the minutes/report of the Seniority Committee dated 24.9.2009 and the Chancellor's decision dated 27.7.2009. In brief, the facts of the case are, that Dr. Ashish Kumar, the petitioner, was appointed as Casualty Medical Officer on 24.7.1998 in the then King George's Medical College, a constituent College of Lucknow University, where he worked as such till 30.7.2001. On 28.7.2001, a Government order was issued by the State Government, converting the post of Casualty Medical Officer into Lecturer, with permission to absorb the incumbent working on the said post on the converted post of Lecturer.

2. Consequently, the petitioner took charge of the post of Lecturer on 31.7.2001 and was designated as Assistant Professor vide order dated 28.2.2002 from the date of joining on the post of Lecturer i.e. with effect from 31.7.2001. The Executive Council vide its order dated 17.6.2004 amended the date of

designation as Assistant Professor from 31.7.2001 to 28.2.2002. The Executive Council again modified the date of designation as Assistant Professor vide order dated 5.1.2005 to 31.7.2001. Personal promotion was given to the petitioner on the post of Associate Professor vide order dated 6.5.06 from the date of eligibility i.e. 31.7.2005. He submitted his joining on the post of Associate Professor on 6.5.2006.

3. It is admitted case of the parties that designation of the post of Assistant Professor on 31.7.2001 to the petitioner was granted, considering his experience of non-teaching post of Casualty Medical Officer as teaching experience in view of Statute 10.01-A of the First Statutes of the Lucknow University.

4. Dr. Santosh Kumar, respondent No. 5 (hereinafter referred to as "the respondent") was appointed as Lecturer in the Department of Orthopaedic Surgery in King George's Medical College on 12.12.2001. Considering his working as Senior Resident from January 1999 to December 2000 (two years) and on the post of Lecturer from 12.12.2001 to 11.12.2002 (one year) (total three years), he was designated as Assistant Professor with effect from 12.12.02 and was given time bound promotion on the post of Associate Professor on 12.12.2006.

5. It is worthwhile to mention here that King George's Medical College, until 6.9.2002, was a constituent College of Lucknow University under the U.P. State Universities Act, 1973 and since 6.9.2002, it is the Chhatrapati Shahuji Maharaj Medical University under the U.P. Chhatrapati Shahuji Maharaj Medical University Act, 2002 (for short CSMMU Act).

6. The dispute in the present petition is with respect to inter se seniority of the petitioner vis-a-vis the respondent. The respondent claims himself to be senior than the petitioner whereas petitioner claims that he was senior and that the Seniority Committee had no jurisdiction to change his date of appointment/promotion on the post of Assistant Professor and consequently that of Associate Professor and thereby to declare the respondent as senior to him.

7. The dispute regarding the seniority was raised by the respondent, which matter was referred to the Seniority Committee. The Committee so constituted consisted the following persons:

1. Prof. (Mrs.) Saroj Chooramani, Vice Chancellor - Chairperson
2. Prof. (Mrs.) Jaya Dixit, Dean, Faculty of Dental Sciences, CSMMU, U.P., Lucknow - Member
3. Prof. A.K. Mahapatra, Director, SGPGIMS, Lucknow - Member.

8. The Seniority Committee considered the case of both the parties and after giving them opportunity of hearing, decided that Dr. Santosh Kumar (the respondent) was senior to Dr. Ashish Kumar (the petitioner).

9. For reaching the aforesaid conclusion, the Committee found that Dr. Ashish

Kumar was elder in age, who was appointed on the post of Casualty Medical Officer (a non teaching post) in G.M. and A.H. Lucknow vide letter of Registrar, Lucknow University No. 16687 dated 23rd July, 1998. He joined on the post of Casualty Medical Officer on 24.7.1998. This non-teaching post of Casualty Medical Officer was converted into Lecturer (a teaching post) vide Government order dated 28.7.2001 and Dr. Ashish Kumar was converted from non-teaching post to teaching post as Lecturer in the department of Orthopaedic Surgery vide letter of Registrar, Lucknow University dated 31.7.2001. He was then designated as Assistant Professor from the date of joining in the Department of Orthopaedic Surgery vide letter dated 28.2.2002 by Registrar, Lucknow University. He was then designated as Assistant Professor from the date of joining in the department of Orthopaedic Surgery vide letter dated 28.8.2002, which post he joined on 31.7.2001. This designation was amended from the date of joining i.e. 28.2.2002 by the Executive Council in its meeting held on 17.6.2004. The joining of the petitioner from 31.7.2001 instead of 28.2.2002 of Assistant Professor was again modified by the Executive Council in its meeting held on 5.1.2005 vide letter dated 3.9.2005 and he was given time bound personal promotion on the post of Associate Professor from the date of eligibility with effect from 31.7.2005 vide order dated 6.5.2006.

