

(2003) 09 AHC CK 0133
In the Allahabad High Court
Case No : C.M.W.P. No. 8019 of 1995

Priya Kant Chaube

APPELLANT

Vs

Vice Chancellor, Kashi Vidyapeeth and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 AWC 3378

Hon'ble Judges : Umeshwar Pandey, J;A.K. Yog, J

Bench : Division Bench

Advocate : Triveni Shankar, for the Appellant; Anil Tiwari and N. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—The petitioner. Dr. Priya Kant Chaube has approached this Court under Article 226 of the Constitution of India with the following prayers :

(a) To issue a writ, order or direction in the nature of mandamus directing the respondents to comply with the order dated 7.7.1994 (Annexure-8) passed by Vice-Chancellor and report of Sub-committee dated 19.6.1994 (Annexure 6 and 7), which has become final and binding upon the respondents.

(b) To issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to issue No Dues Certificate to the petitioner in pursuance of order dated 7.7.1994.

(c) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay the arrears of salary, gratuity, pension and all benefits arising thereof since 4.9.1967 to the petitioner.

2. Brief facts of the case as disclosed in the petition are that the petitioner obtained degree of Ayurvedic Bachelor of Medicine and Surgery (A.B.M.S.) from Banaras Hindu University, Varanasi, which is equivalent to the degree of M.B.B.S.

The petitioner was appointed as an Honorary Medical Officer with Kashi Vidyapeeth on 18.12.1962 on an honorarium of Rs. 50 per month. On the recommendation of the Management of Kashi Vidyapeeth, he was appointed as temporary Medical Officer in the year 1965. This appointment was made effective from 10.10.1963 on fixed pay of Rs. 150 per month. This state of affair of petitioner's employment as temporary Medical Officer in Kashi Vidyapeeth continued till 1967 when with effect from 4.9.1967, he was appointed as permanent Medical Officer. He, however, continued receiving fixed pay only, which was increased upto Rs. 1,500 per month and which he was getting till the end of his career with Vidyapeeth. He used to attend to eight hours duty as Medical Officer out of which two hours each he would spend sitting in the hostel dispensary and Health Centre and for four hours he used to devote visiting the patient, students and staff of the University. He was provided with the facility of Provident Fund and Earned Leave with effect from 28.8.1965 till the date of his retirement (9.10.1994).

3. After passing of the U. P. State Universities Act, 1973, Kashi Vidyapeeth was declared as a University with effect from 16.12.1973. Under the provisions of the said Act, every person employed before the effective date in Kashi Vidyapeeth, became an employee of the University on the same terms and conditions on which he was working. The petitioners thus, alleges that he became confirmed Medical Officer of Kashi Vidyapeeth University. In spite of his repeated request for a regular pay scale as is payable to the Medical Officers employed with other Universities the respondents did not accede to the same by making an order to that effect and instead, the Vice Chancellor sent requisition to the State Government for creation of a permanent post of Medical Officer. He also, on 24.5.1985, took a declaration from the petitioner that he was agreeable to work as Medical Officer with the University on fixed pay till the post of Medical Officer is created and his appointment on that post is made. Accordingly, the Vice Chancellor on 8.6.1985 passed an order to that effect. After the petitioner's repeated correspondence, the Executive Council of Kashi Vidyapeeth passed a resolution on 17.2.1994 appointing a Sub-committee to decide the question as to whether the petitioner would get regular pay scale of Medical Officer or he should be continued with fixed pay only. The Committee was headed by Justice G.D. Dubey (retired) with Professor Paras Nath Dwivedi and Professor Basu Dev Singh as its members. The decision of the Executive Council was communicated to the Chairman and Members of the sub-committee by the Registrar vide his letter dated March 18, 1994 (Annexure-5 to the writ petition). The sub-committee communicated its findings dated 19.6.1994 to the Vice Chancellor through Justice Dubey's letter dated July 4, 1994 (Annexure-8 to the writ petition). The Sub-committee by a majority decision recommended that the petitioner Dr. Chaube should be allowed the regular pay scale of a Medical Officer as is admissible to such Medical Officers in other Universities. He should also be made entitled to the retiral benefits to be fixed in such manner as would be fixed in a case of a Medical Officer with regular pay scale. This decision was taken by the

Chairman and one Member of the sub-committee whereas the other Member Prof. Basu Dev Singh dissented from the majority view and recorded a finding that since the petitioner, Dr. Chaube was not a full time Medical Officer in Kashi Vidyapeeth and he worked all through on fixed pay only, he was not entitled to the regular pay scale of a full time Medical Officer as is admissible in other Universities. In the dissenting opinion, Prof. Basu Dev Singh, however, found that the retiral benefits as would be admissible under Rules on the fixed pay of Rs. 1,500 to the petitioner Dr. Chaube, should be allowed to him on his superannuation.

