

(2006) 09 DEL CK 0082

In the Delhi High Court

Case No : Writ Petition (C) No. 5762 of 2003

Prof. V.S. Nanda

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

University Grants Commission Act, 1956 — Section 26

Citation : (2006) 09 DEL CK 0082

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Rukhsana Choudhary, for the Appellant; A. Mariarputham, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The short question which falls for consideration of the Court is, "whether the petitioner is entitled to the benefit of five years added service under 28A (1)(h) of the Delhi University Statute". The indisputable facts of the case of the petitioner are these. The petitioner joined as a lecturer in the Department of Physics and Astrophysics in October 1954. He retired on 30.6.1986. He was re-employed for a period of five years till 12.6.1991. The petitioner was not given the benefit of Statute 28A(1)(h) of Delhi University, at the time when his pension was fixed vide letter dated 29.9.1986. As per the above said statute, the University grants the benefit of five years to those, who fall short of 33 years of service for full benefit of pension. The petitioner had completed service up to 31 years 8 months and 12 days on 30.6.1986. If the five years benefit is given to him, it would be deemed that he had completed service for more than 33 years.

2. The above said statute came to the knowledge of the petitioner in the year 1999, i.e. after the lapse of 13 years after his retirement. The petitioner made a number of representations but it did not ring the bell. It was pointed out that this Court had already granted relief to another lecturer Dr.(Mrs.) S. Punnuswamy.

The petitioner also cited example of one Dr. S.C. Pancholi, who was also granted this benefit. Under these circumstances, the present writ petition was filed with the prayers that writ of certiorari for quashing the letter No. Estab.(T)/V/2003/7554 dated 9/12/13.05.2003 issued by the Asstt. Registrar (Estab-T) and a writ of mandamus directing the respondents to award the benefit of Statute 28A(1)(h) of the Delhi University Statutes to the petitioner, to carry out refixation of his pension, family pension and other consequential retiral benefits by adding five years qualifying service as provided therein be issued.

3. In its counter affidavit, the respondent has objected that the instant petition is highly belated and is being filed after the lapse of 13 years. It was explained that judgment in the case of Dr. S. Punuswamy had peculiar facts and the order passed by this Court clearly mentioned that same would not be considered as precedent in respect of any other case. It is for the petitioner to prove that his case falls within the four corners of Statute 28(A)(1)(h) Note 1. Moreover, the Executive Council vide Resolution No. 151, dated 27.01.1975, provided that if any individual is aggrieved by any decision of the University, he/ she would be free to represent against the same up to a period of three years. The petitioner was a teacher for a number of years and Therefore he should have familiarized himself with the provision in question.

4. In order to understand the position clearly it would be worthwhile to reproduce the aforesaid provision in question. Statute reads:

Statute 28A(1)(h)

In this Statute unless there is anything repugnant in the subject or context:

(a) ...

(i) "Qualifying service" means service rendered by a person in a substantive capacity including periods spent on probation. All service rendered to the University on a full time basis in a temporary or officiating capacity followed without interruption by confirmation in the same or another post shall count as qualifying service except in periods of service paid from "contingencies".

Note: 1. An employee, who has not derived any form of retirement benefits from some other organization before joining the service of the University of Delhi, shall be eligible to add to his service qualifying for superannuation pension but not for any other class of pension the actual period not exceeding one- fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded 25 years or a period of five years; whichever is least, if the post to which he is appointed is one:

(a) for which post-graduate research or specialised qualification or experience in scientific, technological or professional field is essential; and

(b) to which candidates of more than twenty five years of age are normally recruited:

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the University service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said post contain a specific provision that the post is one which carries the benefit of this clause.

5. It may be clarified that both the petitioner as well as the University have failed to produce the recruitment rules pertaining to the appointment in the year 1954 or prior to that. It is always for the department to preserve the recruitment rules which if produced would have gone a long way to pave the way to reality. However, it is pertinent to note that it is for the petitioner who has to prove his case. This point was made clear vide order sheet dated 30.01.2004 The relevant para is reproduced as follows:

1. Though earlier on relief as prayed by the petitioner was being denied on other counts, during arguments learned Counsel for the University relied upon the second proviso to Statute 28A and contended that petitioner has to show that recruitment rules in respect of the post in question contained a specific provision that the post is one which carries benefit of this clause. Then alone, would the petitioner be entitled to the benefit of Statute 28A.

6. In his additional affidavit dated 15.3.2004, the petitioner stated that benefit of five years was given to Prof. S.C. Pancholi, who was similarly circumstanced. I find no force in this argument. Prof. S.C. Pancholi joined service in the University initially in the year 1989 as a Reader. Qualifications prescribed by UGC for the post of Reader, at the time Prof. S.C. Pancholi joined the University, as Reader, in the year 1969 were these:

Readers:

(a) A first or high second class Master's degree of an Indian University or an equivalent qualification of a foreign University.

(b) A research degree of a doctorate standard or published work of a high standard.

