

(2013) 12 AHC CK 0118

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32271 of 2002

Dr. Vindu Kishore Sharma

APPELLANT

Vs

Chancellor, Chaudhary Charan Singh University, Meerut and
Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 2 ADJ 405 : (2014) 1 UPLBEC 455

Hon'ble Judges : Rakesh Tiwari, J; Bharat Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bharat Bhushan, J.—By means of this writ petition, the petitioner has prayed for the following reliefs:

(i) A writ, order or direction in the nature of certiorari quashing the order of the Chancellor dated 13.5.2002 in so far as it rejects the claim of the petitioner pertaining to divesting all duties of Head of Department and declines to sanction benefit of personal promotion from the date of acquisition of eligibility of the petitioner.

(ii) A writ, order or direction in the nature of certiorari quashing the order dated 15.9.2001 issued by the Vice Chancellor, Chaudhary Charan Singh University, Meerut.

(iii) A writ, order or direction in the nature of certiorari quashing the order dated 29.5.1999 issued by the Registrar, Chaudhary Charan Singh University, Meerut in so far as it limits the benefits of personal promotion as Professor only from the date of assumption of charge in pursuance to the said order.

(iv) Issue a writ, order or direction in the nature of certiorari quashing the Executive Council's Resolution as contained in Sankalp Sankhya 6-B having been resolved in its meeting dated 1.6.2008 and communication therefore by

Registrar, Chaudhary Charan Singh University, Meerut through its letter dated 5.6.2008.

(v) A writ, order or direction commanding the respondents university to sanction designation and consequential seniority as Professor to the petitioner from 30.3.1990 or 30.3.1992 within a period to be specified by this Court.

The facts necessary for adjudication of the present dispute are that the petitioner having Doctorate Degrees in Physics as well as M.Phil in Physics, was appointed as Reader on 30.3.1982 in the Department of Physics in Chaudhary Charan Singh University, Meerut, governed by the provisions of UP State Universities Act, 1973 (hereinafter referred as "University Act") and the First Statutes of the Meerut University. The work and conduct of the petitioner is said to have been fully satisfactory throughout the length of his service.

2. The said "University Act" was amended w.e.f. 10.10.1984 by means of UP Act No. 9 of 1985 whereby incorporating Section 31-A for facilitating the grant of personal promotion to the teachers of University. It contemplated the scheme of personal promotion of teachers to the post of Reader or Professor. This scheme envisaged that personal promotion was to be given on recommendation of Selection Committee constituted under Clause (a) of Sub-section 4 of Section 31 in such manner and subject to such conditions as may be prescribed. In continuation and for effectuating the aforesaid provision Statute 11-12-B was incorporated to the Statute of Meerut University which provides inter-alia that a Reader who has put in at least 10 years full time continuous service as such, would be eligible for grant of personal promotion to the post of Professor.

3. Petitioner claims that he had completed ten years length of service as regular Reader on 30.3.1992 thereby became eligible for grant of personal promotion to the post of Professor. He submits that immediately upon completion of ten years length of service as Reader he submitted self assessment report referred under Statute 11-12-B (3) of Meerut University to the then Head of Department with request to grant personal promotion to him. It is stated that no action was taken and no meeting of Statutory Selection Committee was convened for consideration of personal promotion of petitioner till 1998. On 12.9.1998, Statutory Selection Committee met for considering the appointment of Professor in the department of Physics. But apparently, petitioner's papers were not placed for consideration before this Committee impelling him to file representation before the Chancellor on 5.10.1998 ventilating his grievance. Subsequently meeting of Selection Committee was convened on 23.3.1999 and the Selection Committee recommended grant of personal promotion to the petitioner which was approved by Executive Council of the University and by a formal order dated 29.5.1999 issued by the Registrar of the University, petitioner was granted personal promotion as Professor effective from the date of assumption of charge pursuant to the order of promotion. Petitioner joined as professor on 29.5.1999.

