
(2013) 04 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 739 of 2012 (O and M)

Dr. S.K. Gupta

APPELLANT

Vs

Maharshi Dayanand University

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) LabIC 3548

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Alok Jain, for the Appellant; Balram K. Gupta and Ms. Madhu Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Two intra-Court writ petitions were taken up for adjudication by the learned single Judge, namely CWP No. 15305 of 2008 titled as "Amit Bansal v. Vaish College of Engineering, Rohtak and Ors." (for short "Ist petition"), in which he sought writ in the nature of quo warranto to quash the promotion of S.K. Gupta (appellant herein) by order dated 21.9.2006 to the post of Professor, being contrary to the AICTE norms regarding number of years of experience and another CWP No. 6227 of 2009 titled as "Dr. S.K. Gupta v. Maharshi Dayanand University Rohtak" (for short "IInd petition"), in which he has prayed for issuance of writ in the nature of certiorari for quashing the enquiry conducted by the University, show-cause notice issued on 24.3.2009 and also the enquiry report given on 12.3.2009 being without jurisdiction, illegal and beyond the powers of the University. In respect of the 1st petition, it has been observed by the learned single Judge that it deserves to fail for the reason that holder of office is not a holder of public office which would require to be annulled by issuance of a writ in the manner as sought for and the IInd petition filed by the appellant was also dismissed holding that an unaided self-financing college is still to conform to the University directives as regards approval of appointments so that persons who hold various posts have the requisite qualification that an

expert body like AICTE has laid down. The failure of compliance of AICTE norms taken as a ground for withdrawing the approval granted to the College for appointment of the appellant as Professor, has been approved. However, the learned single Judge had directed that the College will be at liberty to seek fresh consideration in the light of number of years of experience that appellant has secured during the pendency of the proceedings or by competitive selection method, if there is any other candidate, who is fit for consideration and the College would prepare a panel and make selection and seek approval of the University/College in accordance with law,

2. Aggrieved against the aforesaid order of the learned single Judge, the present appeal has been filed by the appellant but before we delve into the respective contentions of the parties it would be appropriate to give a few relevant facts.

3. The appellant is working in Vaish College, which is an Unaided Self-Financed Technical Professional College being managed and run by the Vaish Education Society, registered under the Societies Act, 1961. The college is approved by All India Council for Technical Education and recognized by Directorate of Technical Education, Haryana and is affiliated to Maharshi Dayanand University, Rohtak. The case of the appellant is that he was appointed as Lecturer in the year 1995 in Vaish College of Engineering and was promoted as Assistant Professor in the Vaish College in the Selection Committee meeting held on 1.1.2001. Later on, the College authorities thought it fit and proper to get the appointment of the appellant as Assistant Professor approved from respondent-University, therefore, appellant had to face another Selection Committee in the year 2004 and his appointment as Assistant Professor was approved by University on 8.2.2005. He was further considered for the post of Professor by the Selection Committee on 17.9.2006 which was also approved by the University on 3.4.2008. The appellant is stated to have 15 years of teaching experience and was upgraded as Principal of the College.

4. The whole dispute started when it came to the notice of the University that the appellant was appointed as an Assistant Professor only on 25.7.2004 and at the time when his case was taken on 17.9.2006 for the purpose of appointment as Professor he was not possessing requisite number of years of experience as Assistant Professor as laid down in AICTE norms i.e. the qualification and experience for the period of five years as Assistant Professor or its equivalent.

5. Although the case set up by the appellant in the writ petition was that he was appointed as Assistant Professor on 1.1.2001 and only again considered vide another Selection Committee in the year 2004 before he was selected as Professor and had already completed requisite year of experience as per the AICTE norms but the learned single Judge did not agree because the discreet enquiry report by the University has a reference to the fact that the College had not granted any proof for payment of salary as Assistant Professor to the appellant from 1.1.2001 itself but it merely fabricated a document to show that the Selection Committee had held in its proceeding on 1.1.2001 offering

petitioner the post of Assistant Professor with no corresponding documents of payment of salary attached to the post. It was also found that the Chairman of the College had disowned two of the letters alleged to have been sent on 24.5.2007 and 5.7.2007 showing the petitioner as an Assistant Professor from 1.1.2001. He also found that the Selection Committee was proposing the name of the appellant only on 25.7.2004 to the University seeking for its approval without making any reference about any anterior de facto officiation of the appellant as an Assistant Professor.

6. Faced with these facts available on record, the learned single Judge has held that the Selection Committee had committed a serious error of law in proposing the name of appellant as Professor on 17.9.2006 who had only been appointed as Assistant Professor in the year 2004 and had not gained requisite experience for 5 years as per AICTE norms. The learned single Judge had also referred to various judgments relied upon by the appellant by which he wanted to convey that experience gained after appointment can also be considered. All these precedents have been distinguished by the learned single Judge and as it is repeatedly held that there is no evidence on record to prove that the appellant was selected as Assistant Professor in the year 2004 and had acquired requisite experience of five years before he was considered for the post of Professor as per AICTE norms.

7. Learned counsel for the appellant has argued that the appellant was selected as Assistant Professor in the year 2001 and had requisite experience when he was considered for selection for the post of Professor. He has further argued that the appellant had acquired requisite experience during the pendency of the writ petition itself even if it is reckoned from 25.7.2004 and the Court in equity should not have directed the College/authority to prepare a panel and make a selection and seek for approval of the University. He has further submitted that the defect, if any, because of holding appointment as Assistant Professor to have been from 25.7.2004 stands cured by efflux of time.

