
(1999) 09 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 32098 of 1999

Dr. Swatantra Bala Sharma	Vs	APPELLANT
State of Uttar Pradesh and another		RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 4 AWC 3142 : (1999) AWC 3142 : (2000) 2 UPLBEC 64

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Shashi Nandan, G.N. Verma and Dinesh Dwivedi, for the Appellant;
S.C. and P. Padia, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for quashing that part of the order dated 17.10.1998 Annexure-20 to the writ petition which provides that the said order shall be effective prospectively and for a mandamus directing the respondents to give benefit of the G.O. dated 17.10.1998 with retrospective effect and to count the service of the petitioner as Instructor from 29.12.1980 to 12.5.1989 as service rendered to lecturer. A further mandamus has been prayed for to direct the respondents to give effect to the recommendation of the Executive Council of the Allahabad University vide resolution dated 14.11.1998 Annexure-21 to the writ petition.

2. We have heard the learned counsel for the parties. It is alleged in paragraph 2 of the petition that the petitioner has a substantially good academic record and she had secured First Division and first position in merit in M.A. course in Music from Allahabad University in 1979 and also obtained Doctorate degree in the same subject in 1988. She was selected by the Selection Committee duly constituted as per Statutes of the Allahabad University and the selection was approved by the Executive Council. She was appointed as Instructor in Vocal Music. True copy of the appointment letter dated 29.12.1980 is Annexure-1 to

the writ petition. In paragraph 4 of the writ petition, it is alleged that the scale and grade of pay of Instructors of the University, Research Assistants, Cartographers and Curators are the same. In paragraph 5 of the petition, it is alleged that the instructors and Research Assistants are at par since the Instructor has also to take regular classes imparting instructions, delivering lectures and the same duties were being discharged by the petitioner as an Instructor. The petitioner's work as Instructor like those of lecturers has been commended by the University. The petitioner has published six books on the subject of Classical Music and has regularly appeared at Doordarshan and AH India Radio on invitation. It is further alleged that the petitioner as an Instructor discharged not only the duties of lecturer but also more than that. In the department of Music in Allahabad University, there are five lecturers and no Instructor at present. Subsequently, the University advertised the post of lecturer in Music and the petitioner being fully eligible and qualified was selected by the Selection Committee and was appointed as lecturer in Vocal Music vide appointment letter dated 12.5.1989 Annexure-2 to the petition, in paragraph 8 of the petition, it is alleged that as an Instructor and also after appointment as lecturer in Music Department, the petitioner has been discharging all the duties of a lecturer from the date of her initial appointment as Instructor.

3. In paragraph 9 of the petition, it is alleged that the Instructors Including the petitioner filed Writ Petition No. 5327 of 1982 claiming that since they have been discharging the duties of lecturer, they should be appointed and designated as lecturer. In paragraph 10 it is alleged that the Executive Council of the University has also passed resolution to the same effect. The aforesaid Writ Petition No. 5327 of 1982 was dismissed as infructuous in 1996 as in the meantime, the petitioner had been appointed as lecturer in 1989 after facing the Selection Committee.

4. In paragraph 12 of the petition, it is alleged that the Allahabad University also felt that all the Instructors should be treated at par with the lecturers and has been sending letters to the State Government to that effect vide. Annexures-3 to 12 to the writ petition. Thus. Annexure-3 to the writ petition is a resolution of the Academic Council dated 27.3.1974, which states :

"Resolved that the post of all the eight instructors in the Department of Fine Art be converted into the posts of lecturers and all the confirmed incumbents working against these posts be designated as the lecturers."

5. In paragraph 13 of the writ petition, it is stated that the State Government accepted the representations only in certain departments. In paragraph 14, it is alleged that the recommendation of the University was accepted by the U.G.C. and consequently the State Government issued G.O. dated 19.3.1983 followed by another letter dated 11.9.1984 by which pay scale of Physical Training Instructor was changed to the post of lecturer. True copy of the letter dated 11.9.1984 is Annexure-14 to the writ petition. In paragraph 15, it is alleged that not only the Physical Training Instructors were designated as lecturer in 1983

and onwards but the same designation of lecturer was approved for the degree colleges as well and the same became applicable to the Demonstrators, Cartographers, etc. working in the degree colleges in 1986 vide letter dated 3.7.1989 Annexure-15 to the writ petition.

6. In paragraph 16 of the writ petition, it is alleged that in pursuance of the aforesaid G.O., all such Instructors working in the Physical Education Department of Allahabad University were given benefit of conversion of the post of Instructors into the post of lecturers since 1983 onwards whereas the previous service of the petitioner rendered as Instructor in the Music Department was not counted towards the post of lecturer although the petitioner had rendered about 19 years of service in the Department of Music in Allahabad University and discharged all the duties responsibilities of lecturer since 1980 and by virtue of that, she is entitled to the promotion on the post of Reader under the personal promotion scheme. However, it is alleged that due to discriminatory action of the State Government, "the previous service of the petitioner as Instructor from 29.12.1980 to 12.5.1989 was not counted. Hence the petitioner submitted representations to the Chancellor vide Annexures-16 and 17 to the writ petition.

7. In paragraph 17 of the writ petition, it is alleged that the Instructors of Physical Education Department do not take theory -classes but they have been designated as Lecturers while the Instructor of Music Department who takes theory classes also has been denied the said benefit.

8. In paragraph 19 of the petition. Statute 10.04 of the University Statute has been quoted which states :

"Instructors or teaching Research Assistants may be appointed by the Executive Council on such terms and conditions as may be provided for in the Ordinances."

