
(1996) 03 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 37061 of 1995

Dr. Prabha Gupta

APPELLANT

Vs

Chairman, Municipal Council and Others

RESPONDENT

Date of Decision : 14-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 03 AHC CK 0071

Hon'ble Judges : R.K. Mahajan, J;B.M. Lal, J

Bench : Division Bench

Advocate : Tej Pal, for the Appellant; R.N. Bhalla, K.S. Singh, R.N. Singh and Rakesh Bahadur and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal and R.K. Mahajan, JJ.—This petition under Article 226 of the Constitution is directed against an order dated 11.12.1995 passed by the Chairman, Nagar Palika Parishad, Shikohabad, contained in Annexure 1 to the writ petition.

2. It appears that Bhagwani Devi Maheshwari Municipal Girls Post Graduate College (for short the College) is run by the Municipal Board, Shikohabad. The College is affiliated to Agra University and, therefore, the provisions of U.P. State Universities Act, 1st Statute of Agra University and U.P. Higher Education Service Commission Act are applicable to the College.

3. The case of Petitioner appears to be that she being Ph. D. in Sociology is fully qualified for the post of Principal in any post graduate College. On attaining age of superannuation, the regular Principal of the College Dr. Nageena Jain was to retire on 30.6.95, therefore, the vacancy on the post of Principal of the College was notified to U.P. Higher Education Commission and in the meantime, by an order dated 26.6.95 (Annexure 13), the Management of the College appointed the Petitioner under Statute 12.20. to officiate as Principal until a regular

Principal is appointed or the Petitioner retires on attaining the age of superannuation. Petitioner attained the age of superannuation on 19.11.1995. However, by an order dated 15.11.95, (Annexure 3 to Supplementary Affidavit), Petitioner was reappointed under Statute 16.15 as officiating Principal of the College for a period until 30.6.1996. Therefore, she is entitled to continue as Principal of the College till 30.6.96.

4. The case of contesting Respondent No. 3 is that Petitioner was not the seniormost teacher rather the Respondent No. 3 was the seniormost teacher. Therefore, on coming to know that the charge of the office of Principal of the College has been given to Petitioner who is junior to her, the Respondent No. 3 made a representation to the Management on 30.6.95 and again on 11.7.95 and to the Vice-Chancellor on 18.7.95 and again on 24.7.95 and when no action was taken on her representations, she filed Writ No. 33348 of 1995 wherein this Court by an order dated 22.11.95 directed the Vice-Chancellor to decide her representations, whereupon order dated 11.12.95 appears to have been passed against which present writ petition has been filed.

5. Learned counsel for the Petitioner contended that the Petitioner's appointment is to be regulated by the letters of appointment and the provisions of Statutes 12.20 and 16.15. Therefore, even after attaining the age of superannuation, she is entitled to continue in service till the end of academic session and in view of Statute 16.15, she will be treated on re-employment and will be entitled to pay and other benefits admissible to a Government employee of equal status, as such she is entitled to continue as Principal of the College till 30.6.96.

6. Learned counsel for contesting Respondent contended that in view of Statute 12.20, the Management cannot appoint any teacher to officiate as Principal for a period of more than 3 months and if on 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 seniormost teacher in the College shall officiate as Principal of such College until a regular Principal is appointed. In the instant case, admittedly regular Principal is not appointed and the regular Principal of the College retired much more prior to 3 months, therefore, under Statute 12.20, only seniormost teacher of the College is entitled to officiate as Principal of the College and by no stretch of imagination, Petitioner can be said to be the seniormost teacher after attaining the age of superannuation, therefore, the Respondent No. 3 alone being the seniormost teacher of the College is entitled to officiate as Principal of the College.

7. Heard learned counsel for the parties and perused the relevant record and provisions of the statutes. A bare perusal of the provisions of statute 16.15 makes it crystal clear that the re-employment of a teacher, from the date immediately following the date of his superannuation till June 30 following, is statutory and the University has no say in the matter and even has no choice and on re-employment, such teacher will be entitled to pay and other benefits admissible to a Government Employee of equal status. The re-employment is

different from extension. The terms "pay and other benefits" used in III proviso to Statute 16.15 is to be construed keeping in view the context in which it is used. Undoubtedly, these terms are used in the context of re-employment, therefore, in the context of re-employment the terms "pay and other benefits" will not include the benefit of counting the services rendered by such teacher during its earlier employment for the purposes of determining its seniority after re-employment. Such teacher loses its previous seniority on attaining the age of superannuation.

8. In *Dr. O.P. Tandon v. State of U.P. and Ors.* 1984 UPLBEC 362, a Division Bench of this Court held as under:

Re-employment being different from extension, the Petitioner cannot add to his new service which started on his re-employment, his earlier service prior to his superannuation. As such, after his superannuation followed by re-employment, opposite party No. 4, who immediately before the Petitioner's superannuation was next seniormost to him and was also a Professor should be treated as senior to the Petitioner.

9. Under similar circumstances, in a case of *Sampurnanand Sanskrit University*, another Division Bench of this Court held as follows in *Paras Nath Pandey v. District Inspector of Schools and Ors.* (1905) 1 UPLBEC 667:

The Petitioner who immediately after the date of his superannuation gets re-employment under Statute 16.24 (3) of the First Statutes of the *Sampurnanand Sanskrit University* as a teacher ceased to be an officiating Principal of the College with effect from 5.11.94, the date of his superannuation. In view of the provisions of Statute 12.22 of the First Statutes of the University, the post of Principal of the College having fallen vacant, the seniormost teacher of the College became entitled to act as Principal until a duly selected Principal assumes the office.

10. In the instant case, Petitioner attained the age of superannuation on 19.11.1995, therefore, thereafter she cannot be treated as seniormost teacher of the College.

11. In view of the discussions made above, this Court is of the considered opinion that no case for interference by this Court is made out. The writ petition fails and is dismissed. There shall be no order as to costs.