
(2002) 04 AHC CK 0180
In the Allahabad High Court
Case No : C.M.W.P. No. 16755 of 2001

Dr. Chandra Bhushan Dwivedi	Vs	APPELLANT
Rajyapal, U.P. and Others		RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Citation : (2002) 3 AWC 2051 : (2002) 2 UPLBEC 1480

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Bhagwati Prasad, J.P.N. Singh and Rajendra Prasad Mishra, for the Appellant; Neeraj Tripathi and Anil Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—The dispute in this case is regarding inter-se seniority of certain teachers in Sakaldiha P.O. College, Chandauli, which is affiliated to the Purvanchal University. Under the relevant Statute of the University, the senior most teacher is entitled to be appointed as the officiating Principal till the regular selection.

2. Two conflicting Division Bench decisions have been shown to us. The first is the Division Bench decision of this Court of the Lucknow Bench in Dr. A. K. Kalia v. Chancellor, Lucknow University 1995 (2) AWC 832 and the other is the Division Bench decision in Dr. M.P. Joshi and others Vs. University of Kumaon, Nainital and others, . In the decision in M. P. Joshi's case (supra), the earlier Division Bench decision has been held to be per incurium vide para 10 of the said decision. It has been observed in para 10 that the decision in Dr. A. K. Kalia's case (supra) ignored the effect of Clause (7) of Statute 11.12B of the University Statutes.

3. We have perused the decision of the Division Bench in Dr. A. K. Kalia's case (supra). It can be seen that Clause (7) of the Statute 11.12B has been quoted in the said decision (vide para 15). Since Clause (7) has been specifically quoted in

Dr. A. K. Kalia's case (supra), we cannot understand how it can be said that the Division Bench in Dr. A. K. Kalta's case (supra) has not considered the effect of Clause (7). In our opinion, if the Division Bench deciding Dr. M. P. Joshi's case was not in agreement with the Division Bench decision in Dr. A. K. Kalia's case, it should have referred the matter to larger Bench, as consistently held by the Supreme Court in several decisions, e.g., in *State of Tripura Vs. Tripura Bar Association and Others*, , etc. At any event, since there is a conflict between the two Division Bench judgments, we are of the opinion that the matter should be considered by a Full Bench so that the conflict between the two Division Bench decisions may be resolved.

4. Let the record of this case be placed before the Hon'ble the Chief Justice for constituting a Full Bench for this purpose.