

(2004) 04 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 10387 of 2003

Murli Lal Srivastava

APPELLANT

Vs

Vice Chancellor, Banaras Hindu University and Another

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Citation : (2004) 3 AWC 2657

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : L.B. Lal, for the Appellant; V.K. Upadhya and Pankaj Naqvi, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri L.B. Lal for petitioner and Sri Pankaj Naqvi for respondent-University.

2. The petitioner was appointed as Junior Clerk on 1.2.1973 in the institute of Medical Science, Banaras Hindu University. His services were extended on 15/18.5.1973. He was transferred to Post Partum Programme Section on 14/15.6.1973. He was directed to join on 16.7.1973. Since then he is continuously serving in the University and receiving annual increments. The Post Partum Programme, it is alleged, was merged with the establishment of the University and the petitioner was placed in the pay scale of Rs. 260-400 with effect from 1.4.1976 and his pay was fixed at Rs. 272 per month. The petitioner was confirmed on 10.1.1980 as against his claim for confirmation on 1.2.1975, after two years of the joining as Junior Clerk. He was placed at Sl. No. 36 in the security list circulated on 12th December, 1984. The petitioner made representation dated 11.3.1983 on which the Director of the Institute of Medical Science informed the Registrar, Banaras Hindu University that the employees under the Post Partum Programme started in 1973, were initially appointed under Family Planning Unit, working since 1967-68. The State Government extended the benefit of the University grade to such employees with effect from 1.4.1976

which was accepted by the Executive Council. Most the non-teaching staff working under the programme, on the date of placement in the University grade was already working for more than two years. However, University Grants Commission treated the recurring expenditure as committed expenditure under the scheme. The Director with the staff working under the National Scheme should not be put to disadvantage and that they should be confirmed on completion of two years of service from the date of their engagement in the Post Partum Programme and forwarded their confidential remarks.

3. The Assistant Registrar by his order dated 30.1.1985 rejected the representation and found that the non-teaching staff has been rightly confirmed with effect from 1.10.1980. By this writ petition the petitioner has prayed for a direction to the University to count his services w.e.f. 1.2.1973 and to confirm the petitioner on 1.2.1975/1.4.1976 and give him due seniority and promotion.

4. Counsel for petitioner contends that the petitioner was appointed on 1.2.1973. There is no break in his service. He submits that under para 7.1 (a) of Part 1 of the Calendar of Banaras Hindu University provide that all appointment to the different posts shall be made on probation for two years. The probationary period can be extended in special case, at the discretion of the Executive Council for more than 4 years and the employee is to be confirmed after signing an agreement. The petitioner was in service of the University from 1.2.1973 and that grant of the grade will not make any difference to the period of probation. He also claimed discretion as against Dr. Mrs. Saroj Mehta appointed on 12.4.1974 and confirmed on 10.2.1979, Sri Jahar Dey, Dr. (Mrs.) Shall Dubey, Sri S. K. Deoghar and Sri K.N. Misra, who were appointed as Junior Clerk like petitioner in 1973 and were promoted in 1986 whereas the petitioner has not been considered for promotion.

5. Sri Pankaj Naqvi, appearing for respondent University submits that the petitioner was initially appointed in I.M.S. Directorate on temporary basis as Typist for a period of one month fifteen days with effect from 1.2.1973 to 15.4.1973. His temporary services were extended for three months upto 15.7.1973. It was mentioned in the terms of his appointment that his services and other conditions are subject to the rules and regulations of U. P. Government. After expiry of his term, he was required to Join as Lower Division Clerk-cum-Typist under Post Partum Programme after 15.7.1973. He was thus appointed afresh in July, 1973. His previous services were not regulated by the Ordinance/Rules and Regulations of the University. The Joint Secretary and Commissioner, Government of India by his letter dated 17.3.1976 requested the Director of I.M.S. to examine the matter relating to sanction of pay scale to the staff in the Post Partum Programme. By letter dated 6.4.1976, the State Government forwarded the sanction of the Governor for extending similar pay scale and service facilities as applicable to the staff of I.M.S. to the staff of Post Partum Programme. The Additional Director, Family Planning, Government of U. P. communicated the decision on 23.4.1976 placing the employees under Post

Partum Programme in the corresponding scale of pay in the staff of I.M.S. with effect from 1.4.1976, and accordingly the pay was fixed. In the case of petitioner there was certain discrepancies in fixation of pay which was removed by the letter of the Registrar dated 15.12.1983.

