

(2000) 12 AHC CK 0099
In the Allahabad High Court
Case No : C.M.W.P. No. 42347 of 2000

Dr. Shyam Badan Singh

APPELLANT

Vs

Chancellor, D.D.U. Gorakhpur University and others

RESPONDENT

Date of Decision : 12-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 162
Gorakhpur University Act, 1956 — Section 39
Uttar Pradesh State Universities Act, 1973 — Section 50

Citation : (2001) 1 AWC 378 : (2002) 1 UPLBEC 152

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : G.K. Singh and V.K. Singh, for the Appellant; J.B. Singh, Neeraj Tripathi and Dilip Gupta, for the Respondent

Final Decision : Allowed

Judgement

S. R. Singh, J.—Challenge herein is to the legality of the order dated 13.9.2000 being Annexure-7 to the writ petition passed by the Chancellor, Deen Dayal Upadhyay, Gorakhpur University, Gorakhpur (in short the "University"). By means of the impugned order, the Chancellor has set aside the order dated 17.12.1968 of the Vice Chancellor and declared the respondent Dr. Prem Chand Singh, a lecturer in the Udit Narayan Post Graduate College. Padrauna, district Kushinagar, as the senior most teacher in the college. The Vice Chancellor by his order dated 17.12.1968 had declared the petitioner to be the senior most teacher. The representation filed by respondent Dr. Prem Chand Singh having been allowed by the Chancellor, the petitioner has approached this Court for quashing the order passed by the Chancellor.

2. The facts giving rise to this writ petition lie in a short compass. The petitioner was originally appointed Lecturer in Murli Manohar Town Post Graduate College, Ballia, where he worked from 19.7.1966 to 23.9.1974. Upon his appointment as Lecturer in Udit Narain Post Graduate College, Padrauna, district Kushinagar. with

the approval of the Vice Chancellor, the petitioner has been working in the said college since 24.9.1974. He has been granted the pay scale of Reader w.e.f. 1.7.1982 as per the Government orders dated 8.9.1994 and 16.12.1994. It is not disputed that Murli Manohar Town Post Graduate College, Ballia, as well as Udit Narain Post Graduate College, Padrauna, district Kushinagar are affiliated to the University. The respondent No. 4 was appointed as Lecturer in Udit Narain Post Graduate College, Padrauna, district Kushinagar on 21.9.1971 where he joined his duties on 4.10.1971. It would appear that at the time of his appointment, the respondent Dr. Prem Chand Singh was not possessed of Ph.D. degree. Consequently his appointment was made subject to the condition that he would submit his Ph.D degree before the University which he did on 17.10.1972. He has been granted the pay scale of Reader w.e.f. 4.10.1984. Similarly the respondent Dr. Tej Bahadur Singh was appointed Lecturer in the college on 17.8.1967 and he has been given the pay scale of Reader w.e.f. 17.4.1986. In the tentative seniority list of Faculty of Arts of Colleges affiliated to University of Gorakhpur as on 1.7.1981. the name of Dr. Prem Chand Singh is shown at S. No. 424. In the tentative seniority list of Faculty of Science of Colleges affiliated to Gorakhpur University, the name of the petitioner is shown at S. No. 166 and that of Dr. Tej Bahadur Singh at S. No. 209. The inter se seniority of teachers of colleges affiliated to the University is governed by the First Statutes of the Gorakhpur University framed u/s 50 of the U. P. State Universities Act, 1973. The First Statutes were, however, framed on 26.1.1977 whereas the petitioner as well as the respondents 4 and 5 were appointed prior to enforcement of the First Statutes of the University. Accordingly, in view of Statute 18.01 of the First Statutes, their inter se seniority as it stood on the date of enforcement of the First Statutes of the University would not be affected by any thing contained therein. The question then is what should be the criterion for determining inter se seniority of the petitioner and the respondents 4 and 5. The Chancellor in his order impugned herein has held the fourth respondent senior to the petitioner in view of the fact that fourth respondent was appointed Lecturer to teach the Post Graduate students. Reliance has been placed by the Chancellor on a Government Order dated 9.7.1968. Paragraphs 1. 3 and 4 of the said Government Orders being relevant to the question involved herein are excerpted below :

"1. As laid down in para 14 of G.O. No. CI1/2297/XV/-68-100(3)/66, dated March 7, 1968 and amended in G.O. No. CII/4196/XV/-68-100(3)/66. dated June 14, 1968. the seniority in service of teachers in a particular college shall be determined by length of service in that college in the same cadre and in the same grade :

Provided that in case of teachers whose length of service is the same, the seniority shall be determined by the age according to the High School or equivalent certificate :

Provided further that the periods of service in another University, Associated/affiliated college or colleges in the same or higher cadre and grade will count

towards seniority if the University or college is situated in U. P. and the college is affiliated to or associated with one of the Universities in the State.

