

(2001) 02 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21049 of 1990

Prem Lata Pandey (Dr.) (Smt.)

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 89 FLR 346 : (2001) 2 UPLBEC 1264

Hon'ble Judges : D.S. Sinha, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Ambrish Kumar Sharma and A.K. Gaur, for the Appellant; Vinay Malviya, S.C., for the Respondent

Judgement

D.S. Sinha, J.—Heard Sri A.K. Gaur, the learned Counsel appearing for the petitioner and Sri Vinay Malviya., the learned Standing Counsel of the State of U.P., representing the respondents.

2. By means of instant Writ Petition under Article 226 of the Constitution of India, the petitioner urges this Court to issue a writ, order or direction in the nature of mandamus commanding the respondents to grant to her personal promotion to the post of Reader and its scale of pay.

3. Undisputed act and events constituting facts of the case, as they emerge from the pleading on record, are these: The petitioner was appointed as a Lecturer in Pharmacy at Motilal Nehru Medical College, Allahabad on ad-hoc basis in the year 1974, and was regularized on 12th February, 1986.

4. In the year 1986, the State of Uttar Pradesh issued a Government Order dated 24th June, 1986 envisaging grant of personal promotion to Lecturers of various Medical Colleges of the State on fulfillment of conditions specified therein. The principal condition for grant of the promotion was completion of 13 years of satisfactory continuous service. The Government Order dated 24th June, 1986 was followed by another Government Order dated 28th October, 1986 whereby

the incumbents granted the personal promotion of Reader were also granted the designation of Reader.

5. The petitioner completed the requisite 13 years of satisfactory continuous service, a condition precedent for grant of personal promotion to the post and sale of Reader, on 25th February, 1987. Despite the fact that the petitioner had completed requisite 13 years of satisfactory continuous service she was not granted the benefit of personal promotion to the post of Reader and the scale of the pay of the said post. This led her to make a representation on 24th January, 1989, which was duly recommended by the Principal of the Medical Collage. The representation of the petitioner went unheeded compelling her to approach this Court through instant Writ Petition.

6. On 10th August, 1990, on the request of the learned Standing Counsel representing them, the respondents were granted a month's time for filing counter- affidavit but the respondents failed to respond.

7. Thereafter, the matter came up before the Court on 1st August, 1991. The Court noticed the lapse on the part of the respondents in not filing the counter- affidavit and admitted the Writ Petition. The Court also passed an interim order dated 1st August, 1991 directing the Secretary, Department of Medical, Lucknow and Director, Medical Education and Training, U.P., Lucknow to accord to the petitioner personal promotion within a period of six weeks from the date of service of a certified copy of the order upon them or to show cause by filing counter- affidavit within that period.

8. There is no dispute that the certified copy of the order dated 1st August, 1991 was duly served on the respondents concerned. It will be relevant to notice here that despite service of the interim order dated 1st August, 1991, the respondents neither carried out the direction of the Court for grant of personal promotion to the petitioner nor did they show cause within the period stipulated in the interim order dated 1st August, 1991.

9. However, the State of U.P. passed an order dated 7th October, 1991, a photo copy whereof is Annexure-C A-2 to the counter-affidavit filed on behalf of the respondents on 27th November, 1998, whereby the requisite personal promotion to the post of Reader and scale of pay of that post was granted to the petitioner. But, the grant of personal promotion and scale of pay was made subject to result of this petition.

10. Obviously, the order granting the personal promotion and scale of pay to the petitioner being conditional, the controversy regarding the entitlement of the petitioner for the grant of personal promotion to the post of Reader and scale of pay thereof survives calling upon the Court to adjudicate upon the same.

11. The respondents seek to defend the denial to the petitioner the grant of personal promotion to the post of Reader and pay-scale attached thereto on the ground of withdrawal of scheme of grant personal of promotion vide Government

Order dated 6th September, 1990, a photo copy whereof is Annexure CA-1 to the counter affidavit of Sri Amarjeet Mishra.

12. Neither in their pleadings contained in the counter affidavit and supplementary counter-affidavit nor during the course of hearing it has been disputed that the petitioner had completed 13 years of satisfactory continuous service on 25th February, 1987 entitled her to the grant of personal promotion to the post of Reader and the scale of pay of the said post. The respondents have not pleaded that the petitioner does not satisfy other specified conditions. It is also not in dispute that the petitioner had demanded from the respondents the grant of the benefit of personal promotion to the post of Reader and the scale of pay of that post through her representation dated 24th January, 1989.

13. In the opinion of the Court, denial of the benefit of personal promotion to the post of Reader and its pay-scale to the petitioner on the ground of withdrawal of the Scheme is wholly arbitrary and violative of the constitutional guarantee of equal treatment envisaged in Articles 14 and 16 of the Constitution of India in as much as the petitioner had already matured her right to the grant of personal promotion to the post of Reader and to the pay-scale of the post of Reader and had also demanded from the respondents for enforcement of the said right much before the issuance of the Government Order dated 6th September, 1990 withdrawing the scheme of personal promotion to the post of Reader and to the pay-scale attached thereto. Moreover, the Government Order dated 6th September, 1990 cannot be, by any stretch of imagination, held to operate retrospectively depriving the petitioner of the right already accrued to her.

14. It is also relevant to notice that several other incumbents, similarly situated as the petitioner was, were granted the benefit of personal promotion to the post and pay scale of Reader as is evident from the uncontroverted averments made in paragraph 9 of the supplementary affidavit of the petitioner filed on 18th August, 1998, and the petitioner was singularly left out. If such a situation is allowed to be countenanced it will surely result in perpetuation of the vice of discrimination forbidden by Articles 14 and 16 of the Constitution of India.

15. On the facts and circumstances, notices herein before, it is absolutely clear that the petitioner was and is entitled to the grant of personal promotion to the post of Reader and to the scale of pay of the post of Reader in pursuance of the Government Orders dated 24th June, 1986 and 28th October, 1986, and her claim, therefore, is hereby upheld. The direction of Court contained in its interim order dated 1st August, 1991 for the grant of personal promotion to the post of Reader and scale of pay attached thereto to the petitioner is made absolute.

16. Subject to what has been said above, the petition stands disposed of finally. There is no order as to costs.