8. On the other hand, learned counsel for the respondents has argued that if the appellant was selected as Assistant Professor in the meeting of Selection Committee held in the year 2001 then why did he face Selection Committee in the year 2004. They also submitted that the appellant has not placed on record material to show that he was drawing salary as Assistant Professor after 2001. Insofar as the acquisition of experience during the pendency of the writ petition or after having been appointed as Professor is concerned, it is submitted that as per norms of the AICTE, at the time of consideration for the post of Professor, the incumbent should have 10 years experience out of which at least 5 years should be of senior level appointment as Assistant Professor in Post Graduate Teaching which was not possessed by the appellant in the year 2006 when he was considered for selection to the post of Professor because he was selected as Assistant Professor only in the year 2004. It is also submitted that the experience of five years as an Assistant Professor for being considered for the

purpose of Professor at the time of selection is pre-requisite and sine qua non.

9. We have heard both the counsel for the parties and have perused the record.

10. It is not disputed by the appellant that norms of AICTE are mandatory for the purpose of selection of the Professor. The relevant norms are reproduced by the appellant in the grounds of appeal, which are extracted herein:--

For Assistant Professor

5 years experience in teaching and/or research excluding the period spent for obtaining the degree and has made some mark in the areas of scholarship as evidenced by quality of publications/contributions to educational innovations, design of new courses and curricula.

For Professor

10 years experience of which 5 years should be at a Senior level comparable to that of a Assistant Professor in Post Graduate teaching, and/or experience in research at University/National level Institutions, including experience of guiding Research at Doctor level.

11. According to the aforesaid norms, while considering an incumbent for the post of professor, one has to acquire 10 years experience of which at least five years experience should be at a senior level comparable to that of an Assistant Professor in Post Graduate Teaching. The learned single Judge has made a categoric observation about the fact that the appellant was not selected as Assistant Professor in the year 2001. The observation reads as under:--

When this writ petition was filed, the University appears to have made its own enquiries and marked them confidential in the records. The report, which was prepared by the University had the reference of the documents collected by the employee of the college under RTI and they made specific reference to the fact that the petitioner had been appointed in Vaish College of Engineering, Rohtak since 1995 as a Lecturer and the casual leave application from the years 1995 to 2006 had been deliberately destroyed by the petitioner himself vide his order dated 28.01.2008 only to conceal the fact that he had continued as a Lecturer till the year 2004 when he was appointed as an Assistant Professor. The attempt of the college to bolster the case of the petitioner that he had been appointed as an Assistant Professor even on 01.01.2001 was deliberately done only to create a document for experience qualification, which he lacked. The discreet enquiry report collected by the University made also reference to the fact that the college had not granted any proof for payment of salary as Assistant Professor from 01.01.2001 itself but the college had merely fabricated a document to show that the Selection Committee had held its proceedings on 01.01.2001 affording to the petitioner the post of Assistant Professor with no corresponding documents of payment of salary attached to the post. As a matter of fact that the Chairman of the College had himself disowned two of the letters alleged to have been sent on 24.05.2007 and 05.07.2007 showing the petitioner as an Assistant Professor

from 01.01.2001.

As regards the attempt of the petitioner to make it appear as though that he held the post of Assistant Professor from 01.01.2001, I would reject as false and artificial and I would not detain myself at length on this aspect, for there are several factors that show that the petitioner could not have officiated as an Assistant Professor from 2001. Even apart from the absence of leave applications and the salary registers relating to the said period, even the members of the Selection Committee including the persons who were nominees from the University would plead selective amnesia to show that they did not remember whether the petitioner had the requisite number of years of experience and whether they had seen any document showing that the petitioner had been appointed as Assistant Professor from the year 2001 itself. Indeed such a contention would be impermissible for the college to make, especially in view of the fact that when the Selection Committee was proposing the name of the petitioner only on 25.07.2004 to the University seeking for its approval. They were not making a reference about any anterior de facto officiation of the petitioner as an Assistant Professor at that time. I would, therefore, find as correct the enquiry report made by the University that the petitioner had been appointed as an Assistant Professor only in 2004 and on the day when the Selection Committee was proposing his name as a Professor on 17.09.2006, the petitioner had not the requisite experience as per the AICTE norms.

12. We are in agreement with the finding returned by the learned single Judge in this regard and hold that the appellant has failed to prove that he had been selected as Assistant professor in the year 2001 and if he had been selected only in the year 2004 as Assistant Professor he could not have been considered for the selection to the post of Professor without gaining an experience of five years in the post of Assistant Professor and could have been considered somewhere in the year 2009-2010 and not in the year 2006 as has been done in the present case.

13. The other submission of the appellant that his experience has to be counted after his appointment as Professor which is more than 5 years now could be taken into consideration is unacceptable because as per the norms of the AICTE, the Assistant Professor should have five years experience in Post Graduate Teaching before he could apply for the post of Professor. The norms laid down by the AICTE are mandatory in character and are required to be strictly adhered to. Thus, looking from any angle, we do not find the present appeal to be meritorious and as such the same is hereby dismissed though without any order as to costs.