

(1958) 11 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 182 of 1958

Dr. Prem Nath Sharma

APPELLANT

Vs

Vice-Chancellor, Lucknow University and Another

RESPONDENT

Date of Decision : 26-11-1958

Acts Referred:

Lucknow University Act, 1920 — Section 23
Lucknow University Rules, 1958 — Rule 198, 211, 23
Uttar Pradesh General Clauses Act, 1904 — Section 6
Uttar Pradesh University (Amendment) Act, 1958 — Section 11, 11(10), 11(7),
11(8), 11(9)

Citation : AIR 1959 All 618

Hon'ble Judges : R.N. Gurtu, J;J. Sahai, J

Bench : Division Bench

Advocate : Iqbal Ahmed, M.P. Srivastava and Umeshchandra Srivastava, for the Appellant; S.D. Misra and P. Dixit, Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Gurtu, J.—The petitioner, Dr. Prem Nath Sharma, according to the facts sworn to or admitted before us, was recruited as a lecturer in the Lucknow University in 1934. He was promoted to be a reader in 1946. He became an officiating professor in the department of Physics on 18-7-1950, when Dr. D. D. Deodar, the permanent professor in the department of Physics retired. Applications were thereafter invited for the post of professor of Physics. The petitioner and others made applications. Eventually on 8-5-1952, the petitioner was confirmed as professor. He thus came to occupy the professorship and headship of the department of Physics in a substantive capacity on and from that date.

2. Dr. Das Gupta, according to the facts sworn or admitted, was by a resolution of the Executive Council of the University dated 18-3-1949, appointed as professor of Botany from the date he rejoined his duties in the University. Between 18-3-1949 and 15-12-1950, Dr. Das Gupta was on leave without pay.

He took over charge on the last mentioned date as professor and head of the department of Botany in a substantive capacity.

3. Both Dr. Sharma and Dr. Das Gupta have continued to hold service without break.

4. The opposite parties are the Vice-Chancellor Lucknow University, and Dr. Das Gupta who was allowed to intervene.

5. On 1-5-1958, Dr. A. C Chaterji, who was Dean of the Faculty of Science retired and by a letter dated 1-5-1958, a copy whereof was sent to Dr. P. N. Sharma, the petitioner, Dr. A. C. Chaterji was requested to hand over charge of the office of Dean of the Faculty of Science to Dr. Sharma. It was stated in that letter that under the then existing Statutes of 1956 Dr. Sharma was entitled to succeed Dr. Chaterji "until further orders".

6. It was admitted that up to the date of the present petition and even now Dr. Sharma was working as Dean.

7. On 7-5-1958, in exercise of the powers conferred by Section 11 of the Lucknow University (Amendment) Act, 1957 (U. P. Act No. VI of 1958) which amended the parent Act of 1920, the Government of Uttar Pradesh framed Statutes for the Lucknow University and rescinded the existing Statutes. It may be mentioned that the parent Act as well as all amending Acts confer powers and frame statutes which have the force of law.

8. In consequence of the notification of the new Statutes of 1958 the Vice-Chancellor came to the conclusion that Dr. S.N. Das Gupta, professor, and head of the department of Botany had become entitled by virtue of his seniority to be Dean of the Faculty of Science and Dr. Sharma was requested to hand over charge of the office of the Dean to Dr. Das Gupta immediately.

9. It was when the letter dated 14-8-1958 indicating the decision of the Vice-Chancellor was received by Dr. Sharma that he filed the present writ petition and he prayed for an order or direction in the nature of certiorari to be issued quashing the decision of the Vice-Chancellor as communicated to him by means of the letter dated 14-8-1958.

10. Briefly put, the contention of Dr. Sharma was that he having become eligible for being appointed Dean under the old Statutes of 1956 and he having been appointed to succeed as Dean on 1-5-1958, when these Statutes were in force despite the fact that the old Statutes of 1956 have been replaced by the new Statutes framed in 1958, he was still entitled to continue as Dean until the expiry of a term of three years from 1-5-1958, as under the old Statutes of 1956 the term of Deanship was for a fixed period of three years, and he must be deemed to have been appointed for the full term. Alternatively the case of Dr. Sharma is that he is still the senior-most professor head of a Department and even senior to Dr. Das Gupta and is entitled to be a Dean even under the new Statutes framed in 1958.

