

(1998) 07 AHC CK 0105
In the Allahabad High Court
Case No : C.M.W.P. No. 339 of 1985

Dr. Sudhakar Malviya and others

APPELLANT

Vs

Banaras Hindu University and others

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Banaras Hindu University Act, 1915 — Section 2
Constitution of India, 1950 — Article 14, 21, 23, 39

Citation : (1998) 4 AWC 266 : (1998) AWC 266 : (1998) 3 UPLBEC 1713

Hon'ble Judges : R.R.K. Trivedi, J; R.K. Mahajan, J

Bench : Division Bench

Advocate : Amrish Kumar Sharma, V.K. Goel and Shiv Pati B. Pandey, for the Appellant; Dinesh Kacker, for the Respondent

Final Decision : Disposed Of

Judgement

R.K. Mahajan, J.—This writ petition raises interesting question as the petitioner's grievance is that they were though recruited as Research Assistants in different branches of the University on various dates between 1963 and 1982 as mentioned in Annexure-1 but in actual practice after certain lapse of time, they have been working as Lecturers teaching the students, sharing the burden/load of teaching and still the respondents have not declared them as teachers to get pay scale of Rs. 700-1,600 w.e.f. 1.1.1973. Their further grievance is that demonstrators, tutors and persons of other categories have been declared by the respondent as teachers within the definition of Section 2 (i) of Banaras Hindu University Act, 1915. Their third grievance is that in Appendix-V which deals of scale of pay of various categories of staff of Banaras Hindu University teaching the staff only deals with categories of Professor. Reader, Lecturer, Instructors, Physical Instructors have been declared teachers and why there should be discrimination especially when there was no recruitment of Lecturers in Law Department and other departments and the University has been taking work from them. The petitioner made repeated representations to the University but failed. This case started, in 1985 and Hon'ble Supreme Court on 16th December,

1996 remanded the writ petition to dispose of in accordance with law as the High Court dismissed the writ petition on a plea of alternative remedy.

2. Now coining over to brief facts of the case, it may be stated that the petitioners have filed the writ petition seeking the following prayers :

" (i) issue a writ, order or direction in the nature of mandamus commanding upon the respondents to dispose of the representation of the petitioners dated 23.9.1982 and 26.4.1984 (Annexures-4 and 8 respectively to the writ petition) ;

(ii) issue a writ, order or direction in the nature of mandamus commanding upon the respondents to treat the petitioners as "teacher" of the University and to grant the pay scale of Rs. 700-1,600 with effect from 1.1.1973 ;

(iii) to issue such other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case ;

(iv) award of the costs of the petition to the petitioners ;

(v) to issue a writ, order or direction in the nature of certiorari quashing the recommendations of the academic council of the University dated 6.3.1987 as contained in letter No. RAC/Mtg./AC 6387/1/86-87/3652, dated 26.4.87 of the Assistant Registrar of the University (Annexure-9 to the supplementary affidavit ;

(vi) to issue a writ, order or direction in the nature of mandamus directing the respondents to pay the petitioners salary in the scale available to lecturers of the University including consequential benefits from the date of their respective appointments."

3. During the pendency of the writ petition, so many developments took place and there was addition of grounds also more or less confining the quashing of recommendation of academic council not recommending their case for treating them teachers and academic council did not apply the mind while considering the case and its decision is based on irrelevant consideration and is liable to be quashed. It appears that petitioners except petitioner Nos. 8 and 9 are Ph.D in their subjects and are fully qualified. It also appears from the petition that posts of Research Assistant at the University are permanent post and in the cadre. The petitioners allege that while working as Research Assistants, they were assigned duty to set a paper for University examination, take part to organise symposium, etc. and they have been teaching the students as the Lecturers have been teaching, for example All India Legal Aid Seminar. They have been paying fund to the teachers welfare fund of the University. So their grievance in nut shell is though there is minor difference between their recruitment and of Lecturers which would be discussed later on but the University has been actually taking work from them as Lecturers and treating them so. Their further grievance is that the physical Instructor in the University takes no theory classes and imparts practical education only and on the contrary the Research Assistants are involved in teaching the theory of the respective subjects but still their case for declaration of teacher was not recommended by the academic council and it is

arbitrary action. It is also alleged that they have been providing material and other-assistance of academic nature to the teaching staff besides performing the work of teaching and according to the petitioners that non-teaching staff classification is whimsical and artificial.

