

(1977) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 116 of 1973

Dr. Om Parkash Awasthi

APPELLANT

Vs

The Himachal Pradesh University

RESPONDENT

Date of Decision : 25-10-1977

Acts Referred:

Himachal Pradesh University Act, 1970 — Section 24, 45

Citation : (1977) 6 ILR HP 684

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : D.N. Awasthi, H.S. Awasthi and J.R. Thakur, for the Appellant; Inder Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—By this writ petition, the Petitioner prays for an order directing the Respondent to revise his pay scale and define his status as that of a regular Professor in the Himachal Pradesh University.

2. The Petitioner was a Research Assistant in the Central Potato Research Institute, Patna. He was appointed a Regional Potato Development Officer with effect from April 10, 1957, by the Himachal Pradesh Administration, in which capacity he continued until October, 1961, when he proceeded for higher studies. On obtaining his Ph. D. at the Post Graduate School, Indian Agricultural Research Institute, New Delhi, he was posted as Assistant Professor of Agriculture on an ad hoc basis in the Himachal Agricultural College at Sola. The post was subsequently re-named the post of Assistant Professor of Agronomy. On recruitment by the Union Public Service Commission, the Petitioner was selected from among several candidates, and appointed as Assistant Professor of Agronomy, on a regular basis with effect from December 24, 1965. Thereafter the Himachal Pradesh Administration advertised the post of Professor of Agronomy through the Union Public Service Commission, and again as a result of a recruitment through the Commission the Petitioner was selected. He was

appointed by an order dated March 21, 1968, to the post of Professor of Agronomy, Himachal Agricultural College, Solan, in the Class I (Senior) scale of Rs. 630-40-750/40-950/50-1200 with effect from March 6, 1968.

3. Thereafter, the Himachal Pradesh University was constituted under the Himachal Pradesh University Act, 1970. It was decided that the Himachal Pradesh Agricultural College, Solan, would cease to function as a Government College and would stand transferred to the Himachal Pradesh University with effect from July 5, 1971, in pursuance of Section 24(a) of the Act. On June 23, 1971, the Himachal Pradesh Government informed the Petitioner of the proposed transfer and declared that as in consequence the post held by him in the Government stand abolished, his services would no longer be required, and inasmuch as a comparable post carrying the same designation, pay scale and status was available in the University, the University was agreeable to employing him in that post. On such employment the University would "protect the scale of pay of the post presently held by you as also the emoluments drawn by you so long as you continue to be employed in the same post. The designation will not entitle you to claim as a matter of right any pay scale other than your existing scale of pay". It was also declared that the Petitioner's past services in Government would be taken into account by the University for all purposes, and that his present status would remain unaffected. Apparently, the Petitioner agreed to the offer made by the University. On July 3, 1971, the Himachal Pradesh Administration informed the University that the Petitioner, among other officers, w become an employee of the University with effect from July 5, 1971, on terms and conditions agreed upon between the University and the State Government. The status of the Petitioner was shown as Professor of Agronomy. A list of the transferred officers serving in the Himachal Pradesh Agricultural College, Solan, indicated that the Petitioner was the only Professor of Agronomy. The Petitioner was informed on the same date that he had become an employee of the University.

4. On June 2, 1972, the Executive Council of the University approved the recommendations of the Board of Management for the unification of pay scales of the Research, Teaching, Extension and Education staff serving in the Agricultural Complex of the University, which included the Himachal Pradesh Agricultural College, Solan, and the Agricultural College, Palampur. The Agricultural College at Solan had been a Government institution under the administrative and financial control of the Department of Agriculture, Himachal Pradesh Government, and its staff was covered by the Government scales of pay. As mentioned already, the College was transferred to the University with effect from July 5, 1971. The Agricultural College at Palampur was originally part of the Punjab Agricultural University, Ludhiana, and its Research, Teaching, Extension and Education staff enjoyed University Grants Commission scales of pay. That college was transferred to the University on July 22, 1970. The two Colleges and their staff constitute the Agricultural Complex of the University. It appears that while the unification was effected in respect of several posts, the post held by the