(c) At least five years experience of teaching post-graduate classes and some experience of guiding research." The above said condition (b) is relevant and crucial. The petitioner has failed to prove that his recruitment rule contained this condition.

7. Likewise the case of Prof. S. Punuswamy has no parallels with the instant case. She joined Daulat Ram College in the year 1973. Her case is squarely covered by the judgment of this Court reported in V.P. Verma (Prof.) Vs. University of Delhi, .

8. The Learned Counsel for the petitioner vehemently argued that her case, too, is covered by the above said authority. The relevant para appears at page 465.

It may be mentioned at this stage that the Vice-Chancellor had constituted a Committee headed by Professor Abad Ahmad, Pro-Vice-Chancellor to examine the issue relating to 5 years of added service under Clause 1(h) of Statute 28 (a) of the Delhi University Statutes. The Committee submitted its report dated 14.3.1997 and in the said report it made the following recommendations:

The Committee, after deliberation, recommended that prior to September, 1991 the minimum qualification for recruitment to post of Lecturer was post-graduate research and hence there was no problem with regard to the cases of 1960s which are coming up now is the Pension Cell for consideration of the benefit of added years of service. This provision would apply to all those who joined as Lecturers/Readers/Professors; it will not apply to those who initially joined the University/College as Asstt. Lecturers. Where a person initially appointed as Asstt. Lecturer is subsequently appointed as Lecturer through a Selection Committee, the benefit of added years of service would be available with reference to the date of appointment as Lecturer. Such person could opt to forgo that benefit and count, instead, his/her service as Asstt. Lecturer for pension if that is more beneficial.

This report was placed before the Executive Counsel and vide Resolution No. 12 dated 3.6.1997, Counsel resolved to accept the recommendations of the Committee. This Resolution of the Executive Committee Along with the recommendations of Professor Abad Ahmad committee has been filed by the University Along with affidavit dated 15th October, 1997 and it is stated that as per the said Resolution benefit of 5 years of added service available to any one as Lecturer/Reader/Professor and where a person is initially appointed in any cadre every time benefit of added service would be available without reference to date of appointment as Lecturer. This would mean that a Teacher can either opt for his total service including that one before the appointment of Lecturer/Reader/ Professor or to count the service as Lecturer/Reader/Professor with 5 years of added years of service. But both the benefits are not admissible.

9. Learned Counsel for the petitioner vehemently argued that the committee recommended that prior to September 1991, the minimum qualification for recruitment to the post of lecturer was post graduate research and there was no problem with regard to the cases of 1960. However, it must be borne in mind that the case of the petitioner does not pertain to the cases of 1960s. His case pertains to 1950s.

10. Learned Counsel for the University has produced the recruitment rules that is communication from the UGC dated 31.10.1957 and the resolution of the academic counsel dated 9.1.1957 adopting the same, which go to reveal that following recruitment rules were prevalent in the year 1957.

The University Grants Commission is required u/s 26(i)(e) of the University Grants Commission Act, 1956 to make regulations consistent with the University Grants Commission Act and the rules made there under defining the

qualifications that should ordinarily be required of any person to be appointed to the teaching staff of Indian Universities, having regard to the branch of education in which he is expected to give instruction.

A Committee appointed by the Commission to consider this question has suggested that the following qualifications should ordinarily be required of persons to be appointed to teaching posts in the University, except in special cases in which a departure from the conditions could be justified. Lecturer

At least a first or high second class Master's Degree or an equivalent qualification of a foreign University.

Reader

Professor

The University Grants Commission may kindly be informed of the views of the University on these qualifications.

This was the position in 1957. The petitioner has also failed to produce the recruitment rules for the post of Lecturer after 1957 to 1960 onwards to enable the Court to read the same in juxtaposition with recruitment rules pertaining to the year 1957.

11. It must be borne in mind that this is the petitioner and nobody else who is to carry the ball in proving his case. The petitioner has failed to produce the recruitment rules which would have gone a long way to hit the bull's eye. In absence of those crucial recruitment rules the position does not begin to jell. Secondly and most importantly the rules pertaining to the year 1957 clearly provide an inkling towards the fact that the minimum qualifications for recruitment to the post of Lecturer was not post graduate research but it was, "ECHO is on at least a first or high second class Master's Degree or an equivalent qualification of a foreign university". This is the most likely that the same or lesser type of qualifications must have been prescribed for the year 1954. Although, the petitioner was a Ph.D., yet, this was not the requirement of the recruitment rules or whatever the rules were which do not stand proved. The petitioner has to prove that the post to which he was appointed is one.

(a) for which post graduate research or specialised qualification or experience in Scientific technological or professional field is essential.

which is the requirement of the Statute and is already quoted above. Last but not the least, the petitioner has failed to prove that any other Lecturer in whole of the University, in the year 1954 or prior to it got the benefit of the statute Note I 28 A (1)(h). Consequently the writ does not succeed and is hereby dismissed. There shall be no orders as to costs.