3. A teacher in a higher grade would be senior to another teacher in the lower grade even though the latter may belong to a post-graduate department. If both the teachers are in the same grade the one belonging to post-graduate department will be senior to the one belonging to the degree department. Again, between two teachers A and B working as heads of the department in a degree college. A may be senior to B as he joined the college earlier, but if on a particular date the department of both A and B are raised to post-graduate and they are appointed as Readers in the respective post-graduate departments, their seniority in the new cadre will be determined by age only.

4. The seniority of a teacher of the post-graduate department will not depend upon whether he has been teaching post graduate classes or not. It will depend upon the grade in which he was appointed and the length of his service."

3. We have had heard Sri R. N. Singh, senior advocate for the petitioner and Sri Ashok Khare, senior advocate for the respondents. It has been submitted by Sri R. N. Singh that the petitioner was appointed on 19.7.1966 almost five years prior to the appointment of the fourth respondent who was admittedly appointed for the first time in the year 1971 and according to the Statutes framed under the Gorakhpur University Act, 1956, the petitioner was senior to the fourth respondent and the State Government had no authority to super-impose the Statutes by means of Government order dated 9.7.1968 reliance on which has been placed by the Chancellor in the order impugned herein. It has further been submitted by Sri R. N. Singh, senior advocate that the Government Order dated 9.7.1968 in so far as it is inconsistent with the old Statutes is illegal and without jurisdiction and does not confer any legally enforceable right. Sri Ashok Khare, senior advocate on the other hand submits that the relevant Statutes being skeletal, the Government was justified in issuing the Government Order of 1968 in order to fill in the gap. It has been submitted by Sri Khare that the fourth respondent was appointed as lecturer in the Post Graduate Department and, therefore, he has rightly been placed above the petitioner notwithstanding the fact that the petitioner was appointed lecturer prior to the appointment of the fourth respondent. The Government Order dated 9.7. 1968, it has been submitted by Sri Khare, does not contravene any provision contained in Chapter XVII of Statute of 1956 of the Gorakhpur University and it has the force of law having its origin from Article 162 of the Constitution of India which provides that the executive power of the State shall extend to the extent of the legislative power of the Legislature in the matters with respect to which the Legislature of the State has the power to make laws.

4. We have given our anxious consideration to the submission made by the learned counsel for the parties. Chapter XVII of the First Statutes, in short the old Statutes of the Gorakhpur University framed under the Gorakhpur University Act, 1956 and approved by the Government of U. P. Lucknow Shiksha (Ga.)

Vibhag No. C 3508/XV-55(131-1956 being Annexure-SA3 in so far it is relevant reads as under :

"1. The seniority of Principals and teachers shall be determined by the length of their service reckoned in the manner hereinafter laid down.

2. Service in each capacity as Principal or teachers shall be counted from the date of substantive appointment in that capacity.

3. Services rendered by a teacher for teaching degree classes in any of the State Universities or Degree Colleges affiliated thereto shall be taken into account for determining the seniority :

Provided that when a person holding substantively a post of corresponding rank in any University other than the Universities established by the State of Uttar Pradesh or colleges affiliated thereto which extend similar treatment to the teachers of this University or of its colleges, is appointed as a teacher by a college affiliated to the Gorakhpur University, the services rendered by that person in that University or the college affiliated thereto shall also be counted for seniority by the college which employs such a teacher.

4. Subject to the foregoing provisions, the seniority of a teacher shall be determined in the manner laid down in clause (6) below.

5.

6. Where more than one person becomes entitled under Statute to the same period of service for purposes of seniority, seniority among such persons shall be determined by age."

