
(2005) 08 DEL CK 0048

In the Delhi High Court

Case No : WP (C) No"s. 3750 of 2002 and 6734-57 of 2005

Dr. (Mrs.) Suman Bala Sharma

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 08 DEL CK 0048

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Anil Gupta and Bijender Singh, for the Appellant; S.K. Luthra, and Bikash Kar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner, in these proceedings under Article 226 of the Constitution of India, challenges her seniority fixed by the respondent University. She seeks a direction to quash the order dated 26.04.2002 and also another, to consider her senior to respondent No. 2.

2. The petitioner and the second respondent applied for the post of Reader in Bio-Chemistry, in the University College of Medical Sciences (hereafter "UCMS") which is under the control of the Delhi University. They were both interviewed, and selected. The Minutes of Meeting of the Executive Council, of the University dated 31st July 1992 recorded approval of their names and recommended appointment, to the post of Reader, in Bio Chemistry in the UCMS. Their names appeared in the sub heading 12 of Item 82, which dealt with recommendations of various Selection Committees. The respondent University issued a letter of appointment on 05.08.92 to both the petitioner and the respondent No. 2 requiring them to join, and give acceptance latest by 22nd August 1992. The petitioner joined on 22nd August 1992. The second respondent joined later, on 28th October 1992.

3. It is averred that on account of the petitioner having joined earlier and also on account of her seniority in age, she was granted the seniority over the second respondent and selected Member of the Faculty of Medical Sciences (An Advisory body to the University) under the Statutes, for a term of three years on 15th February 1999. It is averred that the petitioner and the respondent both appeared for interview to the post of Professor in the Department of Bio Chemistry on 28.03.2001; the selection committee recommended their names along with one Dr. J.K. Gambhir. The order communicated by the Selection Committee was as follows:-

1. Dr. J.K. Gambhir, w.e.f. 27.07.98

2. Dr. S.B. Sharma (the petitioner) w.e.f. 22.08.2000

3. Dr. B.D. Banerjee (second respondent here) w.e.f. 28.10.2000

4. It is averred that the promotion was purely on merits after a thorough interview. The order of promotion was communicated to the petitioner on 19th November 2001. It is alleged that despite these facts the second respondent had been claiming seniority over the petitioner on the basis of initial appointment to the post of Reader. The Assistant Registrar sought clarifications about the issue of seniority, on the basis of the facts, by letter dated 24-5-2001. After considering all relevant facts including the order of appointment, Minutes of the University and other records, the respondent University communicated its decision on 25-6-2001, that the petitioner's seniority ought to be maintained over the respondents both in the cadre of Reader as well as Professor. The order dated 25-6-2001 reads as follows:

"Consequent upon considering the cases at appropriate level, the University of Delhi has clarified vide letter referred to above, that in the light of the Provisions of Clause 37(i) of the Statute and Clause 11 (ii) of Ordinance 11 of the University, the Seniority of Dr Mrs. S.B. Sharma be maintained over Dr. B.D. Banerjee in the cadre or Reader as well as Professor."

4. The second respondent continued to represent against the seniority and by order dated 26-4-2002, the University communicated supersession of the letter/order dated 25-6-2001 and stated as follows:

"The interest seniority between the two in the post of Reader will remain unchanged in the post of Professor. Accordingly the seniority of Dr. B.D. Banerjee over Dr. (Mrs.) Suman Bala Sharma will continue unchanged. "

5. The petitioner unsuccessfully represented against the order dated 26-4-2002. Hence she approached this court for relief.

6. It is alleged that as per Ordinance XI (11) read with Statute 37(1), the petitioner is entitled to seniority. This was recognized, by the respondent University, when she was made Member of the Faculty of Medicine, under the Delhi University under statute 9(3)(iv), as per statute 37 which postulates

membership of such authorities on the basis of seniority. The petitioner also avers, that upon her promotion as Professor she was placed in the grade with effect from an earlier date and Therefore took her seniority on that basis. All these were reviewed by the University, which had determined her seniority on the basis of the order dated 25-6-2001. However that order was superseded by the impugned order dated 26-4-2002 without any fresh material or an opportunity of hearing, to the petitioner. The impugned order is Therefore illegal and arbitrary.

