
(2002) 10 AHC CK 0218
In the Allahabad High Court
Case No : C.M.W.P. No. 38255 of 2001

Dr. Kailash Prakash Yadav

APPELLANT

Vs

Vice Chancellor, B.H.U. and Others

RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 2 AWC 1555

Hon'ble Judges : R.B. Misra, J;M. Katju, J

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant; V.K. Upadhyay and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

R.B. Misra, J.—This writ petition has been filed seeking direction to regularise/ absorb the petitioner on a permanent post in the school Bio Medical Engineering in the Institute of Technology, (in short hereinafter referred to as "Institute") of Banaras Hindu University (in short called "B.H.U.") for payment of salary from "R" account (revenue account/ maintenance grant) of B.H.U. in a particular pay-scale.

2. Heard Sri S. P. Singh, learned counsel for the petitioner and Sri V. K. Upadhyay, learned counsel for the respondents.

3. The brief facts necessary for the adjudication of the writ petition are that the petitioner is M.Sc. (Chemistry) and Ph.D. and was initially appointed as Research Associate on 12.9.1991 on Rs. 2,200 per month in the scale of Rs. 2,200-100-2,700 with house rent allowance and contingency as per rules under "Special Assistance Programme" in the department of ceramic engineering of "B.H.U." The petitioners' service was extended from time to time by means of letters/ orders of Registrar (Development), B.H.U., namely, by letters dated 28.9.1992, 8.9.1993, 25.10.1994, 27.11.1995 and 8.12.1995 indicating payment

of Rs. 2,300 p.m., Rs. 2,400 p.m., Rs. 2,500 p.m. and Rs. 3,000 p.m. respectively, payable to the petitioners (enclosed as Annexures-2 to 5 to the writ petition). Another advertisement was issued on 15.7.1996 by the "B.H.U., including the appointment to be made to the post of "Research Associateships" in the school of Bio-Chemical, as well as in the "institute". The Research Associates were accommodated on Rs. 2,000, 3,300, 3,750 and 4,325 with annual increments in the scale of (A) Rs. 2,000-100-3,300 (B) Rs. 3,300-100-3,800 (C), Rs. 3,750-125-4,375 (D), Rs. 4,325-125-4,700-150-5,000 depending on educational qualifications, teaching/research experience and research work publication, etc., as per rules. The petitioner was approved on 29.11.1996 as a "Research Associate" against permanent post in the "Institute" and his period of engagement was extended for a period of one year each time by means of letters dated 23.12.1997, 7.1.1999, 29.12.1999 and 6.1.2001, respectively. The letters in respect of extension order of petitioner as a "Research Associate" are enclosed as Annexures-12 to 15 to the writ petition. According to the petitioner, one Dr. S. P. Singh originally appointed as "Research Associate" on 26.4.1977 was permanently absorbed in the post as lecturer in "B.H.U." which is a Central University for development where five years plans are maintained and in each five year plan, various development projects and extension of academic works are taken and in each plan, different posts are duly sanctioned by the University Grant Commission (in short called "U.G.C."}.

4. According to the petitioner, the posts of "Research Associate" are duly sanctioned and approved by the "U.G.C.", and there are large number of posts of "Research Associate" which are of permanent and substantive nature as the payment of salary for them are drawn from "R" account commonly known as maintenance grant of the university and the tenure of "Research Associates" is not mentioned in various advertisements issued in the year 1991 and onwards. In support of his contention the petitioner has submitted the following two aspects :

(i) Firstly on representation of several "Research Associates" of different departments of Institute", the Visitor of "B.H.U., i.e., President of India had referred the matter to the Ministry of Human Resources Development (in short called "M.H.R.D.") for absorption/ regularisation irrespective of the fact that where the executive counsel had expressed its inability, therefore, the request was made to the "M.H.R.D." to take place the matter again before the "Visitor" for sympathetic consideration.

(ii) Secondly because in the joint meeting of the Consultative Committee on policy planning committee of the "institute" following recommendations were made :

"It was resolved to request the university that since the "Research Associate" (R.As.) position in the institute have been merged with "R" account of the B.H.U., the serving R.As. be given opportunity by absorbing them as scientific Assistants in the respective department/school of the institute in a

suitable grade in such a manner that the total emoluments do not exceed the maximum emoluments admissible to R.As. Such a step of the university would not only strengthen the research/academic work of the concerned department/schools but would also provide relief to the suffering individuals without causing any additional financial burden."

5. It has been submitted that the petitioner was deployed as "Research Associate" since 1991 in the department of Ceramics and subsequently since 1996 in the department of Bio Medical Engineering and had worked for more than 10 years in such capacity. The research work of the petitioner is commendable and now he has become overage for another employment. The petitioner is attached to the post graduate institute and the research projects are still continuing therefore, as contended by the petitioner, he should be treated as temporary without interruption, and treating to be working continuously, he should be absorbed/regularised as "Research Associate".

