
(2004) 07 AHC CK 0148
In the Allahabad High Court
Case No : C.M.W.P. No. 32532 of 2003

Dr. Sushila Rai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2004) 4 AWC 3252

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : K.R. Singh and Manju R. Chauhan, for the Appellant; V.K. Upadhyay and Pankaj Naqvi, S.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog, J.—Dr. Sushila Rai petitioner before the Court, being aggrieved against order dated 16.7.2003/Annexure-20 to the writ petition, passed by Banaras Hindu University (called the University) through respondent Nos. 2 and 3, by means of which representation dated 2.6.2003 filed by the petitioner (praying for regularisation/extension of her services as "Library Attendant" in the department of Library of Electrical Engineering, I.T. of the University addressed to the Vice-Chancellor/respondent No. 2) has been rejected by the Vice-Chancellor of the University with the observation : ".....your request regarding extension/regularisation.....was placed before the Vice-Chancellor for consideration but the same has not been acceded to" and further adding : "directed to inform you that in future your representation will not be entertained".

2. At this juncture, it may be noted that at the request of Sri V. K. Upadhyay, learned counsel for respondent Nos. 2 and 3, original record of the case was also summoned and perused with the assistance of the learned counsels for the parties.

3. From the original record, produced before the Court, it transpires that

petitioner possessed following qualifications :

(1) Admission Examination 1975 2nd Division (2) Intermediate Examination 1976 2nd Division (3) B.A. 1979 2nd Division (4) M.A. (History) 1982 2nd Division (5) B.Ed. 1985 2nd Division (6) Ph.D. (History) 1992

4. Facts of the case necessary for rendering the Judgment in the case are that the petitioner was appointed under appointment letter dated 9.6.1993/Annexure-I to the writ petition issued by the then acting University-Librarian as "Temporary Library Attendant" on a fixed salary of Rs. 750 p.m. under Clause VIII Plan Grants for Books and Journals, for processing of books, for a period of three months of her joining duties.

5. There is no dispute that said appointment was extended, from time to time, and approved by the Vice- Chancellor of the University as such.

6. The brief history of the petitioner's services in the University as "Temporary Library Attendant" and extended from time to time by the University/ the Vice-Chancellor, particularly in the department of Electrical Engineering, I.T. as is borne out from the University record placed before the Court is as under :

Sl. No. Period of Head of Rate of Appointing Department engage- account payment authority /Office. ment (1) 11.6.1993 VIII Plan Rs. 750 Librarian, Central to Book Grant p.m. Central Library 10.9.1993 Library (2) Continued - do - - do - Registrar - do - beyond 10.9.1993 . to 31.1.1996 (3) 1.2.1996 Against the Rs. 30 per Registrar - do - to post of Lib. day 31.7.1996 Attdt. (4) 3.8.1996 -do- -do- - do - Deptt. of to Vice- Chem. 15.5.1998 Chancellor Engg., I.T. with mandatory break of 2 or 3 days on every 3 months. (5) 16.5.1998 -do- -do- - do- In the to Deptt. of 7.8.2000 Elec. Engg., I.T., with mandatory break. (6) 18.8.2000 -do- -do- -do- In the to Deptt. of 17.2.2001 Electrical Engg.. I.T., with mandatory break. 7. It may not be out of place to note down certain "Office Notes" and orders which appear from the original record of the University :

Office-notes (P-62/C) dated 22.5.1996 and 24.5.1996 are reproduced :

"May kindly peruse the letter No. Ch.E/P/170 dated 8/10.5.1996 of the Head. Department of Chemical Engineering, Institute of Technology (placed opposite).

The Head, Department of Chemical Engineering , I.T.R., has again recommended for the placement of Dr. (Mrs.) Sushila Rai for her placement in graded pay scale with effect from 1.6.1995 in the Departmental Library on the following grounds :

(1) That it appears Prof. C. S. Jha the then Vice- Chancellor made positive notes on the initial application of Smt. Rai in February, 1993, appreciating the compassion the applicant deserved. The papers were processed and Smt. Rai joined Central Library on 11.6.1993 (office Memo L/EST/561 dated 9.6.1993) on Rs. 750 per month. (Annexure-I).