10. The Committee also considered that the respondent was substantively appointed through duly constituted selection committee in the department of Orthopaedic Surgery vide letter of the Registrar, Lucknow University dated 12.12.2001 and he was designated as Assistant Professor with effect from 12.12.2002 vide order dated 4.4.2003. He joined on the post of Assistant Professor on 12.12.2002 and was given time bound promotion on the post of Associate Professor from the date of eligibility i.e. from 12.12.2006 vide order dated 26.11.2007.

11. The Committee also found that the petitioner as well as the respondent were in agreement with the personal statistics of each candidate, prepared by establishment section of the office.

12. The Committee observed that on the basis of the facts put before the Committee, they were of the consistent opinion that any teacher substantively duly appointed through selection committee should be senior to a teacher converted from non-teaching post as Lecturer, if other details are similar.

13. Further, the Committee observed that the rules under Clause 10.01-A of the Statutes of the Lucknow University as applicable to the University concerned, only apply to the case of teaching experience which reads as follows:

A Lecturer having 3 years teaching experience as such or as Chief Resident/Senior Resident/*[Tutor/Demonstrator/Registrar] or equivalent after obtaining requisite recognized Postgraduate qualification shall automatically become Assistant Professor. (Also, 50% of the time served as Research Associate or equivalent in ICMR of CSIR research scheme up to maximum of 18 months will

count as teaching experience for this clause.)

* Subject to approval of the MCI.

14. The Committee, therefore, considering the facts narrated above, observed that the experience of non-teaching post as Casualty Medical Officer of Dr. Ashish Kumar w.e.f. 24.7.98 to 31.7.2001 cannot be considered as experience according to clause 10.01-A and as per letter dated 13.2.2006 issued by the Secretary, Medical Council of India, New Delhi regarding verification of claims of past teaching experience submitted by Dr. K. K. Singh for appointment to regular faculty position in KGMU, Lucknow enclosed by Dr. Santosh Kumar in his representation dated 26.6.2009 as well as other related documentary proof put up before the Seniority Committee. The Committee considered the aforesaid letter of MCI, the operative portion of which reads as under:

The experience claimed by Dr. K.K. Singh as Casualty Medical Officer in Gandhi Memorial and Associated Hospitals, Lucknow is also a non-teaching assignment and, therefore, cannot be considered as valid teaching experience as per the T.E.Q. Regulations, 1998 of the Council.

15. The Committee further observed that on the basis of the above facts, Dr. Ashish Kumar should be designated as Assistant Professor with effect from 31.12.2003 (after completing three years teaching experience i.e. Senior Resident with effect from 8.12.1995 to 7.12.1996 (one year) and as Lecturer from 31.12.2001 to 30.12.2003 (two years) and should be treated to be given time bound personal promotion as Associate Professor with effect from 31.12.2007 and thus, the benefits given to him should be amended accordingly. Likewise, Dr. Santosh Kumar should be designated as Assistant Professor with effect from 12.12.2002 counting his past teaching experience as Senior Resident from January 1999 to December 2000 (two years) and Lecturer from 12.12.2001 to 11.12.2002 (one year) and Associate Professor with effect from 12.12.2006 (the date of eligibility) which needs no change. Hence, Dr. Santosh Kumar, Associate Professor is senior to Dr. Ashish Kumar, Associate Professor in the department of Orthopaedic Surgery of this University.

16. Accordingly, the Committee was of the opinion that the inter-se seniority of both Associate Professor in the Department of Surgery shall be as under:

1. Dr. Santosh Kumar
2. Dr. Ashish Kumar.

17. The minutes of meeting of the Seniority Committee held on 24.9.2009, in which the matter of inter-se seniority was considered was approved by the Executive Council in its meeting held on 10.12.2009. The Executive Council resolved as under:

That the Minutes of the meeting of Seniority Committee held on 24th September, 2009 regarding deciding the seniority between Dr. Ashish Kumar and Dr. Santosh

Kumar, Associate Professor in the Department of Orthopaedic Surgery of this University - be approved.

