
(1992) 03 RAJ CK 0042
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1208 of 1982

K.K. Banerji

APPELLANT

Vs

The University of Jodhpur

RESPONDENT

Date of Decision : 11-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1992) WLN 57

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—The petition raises a short issue. The petitioner was appointed as Lecturer at University of Jodhpur w.e.f. 8th Sept., 1965. Thereafter against advertisement for the post of Reader, he applied and was selected by the selection committee and as per resolution of the Syndicate dated 20th Jan., 1979, the petitioner was appointed as Reader in the Department of Chemistry. The pay-scale of the post of Reader at the relevant time was Rs. 1200-1900. The post of Reader was a post of direct recruitment and not a post of promotion. As a result of direct recruitment to the post of Reader, petitioner, who was drawing salary in the scale of Lecturer at Rs. 1,150/- p.m., was fixed at Rs. 1,200/-. However, one Dr. S.P. Garg, who was simultaneously selected by the very same selection committee but who was placed below the petitioner in order of merit, was given appointment on the post of Reader with a salary of Rs. 1,360/- in the same pay scale. Petitioner's case is that while he was higher in order of merit and, therefore, in the cadre of Reader, he would rank senior to Dr. S.P. Garg, yet he was fixed at a lower salary in the same pay scale which has resulted in anomalous situation. It is further contended that to meet out such anomalous situation where a person lower in merit is granted higher pay under the rules for some reason then the person who is higher in merit in the same selection, a provision for stopping-up pay was made by the Syndicate through adopting

resolution dated 22nd October, 1972, which reads as under:

Resolved further that from now on if a departmental candidate is placed higher in merit than an outsider by the selection committee, but for some reason higher salary is allowed to the latter, the salary of the departmental candidate shall be stopped up to equate with that of the outsider irrespective of what his salary would have been, had it been fixed under the rules.

These facts are not disputed.

2. The controversy which has arisen in the case is because of the use of the words "departmental candidate" in the resolution. While the petitioner contends that since the post of a Reader is a post of direct recruitment and apart from promotion scheme where there is an appointment by selection, there is nothing like departmental candidate and outsider candidate and in reality the resolution is to remove the anomaly which arises on account of giving higher pay to a person lower in merit in the same pay scale than a person placed higher in order of merit and this principle should be applied to the case of the petitioner irrespective of the fact whether candidature is departmental or outsider.

3. On the other hand, respondent contends that the aforesaid resolution only comes into operation in a situation where out of the two appointees, one appointee is a department candidate in the sense that he was previously employee of the Jodhpur University itself and Anr. candidate who is given higher pay inspite of being lower in merit than the status of departmental candidate being higher in merit is protected by stepping up his pay to that which was allowed to person lower in merit.

4. Having carefully examined the contentions raised before me, I am of the opinion that the contention, raised by the learned Counsel for the petitioner has force. It is not disputed that the resolution applies to the case of direct recruit to the post. If the selection is made from open market without any inhibition about the candidate being already in-service candidate from the University, the terms "departmental candidate" and "outsider candidate" do not make any sense because the post of Reader carries a pay scale of Rs. 1200-1900 and on first appointments the man is posted under the same pay scale irrespective of the previous employment held by the candidate under one or the other employee. The case being of a direct recruitment, the principle of giving advance increment on the occasion of promotion thereby computing the fixation of pay in the promotional post with, reference to pay being drawn in the lower post, does not arise. On an enquiry about the rules or the situation which warrants giving a higher start to a person lower in merit, it was stated that though there are no rules but this situation arises only because of the practice followed by the University in protecting the pay of a candidate who is being appointed, which he was drawing on his previous employment. It may be pertinent to notice that for recruitment on the post of a Reader, apart from the academic qualification, experience of teaching post graduate classes for atleast five years is required in

the faculty of the science under Ordinance 317 that is to say only that person is eligible who already has a teaching experience of five years at his back. In other words, it is envisaged that a person who is applying for the post of Reader is already a teacher whether in the Jodhpur University or at any other place and once a person is in employment, the question of salary which he is already drawing and the fixation of salary of the post for which he applies with reference to the already drawing emoluments, become relevant. It may also be noticed that for the post of Reader, not only that person is eligible who is holding a post of Lecturer, but even a person who is Reader elsewhere is eligible for appointment by direct recruitment through the open competition. In this manner, it is apparent that persons applying for the post of reader are of varied experience and varying emoluments are already being drawn by them. It is only with a view to attract, good talent, it is envisaged that the pay already drawn by the person, whom appointment is offered, is protected and it is this situation which results in the situation that a person who is placed lower in merit may be fixed at a higher pay scale notwithstanding that the appointment is through direct recruitment. In no case, This process can be considered to be a case of promotion to make a distinction on the ground of departmental candidate and outsider candidate. Viewed in this light, the only inference which can be drawn from the resolution of the Syndicate quoted above is that while it is envisaged that already drawn emoluments of the appointee, is protected, whenever there were more than one appointment through the same selection, it was felt just and equitable that a person who is higher in merit should not be placed in a disadvantageous position as regards fixation of salary with reference to person who is lower in merit that is to say while protecting the pay of the person lower in merit, the person who is higher in merit and assigned seniority above the person lower in merit, does not draw less salary. Therefore, when there is no question of having a departmental candidate vis-a-vis candidate in the matter of open market selection, the resolution passed by the Syndicate can only mean to protect the status of senior and more meritorious candidate in the matter of fixation of emoluments vis-a-vis person who is placed lower in merit in the same selection. Taking any other view would render the resolution open to attack on the ground of hostile discrimination and arbitrariness. No reason or, rationale can be attributed to deny the same treatment to a very meritorious person in the matter of fixation of pay on the basis of person lower in merit being an earlier appointee of Jodhpur University or an appointee under any other outside agency. In both the cases because of protecting the pay already drawn by the person, fixed lower in merit, the person higher in merit may be fixed at a lower pay under the rules. It does not stand to reason that while protecting the pay of the outsiders, the pay of a previous employee of the Jodhpur University is stepped-up to honour his merit, the same protection of honouring the merit is not available on the basis of a person lower in merit being a colleague in Jodhpur University drawing the higher pay. In my opinion it is a case in which contextual interpretation of resolution is required to be given to save it from being vitiated on the ground of violation of Articles 14 and 16 of the Constitution.

5. Every assuming that the resolution confines its applicability to a situation where pay is stepped-up when out of the two candidates concerned, one is employee of the University of Jodhpur and Anr. is not an employee of the University of Jodhpur but in a similar situation arising on account of both the candidates being from the same university and that situation on the face, appears to be resulting in gross violation of fundamental rights of the equality guaranteed under Articles 14 and 16 of the Constitution, this Court can, in exercise of the powers under Article 226 of the Constitution, direct the respondents to remove the existence of such an arbitrary and anomalous situation by directing them to accord the same treatment in the latter situation/ which the respondents accord in the former situation and accord equal treatment to the employees of the same authority. As I have discussed above, that principally there cannot be any distinction in according the same treatment to the more meritorious candidates in the fixation of pay by stepping it up to the pay fixed for a person lower in merit on the basis of colour and quality of his previous employer. The contention of the petitioner merits acceptance.

6. In the result, petition is allowed and the respondent University is directed to step-up the pay of the petitioner to the same which was accorded to Dr. S.P. Garg with effect from the date of his appointment on the post of Reader in the department of the Chemistry. The arrears that may fall due as a result of this stepping-up be paid to the petitioner within a period of four months from today with interest at the rate of 15% p.a.