

(1960) 09 AHC CK 0017
In the Allahabad High Court
Case No : Writ Petition No. 198 of 1959

Dr. S.N. Shukla

APPELLANT

Vs

Chancellor, Lucknow University and Others

RESPONDENT

Date of Decision : 16-09-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Lucknow University Act, 1920 — Section 11(2), 20, 23, 23(5), 23(6)

Citation : AIR 1961 All 401

Hon'ble Judges : Tandon, J

Bench : Single Bench

Advocate : Iqbal Ahmad and Umesh Chandra, for the Appellant; Standing Counsel, for Opposite Party 1, S.C. Das, B.K. Dhaon and K.S. Verma for Opposite Party 3 and Uma Shankar Srivastava, for Opposite Party 2, for the Respondent

Final Decision : Dismissed

Judgement

Tandon, J.—The petitioner, who is Dr. S. N. Shukla, is a Professor of Chemistry in the Lucknow University. The third respondent, Dr. A. B. Sen is also a Professor in the same Department. The other two respondents are the Chancellor of the University and the Lucknow University as such.

2. Dr. A. C. Chatterji who was the then Professor of Chemistry retired on the 30th April, 1956, and it became necessary to make an appointment in the vacancy thus created. Earlier in January, 1958, the University Grants Commission had in pursuance of their scheme for the development of the higher scientific education during the Second Five Year Plan sanctioned various grants one of which made provision for the entertainment of one further Professor of Chemistry in this University on condition that the State Government also placed a matching grant of similar amount to meet the cost of the post. Appointment of two Professors thus became necessary. An advertisement inviting applications from candidates for these posts and some other posts was then published in the papers. It was thus:--

"UNIVERSITY OF LUCKNOW.

Applications are invited for the following posts of Professors in the grade of Rs. 800-50-1250 and Assistant Professors in the grade of Rs. 300-20-500 E. B.-25-800. Probation two years. Benefits of Provident Fund available under Rules. Knowledge of Hindi will count as an additional qualification: Professors:

1. Two Professors of Chemistry
2. One Professor of Bio-Chemistry
3. One Professor of Statistics
4. One Professor of Geology.

Candidates must possess high academic qualifications and substantial experience of teaching post graduate classes and of guiding research in their respective subjects and specialty. They should also have a well established reputation for scholarship based on original contributions and research publications."

In response to the above advertisement Dr. Shukla and Dr. Sen and a few others whose names are not relevant applied for appointment in the two vacancies. The power to make appointments of teachers of the University, to which category a Professor also belongs, belongs u/s 20(1) of the Act to the Executive Council. The above power, however, is subject to the provisions of Statutes; at the same time, Sub-section (1) of Section 31-A has imposed the further limitation on it that an appointment as teacher shall be made on the recommendation of the Selection Committee which is one of the authorities of the University. The Selection Committee, therefore, met on the 7th November. 1958 and interviewed six candidates Including the aforementioned two persons and made the following recommendation:--

"It was resolved to recommend that Dr. A. B. Sen, M.Sc., Ph.D., be appointed Professor of Chemistry vice Dr. A. C. Chatterji, on Rs. 800/- p.m. in the grade of Rs. 800-50-1250.

"It was further resolved that the other appointment be considered later."

The Committee thus confined its recommendation on this date with respect to the vacancy which occurred consequent upon the retirement of Dr. Chatterji and in its case suggested the candidature of Dr. Sen. No recommendation was made at the moment for appointment to the post created pursuant to the grant sanctioned by the University Grants Commission. There was, however, another meeting of the Selection Committee on the 18th December, 1958, in which it resolved that Dr. S. N. Shukla, i.e. the petitioner be appointed in the post sanctioned by the Commission.

Thereupon the Executive Council, accepting the two recommendations of the Selection Committee, resolved on December 20, 1958 that Dr. Sen and Dr. Shukla shall be appointed to the two posts of Professors of Chemistry. There is

no doubt that the two gentlemen then took over charge of the respective posts to which they had been appointed by the Executive Council.

