

(1996) 10 SC CK 0142

In the Supreme Court Of India

Case No : Civil Appeal No's. 4613-14 of 1996 Etc.

Dr Mahak Singh

APPELLANT

Vs

Chancellor, Ch. Charan Singh University, Meerut and Others

Dr Rajvir Singh Vs Chancellor, Ch. Charan Singh
University and Others

RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Constitution of India, 1950 — Article 136
Penal Code, 1860 (IPC) — Section 302
Uttar Pradesh State Universities Act, 1973 — Section 49

Citation : (1996) 8 AD 721 : (1997) 75 FLR 651 : (1996) 10 JT 207 : (1996) 8 SCALE 217 : (1996) 11 SCC 760 : (1997) SCC(L&S) 419 : (1996) 8 SCR 180
Supp : (1997) 1 SLJ 61 : (1997) 1 UJ 359 : (1997) 1 UPLBEC 557

Hon'ble Judges : S. B. Majmudar, J;N. P. Singh, J

Bench : Division Bench

Advocate : J.P. Goyal, Prashant Bhushan, S. Srinivasan, B.S. Mor, Kusum Singh, M.S. Dahiya, Rajbir Singh, Shree Pal Singh, Goodwill Indeevar and Arun Bhardwaj for S. Uday Kumar Sagar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majumdar, J.—These three appeals arise out of a common judgment rendered by a Division Bench of the High Court of Judicature at Allahabad in different writ petitions moved by the common appellant Dr. Mahak Singh in Civil Appeal Nos. 4613-4614 of 1996 and by one of the writ petitioners Dr. Rajvir Singh, appellant in companion Civil Appeal No. 4616 of 1996. These appeals project a common controversy of a triangular nature amongst three contestant-teachers attached to Janata Vaidic (Post Graduate) College. Baruat in Uttar Pradesh which is a degree college affiliated to the Meerut University. The contestants are Dr. Mahak Singh on the one hand who is the appellant in first two appeals and respondent No. 3 in these appeals Dr. S.P. Singh as well as respondent No. 5 Dr. Rajvir Singh in these two appeals who in his turn is the appellant in the companion Civil Appeal No. 4616 of 1996. All the three of them

claimed to be entitled to work as In charge Principal of the said degree College on the ground that each one of them was the senior most teacher. The High Court in its common impugned judgment has taken the view that out of the three contestants, common respondent No. 3 in these appeals, namely, Dr. S.P. Singh is entitled to work as Acting Principal till regular Principal is appointed in the college by following the due procedure of law. This conclusion to which the High Court reached is on the basis that amongst the three contestants he is the senior most. This is seriously brought in challenge by the common appellant in the first two appeals Dr. Mahak Singh. His learned Counsel Shri Prashant Bhusan submitted that Dr. Mahak Singh is the seniormost lecturer and hence entitled to be considered for being appointed as Acting Principal while learned Counsel for respondent No. 5 submitted in support of his companion appeal that Dr. Rajvir Singh is entitled to the said post. Learned Counsel for common respondent No. 3 on the other hand submitted that the High Court has rightly taken the view that respondent No. 3 is the most eligible candidate for the purpose.

2. In order to resolve this triangular controversy a few relevant facts leading to these proceedings are required to be noted at the outset, earlier the college in which these three contestants are working as senior lecturers was affiliated to Agra University under the Agra University Act, 1926. The said college was, therefore, governed by the provisions of the said act and the statute framed there under from the very beginning till 1.7.1965. The Kanpur and Meerut University Act was enforced with effect from 1.7.1965. As a result thereof the said college got affiliated to Meerut University. Since no statutes were framed the college continued to be governed by the statute of Agra University. Consequent upon the framing of the Statutes of Meerut University on 28.9.68, the college was thereafter governed by the said Statutes. The seniority of teachers of affiliated colleges was governed by Statute No 11.324. of that University. U.P. State Universities Act, 1973 came into force with effect from 2.9.73. Since no statutes were framed under the said act, the statutes of the Meerut University continued to govern the service conditions of the teachers of affiliated colleges. First statutes of the Meerut University were framed under U.P. State Universities Act, 1973 which came into force from 1.5.77. For the purpose of determining the seniority of teachers Chapter XVIII of these statutes became applicable with effect from 1.5.77. It is not in dispute that the fate of these proceedings will be governed by the relevant provisions of these statutes to which we will make a detailed reference at an appropriate stage.

