

(2011) 01 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2321 of 2011

Dr. Mohan Prasad Pathak

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 3 ADJ 16 : (2011) 5 AWC 4875 : (2011) 130 FLR 67

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri D.N. Pandey for the Petitioner. Sri K.R.S Jadaun appears for the Banaras Hindu University - Respondent Nos. 1 and 2.

2. The Petitioner is serving as Research Assistant in the Faculty of Commerce, Banaras Hindu University, Varanasi. By this writ petition, he prayed for the following reliefs:

(i) issue writ order/direction in nature of mandamus commanding Respondents not to give effect to the advertisement No. 01/2009-2010 Code No. 101 to the extent of teacher on which the Petitioner was teaching since long.

(ii) Issue any such writ order/direction as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case.

3. The Petitioner had joined as Petitioner No. 7 in writ petition No. 339 of 1985 for treating Research Assistant, Physical Instructor, and Tutor as teachers, and to give them all benefits including pay and allowances as teacher. The writ petition was initially dismissed. The Supreme Court remanded the matter by an order dated 16.12.1996, on which the writ petition was heard and decided in favour of the Petitioners with following reliefs:

We are of the view that if the Demonstrators, Physical Instructors and Tutors can be recommended by the Academic Council for selection as teacher it was not a

fair and reasonable action on the part of the Academic Council also not to consider the recommendations of Petitioners case for declaration as a teacher by Executive Council as the Petitioners have been performing the work of Lecturers. Since it is a dying cadre, the University should have treated them as a teacher as a special category with reasonable pay scale after all one joins the service to improve the career and at least they deserve two changes for promotion to next higher category. This view has been reiterated in Federation of Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others,

We, therefore hold that the Petitioners are teachers. We further Issue directions to treat them as teachers from the date of refusal of the same by the Academic Council. Other reliefs are disallowed in the facts and circumstances of the case.

We dispose of the writ petition in the light of above directions.

4. The judgment has become final. A contempt petition No. 4203 of 1999, for enforcing the directions given by the Court, is pending. The University has filed a counter-affidavit in the contempt petition.

5. The Petitioner has applied in pursuance to Advertisement No. 01/2009-10, Code No. 101, for selection on the post of Lecturer/Assistant Professor in the Faculty of Commerce. During pendency of the selection, he has filed this writ petition with prayers: "not to give effect to the advertisement No. 1/2009-10 Code No. 101, to the extent of teacher, on which the Petitioner is teaching since long", on the ground that as Research Assistant, he is discharging same duties as that of Lecturer, and is entitled to the same benefit of pay scale and allowances, and thus the post of "Assistant Professor," in the Faculty of Commerce, should not be filled up.

6. It is contended by the Petitioner that in pursuance to directions of the Court, apart from the benefit as a teacher, the Petitioner is entitled to be absorbed, and treated as Assistant Professor. According to him, the University is not authorized to treat the post as vacant, and to advertise it, to be filled up from the open market.

7. We have gone through the judgment dated 28.7.1998, and do not find any directions given by the Court to either regularize the services of the Petitioner or similarly situate persons working as Research Assistant, Demonstrator, Tutor or consider them for absorption in the vacancies on the post of Assistant Professor. The Petitioner's claim was based on "equal pay for equal work". The Court considered the claim and held that since the Petitioners are discharging the same duties and functions as teacher, they should be treated by the University as teachers, as a special category, with reasonable pay scale, and opportunities to improve their career. The Court also observed that they should be given two chance for promotion to next higher category.

8. The directions to treat the Research Assistants, Physical Instructors and Tutors

as teachers do not make them entitled to be adjusted or regularized as Assistant Professor for which a detailed procedure for selection is provided under the Statutes of the University. Every person claiming for regular appointment, as a teacher of the University, has to be eligible for such appointment and has to face selections to be made by statutory committees consisting of experts. The selection is an all India selection, in which all eligible persons are entitled to compete. The rules for reservation are also applicable to the selection. The direction to treat the Petitioner as teacher for the purposes of pay and allowances, and to be treated as special category teacher with reasonable pay scale, and chances of promotion cannot be treated, as directions to regularise or absorb them on existing vacancies of Assistant Professors.

9. For the reasons as stated above, and also on the ground that the Petitioner has applied for selection as Assistant Professor in pursuance to impugned advertisement, we do not propose to interfere with the writ petition.

10. The writ petition is dismissed.