3-4. Sub-section (6) of Section 23 of the Act requires that there shall be a Head in each Department of teaching who shall be responsible to the Deon for the organization of the teaching in the Department. It further provides that the senior most teacher of the Department shall be the Head of the Department. In view of the above provision it became necessary to declare who out of the two Professors shall be the Head of the Department of Chemistry. On a query by the Dean of tile Faculty made in that behalf, the Vice Chancellor ordered on the 3rd of January, 1959 as follows:

"VC

In accordance with the provisions in the statutes Dr. S. N. Shukla is senior to Dr. Sen as professor. He is therefore entitled to be the Head.

Sd. K. D. Tewari Registrar 2/1/1959.

Approved. Sd. K. A. Subramania Iyer Vice Chancellor 3-1-1959"

It might be worthwhile at this very place to reproduce tile fallowing report which had been placed before the Vice Chancellor on the letter from the Dean and on which he ultimately made the above order:--

"Dr. S. N. Shukla and Dr. A. B. Sen were appointed Professor of Chemistry by the Executive Council on December 20, 1958.

"In order to determine seniority among the above teachers attention is invited to the following Clause (v) of Statute 198 printed at page 77:--

"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".

"The date of birth of Dr. A. B. Sen and S. N. Shukla, as verified from the copies of the High School Certificates submitted by these gentlemen, are given below:--

Dr. A. B. Sen..... ..17th June, 1911 Dr. S. N. Shukla..... ..24th Decr. 1905.

Sd. G. L. Srivastava 2/1/59".

5. In view of the Vice Chancellor"s order Dr. Shukla who was held to be the senior to Dr. Sen was in terms of Sub-section (3) of Section 20 declared to be the Head of the Department of Chemistry. On the 5th of January 1959 effect also was given to it. The following day Dr. Sen, who claimed that he was already acting as Head of the Department of Chemistry had been wrongly removed from that office by the aforesaid order of the Vice-Chancellor, made a representation to the Chancellor asking that the Vice-Chancellor"s order be set aside and its operation too might be stayed meanwhile. This representation was described to

him to be an appeal against the aforesaid order.

The Chancellor obtained a report from the University on this representation and in the end made an order on the 2nd of July, 1959 that Dr. Sen shall be held to be senior to Dr. Shukla. He also directed the Vice-Chancellor to give effect to his decision which necessitated the transfer of the office of the Head of the Department of Chemistry from Dr. Shukla to Dr. Sen. On July 22, 1959, the Registrar asked the Dean of the Faculty to give effect to it. The same day Dr. Shukla presented the instant petition under article 226 of the Constitution impugning the validity of the Chancellor's order. The reliefs asked were

(i) a writ in the nature of certiorari quashing the said decision of the Chancellor; and

(ii) a writ in the nature of mandamus directing the respondents 1 and 2 not to give effect to it.

In asking the first relief the prayer made was to quash the direction by the Registrar dated the 22nd July, 1959, by which while communicating the decision of the Chancellor he, had required the charge to be transferred to Dr. Sen. It appears that subsequent to the presentation of the petition Dr. Shukla wrote to the Chancellor to reconsider his order holding Dr. Sen to be senior to him. The Chancellor turned down his above representation on the 2nd May, 1960. The petitioner, thereafter added the further relief by way of amendment requesting that the order dated the 2nd May, 1960 be also quashed. The grounds urged in support are :

Firstly that the petitioner's appointment -as Professor of Chemistry was not on any temporary post, there being also no substantial difference in the manner the two appointments, viz. the petitioner's appointment and the appointment of Dr. Sen, happened to be made.

Secondly, that the Chancellor had no authority under the law to determine the question of seniority inter se the two Professors; accordingly his decision is without jurisdiction.

Thirdly, that in any case the Chancellor's decision, is invalid as it failed to give to the petitioner an opportunity of being heard in reply, it thus offended against the principles of natural justice.