3. The service Bio-date of the aforesaid three contestants run as under:

4. The appellant in Civil Appeal Nos. 4613-4614 of 1996, Dr. Mahak Singh was appointed on 9.7.59 as lecturer in Agronomy in the grade of Rs. 225-450 for teaching degree classes in the aforesaid college. On 6.11.1963 he was appointed as Head of the Department (Post Graduate College) in the grade of Rs. 350-800. On 1.1.86 he was designated as Senior Lecturer in the grade of Rs. 3700-5700.

5. Dr. S.P. Singh, common respondent No. 3 was appointed on 9.7.59 as lecturer

in the same college for teaching post graduate classes in the subject of Economics in the grade of Rs. 250-500. On 6.1.63 he was designated as Head of the Department, Post Graduate Classes in the grade of Rs. 350-800. On 1.1.1986 he was granted the grade of senior lecturer i.e. Rs. 3700-5700.

6. Dr. Rajvir Singh, respondent No. 5 in the first two appeals and appellant in the companion appeal No. 4616 of 1996, was appointed as post graduate lecturer in the aforesaid college on 9.7.61 in the grade of Rs. 250-500 in D.A.V. College, Muzarfarnagar in the subject of Geology. On 25th August, 1964 he was appointed and designated as Head of the Department Post Graduate Classes in the grade of Rs.350-800 in the college to which the other two contestants belonged. It appears that his service tenure in the same college underwent rough weather. Even though he was designated as Head of the Department on 9.7.66 in the grade of Rs. 700-1100, subsequently his services were terminated on 7.5.69 and said termination order was set aside on 31.1.73 and thereafter he joined as lecturer in the same college in the grade of Rs. 700-1600. On 1.1.1986 he was granted grade of Rs. 2200-4000. The said grade was that of a lecturer. He was designated as a senior lecturer in the grade of Rs. 3700-5700 with effect from 31.1.1986.

7. The aforesaid Bio-data of the three contestants is well borne out from the record of the case and has been treated by the High Court to be well established. However, learned Counsel for respondent No. 5 in these two appeals Dr. Rajvir Singh vehemently contended that his client should be considered to have been appointed as a senior lecturer in this very college not from 31.1.1986 but from 1.1.1986 when the other two contestants were treated as senior lecturers. It is not possible to agree with this contention for the simple reason that if it was felt that his appointment from 31.1.1986 as a senior lecturer was wrongly made and he should have been treated as a senior lecturer not from 31.1.86 but from 1.1.86. he should have made such a grievance at the relevant time. Years rolled by still he never made a grievance about the same and accepted the decision that he was to be designated as senior lecturer only from 31.1.86. Subsequently, therefore, when vacancy of Principal arose in June, 1993 when the then Principal Dr. P.S. Malik, retired and when the question of appointment of an Acting Principal arose it was too late for Dr. Rajvir Singh to contend after seven years that he should have been treated to be a senior lecturer from 1.1.86 and not from 31.1.86. We must, therefore, proceed on the basis that appellant Dr. Mahak Singh and respondent No. 3 were designated as senior lecturers from 1.1.86 while respondent No. 5 Dr. Rajvir Singh was rightly designated as the senior lecturer from 31.1.86. In the background of his service bio-data of all the three contestants, the short question which arises for our consideration has to be resolved. The relevant statute for resolving this controversy is 13.20. It is not in dispute between the parties that the said statute held the field when the vacancy of the Principal of the college occurred on 30th June, 1993. The said statute reads as under:

13.20: When the office of the Principal of an affiliated college falls vacant, the Management may appoint any teacher to officiate as Principal for a period of three months or until the appointment of a regular Principal, whichever is earlier. If one or before the expiry of the period of three months, any regular Principal is not appointed or such a Principal does not assume office, the senior-most teacher in the college shall officiate as Principal of such college until a regular Principal is appointed.

