

(1989) 02 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 7024 of 1986

Maresh Chandra

APPELLANT

Vs

State of U.P.& Others

RESPONDENT

Date of Decision : 18-02-1989

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(3)(b)

Citation : (1989) 02 AHC CK 0034

Hon'ble Judges : U.C.Srivastava, J and S.H.A.Raza, J

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The question of seniority between three doctors of King George's Medical College, Lucknow all of whom were subsequently promoted temporarily to the post of Readers, is subject matter of challenge in this petition.

2. The petitioner was held to be junior to opposite parties No. 4 and 5, who also like him were appointed in the department of Medicine in the King George's Medical College, Lucknow and that is why the petitioner filed the instant writ petition praying that the opposite parties may be directed to decide the representations of the petitioner which were forwarded by the Registrar, Lucknow University, Lucknow and the Director of Medical Education and Training, U.P. Lucknow and also not to make any appointment of Reader in the Department of Medicine in the King George's Medical College, Lucknow before deciding the representations.

3. The representations preferred by the petitioner were decided by the State Government and thereafter the writ petition was amended and a prayer was added to the effect that the impugned order dated 31st October, 1986 passed, by the State Government rejecting his representation may be quashed and a writ, order or direction may be issued quashing the selection made by the U.P. Public Services Commission to the post of Reader, to be made against the promotion quota and the U.P. Public Service Commission be directed to hold fresh selection for the two posts of Readers in King George's Medical College, Lucknow, treating

him to be senior to the opposite parties No. 4 and 5.

4. The petitioner was appointed as Lecturer on ad hoc basis on 21st September, 1973 and worked in said capacity upto 30th April, 1974. Thereafter he was again appointed as temporary Lecturer on 24th May, 1974, which appointment was extended from time to time on ad hoc basis. The opposite party No. 4, Dr. Ashok Chandra was appointed as Lecturer on 1111975 and opposite party No. 5 Dr. Mam Chandra was appointed Lecturer on 25th May, 1974. The petitioner was appointed temporarily in place of Dr. S.S. Agarwal, who in the meantime had been temporarily promoted to the post of Reader.

5. A Selection Committee of King Georges Medical College met on 31st October, 1975 for selecting three permanent and three temporary Lecturers in the Department of Medicine. The opposite parties No. 4 and 5, Dr. Ashok Chandra and Dr. Mam Chandra and Dr. C.G. Agarwal were recommended for appointment against three permanent posts while Dr. R.C. Ahuja, the petitioner and Dr. R. B. Singh were recommended for appointment on the post of temporary lecturers. All of them joined on the same date, i.e. 1111975. The petitioner was appointed as a temporary Lecturer and was placed at Serial No. 2 in the list of temporary lecturers as indicated above. Dr. Mam Chandra was confirmed with effect from 1311976 and Dr. Ashok Chandra was confirmed as permanent Lecturer with effect from 1921977. In the meantime, Dr. S.S. Agarwal, in whose place the petitioner was temporarily appointed, became Reader and the University Executive Council in its meeting dated 1821977 appointed the petitioner substantively as Reader under Section 31 (3) (b) of the State Universities Act (hereinafter known as the Act). He was confirmed on the said post on the date on which he completed one year's probation, meaning thereby he was confirmed from 1921978.

6. So far as age is concerned, Dr. Ashok Chandra is the youngest and the petitioner is the eldest. The petitioner's claim is that as substantive appointment of all these doctors will be deemed on the same date and, as such, he being senior in age, is the senior lecturer.

7. The King Georges Medical College, Lucknow was taken over by the State Government, which hitherto was under the control of the Lucknow University, in the year 1982. In the seniority list, the opposite parties No. 4 and 5 were shown to be senior to the petitioner wherefore he preferred representations against the same. On 31st March, 1983 the petitioner was appointed as Reader on ad hoc basis in the department of Medicine along with Dr. Mam Chandra and Dr. Ashok Chandra. It was thereafter vide letter dated 1691983 that the opposite parties No, 4 and 5 and the petitioner were appointed as temporary Readers in the department of Medicine with effect from 31st March, 1983. Out of these three posts, two posts are promotional posts i.e. Post No. 1 and 3, and Post No. 2 is selection post. Post No. 2 was advertised by the Commission and Selection Committee had taken place, but its recommendations could not be implemented because of the interim orders passed by this Court. As the post Nos. 1 and 3

were going to be filled in, the petitioner filed this writ petition in which interim order was passed to the effect that the U.P. Public Services Commission may hold the interview which may also consider the seniority of the petitioner as claimed by him, and if selection takes place the result of the same may not be declared. It was further observed that in the meantime the State Government may decide the representation filed by the petitioner regarding seniority.

