
(2012) 03 AHC CK 0216
In the Allahabad High Court
Case No : Writ A. No. 53776 of 2010

Dr. (Mrs.) Bandana Bose

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Banaras Hindu University Act, 1915 — Section 17(4)

Citation : (2012) 3 ADJ 478

Hon'ble Judges : Sunil Ambwani, J; Manoj Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble Manoj Misra, J.—The dispute in the present writ petition relates to Headship of the Department of Plant Physiology, Institute of Agricultural Science, Banaras Hindu University, Varanasi.

2. The facts, largely undisputed, are that in the Department of Plant Physiology of the Institute of Agricultural Sciences, Banaras Hindu University, Varanasi, at the relevant time, there were three Professors. The petitioner was the seniormost, followed by Professor J.P. Srivastava and Professor A. Hemanta Ranjan, who was appointed as Professor w.e.f 27.06.2006. The Headship of a Department of Banaras Hindu University is governed by Statute 25 of the First Statutes of the Banaras Hindu University, which is being reproduced below:-

25. Department/Faculties

(1) The Departments of Studies in the University and the Faculties relating thereto are set out in the annexure to this schedule.

(2) No Department shall be established, reconstituted, amalgamated with another, or devided or abolished except in accordance with the provisions of these Statutes.

(3) Each Department shall consist of the following members, namely:-

- (i) Teachers of the Department;
- (ii) Persons conducting research in the Department;
- (iii) Dean of the Faculty or Deans of the Faculties concerned;
- (iv) Honorary Professors, if any, attached to the Departments;
- (v) Such other persons as may be members of Departments in accordance with the provisions of the Ordinances.

(4) (1) Each Department shall have Head whose duties, functions and conditions of appointments shall be laid down by the Ordinances.

(2) In the case of Departments having the sanctioned strength of more than one Professor, the Vice-Chancellor shall appoint one of the Professors by rotation according to seniority as the Head of Department for a specified period as laid down in the Ordinances.

Provided that, if at any particular time, such Department in effect has only one Professor, the Vice-Chancellor shall appoint the Head of Department in accordance with the provisions given in Clause (3).

Provided further that a Professor/Reader who has been the Head of Department earlier or who declined the option under Clause (5) shall not be reappointed until all the Professor/Reader as the case may be in the Department have been duly considered.

Provided further that in the event of Professor/Reader not being available at the time of commencement of his tenure, the Professor/Reader, as the case may be, next in order of seniority shall be appointed as Head of Department and the tenure of such as were not available shall commence after the expiry of the term of the Professor/Reader appointed in his absence.

(3) In the case of the Departments which have the sanctioned strength of only one Professor, the Vice-Chancellor shall first appoint the Professor as the Head of Department and thereafter one of the Readers from amongst the two senior-most Readers by rotation according to seniority for a specified period as laid down in the Ordinances. After the term of the Readers is over the Professor would again be appointed as the Head and the rotation would continue.

(4) In the case of Departments where there is no Professor, the Vice-Chancellor shall appoint one of the Readers from amongst the two senior-most Readers by rotation according to seniority, as the Head of the Department for a specified period as laid down in the Ordinances.

(5) Any Professor or Reader shall have the option to resign the Headship at any time during his tenure or also to decline the offer of appointment on his turn as Head of the Department.

(6) If no Professor or Reader is appointed Head of the Department or when the

place of the Head of the Department is vacant for any reason the Dean of the Faculty concerned shall act as the Head of the Department.

(7) Notwithstanding anything contrary contained anywhere in these statutes, whenever the Vice-Chancellor is satisfied that appointment of a person, whose appointment is due on the basis of seniority as the Head of the Department, will not be in the overall interest of the Department he may, with the prior approval of the Executive Council, appoint another Professor or Reader next in seniority, as the case may be, as the Head of the Department.

(8) Notwithstanding anything contained to the contrary in these statutes. Faculties consisting of a single Department the office of the Head and the office of the Dean shall continue to be "held conjointly.

Provided that in the event of Professor exercising his option to resign from the Headship or declining the offer of the appointment as Head of Department under Clause (5), his term as Dean shall also come to an end notwithstanding the provisions of para 30 of the Statutes.

(9) If any dispute or doubt arises about the interpretation of these Statutes, the same shall be referred to the Executive Council and the decision of the Executive Council shall be final.

(10) These amended Statutes shall be deemed to have come into force w.e.f 4th April, 1984.