9. In paragraph 21 of the writ petition, it is alleged that the Executive Council of the University by its meeting dated 27.3.1974 resolved to convert the post of Instructors in the Department of Fine Arts into the post of lecturers. True copy of the said resolution has already been annexed as Annexure-3 to the writ petition. The said resolution was sent to the State Government vide letter dated 29.1.1981 Annexure-7 to the writ petition.

10. In paragraph 23 of the writ petition, it is alleged that the University made recommendations to the State Government for converting the post of Instructors to the post of lecturers in various departments of the University like Urdu. Political Science and Business Administration, but the State Government failed to pay any heed to the same and hence the aggrieved teachers as Instructors filed Pankaj Kumar and others v. University of Allahabad and others. Writ Petition No. 21709 of 1998. A Division Bench of this Court held that such Instructors working in the Department of Political Science were entitled for the post of lecturers from the date of initial appointment as Instructors and are entitled to salary as such. A true copy of the said judgment is Annexure-18 to the writ petition.

11. In paragraph 24 of the writ petition, it is alleged that similarly the Research Assistants in B.H.U. filed a writ petition in this Court and this Court held that such Research Assistants are entitled to the salary as lecturer. True copy of the said judgment dated 28.7.3998 is Annexure-19 to the writ petition.

12. In paragraph 25, it is stated that the Executive Council of the Allahabad University granted scale and designation of lecturers to four Research Assistants working in Urdu. Commerce and Political Science Department on 15.10.1994 but the Instructors working in the Music Department were deprived of this benefit. However, on 17.10.1998 the State Government conceded to the said request and issued a letter accepting that the Instructors be given the post of lecturers and salary as such. True copy of the said letter dated 17.10.1998 is Annexure-20 to the writ petition. However, by that order the State Government has directed that the change will be applicable prospectively and not retrospectively with the result that the petitioner was deprived of the entire past service as an Instructor even though she had been discharging the duties of lecturer.

13. In paragraph 28 of the writ petition, it is alleged that the Executive Council of the University by its resolution dated 14.11.1998 resolved that the said letter be modified and the benefit to the Instructors for being given designation and pay of lecturer should be given retrospectively from the date of initial appointment as Instructor otherwise there will be discrimination from one Department to other of the University. True copy of the resolution dated 14.11.1998 is Annexure-21 to the writ petition. However, the State Government does not pass any order on the said representation. Aggrieved, the petitioner made a representation to the Chancellor and the Chancellor by letter dated 11.6,1999 directed that the representation should be made to the Principal Secretary. U. P. Government. Higher Education Department vide Annexure-22 to the writ petition. Hence the petitioner made a representation to the Principal Secretary, Higher Education vide representation dated 10.7.1999 Annexure-23 to the writ petition. The petitioner submitted that since the Selection Committee for appointment on the post of Professor is going to meet shortly, hence her representation be decided early otherwise she will be denied the chance of selection as Professor. However, no decision was taken by the Principal Secretary on the said representation.

14. In paragraph 34 of the petition, it is alleged that the petitioner's selection as an Instructor was made by the proper selection committee and was approved by the Executive Council consisting of the Vice Chancellor. Dean of the concerned Faculty and the Head of Department concerned. Hence it is alleged that the petitioner should be given designation of lecturer from the date of initial appointment as Instructor but she has been illegally denied that benefit. Hence this petition.

15. A counter-affidavit has been filed by the University and we have carefully perused the same. No counter-affidavit has been filed by the State Government. In paragraphs 7 and 8 of the counter-affidavit filed by the University, it is denied that there is any discrimination. However. It has been stated in paragraph 30 of

the said counter-affidavit that the University has no objection in case the Government directs to decide the representation.

16. In our opinion, there is clear discrimination against the petitioner because the Instructors who were in other Departments were given designation and pay of lecturer from the date of the initial appointment as Instructor. In our opinion, the ratio of the decision in the case of Pankaj Kumar v. University of Allahabad and another. 1993 (1) UPLBEC 544 . as well as the decision in the case of Vinod Behari Sinha and others v. Banaras Hindu University and others copy of which is Annexure-19 to the petition squarely applies to the facts of the present case. The petitioner's case also finds support from the decision of this Court in Dr. Ayodhya Prasad and others v. State of U. P. and others. Writ Petition No. 3831 of 1990, decided on 1.5.1992, against which SLP filed in the Supreme Court being Special Appeal No. 6797 of 1997 was dismissed by the Supreme Court on 23.4.1993. The decision of Dr. Ayodhya Prasad's case (supra) was also followed by this Court in the case of S.B. Misra and Others Vs. State of U.P. and Another, , as well as by the Division Bench decision of this Court in Dr. Salil Kumar Mitra v. State of U. P. and others. Writ Petition No. 21296 of 1992 decided on 24.2.1999.

17. In our opinion, since the Instructors of other departments were given benefit of being appointed lecturers from the date of their initial appointment as instructor, hence there cannot be discrimination against the petitioner, otherwise Article 14 of the Constitution will be violated.

18. Admittedly the petitioner has put in 19 years of service and there is no reason why she should not be treated as lecturer from the date of her initial appointment as Instructor on 29.12.1980 specially since the Executive Council by its resolution dated 14.11.1998 has resolved in favour of the petitioner.

19. On the facts and circumstances of the case, the petition is allowed and the respondents are directed to treat the petitioner as lecturer from the date of her initial appointment as Instructor on 29.12.1980 and give her arrears of balance of her salary if any due, as lecturer from 29.12.1980 to 12.5.1989 within three months of production of a certified copy of this order before the Registrar of the University.