6. The petitioner has referred to order dated 30.9.1999 of this Court (D.B.) passed in Writ Petition No. 31112 of 1997. Ramesh Mohan Shettiwar v. Chancellor. B.H.U. and Ors. where it was held :

"The petitioner has prayed for regularisation of service on the post of Junior Research Officer. The post was advertised by advertisement dated 25.8.1980 which is Annexure-1 to the writ petition. The petitioner applied for and has been selected vide appointment letter dated 7.5.1980 Annexure-2 to the writ petition. The petitioner has been continuously working since 1980 and now this petition has been filed for regularisation of his service. It is distressing that a person has been kept for 19 years without regularisation.

This in our opinion is wholly arbitrary. The Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, has held that arbitrariness violates Article 14 of the Constitution. In this case the respondents have acted arbitrarily by keeping a person for 19 years in service without regularisation for such a long period. In the circumstances, this writ petition is allowed and we direct the respondents to regularise the petitioner's service within a month on the production of certified copy of this order before them and to pay the salary regularly."

However, the facts and circumstances of the Ramesh. Mohan Shettiwar case (supra) was in different context where writ petitioner after duly being appointed to the post of Junior Research Officer had worked continuously for 19 years, therefore, direction was given for regularisation.

7. In the case of Rattan Lal and Others Vs. State of Haryana and Others, while considering the common question as to whether it was open to the State Government to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on an ad hoc basis at the commencement of next academic year and to terminate their services before

the commencement of the succeeding summer vacation or earlier and to continue to do so year after year, the Supreme Court observed as below :

"The policy of "ad hocism" followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer". Further direction was given to the State Government to make appointment as per rules. The fact of Rattanlal case (supra) is distinguishable where rules were available for selection of teachers even then the teachers were given ad hoc appointments on above basis year after year.

8. In the case of Sri Rabinarayan Mohapatra Vs. State of Orissa and others, . the, school teachers (appellant) appointed in 1982 Initially for 89 days continued for 4 years with approval of authorities and even thereafter without such approval with repeated spells of 89 days appointments with one day break in between and the teachers were deprived of salary for the period of summer vacation and other benefits then the Supreme Court has treated as discriminatory and fully covered u/s 3 of Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989, in short "Act 1989" and therefore, directed to regularise the ad hoc service of the school teachers with effect from the initial appointment with salary including the salary for summer vacations and other breaks. The question of giving benefit in service under "Act 1989" was involved, i.e.. different context other than the present case, therefore, the petitioner could not take benefit of verdict of Rabindranarayan Mohapatra (supra).

9. Reliance was placed on behalf of the petitioner on a decision of this Court in Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, in which ad hoc appointments made in one project or another continuing for long periods and thereafter on projects drying up, researchers in such projects having worked continuously for 10 to 15 years their services having been discontinued on the ground of absence of further projects, would give rise to human problem or deprivation of source of sustenance as with the advancement in age they become disentitled to jobs in Government or public sector undertakings and, therefore, this Court gave direction to evolve a scheme for building up a team of researchers in co-ordination with the Health Ministry and to provide employment to the aggrieved persons either as researchers or in any suitable employment until their inclusion in the term is considered.

However, the facts of Dr. V. L. Chandra (supra) was different whereas in the present case rules for "research associate" have been provided by "U.G.C."

10. According to the counter-affidavit filed on behalf of B.H.U. the petitioner was selected "research associate" through an advertisement and as per guidelines of the U.G.C. for a period of one year w.e.f. 29.11.1996 and the same was extended from time to time, i.e., for a total period of five years which had

expired on 28.11,2001. Further extension was not permissible as claimed by the petitioner. The reference of rules as amended in May, 1988 in the form of guidelines for "Research Associateship" as provided by "U.G.C." is (enclosed as Annexure-1 to the counter-affidavit as revised in May, 1988). The relevant provisions are provided as below ;

1. The Scheme :

"Research Associateships" are awarded by the Commission centrally and by the universities, etc. every year with a view to provide an opportunity to research students and teachers who have shown extraordinary talent and competence to take up research work independently or on project assignments in Science, humanities Including social sciences and engineering and technology.

2. Eligibility :

Research Associateships are Intended for persons preferably below the age of 45 years who have doctorate degree and have published research work to their credit and have already shown evidence of independent research work. In case of women candidates, the age limit is 55 years.

3. Emoluments :

Research Associateships are awarded in four slab and carries emoluments at the following rates :

U.G.C. has revised w.e.f. 1.4.1998

(i)

2,200-100-2,700

8,000 (fixed)

(ii)

2,700-100-3,200

8,800 (fixed)

(iii)

3,200-100-3,700

(iv)

3,700-125-4,325

10,500 (fixed)

A research associate shall complete his tenure in the same slab in which he is placed at the time of selection.