4. The case of the University which has been mentioned in counter-affidavit of Babu Lal, Section Officer, Legal Cell is as follows :

"It is alleged that the post of Research Assistants in different departments of the University are not part of regular teaching cadre of the University. The posts of Research Assistants are ex-cadre non-teaching posts meant for extending academic support to the teaching staff as also to research scholars by collecting research materials and information of teaching aids. It is alleged that their main function is to assist the teachers and research scholars by collecting and making available relevant material. The plea of the University is that they belong to the non-teaching cadre/staff and they cannot be equated with Lecturers. It is alleged in Para No. 7 of the counter-affidavit that there is functional difference in the post of Research Assistant from that of the regular teaching cadre. According to the respondent the Lecturers are appointed on the basis of open market selection after wide publicity by way of advertisement on the basis of the recommendation of the statutory selection committee constituted under Statute 27 of the Statute of the University which consists of apart from Vice-Chancellor, who is Chairman of the selection committee and the Dean of the relevant faculty, two external experts in the subject nominated by the Executive Council and one Visitor's nominee. There is procedure for approval of the recommendation by a person nominated by the Executive Council. It is also mentioned that so far as the posts of Research Assistants are concerned the same being ex-cadre posts appointments on the said posts are not by selection but by statutory selection made by departmental selection committee. It is headed by the Head of the Department and comprises of Dean of the Faculty, Director of the Institute and a Senior Professor of the department concerned. In Para No. 8. the qualification for Lecturer in Law and Research Assistant is mentioned, which is quoted hereunder for ready reference :

"Lecturer in Law (Faculty of Law) :

Qualification :

Essential : L.L.M. Degree with good academic record.

Explanation :

For determining "Good Academic Record" the following criteria shall be adopted :

(i) A candidate holding a Ph.D. degree should possess at least a second class Master's degree ; or

(ii) A candidate without a Ph.D. degree should possess a high second class Master's degree and second class in the Bachelor's degree ; or

(iii) A candidate not possessing Ph.D. degree but possessing second class Master's degree should have obtained first class in the Bachelor's degree.

Research Assistant (Law (School)) :

Grade : Rs 550-750

Qualifications :

Essential : (1) First Class Bachelor's degree in Law or a Master's degree in Law. For a post of Research Assistant the essential qualification is a Bachelor's degree in Law plus at least a Second Class Master's degree in Sociology/Economics/Psychology/History/Political Science/Statistics with some experience of empirical research.

Desirable : (1) Experience of having worked in a Journal."

5. Learned counsel for the respondent Shri V. K. Upadhyaya has made his submission that there is difference between the mode of selection, qualification and nature of duties. The respondent has also taken stand that besides functional difference in the said two post, i.e., Research Assistant and Lecturer, there is also another main difference that the Research Assistants are not obliged to take classes nor do they guide research scholars and they are also not appointed examiners and perform other examination duties as well. However, it is also mentioned in Para No. 11 of the counter-affidavit that in exceptional cases if vacancies are not filled up in the department, the Research Assistants are required to perform the duties of Lecturers, i.e.. to take classes. The exact language as stated in Para 11 of the counter-affidavit is quoted hereunder :

"Such a situation has been obtaining in the various department of the Banaras Hindu University because of the reason that no selection could be held in the University for the last about 10 years on account of different unavoidable circumstances. However, the process of selection for filling up the vacancies in the University has already commenced since 1996 and hopefully the situation would be rectified and all the vacancies will be filled up by the end of the current year. The University had advertised the posts of Lecturers in the Faculty of Law and such of the applicants who possessed the minimum qualification in terms of 1991 Regulations were given opportunity to apply and their cases were considered for appointment as Lecturers without excluding their candidature on the ground of age bar. The petitioners working in other department of the University would also be offered similar opportunity of applying for the post of Lecturers and their cases would be considered for appointment as and when the post and vacancies of lecturers of other departments are sought to be filled up by University without excluding their candidature on the ground of age bar."

6. It is also mentioned that there is a scheme mentioned in Para No. 12 of the counter-affidavit regarding regularisation of the scheme and upward benefit has been recommended in the light of University Grant Commission recommendation and IIIrd Pay Commission and there is revision of pay scale of Research Assistant

from time to time. There is no post of Research Assistant in Pauranic Department and they have been as publication Assistant (Pauranic) by way of different means and they have been given benefit after eight years of upward scale in terms of 4th Pay Commission w.e.f. 25.5.1987 of Rs. 1,640-2,900. In other words, in some of the disciplines the Research Assistants are likely to be affected in the three tier system. The University Grants Commission is seized with the matter and it has recommended three tier pay scale for Research Assistants with the following pay scales :

"(A) Junior Research Officer -- Rs. 650-1,200 to Rs. 2,000-3,500.

(B) SR. Research Assistant -- Rs. 550-990 to Rs. 1,640-2,900.

(C) Research Assistant -- Rs. 425-700 to Rs. 1,400-2,300."

7. According to cadre review committee, it was felt that since the scale of Rs. 1,640-2,900 and Rs. 1,400-2,300 is available in U.G.Cs. pay structure, there is no disparity in scales of pay for extending the case of scale of Rs. 1,640-2,900. In so far as the department of Sociology is concerned now there is no post for Research Assistant. This aspect of the case has been referred regarding conversion of post of Research Assistant into different cadre structure.