4. After receipt of the report of sub-committee, the Vice Chancellor, respondent No. 1 directed the Registrar to implement the recommendations treating it to be a decision of the Executive Council and passed order dated July 7, 1994 (Annexure-4 to the writ petition). In spite of this direction of the Vice Chancellor, the recommendations of the Committee were not given effect. Accordingly, the petitioner gave reminders to the Registrar (Annexures-9 and 10 to the writ petition) but it was of no avail and finally the petitioner retired from service of Kashi Vidyapeeth on 10.10.1994 whereafter he addressed a letter (Annexure-11 to the writ petition) dated 12.10.1994 to the Vice Chancellor for implementing and acting upon the report of the sub-committee. Thereupon the Vice Chancellor directed the Registrar to put up the relevant file with his notes. No positive result, however, could be noticed even thereafter and the order of the Vice Chancellor passed on the report of the sub-committee was not complied with. Accordingly, the petitioner addressed a representation to the Chancellor (Governor) of the University (Annexure-12 to the writ petition). A request was made to the Chancellor to interfere into the matter and issue directions to the Vice Chancellor of the University to implement the decision of the sub-committee. Copies of the representation to the Chancellor were also given to the Vice Chancellor and Registrar of the University.

5. Later on the petitioner came across that by resolution dated 2.12.1994, the Executive Council stayed the compliance of the order of the Vice Chancellor dated 7.7.1994 (Annexure-8 to the writ petition). The petitioner contends that since by earlier resolution dated 17.2.1994 the Executive Council had appointed the sub-committee for taking a decision upon the relevant questions and to treat the decision of the sub-committee as decision of the Executive Council, it is not legally possible for the Executive Council to back out from its earlier resolution and to illegally stay the compliance of the decision of the sub-committee and orders passed thereon by the Vice Chancellor. The decision of the sub-committee once accepted by the Vice Chancellor who also happened to be the Chairman of the Executive Council, the same cannot be rejected in such manner. The representation of the petitioner made to the Chancellor to interfere into the matter and pass suitable orders for appropriate action on the basis of the report of the sub-committee was also rejected. Accordingly, having left with no alternative, this Court was moved by the petitioner under Article 226 of the Constitution of India with the aforementioned prayers,

6. The writ petition has been contested by respondent Nos. 1 to 4 and on their behalf the counter-affidavit of the Assistant Registrar (Finance) of Mahatama Gandhi Kashi Vidyapeeth, Sri Uma Shanker Chaubey has been filed. In the averments of the counter-affidavit it is however admitted that the petitioner was appointed as a part-time honorary Medical Officer in Kashi Vidyapeeth in the year 1962. It is disputed that any honorarium was being paid to him at that point of time. Later on he started receiving fixed pay, which was revised from time to time and continued working as such part-time Medical Officer till the date of his retirement (9.10.1994). It is contended that the degree of A.B.M.S. possessed by the petitioner, if, is equivalent to the degree of M.B.B.S., is such a fact which is ascertainable from Indian Medical Council. The initial honorarium paid to the petitioner with effect 10.10.1963 was fixed at Rs. 50 per month only. The petitioner's counter part in Homeopathy side, Dr. V.K. Agarwal was also being paid fixed monthly pay in the same manner. They were not given any pay scale through out their tenure of working as Medical Officers with Kashi Vidyapeeth.

7. In the counter-affidavit it is also averred that the University however, once communicated to the University Grants Commission for sanction of grants towards the salary of the two Medical Officers showing their pay scale of Rs. 210-425 in the annual budget but vide University Grants Commissions' letter dated 25.9.1965 (Annexure-4 to the counter-affidavit), the proposal was rejected by the Commission on the ground that the pay scale of a part-time Medical Officer could not be equated with the pay scale of a full time Medical Officer. As such the petitioner's fixed monthly pay however, continued and it was revised from time to time from Rs. 50 to Rs. 1,500. The status of the petitioner as part-time Medical Officer remained till the date of his retirement, i.e., 9.10.1994 and the same is evident from the letter of the Registrar dated 8.10.1994 (Annexure-8 to the counter-affidavit). The fixed pay as made admissible to the petitioner from time to time, has been regularly paid to him. The fact that the petitioner remained all through a part-time Medical Officer in the University, is evident from different orders of the Registrar (Annexures-9 to 13 to the counter-affidavit). His duty hours never exceeded a duration of four hours. The facilities of Provident Fund and Earned Leave etc. were made admissible under Rules to the part time employees also and thus only, the petitioner also availed of those facilities. All the emoluments and perks which were available to the petitioner before the U. P. State Universities Act came into force had been continued by the authorities after Dr. Chaube became an employee of the University under the said Act. Accordingly, the status of the petitioner as such after coming into force of U. P. State Universities Act, 1973, did not undergo any change and he continued to receive all the emoluments and facilities which he received prior to the Kashi Vidyapeeth acquiring the status of University established under the provisions of the said Act. The conditions of service of the petitioner, Dr. Chaube remained the same as before. It is also contended on behalf of the respondents that since the report of the sub-committee which was obtained in pursuance of the resolution dated 16/17.2.1994 of the Executive Council, was not unanimous ; it was given

