

(2021) 03 DEL CK 0143

In the Delhi High Court

Case No : Civil Writ Petition No. 13219 Of 2018, 1008 Of 2021, Civil
Miscellaneous Application No. 2755, 2756, 7433, 7946 Of 2021

Prof. Shreekant Gupta

APPELLANT

Vs

University Of Delhi

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Citation : (2021) 03 DEL CK 0143

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Shikhar Khare, Srinivasan Ramaswamy, Manisha Singh, Seema Dolo

Final Decision : Dismissed

Judgement

V. KAMESWAR RAO, J

CM APPL. 2756/2021 in W.P.(C) 1008/2021 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 7946/2021 (for early hearing) in W.P.(C) 13219/2018

CM APPL. 7433/2021 (for early hearing) in W.P.(C) 1008/2021

For the reasons stated in the applications and the counsel for the respondent / University having no objection on the applications being allowed, the same are allowed and the writ petitions are taken up for hearing.

Applications are disposed of.

W.P.(C) 13219/2018

W.P.(C) 1008/2021

1. As these two petitions have been filed by the same petitioner and the issues

raised in these petitions are inter-connected, with the consent of the counsels for the parties, they have been finally heard and are being disposed of by this common Judgment.

2. The writ petition being W.P.(C) 13219/2018 has been filed by the petitioner seeking a direction against the respondent University to grant seniority in accordance with the provisions of the Delhi University Act, 1922, Statutes made thereunder and the UGC Regulations dated June 30, 2010. Whereas W.P.(C) 1008/2021 has been filed by the petitioner challenging the notification dated December 17, 2020, whereby the respondent No.2, namely Prof. Surender Kumar, has been appointed as the Head of the Department ('HOD', for short) of the Department of Economics, for a term of three years.

3. The common facts in both the writ petitions, as urged by Mr. Shikhar Khare, learned counsel for the petitioner, are that the petitioner started his career in the respondent University in the year 1997, when he was appointed as a Reader, which post w.e.f October 1, 2006 was re-designated as Associate Professor. Thereafter, he was promoted as Professor w.e.f. October 16, 2003 under the Career Advancement Scheme ('CAS', for short), 1998 vide Office Order dated July 1, 2015. Pursuant thereto, the petitioner has been given all financial benefits as Professor w.e.f. October 16, 2003.

4. The submission of Mr. Khare with regard to the seniority is that the petitioner having been promoted as Professor w.e.f. October 16, 2003, his seniority must relate back to the said date and based on the said seniority, the petitioner is entitled to be appointed as HOD, Department of Economics. In this regard, he submits that the respondent University has prepared two seniority lists wherein he has been placed at the bottom, i.e., as the junior most and in fact junior to even those Professors who had not even joined the respondent University as a Reader when the petitioner was serving as one. Mr. Khare submits that the petitioner has made various representations and had also met Pro-Vice-Chancellor with regard to his grievances both on seniority and denial of the headship of the Department of Economics. Unfortunately, the request of the petitioner for grant of both has not been acceded to. According to Mr. Khare, the respondent University has failed to appreciate the mandate of the UGC Regulations that the seniority of a promotee has to be computed from the date of eligibility and not from the date of joining. The petitioner having been promoted from October 16, 2003, i.e., the date of eligibility, his seniority must relate back to the said date. Even under Statute 37 and Ordinance XI, the petitioner is entitled to the seniority w.e.f. October 16, 2003 as, the petitioner has been in continuous service in the rank of Professor from that date and has been paid all back-wages and arrears attached to the rank of the Professor with effect from that date. Alternatively, Mr. Khare states, that Statute 37 and Ordinance XI, which deny the seniority from the date of eligibility, is arbitrary and ultra-vires the Act. The other submission made by Mr. Khare is that even in both the seniority lists, the Professors who were interviewed for promotion with petitioner