6. Sri Pankaj Naqvi submits that prior to the joining of the Post Partum Programme the petitioner was working on a leave vacancy and was not holding any lien in the University services. His pay was fixed with effect from 1.4.1976 in the pay scale of Rs. 200-320, at Rs. 272 (being last pay drawn) on the date when the Post Partum Programme merged in University under Ordinance 25 (ii) of the Non-teaching Employees Service Condition Ordinance. This was done after the Government of India, Ministry of Health and Family Welfare, after receiving confirmation of University Grant Commission, by its letter dated 10.1.1980, agreed to treat recurring expenditure as committed expenditure under the scheme in B.H.U. It was further requested that in future whenever such schemes are introduced the University Grant Commission be consulted well in advance. Consequently, the Rector, B.H.U. passed the following orders :

"Those non-teaching staff who were appointed on ad hoc basis under the Post Partum Scheme without any proper selection be considered after they are again recommended by the D.P.C. of the Department of P.S.M. They will be confirmed w.e.f. the date they complete two years of their service or from 10.1.1980 whichever date is later."

7. The petitioner was consequently confirmed on 10.9.1980 and that his representations were decided accordingly. The seniority of the petitioner has to be determined from the date when he was substantively appointed in Post Partum Programme vis-a-vis the seniority of other person of the University turn in the same cadre. Sri Naqvi had denied that there is any discrimination between petitioner and other employees. Dr. Shall Dubey, and Dr. Saroj Mehta are the teaching staff of the I.M.S. and the University are governed under Statute 27 and the Ordinance of the University framed under Article 18 (1) (K) of the B.H.U. Act, and that the case of Jahar Dey Projectionist (Medical) is not similar to that of the petitioner. He was drawing salary on 1.1.1984 in the pay scale of 425-700 whereas the petitioner was promoted on the post of Senior Clerk with effect from 16.10.1985 in the pay scale of Rs. 330-560.

8. I have considered the submission of parties and perused the documents on record, and find that the Post Partum Programme was not a part of University. It was initiated and that the staff appointed under those programme were subject to rules and regulations of the State Government for the time being in force. It was not subject to Ordinance/Rules and Regulations of the University. It was only when the Joint Secretary and Commissioner under Family Planning, Government of India requested on 17.3.1976 to examine the matter with regard to pay scale of the staff, the State Government decided to extend the same benefit, and that on the commitment given by the University Grants Commissions, the staff were given the pay scale applicable to the University with effect from 1.4.1976. The

petitioner was not an employee of the University and his services were not regulated by the Ordinance/ request of the University. The University as such did not commit an illegality or arbitrariness in confirming the non-teaching staff under the Post Partum Programme, which was appointed without any prior selection, to be confirmed from the date they completed two years of service or from 10.1.1980 whichever is earlier. This date has been fixed taking into account the letter of the Under Secretary, University Grants Commission, New Delhi forwarding the agreement treating the recurring expenditure as committed expenditure under the Scheme in B.H.U.

9. The petitioner has not been able to establish any discrimination. Dr. Shall Dubey and Dr. Saroj Mehta was the teaching staff of I.M.S. of the University and Sri Jahar Dey were appointed in University. He was senior to the petitioner. The petitioner was promoted in the year 1985 and that the upward pay scale of Rs. 1.640-2.900 and as junior clerk or senior clerk was not accepted prior to 1.1.1996 as he was awarded punishment in the year 1992. He did not submit an option form in October, 1997 for upward movement scheme and thus the benefit of upward movement of pay scale could not be released to him. This upward movement scheme was discontinued on 10.4.1988. The petitioner was promoted as Senior Assistant with effect from 22.4.1988.

10. For the aforesaid reasons, I do not find any merit in the grounds raised by the petitioner. The petitioner was not an employee of the University and was appointed in a programme run by the State Government without any selection. He, therefore, cannot be given the benefit of seniority or confirmation prior to 10.1.1980 when he became an employee of the University.

11. The writ petition is. accordingly, dismissed.