(2) That continuation was granted vide AB/20-C- Gen (1) NT-II 20754, dated 20.

10.1993. (Annexure-II).

(3) That Smt. Rai was granted casual engagement as Library Attendant in the Central Library vice Shri Sharajoo Prasad Pandey (Retired) on Rs. 1,400 p.m. Vide AB/20-C (SRJ/NT-II/2388, dated 19.11.1994 for six months/ till further order/ till post is filled. (Annexure-III).

She continues till 31.5.1995 as claimed without Break.

(4) That the Department of Chemical Engineering, approached the then Vice-Chancellor Prof. D. N. Mishra vide letter No. IT/ChE/31/107, dated 21.4.1995 for providing a Library Attendant and the Vice-Chancellor was pleased to create a temporary post in the grade Rs. 800-Rs. 1150 Smt. Sushila Rai was placed in the graded scale (AB/20-C (SR) NT-II/6668 dated 1 .6. 1995). (Annexures-IV and V)

(5) That after expiry of the first six months, approached the registry vide IT/ChE/ SR/P/1040 dated 8.11.1995 and Directorates endorsement IT/Adm/4929/L. dated 13.11.1995 for further sanction and received a shocking reply No. AB/17-C-NT/-IT/30059 dated 1.2.1996 sanctioning at Rs. 30 per day perleaps the lowest for a daily wager. (Annexures-VI and VII)

The above makes a sad case. The applicant starts in 1993 on compassion at Rs. 750 p.m. and ends up at less than Rs. 750 p.m. in 1996 (30 days 6 holidays) after- having worked on Rs. 1,400 p.m. and Rs. 2,000 p.m. graded Dr. (Mrs.) Sushila Rai has been working in this department since 1.6.1995. Her work has been satisfactory.

In my opinion this case deserves your attention most urgently and compassionately and with consideration of the views of a former Vice-Chancellor in 1993 and another former Vice- Chancellor in May, 1995 and decide favourably.

I recommend :

(a) That the continuation of Smt. Rai in graded salary as done with effect from 1.6.1995 may be approved.

(b) She may be appointed in our .Departmental Library and suitable action may be taken for her absorption in the graded salary.

The earlier orders of the Registrar may kindly be seen on pre-pages 23, 24 and 26/N.

Submitted for consideration and necessary orders.

Sd. Illegible

22.5.1996."

In view of the recommendation of Head of the Deptt. at "X" and in view of the order of our former Vice-Chancellors the request of the Head, Deptt. of Chemical Engineering and technology may be considered and she may be placed in the

graded pay scale.

For order please.

Sd. Illegible

24.5.1996."

8. In the light of above recommendation the consequent office notes dated 18.6.1996 and 28.6.1996 as well as the order of Vice-Chancellor dated 18.8.1996 (in red ink) on the original record read :

"Smt. Sushila Rai has been presently working in the Department of Chemical Engineering, I.T., on daily wage @ Rs. 30 per day (contractual) for a period of six months with effect from 1.2.1996 or till the post is filled up. She has represented to place her back in the graded scale of pay availed of by her during the period from 1.6.1995 to 30.11.1995 (Rs. 800-1,150). Her representation has been recommended by Head of the Department of Chemical Engineering and forwarded by Director, I.T."

Period of Head of account Pay Appointing engagement w.e.f. authority (I) 11.6.1993 to VIII Plan Rs. 750 p.m. Librarian, Central ... 10.9.1993 at Book grant Library Central Lab. (2) Beyond - do - - do - Registrar 10.9.1993 allowed to continue at Central Library (3) 21.11.1994 Against the Rs. 1,400 (fixed) Registrar for six vacancy of a months at retired Library Central Attendant. Library (4) 1.6.1995 to "R" A/C newly Graded scale of Registrar (V. C. 30.11.1995 created post Rs. 800-1,150 out of Station) (5) 1.2.1996 to Against the post Rs. 30 per day Registrar 31.7.1996 of Library Attdt.