Petitioner was not considered for the purpose. An Associate Professor in the Agricultural College, Solan, who was borne on the scale of Rs. 400-1250 was brought at par with an Associate Professor employed in the Agricultural College, Palampur, who enjoyed the pay scale of Rs. 700-1250, so that all Associate Professors within the Agricultural Complex were now on the pay scale of Rs. 700-1250. The Petitioner, who was a Professor of Agronomy, and who claims to be senior in rank to an Associate Professor, remained in the scale of Rs. 630-1200. The Petitioner alleges that an anomaly thus came into existence, that is to say, a Professor of Agronomy enjoyed a lower scale of pay than an Associate Professor. It is said that in the pattern of pay scales which emerged on unification, the inevitable consequence of upgrading the scale of pay of an Associate Professor of the Agricultural College, Solan, had to be the consequent upgrading of the pay scale of the Professor of Agronomy. On November 23, 1972, the University circulated a provisional integrated seniority list of the staff working in the. Agricultural Complex. The list described the Petitioner as an Associate Professor of Agronomy, and he was shown at serial number 11 in seniority in the list of Associate Professors. He was not mentioned at all in the seniority list of Professors. The Petitioner says that this was inconsistent with the assurance on which he was employed in the University, that his status as Professor of Agronomy would remain unchanged on transfer from the Government to the University. The Petitioner points out that in the meeting of June 2, 1972, the Executive Council created a new post of Professor of Agronomy in the Agricultural Complex in the scale of Rs. 1100-1600. It is urged that the First Ordinances of the University did not refer to any post of Professor in the pay scale of Rs. 630-1200. The case of the Petitioner is that inasmuch as the different posts in the Agricultural College, Solan, were brought to the level of the University Grants Commission pay scales as in the case of the posts in the Agricultural College, Palampuru, likewise the post of Professor of Agronomy at the Agricultural College, Solan, held by him should also have been brought to the University Grants Commission pay scale. It is contended that because of that omission the Petitioner's fundamental rights under Articles 14 and 16 of the Constitution have been violated and the Petitioner has been treated with discrimination. It is alleged that his chances for future promotion have been marred, his seniority has been affected and his right to be considered for inclusion in various University bodies has been denied.

5. The case of the Respondent is that no demand has yet been made by the Petitioner on the Respondent for the revision of his pay scale and the affirmation of his status and, therefore, no mandamus can be issued on this petition. It is also urged that under the terms set forth in the letter dated June 23, 1971, under which the Petitioner was employed in the University, what was protected was the pay scale then enjoyed by him, and he has no right to a higher pay scale. It is also pointed out that the newly created post of Professor of Agronomy in the scale of Rs. 1100-1600 was distinct from the post of Professor of Agronomy held by the Petitioner. The Petitioner was not entitled, it is said, to the

scale of pay attached to the new post of Professor of Agronomy, and therefore no case for discrimination was made out. It is also pointed out that the post of Professor of Agronomy in the pay scale of Rs. 630-1200, to which the Petitioner was appointed, had existed before the University Ordinances were framed, and therefore the Ordinances did not refer to a post of Professor in that pay scale. The rights of the Petitioner, it is also contended, must be considered as they existed in July, 1973, when the writ petition was filed, and subsequent developments cannot be taken into account. In the course of arguments, it was stated on behalf of the Respondent that the plea of laches is not pressed.