Fourthly, that in accordance with the provisions of Statutes 198(2) (5) the petitioner whose appointment was in a substantive capacity was senior to Dr. Sen.

Fifthly, that irrespective of the fact whether the post held by the petitioner was a temporary Post or a permanent post, he is entitled to be declared senior to Dr. Sen so long as his appointment to the post held by him is in a substantive capacity. In other words, the contention is that a substantive appointment can be both in a temporary post and in a permanent post. If, therefore, the petitioner

held his post substantively no matter it was a temporary post, he must be senior to Dr. Sen.

6. Each one of the three respondents has separately entered appearance. Dr. Sen has claimed that he was senior to Dr. Shukla. Both Dr. Sen and Dr. Shukla have in their respective affidavits made effort to describe their educational qualifications as also the posts as Reader or as Lecturer held by them from time to time, the purpose apparently being to show the reasonableness of their respective claim, but as was frankly conceded at the Bar the present controversy is not affected by those facts. The seniority of one or the other as Lecturer or Reader is of no avail in determining seniority as Professor. The main ground which Dr. Sen has raised is that his appointment being on the permanent post of Professor of Chemistry he under the standards governing seniority was senior to Dr. Shukla.

It has been noticed that Dr. Shukla was appointed on the post sanctioned by the University Grants Commission. Dr. Sen accordingly contends that this particular post was a temporary post as it was limited in its duration to the period of the Second Five Year Plan and in determining seniority the claim of a person holding a temporary post cannot be considered. He has also urged that the Chancellor was authorised on a representation having been made by him to decide the question of seniority as he actually did by the impugned order. In view of it too he was entitled to be senior to Dr. Shukla hence had been rightly declared to be the Head of the Department of Chemistry.

7. The University do not admit that the post created pursuant to the grant made by the University Grants Commission was a temporary post, Their case, on: the contrary, is that it was a permanent post and appointment thereto of Dr. Shukla was in a substantive capacity. That being so, their contention further is that Clause 198 (v) of the Statutes was applicable to, the instant facts, therefore Dr. Shukla ought to be senior to Dr. Sen. The above clause is thus:--

"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).....,

(b)

(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.

(iii)

(iv)

(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."

Dr. Shukla is admittedly senior in age to Dr. Sen. Further since both these persons had been appointed as Professor in the posts held by them on the same date, i.e. 20th December, 1958 the period of service rendered by them happened to be the same. The University therefore claimed that seniority in age was the deciding factor.

8. On behalf of the Chancellor, firstly, it is urged that the post held by Dr. Shukla was a temporary post while the post held by Dr. Sen was permanent, therefore the latter was senior and also entitled to be the Head of the Department. Secondly, it is pointed out that the decision which he gave on the representation of Dr. Shukla was done so u/s 39 of the Act and as this section gave him the authority in that behalf it was not open to the petitioner to question it by these proceedings. Section 39 provides that:

"If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University or whether any decision of the University or any Authority thereof is in conformity with this Act, the Statutes or the Ordinances, the matter shall be referred to the Chancellor whose decision thereon shall be final."

9. A question of fact which will require to be determined at the outset is about the true nature of the appointment held by the petitioner. Can he be said to hold his post in a substantive capacity when alone Clause 198 of the Statutes is attracted. Neither the Act nor the Statutes framed there under have anywhere attempted a definition of "substantive appointment" nor do they describe in what cases a person shall be deemed to hold his post in a substantive capacity. The petitioner argues that appointment on a temporary post also, as in the case of a permanent post, can be in a substantive capacity (though he further claims that the post held by him was a permanent post) hence the temporary or permanent nature of his post should not matter.

The case of the University likewise is that the post held by the petitioner was a permanent post and that in any case his appointment thereto was in a substantive capacity. The remaining respondents who do not admit that an appointment in a substantive capacity can be made against a temporary post contend that the petitioner's post was a temporary post, he could not also be said to be holding it in a substantive capacity.