11. On the other hand, the contention on behalf of the opposite parties is that with the rescinding of the previous Statutes of 1956 Dr. Sharma ceased to be a Dean. It is also contended that when Dr. Sharma was appointed Dean on 1-5-1958, he was only appointed "until further orders" because the Lucknow University (Amendment) Act, 1954 where-under the Statutes of 1956 were framed was about to be replaced and that actually it was replaced by the Lucknow University (Amendment) Act 1957.

Further it is argued on behalf of the opposite parties that under the new Statutes of 1958 framed under the Amendment Act 1957 Dr. Sharma is not senior-most professor and head, but Dr. Das Gupta is the senior professor and head of a department. Further it is the case of the opposite parties that inasmuch as Dr. Sharma has been a Dean under the 1956 Statutes, he has had his turn of Deanship and under Rule 211 of the 1958 Statutes he is not at present eligible for Deanship until all the other professor heads of other departments have had their turn by rotation.

12. In order to understand the rival contentions we must start from the very beginning and go back to the Lucknow University Act 1920 as originally passed. By Section 8 of the said Act officers of the University were named, and the Deans of the Faculties are shown at No. 5 in the section. Section 23(1) of the said Act created Faculties including that of Science. Section 23(2) enacted that the constitution and powers of the Faculties shall be prescribed by the Statutes. By Sub-section (3) thereof it is provided that there shall be a Dean of each of the Faculty, and Sub-section (5) provided that the Dean of the Faculty shall be elected by the Faculty from among the heads of departments of the Faculty. It will be observed that the Faculty of Science was created by the Act itself.

13. In 1954 it was considered necessary to amend the Act of 1920 and the Lucknow University (Amendment) Act, 1954 was passed. That Act made one change in the old Section 8 of the parent Act in that it added to the list of the officers of the University a new officer styled "The Dean of Students Welfare". It made other changes as well, and inasmuch as this Amendment Act of 1954 was intended partially to be of a transitory character certain transitory provisions were introduced and they were contained in Sections 40 to 43 of the said Act. Section 40 enacted inter alia that the terms of office of all elected holders would determine on the appointment of the corresponding officer in accordance with the provisions of the Principal Act as amended by the Amending Act 1954. Therefore the elected Dean, who was holding office when this amendment Act 1954 came into force, must have been appointed in accordance with the provisions of this Act and the Statutes made under this Act replacing the older pre-existing Statutes.

14. It is not disputed that Dr. A. C. Chaterji, who was holding the Deanship while this amendment Act 1954 and the Statutes of 1950 thereunder were in force, retired on superannuation and then Dr. Sharma became entitled to succeed as Dean. He was then a permanent professor head in the department of Physics and

inasmuch as under the relevant Statutes the period of officiating professorship was considered to be equivalent to the holding of a substantive professorship and the term of officiating professorship could be tacked on to the terms of a permanent professorship Dr. Sharma, according to the then Statutes of 1956, was undoubtedly seniormost professor and was entitled to become the Dean and was purported to be appointed Dean "until further orders".

15. The aforesaid Amending Act was followed by the U. P. Universities (Amendment) Ordinance, 1957. It was published in the U. P. Gazette on 6-11-1957. It made certain amendments with which we are not concerned.

16. Then followed the Lucknow University (Amendment) Act, 1957. It made no further changes in Section 8 of the principal Act, but by Section 11 it provided that

"at any time after this Act has come into force it shall be lawful for the State Government to do anything necessary generally for giving effect to the provisions of the Lucknow University Act, 1920, as amended by this Act, including the making of any Statute or the amending of any Statute and fixing of dates for the coming into force of such Statutes or amendments."

Sub-section (2) of Section 11 provided that

"the power conferred by Sub-section (1) may be exercised by the State Government as often as occasion requires but not later than 12 months from the date of the commencement of this Act."

17. It is under these provisions that the old Statutes of 1956 were replaced by the new Statutes of 1956 and the Statutes of 1956 were rescinded.

18. As has already been indicated there is now no dispute that the petitioner was seniormost head under the old Statutes of 1956. He was the senior-most professor and entitled to be the Dean. The dispute is in regard to his rights after the Amendment Act 1937 under the present Statutes of 1958 framed thereunder and also whether having been appointed under the old Statutes of 1956 he still continues to be the Dean.

19. An examination of the 1958 Statutes clearly shows that the petitioner was not the seniormost professor when the Statutes came into force.

20. We may point out that Rule 23 of the Statutes of 1958 lays down that in the Faculties of Arts, Science, Commerce and Law the office of Dean shall be held in rotation for a term of three years amongst the professors who are heads of departments in order of seniority as professor heads of the department in the Faculty beginning from the seniormost professor head of department, other than the one who is deemed to have had his turn on the date of enforcement of the Statutes in terms of Rule 211 thereof.