6. The first point in whether the Petitioner has a right to a revision of the pay scale attached to the post of Professor of Agronomy held by him in the Agricultural College, Solan. There is no doubt that if there had been no change in the context in which that pay scale had been fixed the Petitioner would be bound by the conditions contained in the letter dated June 23, 1971, that on employment in the University he would not be entitled to claim as a matter of right any pay scale other than the existing scale of pay. So long as the employment infrastructure of the Agricultural Complex of the University remained what it was when the two Agricultural Colleges and their staff were transferred to the University, the Petitioner could have no legitimate claim as of right to a different scale of pay. But, in the events that followed, the terms and conditions of service woven into that infra-structure suffered material change. It was decided to unify the pay scales prevailing in the two Agricultural Colleges in order to remove the anomalies arising from the existence of different scales of pay in posts carrying identical designations. The staff in the Agricultural College, Palampur, enjoyed the U.G.C. scales of pay, while the staff employed in the Agricultural College, Solan, was governed by Government scales of pay. The process of unification required that the staff at Solan should also enjoy U.G.C. pay scales, so that they could be brought at par with the staff working at Palampur. In large measure, that was accomplished. But while doing so the University considered those posts alone in the Agricultural College, Solan, which corresponded to posts in the Agricultural College, Palampur. The University failed to consider that logically the process of unification could not stop there. If it was decided as a matter of principle that the U.G.C. pay scales should be extended to those posts at Solan which corresponded to posts at Palampur, the principle had to be carried further and applied also to the other posts in the Agricultural College, Solan. The principle had to be applied to all the posts at Solan. If it were not, there would be the curious case of a superior post, which had no corresponding post at Palampur, remaining at a pay scale which now was lower than, or equal to, the revised pay scale of an inferior post. That is precisely what the Petitioner complains did happen as between the post of Professor of Agronomy held by him and the inferior post of Associate Professor. The Petitioner's post, in its hierarchical standing, fell between the posts of Dean or Principal-cum-Joint Director of Agriculture (Research) above it and the posts of Associate Professors below it. The U.G.C. pay scales were applied to the post

above and to the post below. They should have been applied to all the posts at Solan, regardless of whether all of them did or did not correspond to posts at Palampur. To restrict them to corresponding posts only was to create an invidious discrimination inter se between the posts at Solan. The error would not have occurred if the University had appreciated that equality of treatment required that on principle U.G.C. pay scales were to be applied to all posts at Solan even as they had been applied to all posts at Palampur. That certain posts existed at Solan and not at Palampur was of no materiality to the application of the principle. Indeed, when the new post of Professor of Agronomy was created in 1972, a pay scale of Rs. 1100-1600 was attached to it, evidencing the application of U.G.C. pay scales. There is no reason why the post held by the Petitioner should not also have had the same advantage. It has not been shown that the responsibilities and functions pertaining to the two posts of Professor of Agronomy were different. There is also nothing to show that the Petitioner was in any way disqualified from obtaining the benefit of the unification process. In failing to apply the U.G.C. pay scales to the post held by the Petitioner, the University denied to the Petitioner his fundamental rights under Articles 14 and 16 of the Constitution. That error lies at the root of all the subsequent decisions, orders and notifications issued by the University, its Executive Council and Vice-Chancellor so far as they affected the Petitioner's status, seniority and his right to membership of various University authorities and bodies.

7. Because of the error in which it had fallen, the University found itself in considerable confusion, and from time to time attributed to the petitioner status and a seniority which did not truly belong to him. In the provisional seniority list circulated on November 23, 1972, the Petitioner was shown at serial number 11 in the list of Associate Professors. Thereafter, a tentative seniority list circulated on November 26, 1973, included four Professors in the scale of Rs. 1100-1600 in one category while the Petitioner was shown in a separate category as Professor of Agronomy with the pay scale of Rs. 700-1250. On March 21, 1974, the Executive Council of the University passed an order confirming the Petitioner in the scale of Rs. 700-1250, and described him as enjoying the "personal designation as Professor of Agronomy". What had all along been the essential description of the post itself and had indicated its nature and its status was now sought to be treated as the personal designation merely of the Petitioner. On September 26, 1974, the Executive Council passed a resolution purporting to "upgrade the existing post of Associate Professor (Rs. 700-1250) in the Department of Agronomy in the Agricultural College, Solan, to that of Professor in the scale of Rs. 1100-1600 and to re-designate it as Head, Department of Agronomy-Cum-Estate Manager, Borlaug, w.e.f. the date of decision". By an order dated November 26, 1974, the Petitioner was appointed to that post on a temporary basis until permanent appointment was made. On January 30, 1975, the Vice-Chancellor of the University appointed Dr. S.C. Modgil, who held the post of Professor of Agronomy newly created in 1972, as Head of the Department of Agronomy for a period of two years in terms of Ordinance 23.2 of the First