10. In the absence of any definition in the Act or the Statutes of the expression "permanent post" and of "an appointment in a substantive capacity" this controversy will need to be judged upon the circumstances attached to and also attending the creation of the particular post including those leading to the petitioner's appointment. At an earlier place of this judgment the advertisement by which the applications for appointment to the two posts were invited is reproduced. No such description about the post being temporary or permanent is

to be found in it.

On the other hand, applications were invited in similar terms for both the posts. It also stated that the candidate who is selected shall be placed on probation for two years, and will be entitled to the benefits of the Provident Fund also according to the rules. At the same time no limitation as to period for which appointment to the particular post was to continue had been mentioned in it. In view of the features it is contended that both the posts were permanent posts and the appointments thereto were appointments in a substantive capacity.

Reference is made in this connection to Clause 181 also of the Statutes which is to the effect that every teacher shall on appointment be on probation for a period of two years. The appointment of teachers is done through a Selection Committee by the Executive Council u/s 20 of the Act. The classification of teachers of the University is given in Clause 160 of the Statutes, while their number, qualifications and emoluments are fixed by the Executive Council after considering the advice of the Academic Council.

It is admitted that in the instant case the Academic Council recommended the creation of the particular post to which the petitioner had been appointed later. It is thus argued that both for the reason that the post had been created on the recommendation of the Academic Council by the Executive Council and again for the reason that the petitioner was placed on probation for two years the post which he held was a permanent post.

11. Clause 181 of the Statutes undoubtedly requires that every teacher mentioned in clause [160 shall on appointment be on probation for a period of two years. It, however, draws no distinction between a Professor appointed on a temporary post or another who is appointed on a permanent post. There can be a probationary appointment on a temporary post also. There is nothing in law also which can be said to deter an appointment on a probationary basis to be made in a temporary post. The period of probation of an employee is truly a period of test and there is no rule of law which disentitles an employer from requiring an employee whether he is appointed on a permanent post or on a temporary post to serve a period of probation.

12. No guidance can, therefore, be claimed from the fact that the appointees were required to remain on probation.

13. One of the duties of the Academic Council as laid down in clause 103 of the Statute is to make proposals to the Executive Council for the institution of teaching posts. The post is indeed created by the Executive Council but the Council does so after considering the proposal of the Academic Council. The Council, therefore, in its meeting dated the 16th April, 1958, adopted the following resolution with reference to the post held by the petitioner:

"The Council considered the question of approving of the creation of certain teaching posts sanctioned by the University Grants Commission.

It was resolved to recommend that the following teaching posts be created;--

(i) Professor of Chemistry."

The above recommendation of the Academic Council was later considered by the Executive Council in its meeting on the 30th April, 1958. Resolution of the Executive Council was:

"The Council considered Resolution 19 of the Academic Council dated April 16, 1958 relating to the creation of certain posts sanctioned by the University Grants Commission.

It was resolved that the following posts be created and steps be taken to implement the decision after ascertaining the position with regard to the sanction of the matching grants from the State Government:

(i) Professor of Chemistry.

Referring to the above two resolutions Sir Iqbal Ahmad on behalf of the petitioner, has urged that since neither resolution provided for the creation of the post of Professor of Chemistry for any limited period, much less identified it as a temporary post, the post thereby proposed or created was a permanent post.

14. For assessing the true implication of these resolutions both of which refer to the creation of the post sanctioned by the University Grants Commission the terms on which Commission made the grant are relevant. Indeed, the terms on which the State Government made the matching grant subject to the fulfillment of which condition the Commission itself sanctioned the grant are similarly relevant. What the Academic Council and also the Executive Council decided while instituting the post was to create the post which had been sanctioned by the Commission and for which the State Government too was willing to contribute a matching grant. If the post sanctioned by the Commission was a temporary post, the post actually created since it was in pursuance of the sanction given by the Commission will too be a temporary post. The omission to give it a nomenclature in the resolutions of the two bodies will not alter its true position if otherwise the post was a temporary post.