18. As a consequence to the aforesaid determination of seniority, the Registrar issued a letter dated 23.2.2010 declaring Dr. Santosh Kumar as senior to Dr. Ashish Kumar.

19. Sri Anupam Mehrotra appearing for the petitioner, assailing the determination of seniority aforesaid, has mainly raised the following points:

(i) The Seniority Committee was not competent to change the date of appointment/promotion of the petitioner on the post of Assistant Professor nor could have changed his date of promotion on the post of Associate Professor;

(ii) The date of appointment/promotion cannot be changed at such a belated stage and even if any such change was permitted, the same could have been done by the appointing authority i.e. the Executive Council and not by the Seniority Committee;

(iii) The petitioner was given the benefit of teaching experience for the period during which he worked as Casualty Medical Officer, as it was found to be an equivalent post as mentioned in Statute 10.01-A and, therefore, it is incorrect to allege that the petitioner was lacking teaching experience, when he was appointed as Assistant Professor.

(iv) The letter of the Medical Council of India dated 13.2.2006 does not provide any basis for the impugned action, which was in relation to another faculty member;

(v) The claim of seniority raised after several years was barred by laches and the settled seniority could not have been unsettled by the Seniority Committee after such a long time (9 years or so);

(vi) Approval of minutes of meeting (meeting of Seniority Committee) is not the approval of the decision taken therein;

(vii) The Executive Council is the appellate authority in a seniority dispute whereas in the instant case, the Executive Council itself has approved the seniority and thus, took away the opportunity of the petitioner to approach the appellate authority.

20. Before we deal with other issues, we find it expedient that the basic question regarding seniority of the two, namely, the petitioner and the respondent be considered first. It being the discretionary jurisdiction under Article 226, the Court has to see, whether substantial justice has been done between the parties or the decision has caused gross miscarriage of justice to either of the parties.

21. The moot question is, whether the petitioner did possess the teaching experience required for the purpose of appointment/promotion on the post of Assistant Professor on the date when he was appointed as such and, whether the

Seniority Committee was competent to look into this question and give its own finding.

22. Undisputedly, the post of Casualty Medical Officer was a non-teaching post, which was converted into a teaching post vide Government order dated 28.7.2001. The petitioner was taken on such a converted post of teaching as Lecturer on 31.7.2001. After having the designation of Assistant Professor, the petitioner was required to have three years teaching experience.

23. Admittedly, the petitioner was appointed as Casualty Medical Officer, which was a non-teaching post and, therefore, unless he had the experience of three years teaching, as provided under Statute 10.01-A, he could not be treated as eligible for being designated as Assistant Professor.

24. The post of Casualty Medical Officer was converted into teaching post vide Government order dated 28.7.2001 and the petitioner was given the said designation with effect from 31.7.2001, which obviously means that the period of his service, rendered on the non-teaching post as Casualty Medical Officer, was treated to be his teaching experience, which was not permissible.

25. The Seniority Committee has considered the order passed in the case of Dr. K.K. Singh by Medical Council of India, which was a similar case, where Dr. K.K. Singh was claiming teaching experience on the basis of his working on the post of Casualty Medical Officer but the Medical Council of India observed that his working on the said post cannot be counted towards teaching post.

26. The plea of the petitioner that his experience on the post of Casualty Medical Officer was teaching experience as given in Statute 10.01-A, does not stand substantiated from the aforesaid provision. The said provision says that a Lecturer having 3 years teaching experience as such i.e. as Lecturer or as Chief Resident/Senior Resident after obtaining requisite recognized Postgraduate qualification shall automatically become Assistant Professor. The teaching experience as Tutor/Demonstrator/Registrar or equivalent, subject to approval of the Medical Council of India, shall also be counted towards requisite teaching experience for attaining the status of Assistant Professor.

27. Learned Counsel for the petitioner laid much stress upon the asterisk (*) placed before the bracket and the word Tutor, in support of his plea that approval of Medical Council of India is required only if teaching experience is of Tutor, Demonstrator or Registrar and not if it is equivalent teaching experience.