Smt, Sushila Rai, holds a Ph.D. degree of the BHU in History, and as above, started on fixed salary of Rs. 750 per month and was placed in the consolidated salary of Rs. 1,400 per month followed by placement in the scale of pay of Rs. 800- 1,150 for six months.

The Head, Department of Chemical Engineering, I.T., vide his letter No. Ch. E/ P/170, dated 10.5.1996 through the Director, I.T. has recommended to place Smt. Rai in the graded pay scale as done with effect from 1.6.1995 admissible for the post of Library Attendant, i.e., Rs. 8001150.

Prof. Y. D. Upadhyay, Department of Chemical Engineering, I.T. has also recommended (Page 63/C) that Smt. Sushila Rai deserves a sympathetic consideration.

The detailed note from p. 27 to 30 regarding request of the Head, Department of Chemical Engineering, I.T. to regularise/ appointment of Dr. (Mrs.) Sushila Rai as temporary Library Attendant, may kindly be perused, The earlier orders of the Registrar on page Nos. 2N, 13N, 18 and 23 may also be perused. Higher authorities may decide her case keeping in view of the above earlier orders. It needs a police decision.

Sd. Illegible

Asstt. Registrar (Admin.) II

Ms. Sushila Rai to work as daily wager as a Library Attd. for a period of six months to be re- engaged again after expiry of the six months term.

She may continue to work as D/W with statutory break 2-4 days after the end of the engagement period of six months.

This arrangement may only be permitted till the regular recruitment to post is made.

Sd. Illegible

18.8.1996

Vice-Chancellor

Banaras Hindu University ."

9. Vice-Chancellor's order dated 12.3.1998 reads :

"The extension of Services of Dr. (Mrs.) Sushila Rai, Lib, Attdt. on daily wage basis in the Department of Chemical Engineering, I.T., for the period from 10.2.1998 to 9.8.1998 is approved after giving two days break."

10. The then Vice-Chancellor further passed order dated 19.5.1999 :

"No conversion of any post. No more extension after her completion of the present term. No more back door entry. Office is advised not to go for this back door entry. Open recruitment policy be followed."

11. It appears that the matter for extension/regularisation, on the representations made by the petitioner, was placed before the then Vice-Chancellor who passed order dated 21.4.2000 which reads :

"Only extension accepted."

12. The noting of the concerned official of the University with reference to page 168/C (of the University Original record) reads :

"As per above order A on pre- page of the Vice-Chancellor the term of engagement of Dr. (Mrs.) Sushila Rai extended for the period from six months on daily wages basis from 18.2.2000 with three days mandatory break since then she has been continued as such on six months extension basis with visual mandatory break as per approval of the Vice-Chancellor.

At present her engagement has been extended upto 17.2.2002 as per approval of the Vice-Chancellor (on pre page 73/N) on daily wage basis with mandatory break.

Submitted please.

Sd. Illegible

31.10.2001."

13. The then Vice-Chancellor passed order dated 22.4.2002 which reads :

"Approved till 30.4,2000 with effect from 25.2.2002. No more extension under any circumstances."

14. Letter dated 5.10.1998 written by Sri G. K. Rao, Professor and Head of the Department of Electrical Engineering, I.T. of the University as well as the Minutes of the Policy Planning Committee held on 17.11.1998 (on the original record of the University) show that the work of the petitioner was appreciated, recommendation made to continue her services and to absorb her on regular basis.

15. Vide letter dated 5.10.1998 of Shri G. K. Rao, Professor and Head of the Department of Electrical Engineering, I.T. of the University through the Director, I.T. Banaras Hindu University addressed to the Registrar (Admin.) of the University recommendation was made, relevant extract of the letter reads :

"This department has a library which is fact developing as a reference library for both the faculty and the students, thanks to the library grant provided under Special Assistance Programme (SAP) Phase I and II. The services of Dr. (Smt.) Sushila Rai are considered very essential to the departmental library and the office of the department and the Policy Planning Committee of the Department at its meeting on 16th September, 1998, adopted a resolution (copy enclosed herewith) that her services on graded salary be restored from 1.12.1995."

