

(1994) 04 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23581 of 1989

Dr. Shyam Lal Gupta

APPELLANT

Vs

Chancellor, Kanpur University and Others

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1994) 2 AWC 1214

Hon'ble Judges : G.P. Mathur, J;B.L. Yadav, J

Bench : Division Bench

Advocate : V.S. Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—Whether the Petitioner was senior to Respondent No. 4, Dr. A.K. Srivastava; whether (old) statute 11.34 (4) of the Kanpur University was relevant OR Sub-clause (e) of Statute 18.10 of the First Statute was applicable, or Statute 18.16 (under chapter 50 (1)/1.02 (1) was applicable; and in case statute 11.34 (4) was applicable, whether the services rendered by Respondent No. 4 as Senior Agricultural Economist in the Government of Surinam, while he was on leave, was in public interest, and whether it was a position involving similar work, are the short but significant questions for determination in the present petition filed by Dr. Shyam Lal Gupta under Article 226 of the Constitution of India, seeking relief for issuance of a writ of Certiorari quashing the impugned orders dated 31-8-89, 3-3-88 and 22-7-86, passed by Respondent Nos. 1, 2 and 3 respectively.

2. Shorn of details the portrayal of essential facts are that the Petitioner was appointed as Lecturer in Kulbhaskar Ashram Post Graduate Degree College, Allahabad, (for short the College) on 5-11-1965 while Respondent No. 4 Dr. A.K. Srivastava was appointed as Lecturer on 20-7-1965. Obviously Respondent No. 4 was senior to the Petitioner. The circumstances, however, took a dramatic turn

when Respondent No. 4 proceeded on an assignment as Senior Agricultural Economist, offered by the Government of Surinam (South America) and he was serving there since 20-11-81. On 20-9-84 as he rejoined the service, the Petitioner raised a dispute that he was senior to Respondent No. 4 as the latter was not granted leave in public Interest nor his lien was protected, nor the nature of service rendered in Surinam Involved similar work.

3. The averments of the Petitioner were refuted. The Principal of the College by the Impugned order (Annexure-2 to the petition) decided the case in favour of Respondent No. 4, Thereafter the matter was taken by the Petitioner to the Vice-Chancellor, who also by the impugned order dated 3-5-88, maintained the order of Principal and the Petitioner's representation u/s 68 of the U.P. State University Act also met the same fate.

4. Dr. R. Dwivedi, learned Counsel for the Petitioner urged that the Petitioner was senior to Respondent No. 4, and that the Statute 11.34 (4) of the Old Statute of the Kanpur University was not relevant, rather other Statutes indicated above were relevant, and that as the services rendered by Respondent No. 4 while he was holding another assignment since 2-11-81 to 20-9-84 as Senior Rural Economist in the Ministry of Agriculture, Government of Surinam, was not similar to the duties performed by him while in the College, consequently that period has to be excluded and in case that period is excluded the Petitioner becomes certainly senior to him.

5. Learned Counsel for Respondent No. 5 including the learned Standing Counsel and the counsel appearing for the Chancellor, on the other hand, urged that seniority of the Petitioner has to be decided after taking into account the nature of service rendered by Respondent No. 4, while he was abroad in connection with his assignment as Senior Agricultural Economist in the Government of Surinam and the services similar to what he was rendering while in the college. The details have been indicated in the counter affidavit and also in the impugned order, particularly the certificates granted by the Deputy Director, Ministry of Agriculture, Government of Surinam (Annexures C.A. 1, 2 and 3), which would indicate that the duties performed by Respondent No. 4 were similar to those performed by him while he was in the college. The lien and seniority of Respondent No. 5 were also protected as similar assurance was given and certificate was granted by the Principal of the College in consultation with the Committee of Management and other relevant authorities before Respondent No. 4 proceeded on leave. In this view of the matter the Petitioner cannot be senior to Respondent No. 4, and in any view of the matter the Chancellor including the Vice-Chancellor and the Principal have applied their mind to the controversy involved and they have specifically decided the points raised, after scrutinizing the nature of duties performed while Respondent No. 4 was abroad. Hence there is no Justification for interference.

6. Having scrutinized the submissions of the learned Counsel for the parties, the points involved appear to be interconnected, hence it is convenient to take them

with the other. The Petitioner could be held senior to Respondent No. 4 only when the services rendered by the latter while serving in Suriname as Senior Agricultural Economist are excluded as they were not the services rendered on similar nature than the services rendered in the College. The other point involved is as to whether Statute 41.34 (4)(old) was relevant.