15. The Commission's letter dated the 14/24th January, 1958 (Annexure G) said in clear terms that the scheme by reason of which the particular post had been sanctioned was for the duration of the Second Five Year Plan. The grants thereby sanctioned were similarly limited to the period of the Second Five Year Plan. In describing the post which had been sanctioned the period laid down was three years commencing from 1958. It was further provided that the same was subject to the condition that the State Government contributed its share on the basis of one half of the recurring approved expenditure.

The sanction was thus for a limited period lasting up to March, 1961. On February 11, 1959 the State Government as well in sanctioning its matching grant very definitely informed the University that it had done so for the

remainder of the period of the Second Five Year Plan. The University wrote to the State Government on the 18th of February, 1959, in reply to their letter of the 11th of February, 1959, explaining the difficulty which, in its opinion was arising On account of the temporary nature of the appointments approved by the latter.

It was said in it that by providing these posts to be created on a temporary basis the benefit of Provident Fund and leave otherwise admissible to holders of permanent posts alone will not be available to persons who should be appointed to them and this may hamper the successful execution of the scheme itself for the development of scientific education. It further wrote that there was bound to be handicap to the incumbents in other respects also in those circumstances. The Government still wrote to the University on the 9th April, 1959, showing their inability to accede to its request. The Government in doing so also pointed out that the Commission too had not sanctioned the post on a permanent basis. In the end the letter said that the position could be reviewed in the year 1960-61.

16. The above documents leave no room for doubt that both the Commission and the State Government in sanctioning the grant did so for a limited period only. They were unwilling to agree, even though requested by the University, to the creation of the post on a permanent basis. The money for the post was to come through grants had from these authorities. It is not proved that the Commission at any time accepted the creation of the post proposed by it on a permanent basis..... In view of the above facts and the resolutions of the Academic Council and the Executive Council referred to earlier it is clear that the post thereby created was a post limited in duration up to the 31st March, 1961.

The petitioner as well as the University contend that in inviting applications from candidates for appointment on these posts it was not said that the post was temporary or limited up to the 31st March, 1961. At the same time it said that the person appointed shall be entitled to the benefits of Provident Fund and be placed on Probation for two years which incidents belong to an appointment in a substantive capacity. Consequently the appointment of the petitioner who applied in response to the said advertisement should be held to be in a substantive capacity.

It may be that the advertisement made no such reference nor was different from the one made in the case of the permanent post to which Dr. Sen had been appointed. But none of these facts can turn the post into a permanent post it otherwise was created on a temporary basis, in judging the true nature of the post the authority by which it was created must be the test. Any impression which the University might rightly or wrongly have entertained about it should not affect it. Indeed, administrative action continued un objected over a reasonably long period may sometimes usefully weigh in deciding a fact of this nature but the instant case is entirely different. The post was created in 1958. From the very beginning it was subject to the condition that a matching grant was forthcoming. The State Government too had from the commencement insisted that the post shall be limited upto the 31st of March, 1961, when the

position can "be reviewed. There is little merit, therefore, in the contention that in spite of what the Commission and the Government sanctioned the post should be deemed to be a permanent post and the petitioner's appointment thereto in a substantive capacity.

17. It was pointed out earlier also that the University Statutes which make provision for creation of teaching posts in the University do not define the expressions "temporary post" and "permanent post". The obvious question which now deserved to be considered is what is that which distinguishes a permanent post from a temporary post. These expressions are defined in the Fundamental Rules, 9 (22) (30) Financial Handbook Volume II, which are applicable to servants under the State.

According to those definitions a temporary post is a post limited in its duration upto a specified time and a permanent post is one which is not so limited. Although the Fundamental Rules as such do not apply to University employees still the distinction between a permanent post and a temporary post can properly be extended to University employees as well. The above distinction represents the difference otherwise also in the two classes of posts. In its very nature a temporary post is for a temporary period.