Ordinances of the University. The Petitioner, who had all along been representing against the status and the seniority assigned to him from time to time, represented against that appointment also and urged that he had been working as Professor of Agronomy since 1968 whereas Dr. Modgil had joined in 1973 only, and that as senior-most Professor in the Department of Agronomy he should have been declared as Head of the Department of Agronomy. He adverted to the pendency of this writ petition and prayed that the order should be withdrawn and the status quo restored. On April 29, 1975, the University issued an order superseding the order dated January 30, 1975, and stating that the Vice-Chancellor, under the powers vested in him by Statute 13(1)(u)(v) of the First Statutes, had appointed Dr. S.C. Modgil Professor of Agronomy, as Head, Department of Agronomy in the Agricultural Complex with effect from January 30, 1975. On May 28, 1975, a notification by the University set forth the composition of the reconstituted, Faculty of Agriculture and Forestry. Dr. S.C. Modgil was shown as the Head of the Department of Agronomy and the Petitioner was shown as a Reader in the Department of Agronomy. During the arguments before me it was conceded on behalf of the Respondent that the entry of the Petitioner's name in the list of Readers was an error. Subsequently, by a notification dated October 6, 1976, the pay scale of Professor was raised from Rs. 1100-1600 to Rs. 1500-2500 and that of Associate Professor from Rs. 700-1250 to Rs. 1200-1900. The Petitioner elected in favour of the revised scale of pay. On February 15, 1977, an order was issued showing Dr. S.C. Modgil, Professor of Agronomy, in the revised pay scale of Rs. 1500-2500 and the Petitioner, also Professor of Agronomy, in the revised pay scale of Rs. 1200-1900. Evidently the Petitioner, although described as Professor of Agronomy, was in reality and fact being treated as anything but a Professor of Agronomy. It is quite clear that the guarantee of the existing status of Professor of Agronomy, which had been assured to the Petitioner by the letter dated June 23, 1971, was being violated. This was pointed out by the Petitioner to the University by his letter dated February 21, 1977, in which he pressed his claim to the new Professor's pay scale of Rs. 1500-2500. The Petitioner had already been appointed Professor of Agronomy with effect from March 6, 1968, and there was nothing in that notification to show that the appointment was not on a regular basis. It is abundantly clear that had the petitioner been granted the benefit of the U.G.C. pay scales when the unification process was adopted, he would all along have been treated as Professor of Agronomy equivalent in status and pay scale to the incumbent of the post of that name created in 1972, and all the subsequent anomalies and confusion evidenced by the several decisions, orders and notifications would not have arisen.

8. The Respondent has alleged that when recruitment was taken for filling a new post Professor of Agronomy in the grade of Rs. 1100-1600 in 1972, the Petitioner also appeared for interview but he was not considered suitable for the post. It was decided to offer the post to Dr. H.G. Saxena of the U.P. Agricultural University, and the Vice-Chancellor was empowered to consider Dr. H.C. Sharma

and Dr. O.P. Gupta also. It is sought to be inferred from this that the Petitioner himself knew that the post of Professor of Agronomy at Solan held by him was inferior to the newly created post, and the proceedings recorded by the Selection Committee show that he was not considered suitable for the newly created post. In my opinion, merely because the Petitioner sought appointment to the newly created post does not mean that he should be deprived of the application of the U.G.C. pay scales to the post of Professor of Agronomy held by him. If that had been done, it is obvious that the Petitioner would not have considered it necessary to apply for appointment to the newly created post.

9. It is contended by the Respondent that the rights of the Petitioner should be considered as in July, 1973, when the writ petition was filed, and not on the basis of events which have happened subsequently. Reliance is placed on *Qamru Zaman Khan and Others Vs. Sarju Hajam and Others*, the contention is misconceived. In deciding this writ petition, the decision has been confined to the rights of the Petitioner which belonged to him when he filed the writ petition. If subsequent events have been taken into consideration, they have been referred to as consequences flowing from the error committed by the University in omitting to apply U.G.C. pay scales to the post of Professor of Agronomy held by the Petitioner and in attempting to deny to that post its true nature and status.