16. As per original record of the University, Policy Planning Committee also happened to consider the matter of the petitioner vide its Minutes dated November 18, 1998 (P-205 of University Original file) and resolved as follows :

"The Policy Planning Committee of the department considered the matter for considerable time and resolved as under :

(i) Departmental Library has been developing and working very satisfactorily through grants made available under Special Assistance Programme (SAP) volume of books, in the Library is continuously increasing. This library is used by senior B.Tech. Students and M.Tech. Students as also by the faculty and is vital for our academic needs.

(ii) There is no library attendant post available at present to manage the day to day functions of the Library.

(iii) Dr. (Smt.) Sushila Rai's joining in the Department on 16th of May, 1998, through the Director, I.T. has made considerable improvement in the working of the departmental library. Besides the library work, she has been assisting the departmental office in other routine office function efficiently.

(iv) In view of the above the Policy Planning Committee resolved that Smt.

Sushila Rai may be placed under the graded salary against any one of the following vacant positions of the Laboratory Attendants :

(1) Laboratory Attendant post vacated by Sri Ram Lal, (retired) Est. Bud. 1971-72.

(2) Laboratory Attendant post vacated by Sri Mithai Lal, promoted as Junior Laboratory Asstt.

(3) Laboratory Attendant post vacated by Sri Nand Kumar Sharma, appointed as Junior Workshop Asstt."

17. The original record of the University further shows that six months extension were periodically granted with expost sanction with condition of three days of mandatory break on each three months.

18. Relevant extract of the letter dated 3.8.2001 by Sri T. Srinivasan, Professor and Head of the Department to the Deputy Registrar (Admin.)-II of the University), reads :

"She is looking after the work of Departmental Library as well as other official work. Her work is quite satisfactory. It is, therefore, requested that her appointment be extended for a further period of six months w.e.f. 18.8.2001 on existing terms and conditions with three days mandatory break on each three months as per rules."

19. Similar are the contents of the letter dated 19.9.1998/Annexure-I 1 to the writ petition written by Sri G. K. Rao, Professor and Head of the Department to the Registrar (Admin.) of the University through the Director, I.T. of the University :

There are many such other letters on the original record.

Letter dated 29.5.1995 written by Assistant Registrar (Admin.) to the Assistant Librarian, Central Library of the University/ Annexure-3 to the writ petition shows that Vice-Chancellor had sanctioned a new post in the department of Chemical Engineering, I.T. and required the petitioner to be shifted to the aforesaid department from Central Library of the University.

20. Letter from the Assistant Registrar (Admin.) to the Head of the Department of Chemical Engineering, I.T. of the University dated 31.5.1995/Annexure-4 to the writ petition further shows that petitioner was placed in a pay scale, instead of being continued on daily wage basis.

21. According to the petitioner, Policy Planning Committee strengthened her case and recommended for graded pay-scale vide various letters-which are Annexures-12, 13, 14 and 15 to the writ petition,

22. The learned counsel for the petitioner further contends, vide para 16 of the writ petition, that several recommendations were sent by the concerned Department and also representations made by the petitioner (copy filed as

Annexures~16, 17, 18 and 19 to the writ petition) but with no response.

23. At the very outset, it is to be noted that Vice-Chancellor's order dated 22.4.2002 has not been communicated to the petitioner. Aforesaid fact is clear from the averments contained in para 13 of the counter-affidavit (sworn by Sri C. N. Chakravorty, Senior Clerk, Legal Cell of the University) read with Annexure-C.A. XIX to the said counter-affidavit which shows that copy of the said letter was not sent to the petitioner.

24. Similar is the position of other communications issued in the matter (reference may be made to the Annexures-15 to 18 of the counter- affidavit).