4. The petitioner was still unhappy with his promotion, claiming that he had

become eligible for personal promotion to the post of Professor w.e.f. 30.3.1992, therefore, the recital in the promotion order dated 29.5.1999 that promotion was to be effective from the date of assumption of charge is against the provisions of the "University Act" and Statute framed thereunder as also against the past practices prevailing in the University. Petitioner, therefore, made representations dated 5.6.1999 and 15.6.1999 to the Vice-Chancellor, Chaudhary Charan Singh University, Meerut staking his claim of personal promotion to the post of Professor from the date of completion of eligibility criteria. It is stated that on the representations so filed by the petitioner, University sanctioned payment of arrears of salary in the pay-scale of Professor from 30.3.1992 till 29.5.1999 and arrears of salary have actually been disbursed to the petitioner by the end of financial year 2001. Petitioner claims that the aforesaid disbursement of arrears of salary in-fact was in recognition of the fact that the petitioner had been conferred the status of Professor of personal promotion w.e.f. 30.3.1992. However, despite disbursement of arrears of salary, the University did not compute seniority of the petitioner amongst Professors of University from 30.3.1992. It is stated that subsequent to the revision of pay-scale from 1.1.1996 the University has taken into account the length of service of petitioner as Professor from 30.3.1992 and fixation of salary has been effected in revised pay-scale considering him to be promoted to the post of Professor from 30.3.1992.

5. Petitioner also submits that he has not been granted personal promotion to the post of Professor from 30.3.1990. He has drawn the attention of the Court to the Government Order dated 16.2.1999 (hereinafter referred as G.O. dated 16.2.1999). Annexure-II, Clause 5(iii) of the said G.O. contemplates appointment of Reader as Professor upon completion of 8 years of service. Petitioner claims that the aforesaid provision is applicable to him and he is eligible for appointment as Professor after 8 years of service as Reader. Therefore, he should have been granted personal promotion from 30.3.1990 instead of 30.3.1992 and his arrears of salary to the post of Professor also ought to have been computed from 30.3.1990.

6. Meanwhile, the University initiated process for direct recruitment for the post of professor. The petitioner also applied for the said post. The statutory Selection Committee met on 20.10.2001 and selected one V.K. Rastogi for the direct appointment as professor rejecting the claim of the petitioner, impelling him to file the reference u/s 68 of the "University Act" before the Chancellor claiming seniority pursuant to personal promotion at least from March, 1992. It is stated that the petitioner was also functioning as Head of Department of Physics since 16.3.2001 and suddenly the various functions discharged by him as the Head of Department were taken away and entrusted to junior teachers of the department vide order dated 15.9.2001. Aggrieved by the said order, petitioner preferred another reference u/s 68 of the "University Act" before the Chancellor. During the pendency of these references, the University initiated disciplinary proceedings by placing the petitioner under suspension on 13.5.2002. The

Chancellor rejected the reference petitions filed by the petitioner. This rejection order dated 13.5.2002 is also subject-matter of challenge before this Court.

7. Petitioner further claims that he is being harassed because he had initiated criminal proceedings through an application u/s 156(3) Cr.P.C. on 6.12.2004 for lodging a report u/s 13(3) of the Prevention of Corruption Act 1988 and 120B, 465, 466, 468, 471 IPC at P.S. Medical, District Meerut against Dr. R.P. Singh, the then Vice-Chancellor, Prof. Devraj and Dr. Ashok Kumar. However, he has admitted that this application was rejected by the Lower Court and the order of the Lower Court was challenged before this Court by way criminal revision and this Court disposed of the dispute in terms of the judgment and order dated 20.12.2007 permitting the applicant to file a criminal complaint in respect of the allegations made by him.

8. Petitioner is also claiming relief against the resolution of Executive Committee of the University whereby the personal promotion of the petitioner was cancelled in view of the G.O. dated 101.9.1987 for not submitting his option for the post of Professor.

9. This Court gave sufficient time to the respondents for filing the counter-affidavit but the respondents have not filed any counter-affidavit, however, they have submitted written submission in addition to oral submissions.