4. Contingency :

The Research Associateship carries a contingency grant of Rs. 5,000 p.a. for contingent expenditure in case of humanities and social science and Rs. 7,500 p.a. in case of science, engineering and technology.

5. Duration :

Associateship will be tenable initially for a period of three years extendable for another term in the same slab for a period not exceeding two years.

8. Conditions of Award :

(a) The Associateships are generally tenable at any University/ Institution approved under University Grants Commission Act.

X X X X

(g) The Commission in consultation with the university concerned may terminate an associateship without assigning reasons at any time and the decision of the Commission in this regard shall be final.

11. According to para 11 of the counter-affidavit, the scheme of "Research Associateship" was awarded by the U.G.C. centrally and by the universities with a view to provide an opportunity to research students who have shown extraordinary talent and competence to take up the research work independently or on project assignment in Science, Humanities including Social Science and Engineering and Technology. The Research Associateship is a temporally platform to stay for short total period of 5 years. No one can stay on such platform on permanent basis. He has to leave this platform for others. For permanent appointment, either in the university or elsewhere, he has to apply and take his chance. Further, the post of Research Associates has never been equated with the post of lecturer. The appointment procedure for both the posts are entirely different.

12. According to para 13 of the counter-affidavit, the appointment was made under old policy effective applicable prior to 1998 July. According to para 14 of the counter-affidavit, in the beginning of the five year plan, the necessary guidelines are received in the "B.H.U." and thereafter recommendations are sent to the U.G.C. and after thorough examination, funds are released by the U.G.C. with strict guidelines for its implementation. The respondent/ B.H.U. is bound to follow the guidelines received from the U.G.C. as it also keeps strict vigilance in that respect.

13. in para 15 of the counter-affidavit, it has been contended that as per U.G.C. guidelines, the Associateship is tenable for a period of three years, extending for another term in the same slab for a period not exceeding 2 years. Thus, the total period of appointment of Research Associates in one slab cannot exceed 5 years. The post of "Research Associate" existing in the "B.H.U," was previously provided by the U.G.C. as a plan post and later merged in the "R" account-maintenance grant and fund is still provided by the U.G.C. although this has

changed the nature of tenure of the post from scheme plan post to that of permanent nature, yet appointment of "Research Associate" against these positions are made as a term appointment for fixed period in terms of the guidelines of the U.G.C. Only by drawing the salary from "R" account, one cannot claim his regularisation against the said post.

14. According to para 16 of the counter-affidavit, the advertisement has clearly indicated that the Associateship was offered in a particular slab extendable for a maximum period of 5 years. Therefore, it was wrong to say that any advertisement tenure of the appointment was not mentioned when the grade of Research Associate is Rs. 3,000-100-3,800, which itself indicated that a slab of grade of Research Associateship was for five years only.

15. It has also been contended on behalf of the respondents that as per latest guidelines notified on 21.7.1998 (Annexure-27 of the writ petition), the extension of tenure of petitioner as "Research Associate" is not permissible and the notification has superseded all earlier decisions in the matter of "Research Associate". The "Class-V" of notification that the "Research Associate" shall have no claim in any case on any grounds whatsoever to any permanent position in the university. The "Class VI" of notification Indicates that a person who has once been appointed as "Research Associate" or awarded the J.R.F./ S.R.F. (Junior Research Fellowship/ Senior Research Fellowship) shall in no case be again eligible to apply afresh for such appointment/award either in the same or other subject in the university, however, the petitioner has denied that the notification dated 21.7.1998 shall not guide the fate of the petitioner.

16. It has been contended on behalf of the respondents that on the basis of internal correspondence between the B.H.U. and the U.G.C. the petitioner cannot derive strength in his claim.

17. In para 23 of the counter-affidavit, it has been contended that the U.G.C. after promulgation of the recommendations of fifth Central pay commission report, has issued a detailed guidelines regarding recruitment/ extension of any benefit to the inservice employee of the B.H.U. As per guidelines received from the U.G.C.--"no new post/pay scale should be created or upgraded by the universities themselves without the prior approval as per procedure described in para 5 above. Further universities may amend their Acts/Statutes/Ordinances/ M.O.A./Bye -laws, etc., to give effect to the above latest by 30th June, 1998 under intimation to the "U.G.C." and "M.H.R.D." The recruitment rules may also be modified to bring at par with norms of Government of India and future promotions be given only after modifying the recruitment rules." The letter dated 10.4.1998 is enclosed as (Annexure-C.A. 7). It has been contended on behalf of the respondents that the petitioner had prior knowledge of "Research Associateship" was being awarded to him for one year at a time but not for more than five years, therefore, after expiry of the stipulated period, the petitioner has no legitimate right to continue as "Research Associate". The petitioner was free to apply elsewhere for his employment suitable to his qualification. There is no

"rule" applicable for the petitioner where he could be absorbed or regularised on the post of "Research Associateship" on permanent basis.

