
(2008) 09 AHC CK 0098
In the Allahabad High Court

Dr. V.K. Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : (2008) 09 AHC CK 0098

Hon'ble Judges : Amitava Lala, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This writ petition arises out of a dispute of seniority between the petitioner Dr. V.K. Sinha and the respondent No. 6 Dr. Kiran Shanker, both of whom by virtue of their seniority are claiming their right to occupy the office of officiating Principal of Chaudhary Mahadev Prasad Degree College, Allahabad which is an institution duly affiliated to the University of Allahabad, the respondent No. 3 herein. The challenge is to the impugned order dated 18th August, 2008 passed by the respondent No. 3 whereby the respondent No. 6 has been declared to be senior to the petitioner.

2. In a dispute with regard to inter se seniority between one Dr. A.R. Saxena and others, various decisions were rendered, which ultimately culminated in a decision under the Statutes of the Allahabad University by the Vice Chancellor vide order dated 20th March, 2001. This order has been brought on record before us through a supplementary affidavit filed on behalf of the petitioner. A perusal of the said decision indicates that the petitioner Dr. V.K. Sinha was placed below the respondent No. 6 according to the initial appointment on the post of lecturer. It would be appropriate to mention here that a degree college affiliated to a University under the U.P. State Universities Act, 1973 (for short the Act) has the post of Principal and the posts of lecturers but there are no other cadres like the post of Reader or the Professor as in the University.

3. However, in order to avoid any stagnation and to provide for certain benefits

of the said nature, government orders were enforced from time to time awarding benefits under the Career Advancement Scheme and re-designation of the posts. Prior to this, benefits of the selection grade were also extended resulting in award of higher pay scales in accordance with the Government Orders prevalent from time to time. The petitioner claims to have been awarded the selection grade with effect from 25th July, 1982 and the respondent No. 6 is said to have been awarded the said grade with effect from 23rd February, 1983, according to the date of their acquiring the qualification of D.Phil/Ph.D. These facts have been narrated in detail in the order dated 20th March, 2001 which determines the seniority of the petitioner and the respondent No. 6 vis-a-vis Dr. A.R. Saxena.

4. To this stage, there does not appear to be any dispute between the parties. An amendment was brought about in the First Statutes of the University of Allahabad which have been initially promulgated in the year 1976. The amendment, insofar as the present dispute is concerned, is contained in the provisions of Statute 11.12 (c). Sub-clause (3) of the said statute extends the benefit to a lecturer in an associated college for being placed in a senior scale/selection grade. The petitioner on the strength of the said amendment coupled with paragraph 15-A of the Career Advancement Scheme, which was introduced on 17th January, 1989 claims that since the said benefits have been made available to him, therefore, he stands senior to the respondent No. 6. The petitioner has extensively narrated his claim in the representation dated 10th March, 2008 which has been appended as Annexure-6 to the supplementary affidavit brought on record. The said submissions along with certain judicial pronouncements are contained in a subsequent representation filed by the petitioner, which has been described as an appeal under Clause 11(g) of the Chapter XLII of the Ordinance of the University of Allahabad presently in force. This representation is Annexure-22 to the writ petition. The petitioner has categorically taken a stand claiming seniority placing reliance on the decision of the Apex Court in *Dr Mahak Singh Vs. Chancellor, Ch. Charan Singh University, Meerut and Others*,

5. Apart from the aforesaid submissions, the case of the petitioner is that while he was officiating as Principal, a request had been made by the University itself for forwarding the seniority list in accordance with the communication dated 02nd January, 2003. A copy of this communication was forwarded by the Registrar of the University to the institution through the letter dated 08th April, 2006 which is Annexure-17 to the writ petition. The petitioner contends that in response to the said query a seniority list was drawn up by him and circulated, against which there was no substantial objection with regard to the placement of the petitioner at Sl. No. 2 and that of the respondent No. 6 at Sl. No. 7. It has been alleged that the new Ordinances of the University had not come into force by that time and it was under the old Statutes and Ordinances which have been brought on record through the supplementary affidavit that the seniority was to be determined.