10. Heard learned Counsel for the petitioner, learned Counsel for the respondent-University.

11. The main question that needs to be answered is as to whether the personal promotion of Reader of Meerut University given u/s 31-A of the "University Act" is to take effect from the date of assumption of charge on the post of Professor or from the date of eligibility? Secondly, what would be the effect of personal promotion from the post of Reader to the post of Professor on seniority?

12. Before dealing with the issues, it would be appropriate to extract the relevant provisions of Section 31-A of the "Universities Act", which reads as under:

31-A. Personal Promotion to Teachers of University--(1) Notwithstanding anything to the contrary contained in any other provision of this Act, a Lecturer or Reader in the University substantively appointed u/s 31, who has put in such length of service and possesses such qualifications, as may be prescribed, may be given personal promotion, respectively to the post of Reader or Professor.

(2) Such personal promotion shall be given on the recommendation of the Selection Committee, constituted under Clause (a) of Sub-section (4) of Section 31, in such manner and subject to such conditions as may be prescribed.

(3) Nothing contained in this Section shall affect the posts of the teachers of the University to be filled by direct appointment in accordance with the provisions of Section 31.

13. Bare perusal of the aforesaid provision provides that a Lecturer or Reader

substantively appointed u/s 31 of the "University Act", who has put in a particular length of service and possess prescribed qualification may be given personal promotion to the post of Reader or Professor. The required length of service and qualifications were provided in the Statute 11.12-B of the Meerut University. The provisions of Statute 11.12-B of the Meerut University being relevant for our purposes are reproduced as under:

11.12-B (1) Notwithstanding anything to the contrary contained in Statute 11.02 or in any other Statute, the following categories of teachers of the University shall be eligible for personal promotion to the post of Readers or Professors, as the case may be:

Readers post:

(i) Lecturers who are Ph.D. and have put in at least 13 years full time continuous service, as such.

(ii) Lecturers who are not Ph.D. but have put in at least 16 years full time continuous service, as such.

Professor's post:

Readers who have put in at least 10 years full time continuous service in a University.

(2) The service, referred to in clause (1), must have been rendered on an approved post:

(i) in permanent, temporary or ad hoc capacity;

(ii) in this University or in any other University,

Post Graduate or Under-Graduate College or Institute, so however that at least five years permanent service must have been rendered in this University after regular selection through the selection committee constituted under clause (a) of sub-section (4) of Section 31 of the Act.

(3) The teacher of the University who is eligible for personal promotion shall submit a self-assessment report in the proforma given in Appendix "E", containing information relating to his satisfactory work, to the Registrar.

Explanation.--Satisfactory work shall mean the work done with reference to the work expected from a number of the University under University Regulations. Statutes or Ordinances.

(4) The Selection Committee, constituted under clause (a) of subsection (4) of Section 31 of the Act, shall consider the self-assessment report, service record (including character roll) and such other relevant records as may be placed before, or as considered necessary by it. The meeting of the Selection Committee for considering cases of personal promotion shall be held at least once every year.

14. In the instant case, the petitioner was promoted to the post of Professor under personal promotion scheme under the provision of Section 31-A of the "University Act" and Statute 11.12-B. Bare perusal of the clause (4) of the Statute would demonstrate that personal promotion cannot be claimed as a matter of right merely because teacher or the Reader as the case may be is possessed of required qualification and has put in prescribed length of service.

15. Eligible Reader is required to submit a self assessment form in given proforma furnishing the required information about his work to the Registrar of the University. Careful examination of Clause-3 of Statute 11.12-B reveals that the word "Satisfactory" has been employed regarding information to be furnished to the Registrar in the proforma given in Appendix E of the Statute. Clause 4 of the aforesaid statute contemplates the formation of Selection Committee to be constituted under Clause (a) of Sub Section 4 of Section 31 of the University Act. Selection Committee would thereafter is required to consider the self assessment report of the candidate, service record including the Character Roll and such other relevant records as may be placed before committee. All information, self-assessment report and service record need to be satisfactory in terms of the "University Act" and Statutes.