Thus a post which is destined to last till such date only upto which the relative sanction is given is a temporary post. There can be a period of probation and also the benefit of Provident Fund attached to a temporary post as well. None of these facts will render the post a permanent post where its life is limited upto a specified date. As the post on which the petitioner was appointed was limited upto the 31st of March, 1961, it must be deemed to be a temporary post and the petitioner's appointment also to be on a temporary post.

18. It may still require to be considered, since there can be appointment in a substantive capacity on a temporary post also, whether the petitioner's appointment was in any such capacity. To state the question more precisely it is whether the petitioner can ask that clause 198, which in referring to appointment in a substantive capacity does not draw a distinction between a temporary post and a permanent post is applicable to either category of posts, since it simply requires that the person should hold the post in a substantive capacity.

I have given my most careful consideration to the language employed in Sub-clause (2) of clause 198 of the Statutes and to my mind the expression "appointment in a substantive capacity in the cadre" existing in it is referable to an appointment on a permanent post alone. We are aware that the cadre of a service is usually determined on the basis of what may be called its permanent requirements. The existence of a cadre has not at the same time the effect of depriving or otherwise disabling the appointing authority to create posts for which no provision exists in the cadre but which posts have become necessary to meet any temporary need or situation.

So long as the temporary need remains the post created therefore will unless -

the contrary is stated be itself a temporary post. And since it is created to meet the temporary need it cannot be held to be a permanent post. It does not also become incorporated in the cadre which represents the permanent needs. Therefore in referring to "appointment in a substantive capacity in the cadre" the sub-clause has indeed referred to appointments in a substantive capacity on permanent posts. In construing its true meaning and scope the correct approach would be to keep in the forefront the qualifying words to the effect that the particular post is held by the Professor substantively and that in holding the post it can further be predicated that he does so in a substantive capacity in the cadre.

Besides holding the post substantively it must further be established that his appointment thereto carried with it the further privilege of substantively occupying a place in the cadre. This requisite cannot be fulfilled where the post is a temporary post. He may claim to be holding his post substantively but he does not therefore become a part of the cadre which condition is fulfilled in the case of a permanent post only. In this view of the said provision it is immaterial whether the petitioner's appointment was in one or the other capacity. In either case, he is not a Professor who holds his post in a substantive capacity in the cadre.

19. The remaining questions raised in the case may now be examined. The foremost of them is about the powers of the Chancellor vis-a-vis the determination of seniority amongst teachers of the University. One of the contentions in its connection has been that the Chancellor has no legal authority to hold that the petitioner held a temporary post. Whether the Chancellor possessed the power or not to decide a particular question has no real importance left after the finding arrived at just above that the post which the petitioner held was a temporary post.

But assuming that the Chancellor had no such power a fact which I do not think is legally sustainable even then his conclusion about their respective seniority will not be invalid for the following reason. The Chancellor acted in this case u/s 39 of the Act and if the dispute referred to him was such as could be entertained and determined by him, the legality of his decision about seniority will require to be adjudged in the context of the actual controversy which he was called upon to determine.

This controversy was as to the person who should be the Head of the Department of Chemistry and it is fairly covered by the section. Any incidental matters which might be necessary to determine in the process of deciding the main controversy will indeed be within his competence unless he is expressly debarred by provision. The controversy as regards the nature of the post held by the petitioner was clearly an incidental matter which was necessary to be disposed of for deciding the right of the one or of the other to be held as the Head of the Department of Chemistry. If the Chancellor was competent u/s 39 to dispose of the main question his jurisdiction to decide the further question which incidentally arose concerning the true nature of the post will not be wanting. What has to be seen in the case, therefore, is whether the Chancellor was duly

seized of the matter u/s 39.