21. Rule 211 of the Statutes of 1958 runs as follows: Interpretational clause:--

In the application of the provisions of this Statute in respect of holding any office or for representation to any authority or body by rotation in order of seniority or in order of preference, such officer or members as are holding office or membership by virtue of the provisions of the Statutes which were in force prior to the coming into force of this Statute shall, for the purposes of holding office or for the Constitution of Authorities or bodies in accordance with the Statutes be deemed to have had their turn."

Rule 198 of the 1958 Statutes runs as follows:

"198. Whenever in accordance with this Statute any person is to hold an office or be a member of any authority or body of the University by rotation according to seniority, such seniority shall be determined as follows:--

(i) (a) In the Faculty of Medicine and Ayurveda, a Professor shall be regarded as senior to a Reader and a Reader as senior to a Lecturer;

(b) in other Faculties a Professor shall be regarded senior to an Assistant Professor.

(ii) In the same cadre, seniority shall be determined according to the length of continuous service of each person from the date of appointment in a substantive capacity in the cadre:

Provided that in the teachers of the faculties of Arts, Science, Commerce and Law who are classified as Readers and Lecturers prior to the commencement of this Statute, a person who was a Reader shall continue to be senior to a person who was a Lecturer:

Provided further that when a person holding substantively a post of corresponding rank in any of the State Universities or in a college associated or affiliated thereto or in a Research Institute established or recognised by the University is appointed to a post of corresponding rank in this University or a constituent college maintained by the State Government the period of service of such person in that rank in a substantive capacity in the previous institution shall be added to his length of continuous service.

Provided also that when a person holding a substantive post of corresponding rank in any University other than the Universities established by the State of Uttar Pradesh or the Colleges associated or affiliated thereto, which extend similar treatment to teachers of this University is appointed by this University, the services rendered by that person in that University or the College associated or affiliated thereto shall also be counted for seniority in this University and the Constituent Colleges.

Explanation--Service in a temporary post or in officiating capacity in any other University or institution shall not count for the purpose of this Statute.

(iii) The period of service in each capacity shall be reckoned in whole months and part of month shall be ignored.

(iv) A period of leave without pay shall not count as a period of service unless it is declared by the Executive Council to have been spent in study or research with its prior approval.

(v) Where more than one person in a service becomes entitled under this Statute to count the same period of service for the purpose of seniority, the relative seniority among such persons shall be determined on the basis of seniority in age." It will be apparent from a reading of Rule 198(ii) that in the same cadre, seniority has to be determined according to the length of continuous service of each person from the date of appointment in a substantive capacity in the cadre. The rule makes provision for tacking on to the period of substantive holding of a corresponding rank in another University with the holding of the same rank in the Lucknow University but the explanation to the third proviso states that service in a temporary post or in an officiating capacity in any other University or institution shall not count for the purpose of the Statute.

It is evident that this explanation emphasises the fact that the seniority is to be determined with reference to the capacity in which the professorship is held and that capacity has to be substantive. In this case admittedly Dr. Das Gupta was made a substantive professor earlier than Dr. Sharma, though Dr. Sharma was officiating as professor even prior to Dr. Gupta's appointment as permanent and substantive professor. Under the Statutes of 1956 the capacity of officiating professor was equated to the capacity of a substantive holder of the post of professor but that is not the position under Rule 198 of the 1958 Statutes.

It is not possible to agree with the contention that the explanation to which reference has been made above must be taken to imply that it is only officiating capacity or temporary capacity in another University which will not count towards seniority but that otherwise the officiating and temporary capacity will count towards seniority. This submission is in the teeth of the language of Rule 198. As we have already pointed out in the 1956 Statutes in j the provision relating to seniority it was clearly provided that where a person was appointed to officiate in a post, including a temporary post, and was subsequently confirmed in it without a break in his service, his original officiating or temporary appointment was to be deemed to be in a substantive capacity. The position is changed now.

22. There can be no doubt as to the meaning of the words "substantive capacity" as used in the Statutes of 1958. It means a capacity other than an officiating or temporary capacity and would imply that the holder thereof had a lien on his post. What a substantive capacity is has been explained in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, thus:

"The appointment of a Government servant to a permanent post may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a "lien" on the post. This "lien" is defined in Fundamental Rules Section III, Ch. II, Rule

9(13) as the title of a Government servant to hold substantively a permanent post, including a tenure post, to which he has been appointed substantively."