25. The petitioner has categorically averred in para 17 of the writ petition that she made representations before the concerned authority of the University ; copy of such representations are said to be Annexures-18 and 19 to the writ petition. The representations are addressed to the Vice-Chancellor of the University. These representations contained various facts in support of the request for regularisation and extension of service of the petitioner. While replying to paras 17, 18, 19 and 20 of the writ petition-wherein petitioner alleged that she filed representations (which have been rejected and communicated by the Deputy Registrar (Admin.) vide letter dated 16.7.2003, Annexure-20 to the writ petition), no reasons have been given and the fact that she has been working since 1993 has not been considered and ignored arbitrary.

26. The petitioner, in the aforesaid backdrop, vide para 25 of the writ petition pleads that she has been working since 1993 with a sanguine hope that her services will be later regularised, as has been done in the others, namely, Gopal Singh who was also appointed as daily wager and regularised in the year 1996.

27. The facts stated by the petitioner are matter of record and have not been specifically denied by the University (contesting respondent Nos. 2 and 3) except that an endeavour has been made to justify the decision of the Vice-Chancellor refusing to extend or to regularise services of the petitioner.

28. The petitioner has filed rejoinder-affidavit and various documents brought on record in support of her contention made in the writ petition.

29. The petitioner, in support of her case, relies upon the judgment of the Apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., , wherein Apex Court had ruled that State and/or its instrumentality/ authority as contemplated under Article 12 of the Constitution, must act fairly even while issuing instructions in exercise of executive powers.

30. In para 25 of the said judgment Supreme Court dealt with the issue of regularisation of ad hoc /temporary employees in Government service and laid down that : "(I) The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected

employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but If he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee ; (ii) an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee ; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority ; (iii) If for any reason, an ad hoc or temporary employee is continued for a fairly long spell the authorities must consider his/her case for regularisation provided he/she is eligible and qualified according to rules and his/her service record is satisfactory and proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees and so far as the work-charged employees and casual labour are concerned, effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work."

31. Supreme Court went on to observe that : "if a casual labourer is continued for a fairly long spell-say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for concerned authority to examine the feasibility of his/her regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job."

32. Learned counsel representing respondents (University/contesting respondents) has placed reliance upon the judgments in the cases of :

(i) Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava,

(ii) Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, ;

(iii) Mathura Vrindaban Development Authority, Mathura and Ors. v. State Public Services Tribunal, Lucknow and Ors. 2004 (2) AWC 1490 : (2004) 1 UPLBEC 766.

33. It is contended that contractual/ temporary/ ad hoc employee has no right to continue beyond the period of contract and on that basis it is argued that disengagement of such an appointee simplicitor cannot be challenged in court of law.

34. Learned counsel " for the respondents also referred to the decision in support of the contention that appointment made de hors the rules cannot be granted temporary or regular status and also on the issue that in absence of "rules for regularisation" there is no question of an employee being considered for regularisation in service. I do not propose to deal with these judgments in extensio since, in my opinion, the same is not necessary in order to decide the

present petition.

35. As noted above (and established from the original record produced by the University) the "work load" justifies the post of Library Attendant in Library Department of Chemical Engineering, I.T., of the University. There is not even an iota of material on the record of the case or on the original record of the University-produced before this Court, and further no attempt has been made on the part of the University to prove otherwise. The work load justifies creation of the post of Library attendant.

36. In the light of the recommendations made by the Head of the Department concerned as well as the Policy Planning Committee (reference to which has been made in detail earlier in this judgment) one finds no Justification on the part of the University for not considering the consistent recommendation for conversion/sanctioning of post in question.

37. Maintenance of "library1 in the department is essential for utilisng funds received for purchase of the books, etc. Apart from it a library is must for proper functioning of the department. Without proper library one cannot expect qualitative study or research work being done by the students. One finds no reason or material to show as to why the Vice-Chancellor did not agree for conversion or merger of the post as suggested by the University Authorities/ Administration itself and/or what steps were taken by the then Vice-Chancellor to provide "Library-Attendant" to the department of Chemical Engineering, I.T. of the University.