10. It is also urged by the Respondent that the Petitioner is not entitled to a writ in the nature of mandamus because, it is said, no demand has yet been made by him on the University to grant him the relief sought in this writ petition and no refusal has been made by the University to comply with such demand. I have carefully considered the repeated representations made by the Petitioner as one seniority list followed another, or as the orders or notifications followed each other, and I am satisfied that they establish a continuing demand by the Petitioner for rectification of the error committed by the University, its authorities and officers. The stream of orders issued from time to time cannot be construed as anything but a rejection of his continuing demand. There was a legal duty on the Respondent to ensure that the Petitioner's guaranteed fundamental rights under Articles 14 and 16 were not denied. By his representations the Petitioner insisted that the duty so cast on the Respondent be performed and discharged. In refusing to do so, the Respondent has made itself open to the issue of a writ in the nature of mandamus directing it to perform its legal duty. In the circumstances, *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, 1210*, *Dr. Umakant Saran Vs. State of Bihar and Others*, *Sarswati Industrial Syndicate Ltd. v. Union of India 1974 (2) S.C.C. 630* and *Mani Subrat Jain and Others Vs. State of Haryana and Others*, on which the respondent relies, can be of no assistance to it.

11. The next submission of the Respondent is that no right of the Petitioner has been affected by the status, seniority and pay scale assigned to the Petitioner. In view of what has gone before, the submission is without force. If the Petitioner is entitled to a higher scale of pay it is indisputable that he is adversely affected by

the denial of that pay scale. If his true status as Professor of Agronomy has not been recognised in him, the deprivation of that status, or in the least its erosion by treating it as his personal designation only, amounts to the deprivation of a right. The descriptions attached to the Petitioner, that is to say Associate Professor, Reader, etc., have the same effect. It is also beyond dispute that the Statutes and Ordinances of the University confer certain rights on Professors in the matter of membership of the various authorities and bodies of the University. I am of opinion that the Petitioner has been materially affected to his detriment by the decisions, orders and notifications of the Respondent, its authorities and officers.

12. The Respondent says that the dispute raised in this writ petition could have been placed by the Petitioner before the Chancellor u/s 45 of the Himachal Pradesh University Act. Section 45 empowers the Chancellor to decide any question whether a person has been duly appointed or elected as, or is entitled to be, a member of any authority or other body of the University. To my mind, the fundamental question raised in this writ (petition does not fall within the jurisdiction of the Chancellor u/s 45 of the Act. That question is whether the Petitioner is entitled to the benefit of the U.G.C. pay scales. Once it is found that he is so entitled, all the other matters automatically fall into place.

13. During the pendency of the writ petition, an application was made by the Petitioner for an order restraining the Respondent from filling the newly created post of Professor of Agronomy. The Court in the first instance granted such an order, but subsequently it permitted the post to be filled up and directed that any appointment so made would be subject to the decision of the writ petition. Inasmuch as I have held that the U.G.C. pay scales must be applied to the post of Professor of Agronomy held by the Petitioner, it does not seem necessary to consider the validity of the appointment made to the other post of Professor of Agronomy created in 1972. The relief granted on this writ petition, therefore, is not intended to interfere with that appointment.

14. Accordingly, the writ petition is allowed. The Respondent is directed to apply the U.G.C. pay scale to the post of Professor of Agronomy to which the Petitioner was appointed on March 6, 1968, and to treat it at par with the post of Professor of Agronomy created in 1972, the U.G.C pay scale being applied to the Petitioner's post with effect from the same date as in the case of the other posts in the Agricultural College, Solan. The Respondent is directed to take action withdrawing, revising and modifying all decisions, orders and notifications adversely affecting the interests of the Petitioner insofar as they proceed on the failure of the Respondent to apply the U.G.C. pay scale to the post of Professor of Agronomy held by the Petitioner and are inconsistent with the position set forth above. The Petitioner is entitled to his costs, which I assess at Rs. 200/-.