8. Rejoinder-affidavits have been filed reiterating the case in the petition.

9. Shri V. K. Goel, learned counsel appearing for petitioner Nos. 1, 2, 4, 5 and 8 to 12 has submitted the following points for consideration in support of the claim of the petitioners. He has invited the attention of the Court to the definition of teacher as mentioned in Section 2(i) of Banaras Hindu University Act which reads as under :

"2 (i) "teacher" means a salaried professor, reader, lecturer or tutor who imparts instruction in a Faculty of, or in a college maintained by the University and includes any other person who is declared to be a teacher by the Academic Council."

10. In this case reference has been made that the Academic Council has not recommended the case for declaration of teacher and for letter of decision has been described as arbitrary and discriminating.

11. Now we go straight to Appendix-V which deals with scale of pay of various categories of staff. Research Assistant falls in non-teaching staff. Tutor, physical Instructor, Demonstrators, Section Officers also fall under that category but they have been declared teacher within the definition of Section 2 (1) of the Act by Academic Council.

12. It has not been disputed that Demonstrators and Tutors were recommended for consideration as teachers as apparent from Annexure-Nos. 6 and 7 of the writ petition after following regular procedure by academic council and executive council read with Resolution dated 24.10.1972 of the executive council. The fact remains that they were declared as teachers who were in non-teaching staff in

Appendix-V.

13. Shri Goyal, learned counsel for the petitioners has further pointed out the definition of Research Assistant as mentioned in Banaras Hindu University Office Procedure Manual, Edition 1985 and the same is being quoted below :

"Research Assistant.--To assist teaching and research work and Information of teaching aids."

14. We would like to quote the definition of tutor as mentioned in Concise Oxford Dictionary Ninth Edition of 1995 :

"1. Tutor, a private teacher, esp. one in general charge of a person's education.

2. Brit. a university teacher supervising the studies or welfare of assigned undergraduates. Brit, a book of instruction in a subject."

15. Shri Goyal has further submitted from the affidavit of Shri Janardan Tiwari showing that he has specialized for 15 years in the field of Constitutional Law as well as in the Law of Torts and he was assigned the work of teaching undergraduate level since the date of his appointment. Shri C. B. Dwivedi, Head has issued certificate in favour of Dr. Bipin Kumar that he has been teaching undergraduate and post graduate classes of the Department of Psychology. Dr. S. L. Jain, Head. Department of Sanskrit, Faculty of Arts has issued certificate dated 5.1.1994 in favour of Dr. Sudhakar Malaviya that he has been teaching the classes, i.e., post graduate and undergraduate classes regularly since the date of appointment. There are certificates attached with the rejoinder-affidavit showing that the Research Assistants have been helping in coaching classes of I.A.S. There is letter issued from the Dean, Law School, Varanasi (Annexure-RA9) that the students of L.L.M. 1st year 1995-96 who want to study Criminology and Penology as optional subject can approach Dr. M. P. Singh and Sri A. N. Srivastava. There are documents attached as RA10 and RA11 regarding members of organizing committee of All India Inter-University Moot Court Competition which was sponsored by Bar Council of India. So the fact remains that the petitioners have been teaching just like a teacher. It has further stated that even the planning committee of the University has recommended their case but of no effect.

16. Shri Janardan Tiwari has argued the case himself and submitted written notes. We considered these notes. His thrust of arguments is that he is imparting education in the Faculty of Law for the last 17 years as per the prescribed syllabus. He further submits that the University has not filled up post of Lecturers since 1980 and he is doing the work of teachers along with other teachers and the recommendation of the academic council is not fair. He further submits that he be paid salary of the teacher when he was assigned the job and after 8 years of performing the job of teacher, the petitioner should be paid the U.G.C. scale as given by Hon'ble Supreme Court in case of Gurjoginder Singh Vs. Jaswant Kaur (Smt) and Another, . In other words he submits that justice be done and benefits

be given to him from the date when he was working.

17. The arguments of Shri S. B. Pandey are on the same line as of Mr. V. K. Goel and Mr. Janardan Tiwari.

18. Mr. Upadhyaya, learned counsel for the University submitted that the petitioners cannot be declared as teachers merely they were performing in emergency duties of teaching and it would not entitle them to be termed as teachers as it was a function which fell within the ambit of their Research Assistant Degree. He further submits that a Court has no power to grant pay scale and decision of the academic council was rational, reasonable and correct after considering the nature of duties.