28. Equivalence in the teaching experience has to be to the satisfaction of the Medical Council of India. So far the experience of teaching as Lecturer, Chief Resident or Senior Resident is concerned, that experience has been specifically and duly specified as valid teaching experience for the purpose of giving designation of Assistant Professor but the teaching experience as Tutor, Demonstrator or Registrar or equivalent teaching experience, requires approval by the Medical Council of India.

29. This is also evident from the fact that the competent authority has to adjudge, as to which is the teaching experience, which would be sufficient for grant of the status of Assistant Professor. This cannot be left at the discretion of the University and, therefore, asterisk mark before the word Tutor" cannot be said to be confined only to Tutor, Demonstrator and Registrar but would also be equally applicable in the case of "equivalent teaching experience". This is also fortified by the fact that in the case of Dr. K.K. Singh, the Medical Council of India has refused to accept the teaching experience on the post of Casualty Medical Officer as valid teaching experience for being the Assistant Professor as per the T.E.Q. Regulations, 1998 of the Council.

30. Once the competent authority i.e. the Medical Council of India has given its opinion in respect of the same issue with respect to a teacher of the same University under the same circumstances, there is nothing on record for us to take a different view in the present case.

31. Having come to the conclusion that the teaching experience of the petitioner as Casualty Medical Officer could not have been taken as experience on a teaching post and the said post having been converted into a teaching post on 28.7.2001, the petitioner was required to work as Lecturer i.e. on the teaching post for another two years, he being eligible for being given the benefit of one year teaching experience as Senior Resident.

32. That being so, the petitioner could not be made Assistant Professor on 31.7.2001, which date could have been as 31.7.2003, as has been observed by the Seniority Committee that the petitioner should be designated as Assistant Professor with effect from 31.12.2003, after completing three years teaching experience, i.e. Senior Resident with effect from 8.12.1995 to 7.12.1996 (one year) and as Lecturer from 31.12.2001 to 30.12.2003 (two years) and consequently, should be given time bound personal promotion as Associate Professor with effect from 31.12.2007.

33. From the foregoing discussions, it is established beyond doubt that the petitioner was not eligible to be given the designation of Assistant Professor on 31.7.2001, he having not possessed of requisite teaching experience by that time and, therefore, the said mistake has been rectified by the Executive Council on the recommendations of the Seniority Committee.

34. Thus, in our opinion, the grant of the designation of Assistant Professor with effect from 31.7.2001 and consequently, that of Associate Professor with effect from 31.7.2003 to the petitioner, were against the statutory provisions and were, per se, illegal.

35. Now we come to the next plea of the petitioner that the Seniority Committee was not competent to change to date of appointments/promotions on the post of Assistant Professor and that of Associate Professor, as it was only the appointing authority, who could have done so, if at all any such change could have been effected and that the Seniority Committee was bound to determine the Seniority

as per the provisions of Statute 18.05.

36. Statute 18.05 says that (a) a Professor shall be deemed senior to every Reader, and a Reader shall be deemed senior to every Lecturer; (b) in the same cadre, inter se seniority of teachers, appointed by personal promotion or by direct recruitment, shall be determined according to length of continuous service in such cadre; (c).....; (d).....; (e) service against an administrative appointment in any University or institution shall not count for the purpose of seniority; (f).....

The explanation attached to the aforesaid Statute reads as under:

Explanation.--In this Chapter, the expression "administrative appointment" means an appointment made under sub-section (6) of Section 13.

37. Submission of the counsel for the petitioner is that when the respondent raised the dispute of seniority, it should have been decided by the Seniority Committee with respect to inter se seniority of the petitioner and the respondent in the cadre of Associate Professor, where the petitioner was promoted vide order dated 6.5.2006 with effect from 31.7.2005, whereas the respondent became the Associate Professor on 12.12.2006 i.e. much after the petitioner.

38. Once the eligibility itself of the petitioner for being appointed/promoted on the post of Assistant Professor and consequently on the post of Associate Professor became the subject-matter of consideration by the Seniority Committee, it was incumbent upon the Seniority Committee to look into the grievance so raised and, therefore, if the Seniority Committee has come to the conclusion that the very appointment of the petitioner on the post of Assistant Professor and thereafter promotion on the post of Associate Professor was made when the petitioner was not eligible and made recommendations to the Executive Council accordingly, and the Executive Council, in turn, approved the same, it cannot be said that the Seniority Committee has decided the date of promotions contrary to the rules or it has changed the said dates.