to Finance Committee which submitted its report dated 12.10.1994. It was found that since the post and pay scale of a permanent Medical Officer on the Allopathic side was not sanctioned by the Government, the petitioner Dr. Chaube could not be validly allowed the said regular pay scale and the corresponding retiral benefits. The Finance Committee rejected the recommendation of the sub-committee of Justice G.D. Dubey. Accordingly, the Executive Council in its meeting dated 2.12.1994, shelved/rejected the whole proposal of the grant of regular pay scale and other benefits of a whole time permanent Medical Officer, to the petitioner.

8. Respondent No. 5, State of U. P. represented by learned standing counsel, has not filed any counter-affidavit in the case.

9. We have heard Sri Triveni Shanker, learned counsel for the petitioner and Sri Anil Tiwari, learned counsel for the respondents and also perused the record.

10. The learned counsel for the petitioner has contended that the Executive Council vide its resolution communicated through Registrar's letter dated March 18, 1994 (Annexure-5 to the writ petition) had appointed a sub-committee for decision on the point if the petitioner was entitled to the pay scale of a whole time Medical Officer and to treat the decision of the said sub-committee as a decision of the Executive Council, The Vice Chancellor was obliged to make compliance of the same. Since the sub-committee by a majority decision had found the petitioner entitled to the pay scale of a full time Medical Officer of the University vide its report Annexures-6 and 7 to the writ petition ; the Vice Chancellor, thereupon, vide Annexure-8, had passed orders dated 7.7.1994 for the Registrar to implement the decision. No alternative was left with the authorities but to grant the regular pay scale to the petitioner. The learned counsel for the petitioner has further emphasised that since the decision of the sub-committee had to be treated as the decision of the Executive Council and the Vice Chancellor being the Chairman of such Executive Council, had accepted the decision for the grant of pay scale to the petitioner, there was no occasion for him or the Executive Council to back out from the same.

11. From the side of respondent Nos. 1 to 4, the aforesaid argument has been replied and it has been contended that the decision of the sub-committee recommending regular pay scale of Medical Officer to the petitioner by a majority of 2-1 may be having the status of a decision of the Executive Council in view of the resolution dated 16/17.2.1994, yet there was no jurisdictional bar for the Executive Council to take up the same matter again after it found that the decision of the sub-committee was not unanimous. The report was sent for examination by the Finance Committee and when it also dissented and did not find agreement in the view taken by the majority of the member of sub-committee, there was every justification for Executive Council to reconsider the matter and take a fresh decision. The Executive Council took a contrary decision to what the sub-committee had decided in its majority view, mainly on the ground that a post and pay scale of a permanent whole time Medical Officer had

not been sanctioned by the Government and also that the petitioner all through his service period with Kashi Vidyapeeth, remained working on part-time basis.