6. It is contended that the said seniority list was communicated to the Vice Chancellor on 27th June, 2006 and was not disputed. On the strength of the said communication the petitioner further contended that once the petitioner had been treated to be senior to the respondent No. 6 and the said communication was through the competent authority, namely the Principal of the institution under Statutes, the same can not be questioned now by the respondent No. 6. It is also urged that by virtue of the said seniority, which according to the petitioner is final, since no appeal had been filed against the same before the Vice Chancellor, the petitioner can not now claim seniority over and above the petitioner.

7. In reply to the aforesaid submissions made on behalf of the petitioner, Mr. Rajeev Misra, learned Counsel for the respondent No. 6, purged that no finality is attached to the alleged claim of the seniority by the petitioner pursuant to the alleged seniority list dated 27th June, 2006 inasmuch as the respondent No. 6 had not been extended any such benefit and when the said seniority list was communicated to the University the same was not accepted which is evident from the communication dated 28th June, 2006, a copy whereof has been placed before us. He further contended that the respondent No. 6 came up before this Court and filed writ petition No. 52440 of 2006 and obtained an order dated 20th September, 2006 from this Court directing the authority concerned to consider the representation filed by him. The aforesaid order dated 20th September, 2006 is contained as Annexure-20 to the writ petition. He further submitted that even though the Committee of Management has no authority to take up any such issue, yet the petitioner manipulated an alleged decision in his favour from the Committee of Management under the garb of the judgement dated 20th September, 2006. A copy of the said order of the Committee of Management has been produced by Mr. Shailendra, learned Counsel for the petitioner, which is dated 08th January, 2007.

8. Mr. Misra also contended that neither the seniority as claimed by the petitioner was final nor was accepted by the University and the Committee of Management had no authority, either under the Statutes or under the Ordinances, to adjudicate the question of seniority of a teacher of a degree college. He further contended that the communication made by the petitioner in the capacity of an officiating Principal was a nullity as the petitioner could not have been a judge in his own cause and he could not have forwarded the seniority list by placing himself at a senior position as against the respondent No. 6. He has further submitted that the aforesaid facts were pleaded through a writ petition filed by the respondent No. 6, namely, Writ Petition No. 4364 of 2007. The said writ petition was disposed of by judgement dated 24th January, 2008 after hearing the learned Counsel for the petitioner, the respondent No. 6, the University as well as the institution concerned.

9. It is to be noted that when the said judgement was delivered, the new Ordinance had not come into force as a result whereof this Court directed the

Vice Chancellor of the University to call for the records and determine the dispute of inter se seniority between the petitioner and the respondent No. 6 at the first instance. The judgement further recites that any order or decision of an officiating Principal determining the seniority as well as the order of Committee of Management which was impugned in the said writ petition shall not be taken into consideration by the Vice Chancellor while proceeding to decide the same. On the strength of the said judgement Mr. Misra contended that it is, therefore, obvious that the question of seniority which had been either decided by the officiating Principal or by the Committee of Management, had not attained finality as alleged by the petitioner. Mr. Misra and Mr. Baghel, learned Counsel for the University, both have relied upon Division Bench decision of this Court in *Kedar Nath Singh v. State of U.P. and Ors.* reported in (2008) 6 ADJ 372 (DB) to contend that the benefits of the Career Advancement Scheme or personal promotion in degree colleges are the benefits extended to the incumbent of the post in order to avoid stagnation and such posts have been declared to be ex-cadre posts, therefore, the question of seniority as claimed by the petitioner was not available to him in view of the law laid down therein. Mr. Misra further urged that the findings recorded by the Vice Chancellor are sufficient to conclude that the seniority position had already become final in the lecturers grade on 20th March, 2001 and the said question was no longer open to be agitated. Mr. Baghel, learned Counsel for the University, has also supported this stand and urged that in view of the Statutes that were applicable then, the question of seniority could not be reopened as per the statute 18.01. He further contended that new ordinances which have now come into force, have been brought into effect on 24th February, 2008 and as such, under the said Ordinances there is an efficacious remedy available to the petitioner by approaching the Visitor against the decision of the Vice Chancellor.