39. It is not a case, where recommendations of the Seniority Committee have been taken as final, so as to give an opportunity to the petitioner to file appeal against such determination of seniority to the Executive Council but it is a case where, on representation of the respondent, the Seniority Committee found that the petitioner is seeking seniority on the basis of wholly illegal appointment, as he was ineligible for the post of Assistant Professor when he was given appointment on the said post and consequently, was promoted on the post of Associate Professor and, therefore, it made recommendations for correction of the said mistake, which recommendations were considered by the Executive Council and were duly approved by it. The Executive Council being the appointing authority, was competent to do so.

40. The Seniority Committee had given due opportunity to both the parties and after giving them opportunity of hearing, made its recommendations and

thereafter, the University (Vice-Chancellor) issued the order on 23.2.2010 as per statutory provisions.

41. In fact, the recommendations of the Seniority Committee, wherein it found that the date of appointment of the petitioner on the post of Assistant Professor should be 31.7.2003 and that on the post of Associate Professor should be 31.12.2007, were duly considered by the Executive Council, which approved the same and thereafter in pursuance of the decision so taken by the Executive Council, the Vice-Chancellor communicated the seniority position to the parties concerned.

42. Learned counsel for the petitioner has relied upon the case of Kashi Nath Misra Vs. Chancellor, University of Allahabad and Another, , saying that the confirmation of the minutes only results in the correctness of the record being certified and not in validating the business transacted at the meeting.

43. The judgement aforesaid is of no assistance to the petitioner as the instant matter is not a case of confirmation of the minutes of Seniority Committee by the Executive Council but it is a case of approval of the minutes of the Seniority Committee by the Executive Council, namely, the business transacted by the Seniority Committee. In other words, the Executive Council, itself on consideration of the recommendations of the Seniority Committee, has effected the change in dates of appointment on the post of Assistant Professor and that of Associate Professor of the petitioner.

44. On the plea of laches, counsel for the petitioner relied upon various authorities including the case of B.S. Bajwa and Another Vs. State of Punjab and Others, , where the writ petition was dismissed on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallized which ought not to have been reopened after the lapse of such a long period.

45. The Apex Court in the aforesaid case observed that there was inordinate delay for making such a grievance and that this alone was sufficient to decline interference under Article 226 and to reject the writ petition.

46. Reliance has also been placed upon the case of S. Jaffar Sahib Vs. Secretary, A.P.S.C. and Others, and also on the case of A.J. Fernandes v. Divisional Manager, 2001 SCC (L&S) 217, in support of the aforesaid plea.

47. There is nothing on record to indicate that the seniority of the petitioner as well as the respondent was ever determined and circulated so as to give an opportunity of challenging the same. Therefore, when the respondent approached the Chairman of the Seniority Committee claiming seniority over the petitioner, he constituted the Committee as per the Statutes. Thus, the petition, in the facts and circumstances of the case, cannot be thrown out on the ground

of laches, it having been established that the petitioner was though ineligible, was appointed as Assistant Professor on 31.7.2001 and on the basis of such per se illegal appointment, he was also given personal promotion on the post of Associate Professor on 31.7.2005, which dates of appointment and promotion have been corrected and rectified by the Executive Council and consequently, by the University.

48. In case hyper technical view is taken about competence of the Seniority Committee to make such recommendations, namely, giving the correct date of appointment and promotion on the post of Assistant Professor and Associate Professor respectively and if the recommendations made by the Seniority Committee as well as the resolution made by the Executive Council as well as the order passed by the Vice Chancellor are quashed, it would result into revival of an wholly illegal order of appointment of the petitioner on the post of Assistant Professor as well as Associate Professor. A person who was neither entitled nor was eligible for being appointed as such on the date when he was given such appointment/promotion, cannot claim that he should be allowed to enjoy the illegality committed and that it should not be corrected.

49. The Apex Court in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , while considering the competence of the State Government to review the order passed by the Gram Panchayat, refused to interfere with the order, saying that in case said order is set aside on the ground of lack of competence of the State Government to review the order, it will revive an illegal order.

50. Instant is a case where interference made with the decision of the Executive Council in this regard would revive an illegal order, which we refuse to do under discretionary jurisdiction of the High Court.

51. Substantial justice having been done between the parties, no ground of interference with the orders impugned is made out. The petition is dismissed.