

(1996) 05 AHC CK 0122

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26604 of 1990

Pramila Gupta

APPELLANT

Vs

State of U.P., Lucknow & Ors.

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Citation : (1996) 05 AHC CK 0122

Hon'ble Judges : U.P. Singh, J and B.S. Chauhan, J

Final Decision : Disposed Of

Judgement

U. P. Singh, J.

1. The petitioner has moved first petition for issuing a writ, order of direction that the requirement of continuous service under the Government Order dated 711989 (Annexure A to the writ petition) is illegal and the petitioner was entitled for the grant of selection grade of Lecturers, i.e. Rs. 37005700 under the said Government Order dated 711989 with effect from the date of completion of 13 years of service by her.

The second petition is consequential of the outcome of the first petition. The factual matrix of the case is that the petitioner after obtaining the degree of Ph. D. in Botany in 1964, had gone and settled in Canada. Vide order dated 1971971 (Annexure 11 to the writ petition), the petitioner was appointed as a Pool Officer under the Council of Scientific and Industrial Research Scheme (hereinafter called the Scheme). In pursuance of the said order the petitioner worked as Pool Officer in the Allahabad Agricultural Institute of the Allahabad University, which is governed by the provisions of the U.P. State Universities Act, 1973 from 2181972 to 2081975. The petitioner was appointed as a lecturer in the said Institute, vide order dated 2081975 (Annexure 4 to the writ petition) and was confirmed on the said post, vide order dated 2641976. The petitioner, vide letter dated 1271977 (Annexure 6 to the writ petition) submitted her resignation from the said post and it was accepted, vide order dated 1371977. The petitioner worked as Editorial Assistant to the Scientific Journal published by the Sulaimaniyah University, Iraq

from 2521978 to 271979. The petitioner was again appointed as a Pool Officer in the said Institute vide letter dated 1931980 (Annexure8 to the writ petition) for a period of one year with effect from 1641980 and this period was further extended, vide order dated 2051981 till 1641982. The petitioner joined as a Lecturer on 1971982 in pursuance of the appointment letter dated 3061982 (Annexure 10 to the writ petition) in the said Institute and is continuing since then as Lecturer.

2. On 2271988 the Central Government issued a Circular implementing the recommendations of the University Grants Commission, revising the pay scales of teachers in Universities and Colleges etc. with effect from 111986 (Annexure11 to the writ petition). The aforesaid scheme was evolved with a view to prevent stagnation and also to improve their efficiency. The relevant portion of the said Scheme reads as under:

Career Advancement

(vi).

(vii) "Every Lecturer in the Senior Scale will be eligible for promotion to the post of Reader in the Scale of Rs. 37005700 if he/she has:

(a) completed 8 years of service in the senior scale, provided that the requirement of 8 years will be relaxed if the total service of the lecturer is not less than 16years."

In pursuance of the aforesaid circular dated 2271988, the U.P. Government issued G.O No. 91G10/15118814 (15)/87 dated 7189, the relevant part of which is reproduced as under:

Career Advancement

10. Senior Scale Eligibility. "A Lecturer in University or in an affiliated/associated College will be eligible for placement in a Senior Scale of Rs. 3005000 if he/she has:

(a) Completed 8 years of continuous and full time service after regular appointment. This service must have been rendered on an approved post after regular selection in Permanent or Temporary Capacity in any University or Post graduate or Undergraduate Degree College or institute (imparting instructions in degree and/or post graduate courses and/or guiding research) but shall not include service rendered in ad hoc capacity. Provided that benefit of one year for three years, as the case may be, will be allowed to such lecturer as possesses M. Phil, or Doctorate Degree."

(b).....

(c).....

14. Promotion as Reader Eligibility. A Lecturer in University or in Affiliated College will be eligible for promotion as Reader in the scale of pay of Rs. 3700 5700 if he/

she has:

(a) Completed 8 years of service in the senior scale. Requirement of 8 years service in senior scale will be relaxed if the total continuous and full time service of the Lecturer is not less than 16 years. This service of 16 years must have been rendered on an approved post after regular selection in temporary or permanent capacity in any University or Post Graduate or Under Graduate Degree College or Institute within the State (imparting instructions in degree and/or Post Graduate courses and or guiding research but shall not include service rendered in ad hoc capacity. Provided that benefit of one year or three years, as the case may be, will be allowed to such Lecturer as possesses M. Phil, or Doctorate Degree if this benefit has already not been allowed in senior scale."