16. The fact that entire material is to be considered before granting the personal promotion means that the scheme does not contemplate automatic promotion of Reader to the post of Professor merely on acquisition of requisite qualification and on completion of prescribed length of service unless the Selection Committee pursuant to the appraisal of "satisfactory work" finds the candidate suitable and recommends grant of personal promotion. It is possible that a Reader who is otherwise eligible on completion of prescribed length of service and on acquiring required qualification for grant of personal promotion is not found suitable by the Selection Committee. In such cases, personal promotion may be denied to the candidate on the ground of unsuitability.

17. It is pertinent to point out that the clause (3) of the G.O. No. 501(I)/15(15)-46(52)/82 dated 25.2.1984 specifically contemplates that personal promotion to the post of Professor from the post of Reader would be effective from the date of assumption of the post of Professor pursuant to submission of option in this regard. Submission of option is equally important. The University specifically denies submission of any option in this regard, compelling its to cancel the personal promotion granted to the petitioner. The University claims that no option was given by the petitioner during the relevant time opting for personal promotion scheme. Therefore, it was constrained to cancel the personal promotion of the petitioner vide letter dated 5.6.2008 of the Registrar, Chaudhary Charan Singh University, Meerut granted to the petitioner. The letter dated 5.6.2008 issued by the Registrar, Chaudhary Charan Singh University, Meerut is reproduced as under:

18. We cannot approve the argument of learned Counsel for the petitioner that a Reader on being found suitable for the grant of personal promotion u/s 31-A of

the Act is entitled to be promoted with effect from the date of his eligibility inasmuch as Section 31-A of the "University Act" and Statute 11.12-B of the Meerut University provide that the personal promotion shall have effect from the date of eligibility.

19. Learned Counsel for the petitioner has relied upon the decision of this Court in Dr. Ashok Kumar Kalia v. Chancellor, Lucknow University and others, reported in 1995(2) AWC 832 wherein it was held that under the personal promotion scheme the date of taking charge on the post is immaterial and promotion is to be treated from the date incumbent becomes eligible. This dispute was raised before the another bench of this Court in Dr. M.P. Joshi and others Vs. University of Kumaon, Nainital and others, . The Division Bench of this Court differed sharply from the ratio of earlier Division Bench Judgment in Dr. Ashok Kumar Kalia (supra) treating the decision as per-incuriam and liable to be ignored. These two conflicting Division Bench judgments were referred to the Full Bench of this Court in Chandra Bhushan Dwivedi (Dr.) Vs. Rajyapal and Others, . The Full Bench held that the promotion and seniority of the teachers promoted under the personal promotion shall be calculated from the date he takes over the charge after the grant of such promotion. The Full Bench held thus:

1. This Full Bench has been constituted in pursuance of the reference made by a Division Bench dated 22.4.2002 since the Division Bench felt that there was a conflict of opinion between two earlier Division Benches in A.K. Kalia v. Chancellor, Lucknow University, 1995(2) AWC 832 and Dr. M.P. Joshi and others Vs. University of Kumaon, Nainital and others, .

2. We have heard learned Counsel for the petitioner and Shri G.K. Singh, learned Counsel appearing for the respondents.

3. The question in this case is about interpretation of the clause (7) of Statute 11.12-B of the 1st Statute of Gorakhpur University. Clause (7) reads as follows:

Personal promotion on the post of Reader or Professor as the case may be shall take effect from the date of taking over charge of the said post.

4. Sri P.S. Baghel/learned Counsel appearing for the petitioner submitted that clause (7) has to be read alongwith clause (4) of the Statute 11.12-B which states:

The Selection Committee, constituted under clause (a) of sub-section (4) of Section 31 of the Act shall consider the Self Assessment Report Service Record (including Character Roll) and such other relevant records as may be placed before, or as considered necessary, by it. The meeting of the Selection Committee for considering cases of personal promotion shall be held at least once every year.