8. The opposite parties No. 4 and 5, who were impleaded on their application for impleadment, filed short counter affidavits.

9. On behalf of the petitioner reliance has been placed on Statute No 18.05 (f) and 18.06 of the First Statute of Lucknow University apart from Section 31(3) (b) U.P. State Universities Act. The First Statute of the Lucknow University came into effect on 11/1976 and prior to the said Statutes, Lucknow University Statutes were in force. According to the petitioner Statute 198 of the Lucknow Universities Act is applicable. In the affidavit which has been filed by Dr. Mam Chandra it has been stated that Statute 198(v) is not applicable while nothing has been stated by Dr. Ashok Chandra and the State Government.

10. There is no dispute that Dr. Mam Chandra and Dr. Ashok Chandra were appointed substantively as Lecturer on 11/1975 and the petitioner was not appointed substantively on that date, but he was appointed substantively in the department of Medicine on 18/2/1977 under Section 31 (3) (b) of the U.P. Universities Act, which according to the opposite parties is not applicable in the case of the petitioner and he is not entitled to claim benefit of the same. Section 31 (3) (b) of the U.P. State Universities Act reads as under:

31 (3)(b) Where before or after the commencement of this Act, any teacher is appointed (after reference to a Selection Committee) to a temporary post likely to last for more than six months, and such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant or any post of same cadre and grade is newly created or falls vacant in the same department, then unless the Executive Council or the Management, as the case may be, decides to terminate his services after giving an opportunity to show cause, it may appoint such teacher in a substantive capacity to that post without reference to a Selection Committee.

Provided that this clause shall not apply unless the teacher concerned holds the prescribed qualifications for the post at the time of such substantive appointment, and he has served continuously for a period of not less than one year after his appointment made after reference to a Selection Committee.

Provided further that appointment in a substantive capacity under this clause of a teacher who had served before such appointment continuously for a period of less than two years, shall be on probation for one year which may be extended for a period not exceeding one year, and the provisions of subsection (2) shall

apply accordingly.?

11. Statute 198 of the earlier Statute which was later on replaced by the Lucknow University Statutes reads as under:

?198. Whenever, in accordance with provision of the Act or the Statute any person is to hold an office or be a member of any authority or body of the University by rotation according to seniority or is to be appointed as the Head of Department of leaching, according to seniority; such seniority shall be determined as follows:

(i) ????.

(ii) In the same cadre, seniority shall be determined according to length of continuous service of each person from the date of appointment in a substantive capacity in the Cadre.?

Statue 198(v) reads as follows:

?198(v) Where more than one person in a service becomes entitled under the statute to Count the same period of service for the purpose of seniority, the relative seniority among such person shall be determined on the basis of seniority in age.?

12. Under the First Statute of Lucknow University the relevant Statutes are quoted hereunder

?18.01. The Statutes Contained in this Chapter shall not affect the inter se seniority of teachers employed in the University from before the commencement of these Statutes.?

?18.05. The following rules shall be followed in deter mining the seniority of the teachers of the University:

?????..

?(b) In the same cadre, seniority of a teacher shall be determined according to the length of his continuous service in a substantive capacity in such cadre. Provided that where more than one appointment to posts in a cadre have been made at the same time, and an order of preference or merit was indicated by the Selection Committee or by the Executive Council as the case may be, the seniority of the person so appointed shall be governed by the order so indicated.?

?(d) Continuous service in a temporary post to which a teacher is appointed after reference to a Selection Committee, if followed by his appointment in a substantive capacity to that post under Section 31(3) (b) shall count towards seniority.?

?18.06. Where more than one teacher are entitled to count the same length of continuous service in a cadre to which they belong, the relative seniority of such teachers shall be determined as below:

(i)

(ii) in the case of Readers, the length of the substantive service as Lecturer shall be taken into consideration;?

¶18.07. Where more than one teacher are entitled to count the same length of continuous service and their relative seniority cannot be determined in accordance with any of the foregoing provisions, then the seniority of such teachers shall be determined on the basis of seniority in age.?