(b). (c).. (d).

The Scheme further provided for constituting a screening Committee which would review the work of the applicants and take appropriate decision under the Personal Promotion Scheme. It is provided that if a person is not found fit for the Senior Grade or Selection Grade, his work can be reviewed again after a year. Thus, the personal promotion is not automatic, but on eligibility cum merit.

3. The petitioner applied on 321990 for the selection grade, i.e. Rs. 37005700/ claiming that she had completed 13 years of service, but her representation was rejected by the Institute, vide order dated 591990 (Annexure13 to the writ petition) on the ground that the petitioner had not put in 10 years continuous service to her credit as Lecturer and only on this ground her application was not placed before the Screening Committee as there had been breaks in her service. The petitioner approached this Court and this Court, vide its order dated 22101990 stayed the operation of the order dated 691990 (Annexure13 to the writ petition) and the respondent institute was directed to place the case of the petitioner in the next meeting of the Screening Committee which would consider her case for the grant of Selection Grade irrespective of the fact that the petitioner had not completed 13 years continuous service.

4. In pursuance of the order of this Court the Screening Committee considered the case of the petitioner on 2171993 and allotted her the Senior Scale of Rs. 30005000 with effect from 111986 and the Selection Grade of Rs. 37005700 with effect from 481988. The respondent Institute forwarded the recommendations of the Screening Committee, but respondent No. 2, Director of Higher Education fixed the Senior Scale of the petitioner, vide its order dated 7101993 (Annexure16 to the writ petition) with effect from 1971987. Being aggrieved and dissatisfied the petitioner filed the second writ petition.

5. The respondents filed the counter affidavit and their main case is that the petitioner was not eligible for consideration for the Selection Grade before completing 13 years service from 1971982. According to them, the petitioner after reappointment in 1982, had claimed two increments in pay on the basis of her previous service which had been rejected by the Government, vide its order

dated 331984 (AnnexureCA 3 to the writ petition) only on the ground that after resignation the petitioner had no claim or lien on the said post and, thus, the question of pay protection did not arise.

6. As the parties have exchanged the counter and rejoinder affidavits, the matter has been heard with the consent of the learned counsel for the parties.

7. It was contended on behalf of the petitioner that the only requirement of the circular dated 2271988 (Annexure11 to the writ petition) is that the petitioner should have a total experience of 13 years for the Selection Grade irrespective of the fact that there had been breaks in her service twice.

8. Sri Ashok Khare, learned counsel for the petitioner referred to and relied upon the judgment of the Apex Court in the case of the State of Maharashtra and others v. Association of Maharashtra Education Service Class II Officers and others, AIR 1974 SC 2184, Wherein it has been laid down as under:

"It is open to grave doubt whether the recommendations of a body like the University Grants Commission can give rise to rights and obligations enforceable in a court of law..... They are therefore entitled to the higher payscale under the Report of the University Grants Commission which was accepted by the Government of India and was adopted by the Government of Maharashtra. The State Government having received on stated terms and conditions the 80 percent, contribution from the Government of India for implementing the Scheme it was not right on its part to depart from the rudiments of that scheme and to devise a new mechanism entailing the imposition of fresh conditions as a pre requisite to eligibility for the higher pay scale. The Government of Maharashtra misunderstood the Scheme as requiring the promotion of Class II teachers to Class land since under its Rules such a promotion could not be granted without consultation with the public Service Commission, it asked respondents 2 to 11 to offer themselves for selection by that Commission. The imposition of such a condition being based on a misunderstanding of the Scheme proposed by the U.G. Commission, the High Court was right in directing the Government co place respondents 2 to 11 in the payscale of 7001100 without asking them to appear before the Public Service Commission."