7. The respondent University, in its counter affidavit, relied upon Ordinance XI (11), which deals with seniority to say that both petitioner and second respondent were recommended on the same date in cadre of Reader. The seniority had to be fixed on the merit assigned as per Clause (i) provided both the selected candidates joined within three months. The University has taken the position that the petitioner's appointment to the Faculty of Medical Sciences was apparently made in 1999 inadvertently, or by mistake. It is also averred that the Petitioner's promotion as Professor was under the Merit Promotion Scheme and that the seniority in the grade of Professor had to be on the basis of the ranking assigned in the lower cadre, namely that of Reader. Since the seniority in the cadre of Reader of the second respondent was ranked higher, the application of Statute 37(1), the sole basis of the order, dated 25.06.2001 determining the petitioner's seniority, was wrong. Accordingly, when the second respondent represented, the matter was re-examined and the original position was restored; the impugned order correctly reflected that respondent's seniority over the petitioner.

8. During the course of proceedings, the respondent University also filed an additional affidavit on 21st August 2002 pursuant to a query raised by the Court about the nature of promotion earned under the Merit Promotion Scheme and its impact upon seniority. It was averred that the existing seniority as determined in terms of Ordinance XI (11), in the lower grade remained unchanged.

9. The petitioner had filed an additional affidavit dated 17th November 2003, refuting the stand of the respondents. It was stated that a draft seniority list had been prepared in March 1994 and forwarded to the University; copies of that list and the subsequent draft list were produced as Annexures P- 23 to 25. In these lists, the petitioner was shown as senior to the second respondent.

10. During the course of proceedings, UCMS was added as a party. It filed its affidavit on 19th November 2003. It stated that initially the petitioner was shown as senior, in the cadre of Reader. Apparently, some clarifications were sought which led to letter dated 7th May 1994 by the Deputy Registrar stating that the respondent should be shown as senior. It is also averred that the correspondence leading up to this letter/order was not available. UCMS has produced two seniority lists dated 15.12.94 and 18.1.99, to say that at that period in time, the second respondent was shown as the petitioner's senior. These were apparently forwarded to the University College of Medical Sciences from the GTB Hospital

with a request that they ought to be transmitted to the University of Delhi. The second respondent also filed an affidavit. He too relied on a seniority list dated 18.1.99 and said that at all relevant times, the petitioner was shown as his junior. In the additional affidavit, he has stated that promotion under the Merit Promotion Scheme did not result in assignment of a new seniority and that ranking assigned in the lower grade of Reader had to be followed. The relevant provisions, namely, Ordinance XI (11) and Statute 37(1) are extracted below for the sake of convenience:-

"Ordinance XI

11. The Seniority of a teacher in a particular discipline, for membership of the Committee of Courses, of Departmental Committees, and such similar Committees shall be determined in accordance with the following principles :

i) Where two or more teachers are selected at the same time for appointment, then according to the ranking given by the Selection Committee provided that the date of joining in case of the teacher who has been ranked higher is not later than 3 months from the date of issue of the appointment letter to him.

ii) Where no ranking has been indicated by the selection Committee and two or more teachers join on one and the same date;

(a) in case such teachers are appointed from a lower post to a higher post, then according to their seniority interest in the immediate lower cadre, and

(b) in any other case, according to the age of the persons joining, the old person being deemed senior.

iii) Save in the cases covered by sub-clauses (i) and (ii) according to the date of joining of the teacher concerned.

XXXX XXXX XXXX XXXX XXXX (I) Whenever, in accordance with these Statutes, any person is to hold an office or be a member of any Authority of the University by rotation, according to seniority such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such person in his grade or post, as the case may be, and in accordance with such other principles as the Executive Council may, from time to time, prescribe."

11. The records of the University were produced. They contain a note dated 19.12.2001 which noticed Ordinance XI (11) and indicated that no order of preference had been shown by the Selection Committee, for recommending appointment to the post of Reader and that the petitioner had joined the post earlier to the second respondent. This note recommended the petitioner's seniority additionally also in view of Statute 37, above the second respondent. That note dated 07.06.2001 was approved and the University; it issued the letter dated 25.06.2001. Subsequently, the second respondent preferred representations, which led to re-examination of the entire matter.

12. In the course of this re-examination, the letter of the Principal, UCMS dated 06.11.2001, was issued; it recorded that selection of the two candidates in 1992 was made without indicating an order of merit or an order of preference; it also indicated that the petitioner had joined earlier, was senior in age and was also recommended to the post of Professor earlier. The re-examination was premised upon the note, dated 19.12.2001, which essentially relied on the letter dated 07.05.1994; that it indicated the seniority of the parties and in the note, the respondent No. 2 was assigned a ranking above the petitioner.