8. It is not in dispute between the parties that the office of the Principal of college to which all the three contestants belonged fell vacant from 1st July, 1993 and on the expiry of three months from that date no regular Principal came to be appointed. It is pertinent to note that even till date no regular Principal has become available to take over the charge of the college as Principal. We are told that the relevant recruiting agency for the said purpose has already selected a candidate for the said post who is other than any of the three contestants before us. But even his appointment is held up because of a pending litigation in Allahabad High Court. Be that as it may a situation has emerged and has continued to operate qua the college in question, wherein Statute 13.20 has continued to operate all through out till date. It is, therefore, necessary to find out as to who is the senior--most teacher in this college amongst the three contestants who can legally officiate as Principal of this college which is an affiliated college. Statute 11.34 in Part V of the statutes dealing with seniority of teachers in affiliated colleges would become relevant for this exercise. It reads as under:

11.34: Subject to the provision of this Statute the seniority of teachers in a particular college shall be determined by the length of service in that college in the same cadre and by the same grade.

9. For applicability of this statute it has to be found out as to who was the senior-most teacher in this college belonging to the same cadre and having the same grade of pay when the vacancy of Principal arose on the expiry of three months from 1st July, 1993 i.e. from 1st October, 1993. It is seen from the aforesaid service bio-data of all the three contestants that all of them were working in the cadre of senior lecturers and were drawing the same emoluments in the grade of Rs. 3700-5700 on 1.10.1993. Then the next question arises as to who was the senior-most amongst them in the cadre of senior lecturers in this college. So far as contestant Dr. Rajvir Singh is concerned, the answer is obvious. He was designated as senior lecturer from 31.1.86 as compared to the common appellant Dr. Mahak Singh and the common respondent No. 3 Dr. S.P. Singh. He naturally, therefore, gets weeded out by these two seniors of his in the cadre of senior lecturers as both of them were senior to him by atleast 30 days on the principle of continuous officiation as senior lecturers. That removes Dr. Rajvir Singh from the array of contest for the post of Acting Principal on the combined operation of Statutes 13.20 and 11.34. However, strong reliance was placed by learned Counsel for Dr. Rajvir Singh on Statute 18.05 read with statute 18.16

which read as under:

18.05: The following rules shall be followed in determining the seniority of teachers of the University-

(a) A Professor shall be deemed senior to every Reader, and a Reader shall be deemed senior to every Lecturer.

18.16: The provisions of Statutes 18.01, 18.02, 18.05 and 18.08 shall mutatis mutandis apply to the teachers and Principals of affiliated colleges as they apply to the teachers of the University.

10. On the basis of these statutes it was submitted on behalf of Dr. Rajvir Singh that even though the relevant statutes found in Chapter XVIII deal with seniority of teachers of University atleast Statute 18.05 would mutatis mutandis apply to the teachers and principal of affiliated college to which all the three contestants belonged. To that extent he is right. However, the question is whether in the college to which the contestants belonged where the vacancy of Principal occurred, was there any reader who could rank senior to a lecturer so that Statute 18.05 could be effectively pressed in service by Dr. Rajvir Singh. The said question is to be answered in the negative for the simple reason that on the date on which the vacancy of Principal occurred, as aforesaid, Dr. Rajvir Singh had no longer remained a reader but he was designated as a senior lecturer. In past he might have been a reader but it became a matter of history for him as though he was designated as reader and Head of the Department on 9.7.66 with passage of two decades by 1986 he became a lecturer from 1.1.86 and became a senior lecturer only from 31.1.86. Consequently Statute 18.05 cannot be of any assistance to him. This conclusion of ours will put Dr. Rajvir Singh, appellant in Civil Appeal No. 4616 of 1996 out of contest and his appeal would be liable to fail.