18. In *Dr V.P. Chaturvedi and Others Vs. Union of India (UOI) and Others*, the Supreme Court followed the decision rendered in *V. L. Chandra* case (supra) and similar directions were given in that case also. The Supreme Court in *C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain*, examined the scheme of appointment as Pool Officer under Scientists' Pool Scheme or as Scientist Fellow under the Scheme of Quick Recruitment of Scientists (Fellows) for major projects on contract basis for a limited period and held that it did not entitle them to regularisation of their services or absorption in C.S.I.R. and distinguished the decision in *Prathibha Mishra* case, (1997) 35 ATC 501 : (1997) 3 SLJ (CAT) 181.

19. In *Post-Doctoral Research Associates of S.V. University, Dr. K. Krishna Reddy and Others Vs. Union of India (UOI) and Others*, where the writ petitioners, therein were Post Doctoral Research Associates having Research Associateship under the scheme framed either by the University Grants Commission (for short "U.G.C.") or by the Council of Scientific and Industrial Research (for short "C.S.I.R."). Some of them had unsuccessfully approached the High Court. Under the Scheme, the duration of Research Associateship was for an initial period of three years, extendible by one or two years. Such Research Associate was given an opportunity to pursue research. A Research Associate was at liberty to join a new post. In all the present case, the research work had not exceeded for years and on completion of the tenure, their Fellowship had been discontinued. Moreover, "U.G.C." stated that Its Research Associateship Scheme which was formulated in 1983 was discontinued in 1998. The petitioners contended that the short term fixed under the scheme defeated the very purpose of the research as in the absence of extension after completion of the tenure, the research already done was rendered futile. Making it clear that they were not seeking regularisation, the writ petitioners submitted that "U.G.C." and "C.S.I.R." should frame appropriate scheme to support scientific advancement providing a healthy climate for the research fellows to carry on such work. They added that they could carry on such work only with a sense of security for their continuity in the work done by them which would be beneficial to the country as a whole and also to them individually and while dismissing the writ petition, the Supreme Court held as below ;

"The scheme evolved by U.G.C. or C.S.I.R. is only a supportive programme for the research fellows during the period of unemployment initially for a period of five years. Such scheme allows research fellows who have done their Ph.D and have a waiting period of five years when they have got no jobs, to keep them active in their work and facilitates research on tenure basis. Therefore, it is not correct to state that it is only to encourage research that these research fellows have been engaged and not by way of support of them during the period of their unemployment and since U.G.C. or C.S.I.R. have framed scheme to give support to such candidates for a particular period during which they can obtain job in an

appropriate university or institution or in any other organisation, it cannot be stated that such scheme is faulty. It is more by way of a social welfare measure that such action is being taken and not merely to promote scientific research which may be an incident fallout under the scheme. Therefore, it is not possible to direct U.G.C. or C.S.I.R. to frame any scheme in that regard . All that can be hoped is that U.G.C. or C.S.I.R. would bear in mind the research work done by the research scholars and provide them appropriate opportunities whenever an occasion arises."

20. The petitioner was offered "Research Associateship" through an advertisement and by selection process as per guidelines of the "U.G.C." for a period of one year extendable from time to time maximum for not more than five years on the emoluments to be paid in slab against the scheme plan post which later merged in "R" account maintenance-grant and fund provided by "U.G.C." The post of "Research Associate" is not like lecturer and "U.G.C." in consultation with "B.H.U." might terminate associateship at any time without assigning reason in accordance to Rule 8 (g) of amended rules of May, 1988. In absence of "rules", the petitioner could not be absorbed/regularised as "Research Associate" on permanent basis and under old guidelines his period of engagement came to an end on 28.11.2001 and, therefore, under new guidelines notified on 21.7.1998, the extension of tenure of petitioner is not permissible. The absorption or appointment as "Research Associates" if any to the post of lecturer in "B.H.U." In respect of some other person in the past, shall not give a legal right to petitioner as the "Research Associates" were free to apply and avail chance for getting employment to any post of their choice. The relief as prayed for to petitioner cannot be granted. However, keeping in view the work done, experience and past valuable services of the petitioner rendered In the "Institute", this Court is expressing trust and hope that "B.H.U.", if necessary with the consultation of "U.G.C." shall consider the case of the petitioner sympathetically for providing the petitioner appropriate opportunity whenever an occasion arises. With these observations, the writ petition Is disposed of. No order as to the costs.