13. Learned counsel for the petitioner, Mr. Anil Gupta, made three fold submissions. According to him, the petitioner was entitled to the benefit of Ordinance XI (11) and Statute 37. He firstly relied on the terms of the Minutes of the University, which approved the recommendations of the Selection Committee. Those Minutes were produced and are a part of the record. Learned counsel submitted that the Minutes themselves indicated an order of merit or preference, wherever the Selection Committee had assigned it. In the case of Reader of Bio Chemistry, however, no such ranking or merit had been indicated. The published minutes, which have to be followed, Therefore, say nothing about merit, apart from declaration of approval. The inter-se seniority of the parties, Therefore had to be worked out in accordance with Ordinance XI (11) (i) since the petitioner had joined earlier and was also senior to the second respondent.

14. Mr. Gupta also submitted that the petitioner's ranking above the second respondent was correctly maintained by the order dated 25.06.2001 and was illegally withdrawn. He submitted that this could not have been done without assigning any reasons or hearing the petitioner. No new material had been brought to the notice of the University and in fact neither the pleading nor the records disclose that any fresh development or order had been passed which required review of the letter dated 25.06.2001.

15. Learned counsel further submitted that the ranking published on 25.06.2001, was after a complete review of all the materials and that Statute 37(1) was rightly invoked. He submitted that the Faculty of Medical Science is an authority, and the petitioner's appointment to that body was on the basis of her admitted seniority. No one objected to it at that point in time, hence, the University and the UCMS could not be heard to say that the respondent No2 was senior to her.

16. Mr. S.K. Luthra, learned counsel appearing for the University and UCMS submitted that the petition is not maintainable in view of the fact that in the two published seniority lists of 1994 and 1999, in the cadre of Reader, no objection was raised as to the ranking, assigned in favor of the second respondent. He also submitted that the issue of seniority was sought to be re-opened on the basis of promotion made in the year 2001, w.e.f. August 2000, as far as the petitioner was concerned. That promotion, was, despite its nomenclature, not really a merit Promotion but was based upon determination of suitability. The promotion was on the basis of the scheme, which required it to be effective, the moment the candidate became eligible, upon completion of a requisite number of years of

service. It would Therefore not be a reflection of the merits of the candidate as is sought to be made out. Hence the petitioner could not have raised the issue of seniority over the respondent No. 2 after having been promoted as Professor.

17. Mr. Luthra further submitted that the fixation of seniority was as per letter 7.5.94, which was consistently followed; the petitioner did not object to this course of action. Hence, she cannot claim to be aggrieved in regard to fixation of seniority once, the settled position right from the year 1994 was maintained, by virtue of the impugned order. As far as the order dated 25.06.2001 is concerned, it was submitted that on the existing materials, the University passed the order under a mistake. Statute 37 merely enables a member of the teaching staff, to be appointed to an authority of the university; it was not one that dealt with seniority. The relevant provision dealing with seniority was Ordinance XI (11).

18. Learned counsel for the University and UCMS has relied upon the judgment reported as Dr. Kirpa Ram Mathur Vs. State of U.P. and Others, to say that the petitioner cannot claim relief since the merit and ranking assigned for the period of more than a decade was never questioned by her.

19. Learned counsel for the second respondent Mr.Gupta adopted the submissions made on behalf of the University. In addition, he sought to advance an argument that the petitioner was less qualified and, Therefore, assigned a position lower than the second respondent in the order of merit.

20. The above narration would show that admittedly both the petitioner and the second respondent were recommended together for appointment to the post of Reader. Again admittedly, the petitioner joined earlier, the second respondent joined later; equally the petitioner is senior in age and the second respondent is younger to her. After saying so, the points of agreement vanish. There is a divergence as far as the respective stands of parties are concerned. The petitioner states that Ordinance XI (11) (i) applies since she is senior and reported for duties earlier and that the published meeting of the University approving the selections, admittedly did not disclose any ranking. She also relies upon her appointment to the Faculty of Medical Sciences. On the other hand, the respondent stated that right from 1994, the seniority position stood settled which was only changed in June 2001 on some mistaken notions; the impugned order has merely rectified that.

21. The Minutes of the University dated 31st August to the extent they are relevant read as follows :-

"UNIVERSITY OF DELHI

MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL NO. 3

Friday, the 31st July, 1992 at 3.00 PM.