38. Engagement of the petitioner from time to time, as per record, shows that undisputedly petitioner was engaged with condition that her appointment was for specified period or for such period till a regular appointee joined the post. It shows that at all relevant times, it was accepted and admitted that regular selection will be made.

39. It is curious to note that like the petitioner, others were allowed to continue and regularised. One cannot expect a healthy atmosphere in the circumstances where such part time/daily wage employees are kept and then continued for years and years.

40. The petitioner, who is Ph.D., one need not probe under what circumstances, was prompted to accept the job of Typist/Clerk/Library Attendant. Is it not a pity and irony of circumstances that a Ph.D. is required to take up ad hoc/temporary job of a typist. Whatever may be the reason, the petitioner having been continued for about 10 years goes to show that there is enough work to justify the post coupled with the circumstance that even the University Authorities pointed out that posts were vacant and their merger/transfer was justified to have a post of Library Attendant against which petitioner's regularisation could be considered.

41. Secondly, I find no reason in the order of the Vice-Chancellor as to why the

request of the petitioner for extension/regularisation, on the facts and reasons given in her representation, not acceptable to the University. One line order that "extension cannot be considered in future" without dwelling upon the attending circumstances and contentions of the petitioner in her representation go to show that decision taken is arbitrary in nature.

42. Thirdly, the Court finds that petitioner was not communicated the aforesaid order dated 22.4.2002. The letter in question was issued by the University to the Head of the Department without endorsing copy of it to the petitioner. There is nothing in the relevant order of the Vice-Chancellor to show that said authority had taken into account recommendation of the Head of the Department and Policy Planning Committee (as noted above) or not.

43. Last, but not the least, the Impugned notice dated 16.7.2003 contains no reason as to why Vice- Chancellor did not please to accept the contention raised by the petitioner in her representations/Annexures-18 and 19 to the writ petition.

44. Moreover, the petitioner had no occasion to show that her case was identical and akin to the case of other employees who were daily wage employees and regularised. It proves that the impugned order of Vice- Chancellor is not a speaking order in this respect.

45. In view of the above, the order of the Vice-Chancellor dated 22.4.2002 quoted above since not communicated to the petitioner is ineffective. As far as the impugned order dated 16.7.2003, Annexure-20 of the writ petition is concerned it cannot be sustained for the reasons given above and accordingly deserves to be quashed.

46. In view of the above, particularly the ratio laid down in the case of State of Haryana (supra), present petitioner is entitled to continue. University cannot be allowed to "hire and fire" particularly when work load justifies continuance of the petitioner and also that the concerned authorities have highly appreciated the work of the petitioner and recommended for her service regularisation, after watching her work for last about ten years.

47. In view of the above discussion the fact remains that Head of the Department and Policy Planning Committee have recommended for creation of the post by merger/transfer and the same being ignored for no good reason or rhyme.

48. Consequently, it is directed that so long as the work load continues and remains the same or increased w.e.f. the date of the passing of the impugned order the petitioner shall be deemed to continue in service and paid salary/emoluments month by month ignoring the impugned order dated 16/17.7.2003 (Annexure-20 to the writ petition) and the order of the Vice-Chancellor referred to in the said impugned order/letter (Annexure-20 to the writ petition) shall not be given effect to until regular selection is made on the post (deemed in existence) in accordance with law ; with a condition that petitioner, if so desires,

may also apply for regular selection and her candidature shall be considered giving due relaxation in the age for the period she has actually worked in the University. Until regular selection is made, petitioner shall be continued in service and paid her salary ; petitioner shall also be entitled for arrears, salary/emoluments, if any, which shall be paid by the concerned respondents, their officers, authorities etc. within six weeks of the receipt of a certified copy of this judgment. Regular selection shall be made in accordance with law in six months from today.

49. Writ petition stands allowed.

50. In the facts and circumstances of the case and particularly that Court is dealing with an educational institution, there shall be no order as to costs.