9. The petitioner cannot anvil her case on the ratio of the aforesaid judgment for the reason that the State of Maharashtra has misunderstood the Scheme and there had been deviation from the rudiments of the Scheme and the Supreme Court itself expressed grave doubts regarding the justiciability of the recommendations of the University Grants Commission in the Court of Law. Moreover, the Government has devised a completely new mechanism asking the candidates therein to face the Public Service Commission. These salient features of that case are not present in the instant case as the order issued by the Government of Uttar Pradesh is in consonance of the Circular issued by the Central Government and the G.O. issued by the State Government do not provide for the "experience" or "actual working period" etc. In support of her

case the petitioner relied upon an order No. XXIV of Delhi University (Annexure 12 to the writ petition) which reads as under:

Eligibility (A). "Every Lecturer in the Department and Colleges of Delhi University will be eligible for promotion as Lecturer in Senior Scale of Rs. 30005000 if he/she has:

(a) completed 8 years of service (5 years if Ph. D. and 7years if M. Phil).

(b)

(c)

Note 1. No Lecturer will be eligible for promotion as Lecturer in the senior scale unless he/she has completed at least five years of continuous service (2 years if Ph. D and 4 years if M. Phil) in the Delhi University immediately preceding the date of eligibility for promotion.

(B). Every Lecturer/Lecturer in the senior scale will be eligible for promotion as Lecturer in the Reader's Grade in the Scale of Rs. 37005700 if he/she has.

(a) completed 16 years of service (13 years if Ph. D. and 15 years if M. Phil).

(b)

Note (1) No Lecturer will be eligible for promotion to lecturer in the Reader's Grade unless he/she has completed six years of continuous service (3 years if Ph. D. and 5 years if M. Phil) in the Delhi University immediately preceding the date of eligibility for preceding the date of eligibility for promotion.

10. The contention of the petitioner is that while implementing the same Scheme Delhi University has provided for a continuous service of six years in the said University. The averment of the petitioner is contradictory to the first averment that the State Government has no right to superimpose a condition over and above the recommendations made by the University Grants Commission.

11. The second contention of the petitioner is that the breaks in service can be ignored and the past services of the petitioner can also be taken into account while reconing her past experience. In the case of MA. Jeewan Lal (1929) Ltd. v. Its Workmen, AIR 1961 SC 1567, the Supreme Court has observed as under:

"If the service of any employee is brought to an end by the operation of any law that again is another instance where the continuance is disruptiveit must bring to an end the relationship of master and servant.....it would thus always be a question of fact to be decided on the circumstances of each case whether or not a particular employee can.....(sic) a judgment of the Supreme Court in the case oiShardendu Bhushan v. Nagpur University and others, AIR 1988 SC 335. The ratio of the said judgment is of no use to the petitioner as the Supreme Court has held that the words used there in the Circular involved in that case had been:

"Experience of University teaching up to the degree classes for a period of five years."

Thus, it is clear from this that in that case the emphasis in the Circular had been on the experience gained by a teacher while in the employment in the University and the requirement of continuity of service was not involved.

12. In the case of Banaras Hindu University, Varanasi and another v. Dr. Indra Pratap Singh, AIR 1992 SC 780, the Supreme Court has observed as under:

"What is relevant is not the length of the interval or break, as it may be called, but its nature. We do not mean to say that length of such interval is totally irrelevant; what we mean, however, is that one must take into consideration the reason for which break or the circumstances in which such break has occurred. Another factor to be taken into consideration in understanding and construing the said expression is the object underlying the said requirement."

13. In view of the above and looking into the facts and circumstances of this case, the past services rendered by the petitioner prior to 1641980 cannot be taken into account as there had been a break of more than two years and nine months and the petitioner had gone abroad after her resignation was accepted. However, there had been a second break of about three months between 1641982 to 1971982, when the petitioner's service as Pool Officer came to an end after lapse of the tenure period and her employment as a Lecturer in the said Institute, this can be a reasonable period which one can take in getting the reemployment and this break can be condoned.

14. Thus, it is directed that the petitioner is entitled for the Selection Grade of Rs. 37005700 on completion of 13 years from 1641980 and she is entitled for all consequential reliefs under this order.

15. With these observations, these writ petitions are disposed of.

Petitions disposed of.