

(2013) 03 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40031 of 2012

Dr. Dwarika Nath Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 2(19)

Uttar Pradesh State Universities Act, 1973 — Section 2(19)

Uttar Pradesh State Universities Act, 1973 — Section 2(19)

Citation : (2013) 4 ADJ 43 : (2013) 4 ADJ 200 : (2013) 5 ALJ 702 : (2013) 99 ALR 181 : (2013) 6 AWC 5530 : (2013) 2 UPLBEC 1345

Hon'ble Judges : Vineet Saran, J; Manoj Misra, J

Bench : Division Bench

Advocate : Neeraj Pandey, for the Appellant; Gautam Baghel, Harshita Raghuvanshi, K.K. Roy, R.K. Rai and Vivek Verma, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel for the petitioner, Sri K.K. Roy appearing for the newly impleaded respondent No. 7 and the learned Standing Counsel for the State-respondents. The short question involved in this petition is whether the petitioner, who was regularly appointed Principal of Khardiha Mahavidyala, Ghazipur (hereinafter referred to as the College), a college affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur (hereinafter referred to as the University) was entitled to session's benefit, on account of his superannuation in mid-session i.e. 4.7.2002, in accordance with statute 15.24 of the first statutes of the University.

2. The undisputed facts of the case are that the petitioner was appointed Principal of the aforesaid College on recommendation of the U.P. Higher Education Service Commission. He attained the age of superannuation on 4.7.2012 i.e. on completion of 62 years in age. According to the proviso to statute 15.24 of the first statutes of the University, if the date of superannuation

of a teacher does not fall on June 30, the teacher shall continue in service till the end of the academic session i.e. June 30 following and he will be treated as on re-employment from the date immediately following the date of his superannuation till June 30 following. As the petitioner attained the age of superannuation on 4.7.2012, he applied for the session's benefit in accordance with the first statutes. The authorised controller, who was appointed for managing the affairs of the College, vide letter dated 28.7.2012 informed the petitioner that his matter was referred to the Government and the Government vide order dated 26.7.2012 decided not to provide session's benefit to the petitioner.

3. A perusal of the Government Order dated 26.7.2012 reveals that the session's benefit was denied to the petitioner on the ground that prior to his retirement, on account of an inquiry pending against the petitioner, vide order dated 5.6.2012, the Authorised Controller had withdrawn all the powers attached to the office of Principal from the petitioner and assigned it to the senior most teacher of the College whereas the matter with regards to suspension of the petitioner was also pending at the level of the Vice Chancellor. Besides that there were two criminal cases pending against the petitioner. Further, it was observed that under Government Order No. 1587/70-2-2001-16(129)/2001 dated 2.6.2001 read with Government Order No. 2493/70-2-2001-16(129)/2001 dated 5.7.2001 session's benefit was to be provided to an officiating Principal in the capacity of a teacher only.

4. Challenging the Government Order dated 26.7.2012 as also the communication letter dated 28.7.2012, the learned counsel for the petitioner submitted that refusal of session's benefit to the petitioner was not legally justified inasmuch as the said Government Orders dated 2.6.2001 and 5.7.2001 related to the case of an Officiating Principal and, as such, were not applicable to the case of the petitioner who being a regularly appointed Principal was entitled to the session's benefit, as of right, by virtue of Statute 15.24 of the first statutes of the University. It was also submitted that the refusal to provide session's benefit to the petitioner on the ground that two criminal cases were pending and that the matter of his suspension was pending consideration with the Vice-Chancellor was not legally justified inasmuch as under the Statute 15.24 of the first statutes of the University as also under the proviso to sub-rule (3) of Rule 3 of the U.P. State Universities First Statute's (Age of Superannuation, Scales of Pay and Qualification of Teachers), 1975, the petitioner, who was a regularly appointed Principal and, as such, a teacher within the meaning of Section 2(19) of the U.P. State Universities Act, 1973, was entitled to the session's benefit, as of right, and the authorities had no discretion to deny the session's benefit to the petitioner on ground of any charges. It was further submitted that, in any case, the Vice-Chancellor of the University, by his order dated 18.6.2011, had suspended the operation of the suspension order. In support of his submissions, the learned counsel for the petitioner has placed reliance on two division bench decisions of this Court in the case of Udai Narain Pandey Vs. Director of Education (Higher Education), Allahabad and others, and

Meerut College Parivar Kalyan Samiti Vs. State of U.P. and others, , wherein it has been held that as teacher includes Principal, by virtue of the definition clause i.e. Section 2(18) {now Section 2(19)}, a Principal of an affiliated college would also be entitled to session's benefit as a Principal. Paragraph No. 15 of the judgment in Udai Narayan Pandey (supra) is being reproduced below:

15. In the present facts the "Respondent No. 5 admittedly was appointed on substantive post of Principal of the institution concerned and while holding the said post, date of superannuation came. Admittedly, apart from the said appointment as Principal, the Respondent No. 5 never held any post of teacher in the said institution. Therefore, applying the law as aforesaid, after the date of superannuation the Respondent No. 5 was to continue in service on re-employment as Principal.