on the same date on March 30, 2015 have been placed higher than the petitioner. In this regard, he has named Prof. Ram Singh, Prof. Abhijeet Banerje and Prof. Uday Bhanu Sinha, who were not even born on the cadre / rank of Reader when the petitioner was serving as a Reader. According to him, the only reason to place the petitioner after the above persons is that the approval for his promotion in CAS-1998 was not put up before the Executive Council since it was waiting approval from the University Grants Commission ('UGC', for short). This delay is clearly not on account of the petitioner, yet he has made to suffer the consequences. On the other hand, CAS-2010 did not require the approval of the UGC and that is why the promotion of the above Professors appears to have been given with effect from an earlier date, though they all appeared before the same selection committee on the same date, i.e., March 30, 2015. Mr. Khare seeks the reliefs as prayed for in both the petitions inasmuch as his seniority must relate back to the date of October 16, 2003 and he be considered for the headship on the basis of re-determined seniority.

5. On the other hand, Ms. Manisha Singh, learned counsel appearing for the respondent / University of Delhi would submit that there is no illegality in determining the seniority of the petitioner w.e.f. June 29, 2015 for the purpose of grant of HOD, which is the date when the Vice-Chancellor of the University had approved the promotion of the petitioner to the post of Professor. This, according to her, has been done in terms of Statute 37 of the University of Delhi. In this regard, she has drawn my attention Ordinance XI; Statute 37; Statute 9(2)(d)(i) and Ordinance XXIII, which I reproduce as under:

"That seniority for the purpose of Department is maintained in accordance with the provisions of Ordinance XI(II), which is set out below:

11. The Seniority of a teacher in a particular discipline, for membership or the Committee of Courses, of Departmental Committees, and such similar Committees shall be determined in, accordance with following principles:

(i) Where two or more teachers are selected at the same time for appointment, then according to the ranking given by the Selection Committee provided that the date of joining in case of the teacher who has been ranked higher is not later than 3 months from the date of issue of the appointment letter to him.

(ii) Where no ranking has been indicated by the Selection Committee and two or more teachers join on one and the same date;

(a) in case such teachers are appointed from a lower post to a higher post, then according to their seniority inter se in the immediate lower cadre, and

(b) in any other case, according to the age of the person's joining, the old person being deemed senior.

(iii) Save the cases covered by sub-clauses (i) and (ii) according to the dated for joining of the teachers concerned.

2. That seniority for the purpose of being appointed as Head of the Department is determined as per the provision of Statute 37 of The Delhi University Act, 1922:

Statute 37: (1) Whenever, in accordance with these Statutes, any person is to hold an office or be a member of any Authority of the University by rotation, according to seniority such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(3) if two or more persons have equal length of continuous service in a particular grade or post, or the relative seniority of any person or persons is otherwise in doubt, the Registrar may on his own motion, and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereof shall be final.

3. That apart from Statute 37, provision of Statute 9 (2)(d)(i), read with Ordinance XXIII is also taken into account for appointment of Head of the Department, which is quoted below:

Statute 9(2)(d)(i)-Each Department shall have a Professor as its Head Provided that when in a Department there is only one Professor or no Professor eligible to be the Head, a Reader may be appointed as its Head and when there is no Professor or Reader eligible to be the Head, the Dean of the Faculty concerned shall act as the Head of the Department.

(a) No person shall ordinarily be appointed or continue as the Head of a Department on his attaining the age of sixty five years.

Ordinance XXIII (1): The Head of the Department shall be appointed by the Vice chancellor by observing as far as possible, the principle of rotation. Such appointments shall be reported to the Executive Council.

2. Notwithstanding anything contained in Clause I, if for any reason it has not been possible to appoint a person as Head of the Department who is senior to the person (persons) who has already served or is serving as Head of the Department, it shall be open to the Vice Chancellor to appoint that person as Head of the Department whenever a vacancy next occurs if he can otherwise be so appointed.

3. The Head of the Department shall hold office for a period of three years. A person shall not ordinarily be appointed as Head of the Department for a second consecutive term.