Until the petitioner was appointed substantive professor he had no lien on the post. In fact he (along with others) applied for appointment to the substantive post while holding the officiating appointment.

23. It was contended on behalf of the opposite parties that even if it could be held upon an interpretation of the 1958 Statutes that Dr. Sharma was senior to Dr. Das Gupta, he could yet not be a Dean until all other professor heads had held three years terms of office as Dean in rotation because under Rule 211 of the 1958 Statutes Dr. Sharma must be deemed to have had his turn of Deanship, It was contended by the opposite parties that even if it be taken that Dr. Sharma has become a Dean for three years under the 1956 Statutes by virtue of his appointment as Dean on the 1st May, 1958 (though the appointment said it was "until further orders") nonetheless that Deanship came to an end as soon as the 1956 Statutes stood rescinded by the 1958 Statutes.

It was contended that the office of Dean which Dr. Sharma could claim to hold was under the 1956 Statutes and when those Statutes were rescinded and disappeared, then Dr. Sharma's alleged Deanship went with them. It was said that Rule 211 in any case clearly brought the previous Deanship to an end and had the further effect of making Dr. Sharma ineligible until every other professor head had had his turn.

24. It is difficult to say that there is not some force in the opposite contention of the petitioner that an officer, who was holding his office by virtue of the provisions of the 1956 Statutes which were in force prior to the coming in force of the 1958 Statutes, could be deemed only to have had his turn provided that he had held the Deanship for the full term of three years which was the term for which a Dean was appointed under the Statutes of 1956.

It was contended on behalf of the petitioner that the Statutes of 1956 or 1958 nowhere say that the rights of Deanship which came into existence under the 1956 Statutes would come to an end as soon as the 1958 Statutes came into force and the 1956 Statutes stood rescinded and it was contended that all that Rule 211 of the 1958 Statutes meant was that as soon as the running term of the Dean appointed during the subsistence of the 1956 Statutes came to an end he would have no further right to be appointed under the 1958 Statutes until the other professor heads of all the departments comprising the Faculty had had their turn.

25. In order to determine the present rights of Dr. Sharma, the petitioner, it seems necessary to bear in mind that the office of Dean has been created not under the Statutes but under the principal Act of 1920 itself. It has already been pointed out that Section 8 of the Principal Act stated that the Deans of the Faculties "shall be the officers of the University". The subsequent Amendment Acts of 1954 and 1957 have not abrogated this position. What they have done is

to add a new officer in the name of "the Dean of Students Welfare". As has been pointed out the parent Act as originally passed provided that there would be a Dean of each Faculty and that he would be elected.

The subsequent Amendments have destroyed the elective nature of the office of Dean but even after the Amendment Acts of 1954 and 1957 the Deans of Faculties still continued to be officers as under the parent Act itself. Even after the amendment effected by the Act of 1954 Section 23 provided that there would be a Dean of each Faculty who would be chosen in such manner and for such period as may be prescribed by the Statutes. Therefore the Deanship has been created by the Act itself and the Amendment Acts do not alter the original position. It is an office created by the Act and not by the Statutes.

The Statutes only regulate the way in which the Dean is to be chosen and prescribe the period for which he may be chosen. On the 1st May, 1958, when Dr. A. C. Chatterji was superannuated Dr. P. N. Sharma was eligible to be a Dean and the period of appointment at that time prescribed by the Statutes of 1956 was three years. It is not disputed that he was appointed a Dean but it is said that his period of Deanship was limited by use of the words "until further orders". Now neither the Act as it stood on the 1st May, 1958, nor the Statutes provided that a Dean could be appointed for a lesser period than three years.

In a sense once the eligibility was established the office fell into possession automatically and under the Statutes once it fell into possession the duration of possession was to be three years. It was suggested by the opposite parties that it was open to the Vice-Chancellor under the exercise of his emergency powers granted to him u/s 11(7) to cut down the period of the Deanship and limit it to a period "until further orders". Section 11(7), (8), (9) and (10), as it stood amended in 1956, run as follows:

"(7) In any emergency which in the opinion of the Vice-Chancellor, requires immediate action to be taken, he shall take such action as he deems necessary and shall, at the earliest opportunity, report the action taken to the officer, authority or other body who or which in the ordinary course would have dealt with the matter; but nothing in the sub-section shall be deemed to empower the Vice-Chancellor to incur any expenditure not duly authorised and provided for in the budget.