20. From the papers on record it would be noticed that once the two Professors had been appointed, the Dean of the Faculty inquired from the Registrar as to which of them was senior, to be the head of the Department of Chemistry in terms of sub-section (6) of section 23. The Registrar thereupon put up the papers to the Vice-Chancellor who directed that Dr. Shukla being senior in age, should be the Head of the Department in accordance with Sub-clause (v) of Clause 198 of the Statutes. The declaration, therefore, that Dr. Shukla was senior and under the circumstances also the Head of the Department was thus ordered by the Vice-Chancellor.

It is claimed that Sub-section (2) of section 11 of the Act authorised the Vice-chancellor to decide the question of seniority and his decision was authorised by the said provision. Reference is also made to Clause 201 of the Statutes which lays down that cases of doubt regarding seniority shall be decided by the Executive Council. The contention is that the Vice Chancellor was primarily authorised to declare which of the two was senior but if there was any doubt about it, including any doubt raised at the instance of a party affected, the Executive Council alone possessed the power, in view of clause 201 above, to decide the matter. The Chancellor as such has no authority to decide the question.

21. For a correct assessment of the true legal position it will be necessary to bear in mind that the powers of the Chancellor in the particular case shall have to be judged from the language of section 39 under which he gave his decision. It will further be necessary to keep in view that what he was called upon to decide was the right of one or the other out of the two Professors to be the Head of the Department; the question of seniority arose incidentally only. The power to decide an incidental matter, as has been pointed out earlier too, will not be wanting if the main dispute was within his competence to decide.

Section 39 has given the Chancellor wide powers. It authorises him to scrutinise any decision of the University or of any authority thereof and assure whether the same is in conformity with the Act, the Statutes or the Ordinances. The question as to who should be the Head of the Department in a particular situation is a matter governed by the provisions of the Act. As a matter of fact, even the question regarding comparative seniority amongst the teachers is similarly governed by the Act and the Statutes. The Chancellor is thus authorised u/s 39 to decide these questions whenever arising and referred to him.

22. The effect of Sub-section (2) of section 11 and of Clause 201 of the Statutes vis-a-vis the powers of the Chancellor may have to be considered next. Sub-Section (2) of section 11 is clearly of no avail in urging that the Chancellor did not possess the power because the same belonged to the Vice-Chancellor. This sub-section itself says that the power conferred on the Vice-Chancellor is without prejudice to the powers of the Chancellor u/s 39. This means that the

Chancellor's power under that section is in no way affected by the power which should belong by the Vice-Chancellor.

Clause 201 also is unable to show that the Chancellor was incompetent to decide the question of seniority. By its providing that cases of doubt regarding seniority shall be decided by the Executive Council the power of the Chancellor u/s 39 is not curtailed. By reason of this Clause the Executive Council is indeed empowered to decide the question of seniority where a doubt exists, but the right of any person affected by the decision whether of the Executive Council or of the Vice-Chancellor as regards his seniority, to approach the Chancellor u/s 39 is not barred.

What the clause has really laid down is that the University authorities shall, whenever a doubt is raised in this regard, seek the decision of the Executive Council and not themselves decide the question. This clause, therefore, instead of showing that the Chancellor has no power u/s 39 to decide the question, points out that the Vice-Chancellor, who actually decided this question, should have referred it to the Executive Council than done it himself.

His action in declaring Dr. Shukla to be senior to Dr. Sen when the same required to be determined by the Executive Council was such as the Chancellor had power u/s 39 to scrutinise. The Chancellor has power" under this section to scrutinise the actions of the University authorities if they are not in conformity with the Act, the Statutes and the Ordinances. The Chancellor's power in the instant case to entertain the controversy cannot be doubted.

23. Another contention urged in the same connection was that Dr. Sen, if he was dissatisfied with the decision of the Vice-Chancellor, should have moved the Executive Council against it but not the Chancellor; it is only after the Executive Council has taken a decision in a matter that the latter becomes entitled to act u/s 39. The Chancellor's power under this section enables him to scrutinise the actions of the University authorities if an when referred to him. The Vice-Chancellor is an authority of the University.