3. Clause (4) of the Statute 25 provides that each department shall have a Head whose duties, functions and conditions of appointments shall be laid down by the Ordinances. Sub-Clause (2) of Clause (4) of Statute 25 provides that in the case of Department having a sanctioned strength of more than one Professor, the Vice-Chancellor shall appoint one of the Professors by rotation according to seniority as the Head of the Department for a specified period as laid down in the Ordinances. Proviso (2) to Subclause (2) of Clause (4) of Statute 25 provides that a Professor/Reader who has been the Head of the Department earlier or who declined the option under Clause (5) shall not be reappointed until all the Professor/Reader as the case may be in the Department have been duly considered. The Proviso (3) to Sub-clause (2) of Clause (4) of Statute 25 provides that in the event of Professor/Reader not being available at the time of commencement of his tenure, the Professor/Reader, as the case may be, next in order of seniority shall be appointed as Head of the Department and the tenure of such as were not available shall commence after the expiry of the term of the Professor/Reader appointed in his absence.

4. In the instant case, the petitioner was appointed Head of the Department of Plant Physiology with effect from 01.06.1998 to 31.05.2001. Thereafter, Dr. J.P. Srivastava, who was the Professor junior to the petitioner, was appointed from 01.06.2001 to 31.05.2004. Since, there were only two Professors on the date when the tenure of Dr. J.P. Srivastava came to an end, again the petitioner was

appointed for a period of three years as the Head of the Department. During the continuance of the petitioner as the Head of the Department, Sri A. Hemanta Ranjan was appointed as Professor in the Department of Plant Physiology w.e.f 27.06.2006. Therefore, by applying the proviso (2) to Sub-clause (2) of Clause (4) of Statute 25, Professor A. Hemanta Ranjan was appointed as the Head of the Department of Plant Physiology w.e.f 01.06.2007, that is, from the date when the tenure of the petitioner came to an end. After the expiry of the term of Headship of Professor A. Hemanta Ranjan, the Vice-Chancellor appointed Professor Dr. J.P. Srivastava as the Head of the Department of Plant Physiology for a period of three years w.e.f 01.06.2010. It is this appointment which the petitioner has challenged in the present petition.

5. The petitioner claims that the appointment of Dr. J.P. Srivastava, as the Head, was in violation of the rule of seniority as enshrined in sub clause (2) of clause (4) of the Statute 25, inasmuch as by the appointment of A. Hemanta Ranjan as Professor of the Department of Plant Physiology, a new rotational cycle came into existence, and since the petitioner was the senior-most, she should have been made the Head of the Department in preference to Professor Dr. J.P. Srivastava.

6. Before coming to this Court, the petitioner had represented to the Vice-Chancellor as well as the Chairman, Executive Council, Banaras Hindu University against the appointment of Professor Dr. J.P. Srivastava. The representation of the petitioner was placed before the Executive Council and the decision of the Executive Council was communicated to the petitioner by the letter dated 12/13.08.2010 of the Deputy Registrar, General Administration. The contents of which are being reproduced below:-

R/GAD/II-HOD(1266)/XII-4/2086/

Dated 12th August 2010

Professor (Mrs.) Bandana Bose

CONFIDENTIAL

"Department of Plant Physiology Institute of Agricultural Sciences Banaras Hindu University

Subject: Appointment of the Head of the Department of Plant Physiology, Institute of Agricultural "Sciences-regarding

Madam,

This has reference to your representation dated 28.05.2010 and subsequent representation dated 29.05.2010 addressed to the Vice-Chancellor on the subject cited above.

In this connection, after deliberating over the issue at length, the Executive Council vide ECR no. 176 dated 23 June 2010 resolved that since the appointment of the Head of the Department of Plant Physiology, Institute of

Agricultural Sciences was made in terms of the provision of Statute 25(4) 2 and as per the practice of rotation followed by the University in such cases, your representations dated May 28 and 29, 2010 be rejected not being accordance with the practice of rotation followed in the University and disposed off accordingly.

I am therefore directed to inform you that your request to rescind the appointment of Prof. J.P. Srivastava as Head of the Department of Plant Physiology and to appoint you for the same has not been acceded to.

This is for your information.

Yours faithfully DEPUTY REGISTRAR GENERAL ADMINISTRATION

7. We have heard Sri R.N. Singh, Senior Advocate, assisted by Sri G.K. Singh, Advocate for the petitioner and Sri K.S. Chauhan, Advocate for the respondents.

8. Sri R.N. Singh, learned senior counsel, contended that the decision to appoint Professor J.P. Srivastava as the Head of the Department after the end of the tenure of Professor A. Hemanta Ranjan was in gross-violation of Subclause (2) of Clause (4) of Statute 25 of the Banaras Hindu University. He contended that when there were only two Professors, namely, the petitioner and Professor J.P. Srivastava, the rotational cycle was between the two of them. Consequent to the appointment of Professor A. Hemanta Ranjan, the rotational cycle expanded to three Professors. The appointment of Professor A. Hemanta Ranjan w.e.f 01.06.2007, ahead of Professor J.P. Srivastava, was in view of the Proviso (2) to Sub-clause (2) of Clause (4) of Statute 25 of the Banaras Hindu University. However, once the tenure of Professor A. Hemanta Ranjan came to an end, a new rotational cycle commenced amongst the three Professors, and since the petitioner was the senior-most, therefore, she should have been appointed as the Head of the Department. He further contended that it was only after the tenure of the petitioner, that Professor J.P. Srivastava could have been appointed.