5. Learned Counsel submitted that since clause (4) states that the meeting of the Selection Committee for considering cases of personal promotion shall be held at least once every year, the seniority of teachers who get promotion on the basis

of personal promotion should not be counted from the date when they took over charge but from the date when the candidate became eligible. We cannot accept this submission.

6. It is a well-settled principle of interpretation that when the language of a statutory provision is clear the literal rule of interpretation must be applied and we cannot depart from the plain and grammatical meaning. In our opinion the language of clause (7) is clear and plain.

7. In *Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another*, , the Supreme Court observed:

It is well-settled principle in law that the Court cannot read anything into statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said.

8. In our opinion, clause (4) cannot be regarded as mandatory and has to be held as directory. There may be various reasons why a Selection Committee meeting could not be held every year e.g. there may be disturbances, law and order problem, etc.

9. At any event, clause (4), even if treated as mandatory, cannot whittle down the force of clause (7) which is plain and simple. We, therefore, hold that the seniority of a teacher promoted on personal promotion shall be calculated from the date he takes over charge after the grant of such personal promotion.

10. The matter shall now be listed before the appropriate Division Bench for deciding the case in the light of the observations made above.

20. Thus the aforesaid judgment decided the question finally holding that the personal promotion shall have effect from the date of assumption of the office of Professor and not from the date of eligibility. It is, therefore, clear that the petitioner cannot claim Professorship from the date of eligibility in March, 1992. Thus, there is no question of giving him seniority either from 30.3.1990 or from 30.3.1992 as he had not acquired the post of Professor on either of those two dates. Therefore, he cannot claim seniority from the earlier dates. Similar view was taken by the Division Bench of this Court in *Prof U.N. Agarwala v. Union of India and others*, in Civil Misc. Writ Petition No. 67887 of 2010 decided on 23.11.2010.

21. It is true that clause 7 of the first statute of Kumaun University, Nainital and first statute of Lucknow University (Dr. Kalia) is conspicuously absent from the statute 11.12.B of the first statute of Meerut University. But the Scheme of Statute 11.12-B itself entails formation of Selection Committee for appraisal of satisfactory work of claimant for a particular post. In any case, the Government

Order No. 501 (I)/15(15)-46(52)/82 dated 25.2.1984 specifically provides that the personal promotion to the post of professor would be effective from the date of assumption of charge of the said post pursuant to the submission of option in this regard. Therefore, the petitioner has to clear the additional hurdle in the shape of submission of option. University has denied that any option was submitted by the petitioner.

22. In any case, it is amply clear that Section 31-A of the "University Act", Statute 11.12-B of the first statute of Meerut University and the G.O. No. 501 (I)/15(15)-46(52)/82 dated 25.2.1984 collectively provide that the effective date of promotion to the post of professor from the post of Reader would be the date of assumption of the post. There is absolutely no provision to support the claim of the petitioner that his promotion and seniority should be reckoned from the date of eligibility.

23. Claim of the petitioner that cancellation of his promotion vide letter dated 5.6.2008 issued by the Registrar of University is also invalid because he had submitted his option on fulfilling the required qualification in the year 1992. But there is no evidence of the option having been submitted by him. The Meerut had categorically denied this fact therefore, this dispute cannot be resolved in the writ jurisdiction, for the simple reason that it would need specific findings on the question of fact, without the benefit of any specific evidence.

24. Similarly, the order of Chancellor refusing to accept the reference petition during the pendency of the disciplinary proceedings cannot be faulted with as the Chancellor has taken note of the fact that the disciplinary proceedings were pending against the petitioner, therefore, any relief during such pendency was not possible. In any case the Chancellor had directed the University to conclude the disciplinary proceedings expeditiously. Considering all the facts and circumstances of the case and in view of the discussion made herein above, the writ petition is not legally sustainable and is liable to be dismissed.

In the result the writ petition is dismissed. Costs made easy.