
(1989) 02 AHC CK 0049
In the Allahabad High Court
Case No : Writ Petition No. 5893 of 1988

Ramesh Chandra Vyas

APPELLANT

Vs

University of Lucknow

RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 2(19), 9

Citation : (1989) 02 AHC CK 0049

Hon'ble Judges : U.C.Srivastava, J and S.H.A.Raza, J

Final Decision : Dismissed

Judgement

U.C. Srivastava, J.—The petitioner, who was working Head of the Department and Dean of the Faculty of Law of Lucknow University was superannuated on the afternoon of July 14, 1988. Under the provisions of Statute 16.24(3) of the First Statutes, he was reemployed with effect from the forenoon of July 15, 1988 till June 30, 1989.

2. According to the petitioner there was some dispute regarding the date of birth of the petitioner. His date of birth according to his first appointment in the Lucknow University in the Year 1955 was given as 15th July, 1928 while subsequently he claimed in the University his date of birth as 15th October, 1931, Certain proceedings in this behalf were taken place in the University but the plea for change of date of birth has not been taken in this writ petition and rightly this matter has not been argued in this case.

3. The contention on behalf of the petitioner is that as he continues to be Professor in the Lucknow University upto June 30, 1989 he has been wrongly deprived of the office of Head of the Department and Dean Faculty of Law of the University and opposite party no. 4, who has been subsequently impleaded being only Reader and not even the Professor, could not have taken or given charge of Head of the Department and Dean Faculty of Law of the University.

4. Statute 16 24(3) of the First Statutes reads as under:

16 24 (3). No extension in service beyond the age of superannuation shall be granted to any teacher after the date of commencement of these Statutes:

provided that a teacher:

(i) Whose date of superannuation does not fall on June 30, or

(ii) Whose date of birth is July 1 and who, having been employed from before the commencement of these Statutes, continues to be in service as such on the date of commencement of the Lucknow University (Thirty Second Amendment) First Statutes, 1985 shall continue in service till the end of the academic session that is, June 30 following, and will be treated as on reemployment from the date immediately following his superannuation till June 30 following.

Provided that such physically and mentally fit teachers shall be reappointed for a further period of one year, after June 30 following date of their superannuation, as were imprisoned for taking part in freedom struggle of 1942 and are getting freedom fighters pension.

5. The reemployment letter of the petitioner contained the following conditions:

(i) The petitioner would be treated as temporary employee during the period of reemployment.

(ii) The petitioner will not be entitled to avail any leave, which may be due to him prior to attaining the age of superannuation, during his reemployment.

(iii) During the period of reemployment the petitioner would not be entitled to hold any office or Membership of University Body, which he might have been entitled to in order of seniority according to the University Act and Statutes.

These conditions were in conformity with the Government's Order dated 26th October, 1976 by which reemployment of those who were to attain the age of superannuation during midsession was to be considered. On behalf of the petitioner it has been contended that as the petitioner continues to remain in service upto June 30, 1989 he shall also be continued as Head of the Department and Dean, Faculty of Law and cannot be deprived of the said office.

6. The word "teacher of the University" has been defined in subclause (19) of Section 2 of the Uttar Pradesh State Universities Act (hereinafter referred to as, the Act) which reads as under:

(19) "teacher of the University" means a teacher employed by the University for imparting instruction and guiding or conducting research either in the University or in an institute or in constituent college maintained by the University.

7. The word "teacher" has been defined in section 2(18) of the Act which reads as under:

(18) "teacher" means a person employed for imparting instruction or guiding or conducting research in the University or in an Institute or in a constituent

affiliated or associated college and includes a Principal or Director.?

Thus there is difference between "teacher" and the "teacher of the University" as "teacher of the University" means that he should be employed by the University, but so far as "teacher" is concerned, for him it is not provided that he should be employed by the University.

8. Section 31 of the Act provides for the mode of appointment of the teacher of the University and details regarding the same are found in the Statutes framed under the Act. The appointment is made by the Executive council of the University.

9. On 26th October, 1976 the State Government issued a notification providing for reemployment of the teacher of the University on his midsession retirement upto the end of the session on the conditions that the teacher would be treated as temporary employee during the period of reemployment; the teacher will not be entitled to avail any leave, which may be due to him prior to attaining the age of superannuation, during his reemployment and that during the period of reemployment the teacher would not be entitled to hold any office or membership of University Body, which he might have been entitled to in order of seniority according to the University Act and Statutes. It is thereafter that the University Statutes were amended and the provision of reemployment was made in Statute 16.24 of the First Statutes. Thus a teacher on attaining the age of superannuation gets reemployment because of the provisions of the Statutes of the University. The University has no say in the matter of reappointment and it has no choice even. The University in this case has only intimated the petitioner the conditions subject to which he was reemployed and which were in conformity of the said G.O. By the said G.O. the State Government has put certain fetters to and restriction on the powers and rights of a reemployed teacher. The University intimated the same restrictions and restraints to the petitioner in its intimation to him regarding his reemployment. It is not necessary to go into the question of validity of the said G.O. and no challenge to the same has been raised and the petitioner also accepted the same without any objection. As such, the teacher who is reemployed would not be a teacher full fledged as he was before his reemployment.