On the language, therefore, of section 39 there was no bar to his entertaining the dispute which arose due to a certain action of the Vice-Chancellor. Clause 201 vests the Executive Council with the power to determine seniority in cases of doubt. It however, does not confer upon it jurisdiction to, review the orders already passed in that behalf by an authority of the University. That power belongs to the Chancellor u/s 39. The Executive Council's power under Clause 201 to decide cases of doubt regarding seniority does not affect the Chancellor's jurisdiction u/s 39 which belongs to the latter independently of the said clause.

24. Coming to the next question in the case, the Chancellor's order is attacked on the ground also that he failed to give opportunity to the petitioner to place his objection although he was directly affected by it. It is admitted that the Chancellor gave, no such opportunity to the petitioner. What happened was that once the Dean had been informed that Dr. Shukla was senior to Dr. Sen the latter

feeling aggrieved by it, "represented the matter to the Chancellor. The Chancellor thereupon asked a report from the University which supported the Vice Chancellor's decision.

Dr. Shukla was not called upon to place his objection in reply to Dr. Sen's representation. The Chancellor then considered the representation and the reply furnished by the University and held Dr. Sen to be senior to Dr. Shukla. It cannot be, disputed that Dr. Shukla was directly affected by the controversy referred to the Chancellor. The office of the Head or the Department carried with it a certain status and also entitled him to certain privileges. The Chancellor's jurisdiction u/s 39 is of a quasi judicial nature. There is no dispute on this point also.

Dr. Shukla when the dispute was referred to the Chancellor was already declared the Head of the Department of Chemistry. The question of inter se seniority between him and Dr. Sen was again a matter which deserved consideration amongst others on facts relied upon by the two parties. Ends of justice, therefore, demanded that the Chancellor while giving decision should have given an opportunity to Dr. Shukla. The failure to do so has been rightly agitated by Dr. Shukla who has also been adversely affected by the decision.

25. Ordinarily, therefore, the above defect in the proceedings held by the Chancellor would have been sufficient for quashing the impugned order. There is, however, the following overriding consideration which cannot be overcome. And it is that under Sub-section (6) of Section 23 the senior most Professor in the Department is to be the Head of the Department. The finding also has been that Dr. Sen is senior to Dr. Shukla. The Chancellor in giving his decision has too proceeded on the same basis. So long, therefore, as Dr. Sen is senior to Dr. Shukla as he has been held to be, he shall, in preference to the latter, be the Head of the Department, No purpose will thus be served by quashing the order of the Chancellor as no prejudice has ultimately been caused by it.

26. In the above connection it was also pointed out that although initially the Chancellor had not given to the petitioner an opportunity to place his defence before him the petitioner subsequently himself represented to him against his order so that the above objection was over, viz. that the order had been passed without an opportunity to the petitioner. I do not feel called upon to express any opinion on the merits of this contention but would not hesitate in observing that there are more than one difficulties in the way of accepting the respondent's above contention.

27. The only other question which has not been discussed so far is about the applicability of Clause 198 of the Statutes. The learned Advocate General argued that this clause is attracted in those cases only where the office is held by rotation according to seniority but the office of the Head of Department though it is held by seniority is not held by rotation. In this manner he claims that the clause is inapplicable to the present case. Sir Iqbal Ahmad, on the other hand, has strenuously urged that the clause is attracted.

The University also has relied on this clause which according to it is applicable. In support it has relied on Clause 23 dealing with the appointment of Deans and on similar other provisions which, require representation by rotation according to seniority. In view of the finding, however, that Dr. Sen will even upon a true reading of clause 198, assuming that it is applicable, be senior to Dr. Shukla the result of this petition will remain unaffected by either finding on the above question. It need not, therefore, be examined further.

28. The net result of the foregoing discussion, therefore, is that the petition should fail. It accordingly is dismissed but no order is made as to costs.