7. In *Dr. K.P. Hajela v. N.S. Verma* (1986) UP LB EC 492, while considering the other statutes including Statute 11.34 of the Kanpur University, and the First Statute of the University of Kanpur, 1977. Statutes 18.10 and 18.16, it has been held that in the matters of seniority in respect of Lecturers or the Readers appointed prior to the enforcement of the First Statute, Statute of Kanpur University (Old Statute 11.34) was relevant and not the other statute. In that case Respondent No. 1 N.S. Verma proceeded on leave for about three years without pay in order to take up a job of teaching in South Yemen at the University of Eden, College of Education on the recommendation of the Government of India on a clear term that he will have his lien of service and that his assignment will not affect his claim of seniority. On return from the University of Eden his claim was challenged, and in that connection their Lordships of the apex Court ruled that in such a situation it is only the old Statute 11.34 (4) which will hold the field and not the other statute. Following that dictum we proceed to decide the matter holding that the old Statute 11.34 (4) to be applicable and not the other statute. It is convenient to refer to the relevant provisions of the old Statute 11.34 (4) as under:

The period of leave without pay shall not be counted in calculating the seniority unless during such leave another position involving similar work was held or it was medical leave.

As the Respondent No. 4 proceeded on leave without pay, consequently his absence from duty without pay would not have maintained his seniority. But this clause is added by word unless, a conjunction according to grammar, which mean except, when he was holding another position involving similar work during his absence, in that even that period could be counted. It has to be noticed that the Legislature in its wisdom has used the expression "another position" and not "another appointment". The expression "position" is not statutorily defined nor the same is judicially explained. In such event the dictionary meaning can be taken in assistance to ascertain the meaning of the word in common parlance. While doing so we have to remain at guard as a particular word is used in different senses according to its context and the dictionary gives all the meanings of a word. The court has, therefore, to select a particular meaning which would be relevant to the context. According to Shorter Oxford English Dictionary the word "position" connotes the place occupied, the situation which one metaphorically occupies in relation to others. In Webster's III New International Dictionary, the word "position" indicates social or official rank or status. In view of the aforesaid meanings assigned to the word "position" it is the appointment of Respondent No. 4 that has to be looked into or ascertained,

or it is the social and official rank occupied by him while he was serving in the Government of Suriname (South America) has to be looked into, Even though technically the appointment of Senior Agricultural Economist may not be similar to the post held by him while at the College, but the nature of duties as indicated in Annexures C. As 1, 2 and 3 to the counter affidavit have to be looked into.

8. In order to ascertain what is significant in the aforesaid Old Statute 11.34 is that the work done by Respondent No. 4 need not be similar to the work done by him while in the College, The work while he was on leave need not be the same, rather it has to be similar, which obviously indicates somewhat akin to the earlier work performed by him in the College, the Legislature has used the expression "position" and "similar work" to indicate more comprehensive meaning.

9. The certificate issued by the Deputy Director, Ministry of Agriculture dated 7-8-84 (Annexure C.A. 1) indicates the nature of work performed and certifies that ha was incharge of Economic Research, planning and implementation on all levels, i.e., farm, project, regional and sectoral. The job description required him to guide on these aspect. During his stay he also made significant contribution in Economic Research and development activities of the Ministry. He also completed independent projects and had also undertaken feasibility studies. He provided training in Statistical Methods to the in service staff. Similarly in Annexure C.A. 2, the certificate dated 8-3-85 issued by the University of Suriname, South America, it was clearly stated that he was part time lecturer in the Department of Economics at the Senior Lecturer Level since November 1983 till August 1984 and he was teaching within the department of Economics. On the next page of the said certificate it has been stated that Dr. Srivastava was a hard task master for his students. In other words, he required utmost sincerity in the work assigned to the students by him. Similarly Annexure C.A. 3 indicates that he was incharge of Economic Research, planning and implementation on all levels, i.e. farm, project, regional and sectoral. He was also required to guide the Ministry on these aspects and also guide in the team work of international organizations such as F.A.O., Q.A.S. IICA in economic research and development activities of the Ministry. This makes abundantly clear that he was performing duties similar to the duties of lecturer in Agricultural Economics. (Degree Section) in the college. We do not find any substance in the submission of the learned Counsel for the Petitioner that the duties performed or work undertaken by Respondent No. 4 at the University of Suriname was not in connection with another position involving similar work as performed by him in the College. The other aspect which requires emphasis is that before Respondent No. 4 could proceed on leave, a certificate was required by the Ministry of Home Affairs (Department of Personnel), Govt. of India, to furnish a certificate to the effect that Respondent No. 4 would be relieved for taking up the assignment abroad on a foreign service in public interest and that he would be retaining his lien and his seniority would be protected. The College management issued no objection certificate to the aforesaid requirement and thus his lien and seniority was protected technically. This indicated a sort of assurance, relying upon which Respondent No. 4 acted

upon and proceeded on leave. In this view of the matter, in our opinion, that certificate would enure to the benefit of Respondent No. 4 and he would be technically entitled to the benefit of the doctrine of promissory estoppel or equitable estoppel which would be operative against the college management and all concerned.

10. In view of the discussions made above, our answer to the question earlier posed is that the relevant statute is the old statute 11.34 (4), and that the work done or the duties performed by Respondent No. 4 while he was on leave abroad he was holding another position involving similar work. Keeping in view the nature of duties as performed by Respondent No. 4 while availing the leave abroad, his seniority in the College would be maintained and the leave abroad has to be counted towards duty and the Petitioner would not be senior to Respondent No. 4.

11. In view of the premises aforesaid, the petition lacks merit and the same is dismissed. The interim stay, if any, is vacated. There shall be no order as to costs.