PRESENT

XXXX XXXX XXXX XXXX XXXX 82. Resolved that the following recommendations

of the selection committees be accepted :-

1. Reader in Sociology One Dr. Rabindra Ray be appointed to the post.
2. Lecturer in Law (Campus Law Center) Six (Five Temporary) that Shri Sunil Kumar Gupta be appointed to the permanent post of lecturer in Campus Law Centre, with three advance increments in the lecturer's grade. The Committee recommended that following be appointed, in order of preference, for the temporary posts:

XXXX XXXX XXXX XXXX XXXX 3. Lecturers in Law (Law Centre-I) -- Two of the following be appointed in order of preference :

1. Mr. D.S. Bedi
2. Dr. Poonam Pradhan

The committee also recommends that three increments in the grade of lecturer should be given to each.

4. Lecturer in Law (Law Centre-II)--- Two the following be appointed in order of preference/merit :

1. Mr. O.P. Sharma
2. Dr. Kiran Bala Jain.

The committee further recommends that each be given three increments in the lecturer's grade.

5. Lecturers in Japanese Language Two (Department of Chinese & Japanese Studies) the following be appointed :

Ms. Vimla Solomon. She may be given three advance increments and the other post be re-advertised.

XXXX XXXX XXXX XXXX XXXX

11. Reader in Anatomy for the UCMS (MPS) the following candidate be promoted :

1. Dr. Kamlesh Khatri
2. Dr. Madhur Gupta
3. Dr. (Mrs.) Jugesh Khanna
4. Dr. Santosh Kaur Sangari
5. Dr. (Mrs.) Mahinder Nagar

12. Reader in Biochemistry for the UCMS - Two the following be appointed :-

1. Dr. B.D. Banerjee

2.Dr. (Mrs.) Suman Bala Pachori."

XXXX XXXX XXXX XXXX XXXX

22. The university had filed an affidavit enclosing the Minutes of the Selection Committee dated 6th June 1992, which stood approved by the above Minutes of the University. The Committee did not indicate order of merit nor disclosed the basis for placing one or the other candidate at various positions.

23. In view of the above state of record, what ought to have followed was an application of Ordinance XI (11) and fixation of seniority of the petitioner over the second respondent. This view was again strengthened on the basis of the approved Minutes of the University dated 31.7.92, which clearly indicate the order of preference wherever Selection Committees had intended it to be so and maintained neutrality in regard to the other selections, leaving the seniority to be worked out on the basis of Rules.

24. The position however gets complex in view of two factors. The records also show that sometime in 1994, queries were raised about the correctness of the seniority and the matter had been referred which culminated in the drawing up of a list and forwarding it to the authorities, that year itself. The petitioner had also produced copies of a draft seniority list, the same year in which she has been shown as senior. She disputes the seniority list relied upon by the UCMS; it has been alleged by her that it was issued clandestinely due to connivance of an official inimically disposed to her, and that it was never issued. This fact was pleaded in the rejoinder. Even if these factors were to be ignored, the issuance of seniority list dated 18.01.99 has not been disputed. As per this seniority list, admittedly, the petitioner has been shown junior to the second respondent in the cadre of Reader. In her pleadings, particularly, rejoinder to counter affidavit of the second respondent the petitioner had admitted awareness of this document by stating that the seniority was changed in 1999-2000. The petition is significantly silent about the 1999 list. Nothing has been placed on record to show that the Petitioner protested or made representations to the effect that such ranking was illegal or being made unilaterally for the first time to her disadvantage. She appears to have represented, for revision in ranking, after being promoted as Professor, pursuant to the interview held in March 2001. The basis of her claim at that point in time seems to have been the assignment of a place over and above that of second respondent and also the date of effect given to the promotion, namely, 22.08.2000 as against the second respondent having been appointed w.e.f. October 2000.

25. The petitioner, Therefore, did not chose to project her grievance or agitate against the position in the seniority list of 1999 in which admittedly she was shown as junior to the second respondent in the cadre of Reader. She sought clarification only after the promotion was granted to her w.e.f. 22.8.2000, presumably, under the impression that her seniority had to be maintained over the second respondent on that basis.

26. As observed earlier, in the normal circumstances had these grievances been raised at an appropriate stage, the petitioner's claim to seniority over the second respondent in the present state of the record, would have been acceded to. None of the records bespeak of a ranking having been given by Selection Committee to the second respondent over and above the petitioner. That position was correctly reflected by the Minutes of the University, which indicated ranking/merit wherever recommended by the appropriate Selection Committee. The Minutes of the Selection Committee, in this case, also did not show comparative merit. Hence, the petitioner was perhaps entitled to lay claim to seniority over second respondent because she both reported earlier to him and was his senior in age.