9. Per contra, Sri K.S. Chauhan, appearing for the respondents contended that the principle of rotation necessarily involves an equal chance to all the eligible members of the department. He contended that the rotational cycle started with the appointment of the petitioner, which was followed by the appointment of Professor J.P. Srivastava, the second senior-most Professor. Since there were only two Professors till the end of the period of Dr. J.P. Srivastava, the petitioner again got chance to Headship by the principle of rotation. However, after the chance of the petitioner, it was the turn of Dr. J.P. Srivastava, whose chance for Headship got delayed consequent to the appointment of Professor A. Hemanta Ranjan, who had to be given chance by virtue of the proviso (2) to Sub-clause (2) of Clause (4) of Statute 25. Accordingly, after the tenure of Professor A. Hemanta Ranjan, Professor Dr. J.P. Srivastava was given the Headship in accordance with the principle of rotation so as to complete the cycle, that started with the appointment of the petitioner. Sri K.S. Chauhan further contended that if the contention of the petitioner is accepted then the very principle of rotation

would be negated.

10. Having considered the submissions made on behalf of the respective parties, we are of the view that to understand the principle of rotation, it is necessary for us to examine the dictionary meaning of the word rotation.

11. As per the Oxford Universal Dictionary (Illustrated) 3rd Edition, the word "rotation" means :- (a) the action of moving round a centre, or a turning round (and round) on a axis; also, the action of producing a motion of this kind. (2) The act of coming round again in succession; return or recurrence; a recurring series or period 1610; (b) regular and recurring succession in office, duties, etc., of a number of persons; (c) a change or succession of crops in a certain order on a given piece of ground, in order to avoid the exhaustion of soil. The dictionary meaning of the word "rotation" as contained in Websters New 20th Century Dictionary, 1953 Edition is:- (a) the act of turning, as a wheel or solid body on its axis, as distinguished from the progressive motion of a body revolving round another body or a distant point; (2) vicissitude of succession; the course by which those in office leave their places at certain times, and are succeeded by others; change by alternation; apply also to crops. In P.G. Joshi and Others Vs. The Director General, Posts and Telegraphs, New Delhi and Others, , the Apex Court while explaining the expression "rotational transfer", in paragraph 17, observed as follows:

17. A reference to rule 60 would make it clear that it does not speak of rotational transfers. All that the rule provides is that posts included under the rule "should not be occupied by the same officials continuously for more than the period shown against each." But, as the decision of the Government dated November 15, 1958 directs that these posts should be included under rule 60 and since the decision is that these posts should be treated like other posts for which rotational transfers are prescribed, we will proceed on the assumption that that rule deals with rotational transfers. But what follows ? The dictionary meaning of "rotational" is: regular and recurring; succession in office or duties. An element of rotation must be involved in rotational transfer. But what is the rotation if this submission is accepted? It was submitted that the expression "rotational transfer" means transfer from one place to another place and from one division to another division, but in the same cadre. Even if the submission is accepted, it would not in any way change the position, for, as we have already seen, the posts of Wireless Licence Inspectors and Town Inspectors form part and parcel of the clerical cadre and, therefore, they will be rotated only in clerical posts which are in the same cadre. Nor do we think that the expression rotational transfer" means transfer from one place to another or from one division to another but in the same post. In our view, the expression, in the context. can only mean transfer from one post to another and, after the member has spent some time in the post to which he has been transferred, he should be brought back to the original post. This would involve an element of rotation and this is precisely what has been done in the present case, namely, that the incumbents of the posts of

Wireless Licence Inspectors and Town Inspectors are being brought back to their original posts after the expiry of the period, namely, 3 years. As we said, Rule 60 only says that the posts included therein should not ordinarily be occupied by the same officials continuously for more than the period shown against each. It does not deal with the places in which an incumbent could be rotated. The expression "rotational transfer" has nothing to do with the right of the incumbents to hold the posts permanently. The purpose of including, these posts among the posts covered by Rule 60 was" not to affect the term of employment of the Wireless Licence Inspectors and Town Inspectors, but only to provide that they can occupy the posts only for the period specified, namely, 3 years at a time. The Director General of Posts and Telegraphs was competent to pass rule 279/4 and it is not in any way inconsistent with the decision of the Government of India dated November 15, 1958."