5. It would thus be evident that the relevant old Statute provides that seniority of Principals and teachers of affiliated colleges shall be determined by the length of service in each capacity to be counted from the date of substantive appointment in that capacity. In affiliated colleges, the service of teachers is either in the capacity of Principal or teacher, i.e., lecturer. The Statutes clearly provide that the seniority shall be determined by the length service to be reckoned from the date of substantive appointment in that capacity. The Statutes do not make any distinction between teachers of Degree department and those of Post Graduate department appointed in the same cadre and same grade. The Government Order dated 9.7.1968 being Annexure-8 to the writ petition, in so far as it provides that the seniority in a particular college shall be determined by the length of service in that college "in the same cadre and in the same grade" is in accord with the Statutes. It is further in tune with the Statutes in so far as it provides that a teacher in a higher grade will be senior to another teacher in the lower grade even though the latter may belong to a post-graduate department. However, in so far as it provides that if both the teachers are in the same grade, the one belonging to Post-Graduate department will be senior to the one belonging to the Degree department is incompatible with the scheme laid down in the Statutes for determination of seniority. In para No. 7 of the writ petition, it

has been, albeit, averred that seniority had to be fixed in accordance with the Government order dated 9.7.1968 and the old Statutes, the argument advanced by Sri R. N. Singh, senior advocate that the Government order dated 9.7.1968 in so far it provides that if both the teachers are in the same cadre and grade, the one belonging to the Post-Graduate department will be senior to the one belonging to Degree department runs counter to the provisions contained in Chapter XVII of the old Statutes made under the provisions of the Gorakhpur University Act, 1956, according to which seniority shall be determined by the length of service to be reckoned "from the date of substantive appointment" carries substance. Government's executive power is no doubt co-extensive with that of the State Legislature in respect of matters falling within its legislative competence but in areas occupied by statutory Rules, Government cannot issue any executive order which may, expressly or impliedly, run in conflict with the statutory provision. The Government order, in our opinion, in so far as it provides that if both teachers are in the same cadre and grade, the one in the Post-Graduate department will be senior to the one belonging to the Degree department overrides the statutory provision contained in the old Statutes made u/s 39 of the Gorakhpur University Act. 1956, besides being violative of Article 14 of the Constitution and, therefore, it cannot be given effect to. According to Section 39 (d) of the said Act, the Statutes could provide, for the classification and manner of appointment of teachers" among other matters mentioned therein. Unlike the provisions contained in Section 50 (6) of the U. P. State Universities Act, 1973, the State Government had power under the Gorakhpur University Act. 1956, to amend the Statutes. Inter se seniority of petitioner and respondent Nos. 4 and 5 is to be determined by the length of service to be reckoned with reference to the date of their substantive appointments. It is not disputed that the petitioner as well as respondent Nos. 4 and 5 were initially appointed as lecturers, i.e. to say. In the same grade and in the same cadre. By their length of service, they have been granted pay scale of Reader but the petitioner was given that scale earlier in point of time than the respondent Nos. 4 and 5 as already stated herein above and he was entitled to count the service rendered in Murli Manohar Town Post Graduate College, Ballia, while determining his seniority in U.N.P.G. College. Padrauna in Kushinagar. We are, therefore, of the considered view that the Chancellor fell into error in holding the fourth respondent senior to the petitioner merely on the ground that the fourth respondent was appointed as lecturer in the Post-Graduate department.

6. It would be pertinent to mention here that according to Statute 18.10 of the First Statutes of Gorakhpur University made under the provisions of the U. P. State Universities Act, 1973, service in the capacity of Principal or teachers, as the case may be, is to be counted from the date of taking charge pursuant to substantive appointment. According to old Statute, service is to be counted from the date of substantive appointment in the capacity of Principal or teachers, as the case may be. It makes no distinction between teachers of Degree department and those of Post-Graduate department belonging to same cadre and

same grade. Distinction created by the Government order dated 9.7.1968, to our mind, is contrary to law for it has the effect amending the Statutes and the State Government had no authority to do so u/s 39 of the Gorakhpur University Act, 1956, inasmuch as classification of teachers of Degree department and Post Graduate department for the purpose of seniority could have been done only by amending the Statutes and not by Government orders. Executive power of the State under Article 162 cannot be invoked in derogation of statutory provisions.

7. In the result the petition succeeds and is allowed. The impugned order dated 13.9.2000 is quashed.