27. As far as the claim of the petitioner based upon her appointment to the Faculty of Medical Sciences, under Statute 37 is concerned, it only gives a clue to the entitlement of a person for appointment to any authority in the University. This is relied upon, by the petitioner, to say since she alone was appointed as Member of the Faculty of Medical Sciences and that it is an admission of seniority. I am not persuaded to accept that view because Ordinance XI (11) deals with inter se seniority of candidates, recommended for appointment in the same Committee or are appointed on the same date. Ordinance XI (11) constitutes guidance as far as seniority of candidates is concerned. The statement of the petitioner, derivatively on the basis of her appointment to the Faculty of Medical Sciences cannot override the considerations that would weigh under Ordinance XI (11).

28. As far as the issue of seniority granted to the petitioner, based upon her promotion to the post of Professor is concerned, the reliance placed upon Statute 37, in the present case, is not justified. While there can be no quarrel about the order of promotion as Professor, indicated the date from which it took effect, it is clear from the records that such dates, as far as the petitioner and second respondent are concerned, were premised upon their having become eligible, after completing 8 years of service. The petitioner joined on 22.08.92 as Reader; she became eligible on 22.8.2000 and Therefore her promotion was made effective retrospectively from that date. Similarly, the second respondent joined on 28.10.92 and became eligible on 28.10.2000; his promotion too was made retrospectively effective from 28.10.2000. This ranking or assignment of the date appears to be peculiar to the Merit Promotion Scheme and in my considered opinion, cannot obliterate the inter se seniority or ranking as between two candidates in their previous cadre. The exception to this Rule would be however in cases where a candidate found unsuitable and senior in the lower cadre is recommended later. In such an eventuality, he cannot by operation of assignment of deemed date of appointment, steal a march over his junior, promoted on the basis of better records or suitability *Najma Siddiqui (Prof.) Vs. University of Delhi*, affirmed in LPA No. 26 and 48 of 1998 decided on 21.5.2001).

29. It has been held by the Supreme Court in several decisions that in matters of seniority and promotion, an aggrieved candidate ought to project his grievances

within reasonable time, and also approach the Court expeditiously Jagdish Lal and others Vs. State of Haryana and others,). In the present case, although on merits, the petitioner's claim is strong, yet the records disclose that she was aware about the respondent No. 2 having been treated as her senior sometime in 1998-99. Certain allegations have been leveled in so far as the seniority list of 1994 is concerned; it is averred that it was prepared by a Deputy Registrar who had animus against her, since he was her tenant and had fought a litigation against her. Even if those allegations were to be accepted, and the seniority list of 1994 were to be ignored, nevertheless the picture that emerges is that as of 1999 she was aware of the issuance of seniority list dated 18.1.99, at that time. Nothing has been shown that she made any representation against it. She did not approach the Courts. She sought for determination of seniority by using the occasion of her deemed date of appointment as Professor in the year 2001. The petitioner, without challenging or questioning the seniority list in the cadre of Reader, cannot now approach the court for relief, on the basis of her promotion, as per the Merit Promotion Scheme. Her acceptance of the seniority position in the cadre of Reader, emerging from the list publishing on 18-1-1999, to which she did not object, amounts to acquiescence. This would bar any relief in her case. (Ref Dr Mahak Singh Vs. Chancellor, Ch. Charan Singh University, Meerut and Others, and Union of India v. P. Rajaram 1993 Suppl (2) SCC 326. Hence, I am of the view that having not questioned the seniority position in the cadre of Reader, the petitioner could not have used the occasion of her promotion to the post of Professor, for fixation of seniority.

30. In view of the above position and having regard to the facts of this case, I am of the considered opinion that it be inappropriate to return a finding as to the seniority of the petitioner (in the absence of a challenge to the determination of her seniority in the cadre of Reader), admittedly settled last on 18.1.1999. Besides the fact that she accepted that ranking in that cadre, and has premised her case for reconsideration apparently on the basis of Statute 37, (which cannot confer a fresh or additional right on the basis of her restrictive promotion), it would also be hazardous to proceed on the footing that no seniority list was drawn up and circulated in the intervening period between 1994-99. In view of the above findings, I am of the opinion that the petitioner is not entitled to the reliefs claimed. The petition is accordingly dismissed. No costs.