"(8). Whether any action taken by the Vice-Chancellor under Sub-section (7) affects any person in the service of the University to his disadvantage such person may prefer an appeal to the Executive Council within fifteen days from the date on which the action is communicated to him.

"(9). Subject as aforesaid, the Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, suspension and dismissal of officers and teachers of the University.

"(10). The Vice-Chancellor shall exercise such other powers as may be prescribed

by the Statutes and the Ordinances."

This emergency power was there in the parent Act also. I do not, however, think that this emergency power authorised the Vice-Chancellor to cut down the term of Deanship in anticipation of the then Statutes of 1956 coming to an end. He could only have appointed the new Dean in accordance with the then provisions of the Act and the existing Statutes leaving it to the authorities, if they so wished, to determine the tenure of Deanship subsequently according to the altered law. These emergency powers are obviously intended to fill in the vacuums, for situations for which no provision is made, not for creating fresh rights or disabilities contrary to existing statutory provisions in anticipation of events which might or might not come into existence. On 1st May, 1958 the Statutes of 1958 had yet to be notified.

26. The position is, therefore, that Dr. Sharma on the 1st May, 1958, became one of the officers of the University as indicated in Section 8 of the Act, namely, a Dean of Faculty, and he came to occupy an office which was created by the principal Act itself. When he came to fill that office, he must be deemed to have got a three year tenure under the existing Statutes of 1956 despite the restrictive terms. The question, therefore, now is whether the subsequent Statute i.e. of 1958, which so far as the matter in hand goes, merely changes the mode of determining the seniority but does not effect any change in the three-year tenure can take away the right which was in Dr. Sharma to remain an officer, namely a Dean, under the Act and for a term of three years? I do not think so.

The Statutes of 1956, when the petitioner was appointed were, in effect, a part of the Act and the subsequent rescinding of the Statutes of 1956 would not by implication destroy a right which had become vested in Dr. Sharma once he was appointed to the office of Dean. There is no such different intention clearly apparent in the 1958 Statutes as will affect the accrued right and hence the right will continue to be preserved u/s 6(c) of the U. P. General Clauses Act despite the repeal of the 1956 Statutes.

27. I will again turn to Rule 211 of the 1956 Statutes, the only provision relied upon, by the opposite parties and now consider whether all that that rule contemplates is that a person who is holding office as Dean under the 1956 Statutes and has completed his normal period of office as such, will not be entitled to be Dean once again until other professor heads had become Deans in their own turn or whether Section 211 enacts that the Deanship which the person concerned is holding under the old Statutes of 1956 will be deemed to come to an end and also will be deemed to constitute a term already fully held under the new Statutes of 1938 irrespective of whether the full period has run out.

It seems clear that Rule 211 of the Statutes of 1958 could not have intended so to destroy a right of office which had been acquired under the Act itself as

explained above. If it had so intended a more direct language would have been used. If that right had to be destroyed, it would, moreover I think, have been destroyed directly by making an amendment in the parent Act by the Amendment Act 1957 that the office of Dean acquired and held while the parent Act, as it stood amended by the Amendment Act of 1954, was in force would come to an end from the date when the Amending Act of 1957 came into force

This was done previously by the Amendment Act of 1954 in regard to the then pre-existing elective offices. Moreover, it seems that Rule 211 of the 1958 Statutes by no means lends itself to the clear interpretation that the rights previously acquired were to be determined even before the three-year term of office of Dean acquired under the 1956 Statutes was concluded. The words are not "shall be deemed to have completed and had their turn".

Rule 211 seems to aim at preventing a person from once again asserting his right if he had under the prior Statutes enjoyed a full term of Deanship and to enable the rotation to be completed and to give everybody a chance. I may point out that if the interpretation sought to be put by the opposite parties on Rule 211 was accepted, Dr. Sharma, although not a Dean in the full meaning of the word because it is said that he was only appointed Dean for a limited period would still be deemed to have had his term of office and also he would be deemed to have had his turn of office merely because of his enjoying his Deanship for the period between the 1st May, 1958 and the 14th of August, 1958, i.e. for three and a half months,

28. Because of what has been said hereinabove I am of the view that the petitioner is still the Dean of the Faculty of Science and, therefore, a direction should issue quashing the decision of the Vice-Chancellor communicated through the Registrar, Lucknow University, vide letter dated 14th August, 1958.

29. I order accordingly. The petitioner will have his costs as against opposite party No. 2, the University of Lucknow only.

Jagdish Sahai, J.

30. I agree.