10. The petitioner's contention is that having a right of re employment, he was entitled to continue as Head of the Department and Dean of the Faculty of Law, moreso in view of the fact that there was no other Professor in the Department and the Senior Reader could not work as Head of the Department and Dean of the Faculty of Law in presence of a Professor. In this connection reference to the Statutes 2.20 and 18.05 of the First Statutes of the University is made. According to the petitioner, in view of Statute 18.05 the reemployed Professor would be senior to the Reader and as per requirement of Statute 2.20 the senior most teacher will be entitled to function as Head of the Department and consequently Dean of the Faculty concerned. In this connection reference was made to the case of Dr. Avinash Kumar v. State of U.P. & others (1983 UPLBEC

264). In the said case the next senior most teacher was till then only a Reader in the K.G. Medical College. It was held that as the petitioner was senior to the Reader in the department of Radiology and he having been reemployed it is he who will act as Head of the Department in accordance with the Statutes of the Lucknow University. It was also held that irrespective of whether the services of a Professor are extended or he is reemployed, he would in both the cases be senior to a Reader. It was also held that when Statute 16.24 creates a fiction that the superannuated teacher is deemed to be as on reemployment, all the incidents of reemployment have necessary to follow. Moreover, the provision in the Statute that the superannuated teacher will be treated as on reemployment has been made with a view that the reemployment of the teacher concerned would on the date of his superannuation follow as of course, without there being any express order for the purpose by the appointing authority. The fiction has not been created with a view to change the implications of a person being on reemployment.

11. Section 9 of the Act defined the officers of the University and the Dean of Faculties comes in it as officer of the University at (g) of section 19. A reemployed teacher cannot hold any office or membership of the University for which he could be entitled to when he was the regular teacher of the University. From the appointment order itself it is clear that by virtue of the conditions given in it the petitioner cannot hold the office of the Head of the Department and Dean of the Faculty of Law. Section 19 of the Act enumerates the "Authorities of the University and clause (i) provides such other authorities as may be declared by the Statutes to be authorities of the University and reemployed teacher cannot claim the office of the authorities of the University. There is a Division Bench case of Dr. O. P. Tandon v. State of U.P. and others (1984 UPLBEC 362). In the said case also the petitioner who was Head of the Department was allowed to continue till the end of session on reemployment. He also claimed the office of the Head of the Department. It was observed in that case as follows:

?It is to be noted that although the petitioner may be treated as on reemployment, yet this fiction about reemployment itself is to operate from the date immediately following the date of his superannuation. Thus there is clearly a break between the date of superannuation and the date of reemployment. Although the break is notional, it is nonetheless a break in the eye of law. Under Statute No. 18.0.5 (b), in any particular cadre i.e. in the cadre of Professor, Reader or Lecturer the seniority of a teacher shall be determined according to the length of his continuous service in a substantive capacity in the said cadre.?

?The expression "continue in service" occurring in the proviso to Statute no. 16 24 (3) has to be interpreted in the light of the legal fiction which has been provided in the same proviso and in the same sentence. That legal fiction is to the effect that a teacher so allowed to continue in service has to be treated as on reemployment, and this reemployment is to commence on the date immediately following the date of his superannuation. The expression "continue in service"

cannot, therefore, be decisive of the question as it cannot be interpreted as if the legal fiction did not exist.?

12. The case of Avinash Kumar (supra) was distinguished in the above case of Dr O.P. Tandon. In Dr O.P. Tandon's case (supra) it was noticed that in Dr. Avinash Kumar's case (supra) the case law in Virendra Swarup v. President of India (1968 All LJ 641) was not considered in which it was held that the petitioner who in that case had been elected to the office of the Chairman of the Legislative Council but whose term as member of the Council had ceased, did cease to be the Chairman because of the break. In Dr. Avinash Kumar's case it appears that the relevant G.O. of 26th October, 1976 laying down certain restrictions and conditions on the reemployed teachers too either was not considered or its effect was not taken note of and it appears no such intimation was given to him and he was not told of the restrictions and conditions In view of these distinguishing and special features also the question of referring the matter to Larger Bench does not arise.

13. The position of a reemployed teacher or Professor in the University who gets reemployment because of the provision of Statutes is somewhat similar to an excadre post and his post is not included in the hierarchy of the "teachers of the University" though it runs parallel to it closely. The status of a retired teacher is the same that is equivalent to a teacher held by him before retirement but there being some truncation in the powers and rights he is not entitled to hold any other office by virtue of the same which could have been held by him as a full fledged teacher of the University. In the absence of a Professor it is the senior most Reader who will hold the office of the Head of the Department and even of the Dean of the Faculty as if there is no other teacher above him at that time in the department.

14. The petitioner, even though is a reemployed Professor is not entitled to hold the office of Head of the Department as well as Dean of the Faculty and is not entitled to the relief's claimed. There is no force in this writ petition, which is accordingly dismissed. However, there will be no order as to costs.

(Petition dismissed)