6. She submits that apart from W.P.(C) 13219/2018, petitioner had also filed W.P. (C) 369/2019 seeking relief for grant of inter-se seniority and headship of department respectively. W.P.(C) 369/2019 was disposed of vide order dated February 5, 2019 with a direction to the respondent University to consider the

case of the petitioner along with other candidates for appointment of HOD. The respondent University was further directed to communicate the result of the same to the petitioner within a week from the date of decision. Thereafter, the respondent University vide letter dated March 20, 2019 intimated the petitioner that his name was considered along with other Professors of the Department of Economics for appointment of next HOD. Two Professors, namely Prof. Sudhir A. Shah and Prof. Sunil Kanwar, who were appointed as HOD had resigned from the headship. Thereafter, after due consideration and approval from the competent authority, respondent No.2, namely Prof. Surender Kumar, was appointed as HOD vide notification dated December 17, 2020, which is under challenge. Ms. Singh also submits that there is nothing arbitrary, illegal or discriminatory about the seniority as respondent No.2 started working as Professor much prior to the selection of the petitioner as Professor. In other words, respondent No.2 was selected as Professor on April 13, 2015 whereas petitioner was appointed, Professor only on June 29, 2015 though w.e.f. October 16, 2003. Taking these appointment dates and going by the language of Statute 37, i.e., "length of continuous service in a grade or post as the case may be", it is quite clear that as the length of continuous service of respondent No.2 in the grade of Professor was longer than the petitioner, respondent No.2 would rank senior to the petitioner in the grade of Professor. She also submits that issue of grant of seniority and headship is no more res-integra in view of the settled law by the Judgment of this Court in the case of Najma Siddiqui (Prof.) v. University of Delhi, decided on January 16, 1998, reported as 1998 (46) DRJ 216.

7. Having heard the learned counsels for the parties and perused the record, the issue which arises for consideration is, whether the petitioner is entitled to seniority with effect from October 16, 2003 and also consideration for appointment as Head of the Department, Department of Economics on the basis of re-determined seniority.

8. Mr. Khare, learned counsel for the petitioner, in support of his submission that the petitioner is entitled to seniority with effect from October 16, 2003 had contended that the petitioner, though promoted vide order issued in the year 2015 from that date, he has been given all the financial benefits from the date i.e. October 16, 2003 and for all purposes, the seniority must relate back to that date.

9. On the other hand, Ms. Singh, learned counsel for the respondent University had primarily relied upon Statute 37 as interpreted by the Coordinate Bench of this Court in the case of Najma Siddiqui (Prof.) (supra) which judgment has been approved by the Division Bench in Prof. M.M. Aggarwal, Department of Sanskrit, University of Delhi v. Vice-Chancellor, University of Delhi & Ors., 126 (2006) DLT 433.

10. Having seen the judgments, as relied upon by Ms. Singh, suffice to state, the issue in hand i.e. whether the petitioner is entitled to seniority with effect from October 16, 2003 is no more res-integra in view of the judgment of the Single

Judge in the case of Najma Siddiqui (Prof.) (supra) wherein the Coordinate Bench of this Court has clearly held in paragraph 15 that, "..... The law is well settled that once Statute provides that inter se seniority has to be counted from continuous length of service then the inter se seniority of the respondent No.2 vis-a-vis the petitioners has to be from the date they were selected by the Selection Committee and started working as Professors. This is possible by looking at the dates of their appointment as Professors and of performing duties as Professors. Petitioners were appointed Professors earlier than respondent No.2 hence would rank senior. Petitioners have established by documentary evidence that they were appointed as Professors on June 23, 1994 whereas respondent No.2 was appointed on March 4, 1995. Therefore, as per Statute 37 the inter se seniority of the petitioners and the respondent No.2 has to be reckoned from those dates. There is no denying the fact that the Executive Council is competent to decide the inter se seniority but the Executive Council has also to abide by the Statute. It could not have given deemed seniority arbitrarily particularly when the earlier Selection Committee had not selected him. By doing so it appears that second Selection Committee applied the rule of thumb. Once the Statute provides that inter se seniority be counted in a particular way, then it has to be worked out accordingly. By giving deemed proportion or seniority with retrospective effect, the respondent No.2 could not be made senior nor provision of Statute 37 could be given a go-by. Vice Chancellor or for that matter the Executive council could not give deemed seniority or seniority with retrospective effect to respondent No.2 whose first application was rejected on 23rd June, 1994 wherein these very petitioners were selected and made Professors."