5. Per contra, learned counsel for the respondents submitted that as the petitioner had been suspended and had also been facing criminal prosecution, the session's benefit ought not to be provided to the petitioner and in any case the petitioner ought not to be permitted to function as Principal of the College during the extended period of service. Reliance has been placed on a Division Bench decision of this Court in the case of Om Saran Tripathi v. State of U.P. and others (Civil Misc. Writ Petition No. 41457 of 2010 decided on 19.7.2010), wherein relying on an Apex Court's decision in the case of S.K. Rathi Vs. Prem Hari Sharma and Others, , it was held that the session's benefit allowed to a teacher, who had been officiating as Principal, would not enable him to officiate as Principal as it is a case of re-appointment and not extension of the period of officiating charge of the Principal.

6. Having considered the submissions of the learned counsel for the parties as also on perusal of the record, we find that there is no dispute with regard to the fact that the petitioner was regularly appointed Principal of the College and that he retired mid-session on 4.7.2012. According to the definition of "teacher" under the U.P. State Universities Act, 1973, a teacher includes a Principal also. Statute 15.24 of the University provides as under:-

7. The proviso to Statute 15.24 is pari materia to the proviso to sub-rule (3) of Rule 3 of U.P. State Universities First Statutes (Age of Superannuation, Scales of Pay and Qualification of Teachers), 1975, which reads as follows:

Provided that if the date of superannuation of a teacher does not fall on June 30, the teacher shall continue in service till the end of the academic session i.e. June 30 following and he will be treated as on re-employment from the date immediately following the date of his superannuation till June 30 following.

8. A careful reading of the proviso to the statute 15.24 reveals that there is mandate that if the date of superannuation of a teacher does not fall on June 30, the teacher shall be treated as on re-employment from the date immediately following the date of his superannuation till June 30 following.

9. As there is no dispute with regard to the fact that the petitioner was regularly appointed Principal on the date of his superannuation and that he superannuated on 4.7.2012, he would be treated as on re-employment, as per the proviso to statute 15.24, up to 30 June 2013. Since the definition of teacher includes a Principal, in the light of the decisions of this Court in the cases of Udai Narayan Pandey (supra) and Meerut College Parivar Kalyan Samiti, Meerut (supra), the petitioner would be deemed to have been re-employed as a Principal of the college and would continue, in such capacity, till 30.6.2013.

10. The decisions in the case of Om Saran Tripathi (supra) and S.K. Rathi (supra) are of no help to the respondents inasmuch as they related to an officiating principal and not a regularly appointed principal, as is the petitioner.

11. We further find that in refusing session's benefit to the petitioner, wrongly reliance was placed on Government Order dated 2.6.2001 inasmuch as by Government Order dated 5.7.2001, issued by way of corrigendum, it was made clear that the Government Order dated 2.6.2001 would be applicable to an Officiating Principal. As the petitioner, admittedly, was a regularly appointed principal, reliance placed on the Government Order dated 2.6.2001 read with Government Order dated 5.7.2001, was misconceived. Furthermore, we do not find any material on record to infer that providing a session's benefit to a teacher is at the discretion of the authorities. As the proviso to statute 15.24 uses the words "will be treated as on re-employment from the date immediately following the date of his superannuation", discretion with the authorities to grant or not to grant such benefit is excluded, inasmuch as the benefit would be available by operation of law. Even otherwise, we find that the Vice-Chancellor of the University, by his order dated 18.6.2011, had suspended the operation of the suspension order. Thus, we are of the considered view that refusal to grant session's benefit to the petitioner cannot be legally sustained. Accordingly, the order 26.7.2012 (Annexure 10) and the consequential communication/order dated 28.7.2012 (Annexure 9) are hereby quashed. The petitioner will be entitled to the session's benefit and would be entitled to continue as Principal of the said college till the date of his retirement i.e. 30.6.2013, with all the consequential benefits. However, this will not preclude the respondents to take action against the petitioner, in accordance with law. The writ petition is allowed as above.