19. After hearing the learned counsel for the parties, we are of the considered view that though the qualification for Lecturers, procedure for appointment is different to some extent as discussed in the counter-affidavit and Statute but it is not denied and almost admitted that petitioners have been performing the work of teaching which falls within the ambit of Section 2 of the Act. After all what is imparting of instruction in a common parlance. It is nothing but to teach. No doubt the Research Assistants were collecting the material but University imposed upon them by circumstances the duty of teaching. The University (respondent) has admitted that the posts were vacant and they are still vacant and it has been getting the work of teaching though in emergent situation as the posts were not filled up. If they are not granted minimum scale of Lecturers on the principle of doctrine of equal pay for equal work, it would be unreasonable and arbitrary. In our view, mere granting of scale would not confer on them permanent status unless they are absorbed in accordance with law or scheme prepared. In the counter-affidavit It is stated that there were exceptional circumstances in taking their services. The University allowed by their act and conduct and asked the petitioners to teach and it would be irrational, unreasonable and would amount to violation of Articles 14, 21 and 23 of Constitution of India if they are not granted equal pay scale of regular Lecturers.

20. Article 23 of the Constitution of India deals with traffic In human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. So the Assistant Grade Research Officer cannot be forced to perform "begar" of teaching as Lecturer when the posts were there and it would amount to unfair labour practice and right of denial of livelihood which entitles them to lead minimum civilized life and right to live with human dignity. Article 39(d) read with Article 14 of the Constitution of India which relates to equal pay for equal work for both men and women. It is not understandable why they are not being paid their legitimate wages of performing duties of Lecturers?

21. Submissions of Shri Upadhyaya, learned counsel for the University cannot be accepted in the circumstances of the case that they are not entitled to get the pay of Lecturers on the principle of equal pay for equal work as they are not

having equal qualification of Lecturers. The University is estopped to take such plea as it allowed them to teach for number of years and also produced research work. As mentioned earlier the petitioners have done Ph.D.

22. Shri V. K. Goyal, learned counsel for the petitioners has relied upon Gopal Krishna Sharma and others v. Yamuna Shankar Sharma AIR 1883 SC 81 in which it is held :

"Constitution of India, Articles 14 and 39(d) Equal pay for equal work.-- University creating posts of Research Associates on ad hoc basis for duration of projects of Council of Agricultural Research with same educational qualifications and selection process and job-chart meant for Research Assistants.

--This done to avoid equation claims that may arise if claim of certain Research Assistant for pay scale given to Lecturers--Assistant professors was upheld-- Work done by Assistants and Associates almost identical claim of Assistants for pay scale of Rs. 700.00-1,600 accepted by Supreme Court.

--Though Associates are not entitled to claim pay scale as they were never on time scale, considering circumstances in which posts of Associates were created payment of paltry consolidated amount of Rs. 1,100 to them, not justified-- Direction given to work out consolidated salary of Associates on basis of minimum of pay scales allowed to Assistants and allowing monetary benefits thereon in form of allowances allowed to regular employee."

23. Sri Goyal has" also relied upon Vijay Kumar and others v. State of Punjab and others, 1995 SCC 269. It deals with part-time lecturers. They were working for more hours every day as compared to the regularly appointed lecturers, their nature and quality of work being the same--Held, such part time lecturers are entitled to the minimum of the pay scale prescribed for the post of the regular lecturers during their employment as part-time lecturers.

24. Dr. Janardan Tiwari has relied upon the following cases :

Jaipal and Others Vs. State of Haryana and Others, , on the theory of equal work equal pay. Shri Nain Singh Bhakuni and Others Vs. Union of India and Another, . regarding parity with pay scale. State of Haryana and Another Vs. Ram Chander and Another, , which also relates to equal pay for equal work.

25. We are of the view that principle for equal pay for equal work Is applicable in this case as it was the University who was getting the work" of the Lecturers considering them to be qualified to teach and If the University is not able to recruit the Lecturers they are bound to be given the minimum scale of Lecturers and other allowances because it is fact that the petitioners are performing the work of Lecturers and we issue the direction accordingly to the extent that they be given wages on this principle from the date of taking work till further date of taking work of teaching by the University as Lecturers.

26. We are of the view that if the Demonstrators, Physical Instructors and Tutors

can be recommended by the Academic Council for selection as teacher it was not a fair and reasonable action on the part of the Academic Council also not to consider the recommendations of petitioners case for declaration as a teacher by Executive Council as the petitioners have been performing the work of Lecturers. Since it is a dying cadre, the University should have treated them as a teacher as a special category with reasonable pay scale after all one joins the service to improve the career and at least they deserve two changes for promotion to next higher category. This view has been reiterated in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, .

27. We, therefore hold that the petitioners are teachers. We further Issue directions to treat them as teachers from the date of refusal of the same by the Academic Council. Other reliefs are disallowed in the facts and circumstances of the case.

28. We dispose of the writ petition in the light of above directions.