11. Then remain in the field of contest, the common appellant Dr. Mahak Singh and the common respondent No. 3 Dr. S.P. Singh whose claim has found favour with the High Court. So far as this contest is concerned, it must at once be stated agreeing with Shri Prashant Bhushan, learned Counsel for the appellant, Dr. Mahak Singh, that his client became a lecturer from 9.7.59 on a regular vacancy while respondent No. 3 who was appointed as lecturer on 9.7.59 was admittedly unqualified to be appointed as such on regular basis and he was granted relaxation of educational qualification only on 15th April, 1960 by the Executive Council of the University. Therefore, he can be said to have become a regular lecturer only from that date. It is now well settled that if a person is appointed irregularly on a post and if he is regularised later on his initial appointment would be treated as void and he will be considered to have been regularly appointed only from the date of such regularisation and would be treated as having entered in service from that date. In *Shitla Prasad Shukla Vs. State of U.P. and Others*, of the said Report a Bench of two learned Judges of this Court speaking through M.P. Thakkar, J. had made the following pertinent observations in this connection:

There is also one more dimension of the matter. Though the appellant was working as a lecturer, it was not under any authority of law for there is no provision which empowers the college to allow any unqualified person to teach or to appoint him as such in anticipation of his disqualification being removed in future. Till the exemption was granted appellant was not even a teacher in the eye of law though he was allowed to teach by the indulgence of the college authorities. The disqualification was removed only on July 23, 1983 when the Board granted the exemption. How could he have claimed seniority vis-a-vis respondents 5 and 6 who possessed the requisite qualifications and became regularly and lawfully appointed teachers much prior thereto?

12. It must therefore, be held that respondent No. 3 became a regular lecturer in this college from 15.4.1960 and appellant Dr. Mahak Singh on the other hand was a regular lecturer in this college from 9.7.59 and was therefore, senior to him. However, we are strictly not concerned with the initial seniority of these two contestants. We have to examine a situation that obtained when the vacancy of Principal arose i.e. on 1.10.1993. On that date the appellant as well as respondent No. 3 were working as senior lecturers in the same grade from the very same date i.e. from 1.1.1986. The question, therefore, arises as to who between them could be said to be senior so as to be entitled to be considered for being appointed as Acting Principal as per Statute 13.20 read with Statute 11.34 as both of them by that time had equal length of continuous officiation as senior lecturers and were in the same grade. In this connection two aspects assume importance. Firstly between the two who was senior in the light of the initial entry in the college as lecturer and secondly who between the two would be entitled to be considered for the post of Acting Principal which is a stop-gap arrangement awaiting the duly selected Principal. So far as the first aspect is concerned as we have seen above the appellant was definitely senior to respondent No. 3 as a lecturer. However, the more important question is when the appellant and respondent No. 3 were equally placed in the grade of senior lecturers and were officiating as such from the very same date, who between them would be entitled to become the Acting Principal. For answering this question the general bio-data of both of them apart from their service bio-data would assume importance especially when we are examining the rival claims in appeals under Article 136 of the Constitution. So far as this aspect is concerned, our attention was invited by the learned Counsel for respondent No. 3 to the counter affidavit filed on behalf of respondent No. 3 in the special leave petitions from which these appeals arise. In paragraph 20 of the said counter, it has been averred that the credentials of the writ petitioner i.e. (present appellant) are themselves not impeccable and unimpeachable. The petitioner (the appellant) has several criminal cases registered against him in the town of Baraut itself, including one u/s 302, IPC registered in Meerut, the particulars of which are annexed at Annexure-C. When we turn to Annexure-C we find the following particulars:

LIST OF CRIMINAL CASES PENDING AGAINST SHRI MAHAK SINGH IN BARAUT

1. FIR No. 167/82 u/s 147/ 148/ 149/ 307/ 324 IPC.
2. FIR No. 185/82 u/s 326 IPC.
3. FIR No. 282/87 u/s 147/ 148/ 149/ 307/ 302 IPC.
4. FIR No. 191/88 u/s 147/ 148/ 149/ 307/ 323/ 171 IPC.
5. FIR No. 196/88 u/s 307/ 34 IPC.
6. FIR No. 299/80 u/s 147/ 324/ 323/ 426 IPC.