11. Similarly in Prof. M.M. Aggarwal, Department of Sanskrit, University of Delhi (supra), the Division Bench in paragraphs 13 to 20, 22 & 23 has held as under:

"13. During the pendency of the writ petition the University appointed Respondent No. 3 as Head of the Department of Sanskrit with immediate effect for a period of three years, by a Notification dated 14th March, 2002. In other words, the University now took the view that Respondents No. 3 and 4 were senior to the Appellant. Consequently, Respondent No. 3 withdrew the writ petition filed by him.

14. As a result of these developments, the Appellant approached this Court through a writ petition being CW 3246/2002 in which he prayed for quashing of the Notification dated 14th March, 2002 and also that he should be appointed as Head of the Department of Sanskrit in the University. This writ petition was dismissed by the impugned order.

15. During the course of the hearing of the appeal, the only question that was seriously agitated was with regard to the interpretation of Statute 37 of the University made under the Delhi University Act, 1922. This Statute reads as follows:-

37(1) Whenever, in accordance with these Statutes, any person is to hold an

office or be a member of any Authority of the University by rotation, according to seniority such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain, in respect of each class of persons, to whom the provisions of this Statute apply, a complete and up to date seniority list in accordance with the provisions of the foregoing clause.

(3) If two or more persons have equal length of continuous service in a particular grade or post, or the relative seniority of any person or persons is otherwise in doubt, the Registrar may on his own motion, and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

16. In the written submissions filed by the Appellant, it has also been contended that the learned Single Judge misunderstood the rejection of the Appellant's applications for being given the benefit of MPS-1983 and that he had wrongly assumed that this meant that the Appellant was not found fit for being promoted as a Professor. We need not go into this aspect of the matter (and other peripheral issues) because it really makes no difference to the ultimate result of the appeal.

17. Statute 37 clearly requires that seniority of a person is to be determined according to his length of continuous service in a grade or post as the case may be. Additionally, such other principles as the Executive Council of the University may, from time to time, prescribe would also be applicable. Going by the literal interpretation of this Statute, it is quite clear that since the length of continuous service of Respondents No. 3 and 4 in the grade of Professor was longer than that of the Appellant, they should rank senior to the Appellant in the grade of Professor, even though the selection of the Appellant may have been made retrospective.

18. It was contended by learned counsel for the Appellant that since the Executive Council had accepted the recommendations of the Selection Committee and had promoted the Appellant with effect from 11th August, 1996, the latter part of Statute 37(1) would be applicable. Reliance was also placed on a Resolution passed by the Executive Council of the University being Resolution No. 45 dated 30th April, 1999. The relevant portion of this Resolution has been extracted by the learned Single Judge and this reads as follows:-

Appointment of a teacher to next higher post/grade under the relevant Merit Promotion Scheme will take effect from the date of his/her eligibility for that post/grade irrespective of the date of the meeting of the Selection Committee recommending his/her promotion.

19. We cannot agree with learned counsel for the Appellant on both counts.

20. As regards the interpretation of Statute 37 (1), the submission of learned counsel for the Appellant would require us to read the conjunctive "and" as a disjunctive "or" in the Statute. There is no reason for doing so. It is well settled that the word "and" may be read as "or" only if a literal reading of the words produces an absurd or unintelligible result or produces a grammatical distortion which makes no sense. It is not as if the word "and" should be read as "or" if it is convenient to do so. The language of a Statute should not ordinarily be interfered with if it makes sense, and in the present case the literal reading of the Statute does not produce any absurd result nor has it caused any ambiguity.

xxx xxx xxx

22. We also cannot overlook the fact that in an open selection that took place pursuant to the advertisement dated 10th April, 1996, only Respondents No. 3 and 4 were selected, meaning thereby that the Appellant was not found suitable for being directly recruited to the post of Professor. This clearly indicates that Respondents No. 3 and 4 were comparatively more meritorious than the Appellant. In view of this, it would not be appropriate to permit the Appellant to steal a march over these Respondents and claim seniority only on the basis of his becoming eligible for promotion to the post of Professor under MPS-1983. This would amount to giving to the Appellant a benefit that he did not deserve in the first place.