10. In rejoinder, Mr. Shailendra has attempted to distinguish the judgment in the case of *Kedar Nath Singh* (supra) by placing before us the judgement of this Court in the case of *Dr. Aniruddha Pradhan v. The State of U.P. and Ors.* (decided on 15th May, 1997) and has urged that the judgement in the case of *Kedar Nath Singh* (supra) was rendered vis-a-vis the Statutes of the Gorakhpur University which had not been amended and there was no such similar provision in the said Statutes as compared to that of the Statutes of the Allahabad University where amendment has already been brought about by introducing Statute 11.12(C). He contended that the Vice Chancellor, without considering the aforesaid aspects of the matter and without taking notice of the submissions in this regard, has proceeded to pass the impugned order which is cryptic and suffers from the vice of non-consideration of relevant materials.

11. We have given our anxious consideration to the submissions advanced and have heard the learned Counsel for the parties at length. Having expressed our prima facie view in the matter during the course of submissions, learned Counsel for the parties agreed that the matter be disposed of finally at the stage of admission without calling for further affidavits keeping in view the submissions

advanced by them. We are, therefore, under the Rules of the Court with the consent of the parties, proceeding to dispose of the matter finally at this stage.

12. The order impugned dated 18th August, 2008 recites that since there was no sanctioned post of Reader in the College, therefore, the promotion as, claimed by the petitioner, can not be said to be a substantive appointment in a higher grade. The reference has been made to the Government Order dated 16th October, 1984. The impugned order further records that since the seniority dispute has been put to rest by the order dated 20th March, 2001, and there has been found nothing insistent with the earlier decision taken by the University. The respondent No. 6 is, therefore, entitled to be treated as senior as against the petitioner. The aforesaid conclusions have been drawn on the basis of the interpretation put forth in respect of the provisions contained in Statute 18.10(c) of the Allahabad University Statutes, 1976 read with Statute 18.05 (b).

13. In our considered opinion, the claim of the petitioner was founded on certain other provisions namely Clause 15-A of the government Order coupled with the provision of statute 11.12 (C). From the representation filed by the petitioner dated 10th March, 2008, we find clear recitals made to that effect. We further find that the petitioner has clearly stated that a decision had been taken by the Principal on 20th June, 2006 under the then existing Statutes. The said recitals in the representation have not been noticed in the order impugned and conclusions have been drawn, in our opinion, without considering the said submissions advanced on behalf of the petitioner. We are not expressing any opinion on the merits of the claim of the petitioner but the decision making process of the Vice Chancellor ought to have taken into consideration the aforesaid factors by a clear recital to that effect. We may observe that reasons are the main link in the process of decision making, which are to be clearly recited whenever a decision is taken by an administrative authority or quasi-judicial authority, in order to enable the aggrieved person to know as to why his claim has been accepted or he has been non-suited. The question, as to what was the necessity of inviting a fresh claim with regard to the positioning of the seniority, vide letter dated 08th April, 2006 has not been dealt with nor has the Vice Chancellor indicated any consideration of the letter dated 20th June, 2006 relied upon by the learned Counsel for the respondents.

14. According to the new Ordinances, we could have referred the matter to be decided afresh by the competent authority, but on account of the judicial intervention of this Court and the acquiescence of the parties to the said decision dated 24th January, 2008, it would be appropriate that the Vice Chancellor should be called upon to decide the matter again, as we are of the opinion that the order impugned does not contain sufficient reasons either for not taking into consideration the relevant materials as relied upon by the parties or for not recording reasons in relation thereto. It is for the aforesaid reasons that we are not relegating the petitioner to the alternative remedy of placing his claim before the Visitor and hence, the order impugned dated 18th August, 2008 is set aside

calling upon the respondent No. 3 to decide the dispute afresh in the light of the observations made herein above as expeditiously as possible, preferably within six weeks from the date of production of certified copy of this order before him, after giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purpose of effective adjudication a copy of the writ petition and the supplementary affidavit along with its annexures can also be treated as part and parcel of the representation.

15. The writ petition is accordingly allowed without imposing any cost.