12. From the dictionary meaning of the word "rotation," as noticed by us, an appointment by rotation must necessarily involve appointment of each member of a group in a regular recurring manner. The cardinal principle underlying appointment of the Head of the Department by rotation from amongst the Professors of the Department is to give each of the Professors an equal chance to Headship. The question of seniority is relevant for selecting the first candidate, from amongst the two or more candidates, who have never been appointed as the Head of the Department. The cycle that starts with the appointment of the senior most must take a full circle with the successive appointments of all the eligible members. It is only after the appointment of all the eligible members that a new cycle would commence. Taking a view that a new cycle would begin consequent to the appointment of a new eligible candidate may create an absurd situation that may deprive the second senior-most person of having a second chance to hold the position of the Head of the Department, which would rather negate the equitable principle of rotation.

13. In our view the rotational cycle that commenced with the appointment of the petitioner, as the Head of the Department, would have come to an end only with the appointment of Professor Dr. J.P. Srivastava. It is only thereafter that a new rotational cycle would begin. The Executive Council of the University has also taken this stand, as would be apparent from the averments made in paragraph 7 of the counter-affidavit, duly sworn by Madhav Murthy, Sr. Assistant, Banaras Hindu University. The contents of which are being reproduced below:-

Dr. Bandana Bose was appointed Head of the Department of Plant Physiology for the period from 01.06.1998 to 31.05.2001 & from 01.06.2004 to 31.05.2007 and Dr. J.P. Srivastava from 01.06.2001 to 31.05.2004 on rotation basis in terms of the provisions of Statute 25(4) 2 and 25(4) 3.

However, when the term of Headship of Prof. Bandana Bose was over on 31.05.2007, Prof. J.P. Srivastava was next in turn for headship but he could not be offered Headship again because in the meantime Prof. A. Hemanta Ranjan was appointed as Professor w.e.f 27.06.2006, and since Prof. J.P. Srivastava had

already availed the headship before. Therefore, Prof. A. Hemanta Ranjan was appointed as Head of the Department of Plant Physiology, Institute of Agricultural Sciences, Banaras Hindu University with effect from 01.06.2007 for a period of three years under the provision of Statute 25(4) 2.

After the expiry of term of Headship of Prof. A. Hemanta Ranjan, the Vice-Chancellor in exercise of powers conferred under Statute 25(4) 2, quoted earlier, appointed Prof. J.P. Srivastava as next of the Department of Plant Physiology, Institute of Agricultural Sciences, Banaras Hindu University, for a period of three years w.e.f 01.06.2010. This was done in view of the fact that when the last term of headship of Dr. Bandana Bose was over, Dr. J.P. Srivastava was due for appointment as next head in the rotation as per seniority but since in the meantime Dr. A. Hemanta Ranjan became Professor and he had never availed the headship, he was appointed as next head in rotation under the orders of the Vice-Chancellor. This practice is uniformly followed across the University in such cases."

The Executive Council after deliberating over the issue at length resolved as Under:-

Resolved that since the appointment of the Head of the Department of Plant Physiology, Institute of Agricultural Sciences was made in terms of the Provision of Statute 25(4)2 and as per the practice of rotation followed by the University in such cases, the representations dated May 28 and 29, 2010 of Prof.(Mrs.) Bandana Bose be rejected not being in accordance with the practice of rotation followed in the University and disposed of accordingly.

Resolved further that in order to have clarity in provision of the Statute 25(4) 2 the following provision be added in Statute 25(4) 2.

When at a point of time new appointment (s) of Professors/Readers are made, whenever the headship of a department falls vacant, the offer of headship be given. In order of seniority, to the newly appointed Professors/Readers without considering all those otherwise eligible teachers who have got headship in the past or declined headship in the past till all new Professors/Readers have been considered as specified in the Clause 25(4) 2. When all eligible new Professors/Readers have been considered, the headship be, in accordance with seniority, offered to to all those who were by passed as above before the headship is offered to the senior most Professor of the department.

Resolved still further that the amendments proposed in Statute be submitted to the Ministry of Human Resource Development for obtaining previous approval of the Visitor u/s 7(4) of the Banaras Hindu University Act .

14. For the aforesaid reasons, we are of the view that the University neither acted in an arbitrary manner nor misinterpreted the provisions of Statute 25(4) (2) of the First Statutes of the University in appointing Professor Dr. J.P. Srivastava as the Head of the Department of Plant Physiology of the Institute of

Agricultural Sciences, B.H.U, after the tenure of Professor A. Hemanta Ranjan had came to an end. The petition, therefore, lacks merit and is hereby dismissed.

15. There shall be no order as to costs.

16. I agree.