13. Learned Counsel for the appellant joined issue on this aspect and invited our attention to paragraph 8 of the rejoinder affidavit of the appellant at page 115 of the paper book which reads as under:

As regards the respondent's attempt to show that the petitioner has several criminal cases pending against him, this charge of the respondent is malicious and misleading. It is pointed out that the petitioner has been involved in public life and has been an M.L.A. to the Legislative Assembly in 1991. The petitioner, therefore, has various political rivals who lodged false complaints against the petitioner. Out of the six FIRs mentioned, the petitioner is aware of only the first five. Out of these FIRs at item 1, 2, 4 and 5, the charges against the petitioner were found to be false and there is no proceedings pending in respect of the same. At No. 3 involves a false complaint against the petitioner which was made eight years ago. The case is still pending for more than eight years though the charge against the petitioner is totally baseless and the petitioner is accused of offence in the village at a time when the petitioner was attending a sports function in the college.

14. It becomes, therefore, clear that from year 1980 onwards the appellant was involved in so many criminal cases in connection with offences under Indian Penal Code. All the alleged offences were against human body and they ranged from alleged offences under Sections 324 326 and 426 and extending upto offences under Sections 307 147 148 149 and even Section 302 IPC We may take it as submitted by the learned Counsel for the appellant that out of the listed six cases in Annexure-C to the counter affidavit or respondent No. 3, the appellant was discharged in all the cases except one u/s 302 IPC which is still pending since number of years. On our further enquiry we were informed by learned Counsel for the appellant as well as respondent No. 3 that the criminal case regarding offence u/s 302 IPC which is at the stage of evidence before the Sessions Court, the appellant is accused of an offence of double murder alleged to have been committed by inflicting gun shots on the deceased. We are not concerned with the merits of the said controversy as learned Counsel for the appellant contended that this is totally a false case foisted upon the appellant by his political rivals as he was an active political worker who subsequently became a Member of Legislative Assembly. Be that as it may when the question arises as to who should be the Acting Principal of the Degree College wherein apart from administrative duties, the Principal being the head of the institution has to act as

a model for the students, and especially when both the appellant and respondent No. 3 are equally placed and situated as senior lecturers drawing the same pay scale and officiating from the very same day, equity would tilt the balance against the appellant as admittedly he is at present facing a charge of double murder u/s 302 IPC. When such is the bio-data of the appellant at least he can be said to be under a cloud of a serious criminal charge. Consequently even assuming that both the appellant and respondent No. 3 are otherwise equally situated from the point of view of seniority as senior lecturers and that the initial entry as a lecturer makes the appellant senior to respondent No. 3, even then in our view while exercising jurisdiction in appeal under Article 136, we would be loath to give any relief to the appellant so as to entitle him to work as Acting Principal of the Degree College when he is facing the charge of double murder. We obviously cannot and do not express any opinion on his culpability but at least this involvement and cloud affect his credentials for being considered as a suitable candidate for the post of acting Principal of the college wherein students have to be taught discipline and are to be equipped with knowledge, expertise and higher values of life so as to make them better citizens. For acting as the head of the institution, therefore, in the light of the aforesaid peculiar facts of the situation, in our view, the appellant would not be entitled to get the balance tilted in his favour even assuming that he was senior to respondent No. 3 initially as a lecturer. We also make it clear that this assessment is also confined to the limited question as to who would be considered senior for the purpose of being appointed as Acting Principal under statute 13.20. Once the High Court has taken the view that between the appellant and respondent No. 3, respondent No. 3 is entitled to be appointed as Acting Principal under the said statute, and once we find that the appellant is not entitled to relief at our hands in view of the peculiar facts and circumstances in which he is placed as indicated hereinabove, no case is made out by the appellant for our interference under Article 136 of the Constitution of India in the present proceedings.

15. As a result of the aforesaid discussion Civil Appeals Nos. 4613-4614 of 1996 filed by the appellant Dr. Mahak Singh fail and will stand dismissed. Similarly Civil Appeal No. 4616 of 1996 filed by Dr. Rajvir Singh will also stand dismissed. In the facts and circumstances of the case, there shall be no order as to costs in all these appeals.