23. In the impugned judgment and order, the learned Single Judge relied upon *Najma Siddiqui (Prof.) v. University of Delhi* MANU/DE/0485/1998 : 1998IAD(Delhi)619 (upheld by a Division Bench in LPA No. 26/1998 decided on 21st May, 2001) in which it was held that the provisions of Statute 37 cannot be overridden by a resolution of the Executive Council which has to be consistent with the substantive provision of Statute 37, namely, reckoning of seniority on the basis of continuous length of service. We are of the view that the principle of law that has been decided in *Najma Siddiqui* is correct and that the seniority of the Appellant vis-a-vis Respondents No. 3 and 4 has to be reckoned from the date of continuous length of service in the grade of Professor. Since Respondents No. 3 and 4 were appointed prior to the Appellant and had worked continuously as Professors for a period longer than the Appellant, they deserve to be treated senior to the Appellant."

12. The plea of Mr. Khare that, Statute 37 and Ordinance XI are ultra vires to the Act, is also untenable, as, the intent of the provision is to grant seniority for the purpose of HOD, only to those Professors, who have actually worked on the said post and not on notional basis. Even, the plea of the counsel that the petitioner has been granted seniority below the officers, who have been interviewed on the same day, but only on the basis that approval by Executive Council was at a later date, in view of the provision of CAS-1998, which contemplate approval by UGC, is also untenable, as, the seniority of the above officers, is from the date when

the minutes of Selection Committee has been approved by the Executive Council, which admittedly in the case of petitioner was later.

13. From the above, it is seen that the Division Bench of this Court in Prof. M.M. Aggarwal, Department of Sanskrit, University of Delhi (supra) has concurred with the interpretation given by the learned Single Judge in Najma Siddiqui (Prof.) (supra) on Statute 37 that seniority shall be reckoned on the basis of continuous length of service. If that be so, impugned action of the respondent University with regard to seniority of the petitioner and the appointment of respondent No.2 as HOD, Department of Economics cannot be faulted.

14. In so far as the submission of Mr.Khare in the alternative that Statute 37 and Ordinance XI are ultra vires to the Act, being contrary to the settled position of law that the seniority of promotee has to be computed from the date of eligibility and not from the date of joining, the said plea is also without any merit for the reasons stated by the Division Bench in paragraph 20 of the Judgment of Prof. M.M. Aggarwal, Department of Sanskrit, University of Delhi (supra) (as reproduced above) and additionally, there is no prayer made by the petitioner for quashing the said provisions in these petitions. That apart, if the intent of the rule making authority is to bestow the benefit of seniority, for the purpose of HOD, only from the date of continuous service in the grade or post, the same cannot be faulted. This I say so, for holding the position of headship, the actual experience as Professor is definitely a relevant consideration.

15. In so far as the submission of Mr.Khare that the respondent University has placed three Professors namely Prof. Ram Singh, Prof. Abhijeet Banerjee and Prof. Uday Bhanu Sinha above him, even though they were interviewed on the same date, i.e., March 30, 2015 only on the ground that the Executive Council gave its approval in the case of the petitioner after the required approval from the UGC in terms of CAS-1998, which stipulation was not existing in CAS-2010; I am afraid such a plea cannot be accepted in the absence of the said three Professors being made party respondent in the petition. That apart, there is no challenge to such a stipulation of CAS-1998, which prescribes the procedure for approval by UGC before approval by Executive Council to the proceedings of the Selection Committee.

16. In view of my above discussion, I do not see any merit in both the petitions. Same are dismissed. No costs.

CM APPL. 2755/2021 (for Stay) in W.P.(C) 1008/2021

Dismissed as infructuous.