13. Prior to the Coming in force of First Statute of Lucknow. University, Dr. Mam Chandra and Dr. Ashok Chandra were appointed on permanent posts and the petitioner was appointed on temporary post. The appointment parties No. 4 and 5 being on substantive appointment, they were at the time senior to the petitioner whose appointment was only temporary appointment against temporary post and not a substantive appointment and he was placed at serial no. 5 of the selectlist, obviously below the names of opposite parties No. 4 and 5. A cadre may contain both permanent and temporary employees and the opposite parties Nos.4 and 5 the petitioner were in the cadre of lecturers. But in view of Statute 198 (ii), extracted above, the seniority at that stage was to be determined according to the length of continuous service of each person from the date of appointment in a substantive capacity in the cadre. The opposite parties No. 4 and 5 were appointed in substantive capacity, and, as such, in view of said Statute they were senior to the petitioner. This being the position on the date immediately preceding the date on which first Statute of the Lucknow University came in force, viz. 11/1976, the question will be whether in view of the State Universities Act and the provisions of the First Statute of the Lucknow University, seniority could be changed in view of the fact that the substantive appointment of temporary lecturers were also dating back from the date on which he was continuously working on temporary post.

14. The petitioner could get substantive appointment by virtue of Section 31 (3) (b) on 18 February, 1977 and from that date he became on probation for a period of one year and stood confirmed with effect from 19/1978 whereas the opposite parties had already been confirmed in the year 1976 and 1977 respectively. A party cannot be divested of the vested rights even in the matter of seniority. The First Statute of the Lucknow University (Statute 1801) itself provides that seniority cannot be disturbed which stood determined under the Statute as it stood before coming in force of First Statute of Lucknow University and the same cannot be disturbed. In this view, obviously, the opposite parties No. 4 and 5, being senior to the petitioner, the petitioner cannot claim seniority on the basis of First Statute of the Lucknow University.

15. If it is assumed that the question of seniority will be determined under the First Statute of Lucknow University, the petitioner can claim seniority only on the basis of Statute 18.05. His claim that in view of said Statute his continuous service be counted with effect from 11/1975 when he was appointed on the

temporary post for purpose of seniority in view of his appointment on that post under Section 31 (3) (b) of the State Universities Act, cannot be sustained. Assuming that the petitioner's seniority is to be counted with effect from 1111975, visavis other teachers and lecturer, he can claim seniority only on the basis of his appointment on 1111975. But the opposite parties Nos. 4 and 5 were also appointed on the same date against substantive and permanent post and the petitioner was appointed on temporary post and his name was below their names in the select list, hence his name will be below the names of the opposite parties No. 4 and 5 and he cannot claim seniority over them, which he could not have chimed even till before the coming in force of the First Statute of the Lucknow University. Statute 18.05 (f) cannot be read in isolation and it is to be read with Statute 18.05 (b) which provides that in the same cadre, seniority of a teacher shall be determined according to the length of his continuous service in a substantive capacity in such cadre. Thus, in view of this Statute, the opposite parties No. 4 and 5, who were in continuous service on substantive post in the cadre of lecturers with effect from 1111975, will be senior to the petitioner. One who is entitled to court a particular period because of the Statute cannot Claim seniority over one who in his right is senior. In view of the above, the provisions of Statute 18.07 of the First Statute of the Lucknow University which provides that where more than one teachers are entitled to count the same length of continuous service and their relative seniority cannot be determined in accordance with the provisions for seniority, then the seniority of such teachers shall be determined on the basis of seniority in age, will not apply as the Statute makes it abundantly clear that the opposite parties No. 4 and 5 are senior to the petitioner as their appointment as Lecturers will date back from the date they were appointed substantively and not by any legal fiction.

16. In view of what has been said above, the petitioner's claim that he is senior to the opposite parties No. 4 and 5 cannot be accepted and deserves to be rejected.

17. Dispute of seniority going amongst the doctors of King George s Medical College, Lucknow is regretful. Such dispute is not conducive in the interest of the hospital and patients and the medicos. Such things may even create disturbance in the mind of the doctors because of the feeling of seniority and juniority and may affect the duties of the doctors. In view of the directive principles of State policy and the various specialisation courses, which have been created in the King George's Medical College, Lucknow, including in the Dental Faculty, the State Government may consider the ease of creation of different specialties in the medicine department, which is a big department, and may create posts of professors and readers in different specialties. However, it is for the State Government to do the same, which obviously will take into consideration all these observations.

18. With the above observations, we dismiss the writ petition. There will be no order as to costs.

(Petition dismissed)