12. No doubt the petitioner opted to serve Kashi Vidyapeeth as back as 1962 when he moved his application to that effect on 12.10.1962 and agreed to work as an honorary Medical Officer there. This is apparent from the honorary appointment letter dated 13.12.1962 (Annexure-1 to the counter-affidavit). He thereafter with effect from 11.10.1963 started receiving Rs. 50 as monthly honorarium (Annexure-2 to the counter-affidavit). It is also not disputed that since thereafter from time to time, he had been receiving fixed monthly pay, which was Rs. 350 with effect from 1.1.1980 (Annexure-7 to the counter-affidavit). In the pleadings of the parties, it is further admitted that this fixed pay of the petitioner from time to time was revised and finally it touched Rs. 1,500 per month with which the petitioner finally reached the age of superannuation. The last letter of Registrar dated October 8, 1994 (Annexure-8 to the counter-affidavit) shows that with effect from 9.10.1994 after attaining the age of 60 years, the petitioner Dr. Chaube retired from the service of Kashi Vidyapeeth as part time Medical Officer only. It shows that at no point of time, the petitioner was a whole time employee of the University and it is further reflected from Annexures-10, 11, 12, 13, 14, 15 and 16 of the counter-affidavit. It is however, not disputed that vide order dated 8.6.1985 (Annexure-15 to the counter-affidavit), the petitioner was permitted to work as whole time Medical Officer in the University but in view of the declaration dated 24.5.1985 given by the petitioner (Annexure-14 to the counter-affidavit), it was provided in the said order that he would continue to receive the emoluments and facilities of a part time Medical Officer only till a post of whole time permanent Medical Officer is sanctioned by the Government. The said post of permanent whole time Medical Officer, however, could not be sanctioned by the Government till the date of petitioner's retirement, i.e., 9.10.1994. This fact is evident from the pleadings as well as the office order dated 8.10.1994 of the Registrar (Annexure-8 to the counter-affidavit). Annexure-13 to the counter-affidavit is an office order dated 15.5.1991 under the signatures of Dean, Student Welfare, Kashi Vidyapeeth and it clearly shows that the petitioner has his duty hours as Medical Officer from 11.00 a.m. to 1.00 p.m. only. In different documents as referred to above, the duty hours of the petitioner have been shown. It is nowhere reflected that the said duty period was ever beyond four hours. The petitioner's claim that he had been attending to eight hours duty as Medical Officer in the University, do not find support from any document filed on the record. On the contrary, above referred documents show that the petitioner had been performing his duties as Medical Officer with Kashi Vidyapeeth some times for two hours, three hours or to the maximum four hours. By devoting himself to such short duty hours, an employee cannot claim himself to be a full time worker with a particular institution or body.

13. It is because of the petitioner being a part-time employee with Kashi Vidyapeeth and that there being no sanctioned post for full time permanent

Medical Officer in the establishment, the Finance Committee and the Executive Council of the Vidyapeeth decided to reconsider the matter after it received a fractured opinion on the point in controversy from the sub-committee appointed by the Executive Council. Even if in one resolution, the Executive Council had resolved to accept the decision of the sub-committee as a decision of its own, it definitely did not cast an embargo upon it to further apply its mind and reconsider the matter in a fresh meeting of such Executive Council. The petitioner's contention that if the Vice Chancellor, while acting as Chairman of the Executive Council, had once accepted the decision of the Selection Committee the Council as such could reopen the matter, does not appear to be legally justifiable or acceptable. On reconsideration if the Executive Council has not found its agreement in the majority decision taken by sub-committee of Justice G.D. Dubey, it cannot be said that there was any illegality, which could attract an interference by this Court under Article 226 of the Constitution of India.

14. The petitioner, as is evident from the documents referred to above, had continued all through as a part time Medical Officer with fixed pay till end of his career with Kashi Vidyapeeth. He as such, cannot claim pay scale of a full time employee/ Medical Officer as is admissible in other Universities. It is because of this that the proposal of Kashi Vidyapeeth made to the University Grants Commission vide letter of Registrar dated 4.9.1965 (Annexure-3 to the counter-affidavit) for budget of regular pay scale to the petitioner did not find favour with the Commission and the same was turned down vide letter of the Deputy Secretary of the University Grants Commission dated 25.9.1965 (Annexure-4 to the counter-affidavit).

15. It is further noticeable from the record that the petitioner in spite of having been permitted to opt and work as full time Medical Officer in Kashi Vidyapeeth vide office order dated 8.6.1985 (Annexure-15 to the counter-affidavit), he could not be permitted pay scale of a full time Medical Officer. The aforesaid order of permitting. Dr. Chaube to work on full time basis was only in view of his declaration dated 24.5.1985 (Annexure-14 to the counter-affidavit), in which he agreed that he would not claim the pay scale and other facilities of full time Medical Officer till a post of such Medical Officer is sanctioned by the Government and he had been duly appointed on the same. That reflects to the fact that in spite of the permission given to Dr. Chaube to that effect he was never appointed a full time permanent Medical Officer in Kashi Vidyapeeth and since the post of such full time Medical Officer was not created even till retirement of the petitioner, he continued working only as a part-time employee of the University.

16. In aforesaid view of the matter and the circumstances, it is quite obvious that the petitioner, at no point of time, worked as full time Medical Officer in Kasht Vidyapeeth nor there was any post available in the establishment for appointment of such full time permanent Medical Officer. The petitioner, thus, cannot be treated to have been appointed and worked on permanent basis as a Medical Officer. He, accordingly, was not entitled to claim any emolument or

other benefit including retiral benefit of a permanent full time Medical Officer and the reliefs claimed by him in the present petition cannot be allowed.

17. The petition as such having no force is hereby dismissed with no order as to costs.