
(1997) 11 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10672 of 1992

S.G.S.Khanna,Haldwani

APPELLANT

Vs

Vice-Chancellor & Anr.

RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Uttar Pradesh Agricultural University Act, 1958 — Section 23

Citation : (1997) 11 AHC CK 0048

Hon'ble Judges : S.H.A.Raza, J and S.Rafat Alam, J

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The petitioner, who was holding Ph. D. Degree, even before his appointment as Assistant Professor in G.B. Pant University of Agriculture and Technology, Pant Nagar, Nainital, has staked the claim for fixing his pay scale at par with his juniors with effect from 111973 in view of the recommendation made by the O.S. Misra Committee.

2. The said claim is based on the decision of the University to give an incentive to those Assistant Professors who have not obtained the Ph. D. Degree before their appointment as Assistant Professor and during the tenure of their office as Assistant Professor, did research work and obtained the Ph. D. Degree. The said incentive of the grant of three notional increments was given by the University to encourage the Assistant Professors to carry on research work. The Asstt. Professors who had obtained Ph. D. Degree before their appointment including the petitioner, staked the claim for payment of the said increment to them as well as they had obtained the Ph. D. Degree. The petitioner preferred a representation to the ViceChancellor in that regard which was rejected in the year 1978. He then approached the Chancellor by making representation which was remitted to the ViceChancellor for consideration. The ViceChancellor, in view of his earlier order passed in the year 1978, rejected the representation of the petitioner on 1121986.

3. Prior to this, on the representation of the Assistant Professors to consider the

alleged anomaly in the pay scale of Assistant Professors who had obtained the Ph. D. Degree before their selection and who had obtained the Ph. D. Degree after their selection, an 8 member committee known as O.S. Misra Committee was appointed by the University. The O.S. Misra Committee recommended that all the Professors including the Assistant Professors who had obtained Ph. D. Degree prior to their selection, be also given the said increment. It has been submitted by the learned Counsel for the petitioner that the recommendation of the O.S. Misra Committee was accepted by the University authorities on 2051980 and the said recommendation was confirmed on 2551980. As stated earlier, the petitioner staked his claim on the basis of the said recommendation, his representation was rejected on 1121986 for the reason that earlier, it was rejected in the year 1978. It was vehemently argued by the learned Counsel for the petitioner that when the representation of the petitioner was rejected in the year 1978, the O.S. Misra Committee had neither made any such recommendation nor it was accepted by the University authorities. But as the O.S. Misra Committee had made that recommendation which was accepted by the University in the month of May, 1980, then the University authorities ought to have considered the report of the Committee and granted the same benefit to the petitioner. The University authorities thus committed the manifest error of law in rejecting the representation of the petitioner on 12111980 and 1121986. Our attention was further drawn towards the fact that the petitioner had preferred another representation which was rejected in the year 1991.

4. On behalf of the respondents, it has been submitted that the minimum eligibility qualification for appointment to the post of Assistant Professor or equivalent, was Master's Degree in the subject concerned. However, the teachers who were appointed in Master's Degree, were given three advanced increments as an incentive for acquiring Ph. D. Degree and as such the Board of Management of the University passed a resolution on December 6, 1969 that the employees of the University of the rank of Assistant Professor or equivalent or below who acquire Ph. D. Degree or who have entered the University service and this Ph. D. work has not been taken into consideration at the time of recruitment, three advanced increments in the scale in which they were working was allowed with effect from the date they became eligible for the award of Ph. D. Degree. At the time of appointment, the qualification of the petitioner was considered. The petitioner was given higher basic salary, after taking into consideration the fact that he possessed Ph. D. Degree and the petitioner cannot now be permitted to contend that he is entitled to the additional benefit of further enhancement in the salary. Learned Counsel for the petitioner repelled the contention of the University by stating that the enhanced higher basic salary was given to the petitioner and other teachers on the basis of their past experience as teacher and it had no relevance with obtaining the Ph. D. Degree. Hence it cannot be said that for the reason, that the petitioner had possessed the Ph. D. Degree, he was given higher pay scale.

5. Without entering into the factual matrix as set out in the writ petition, we are

of the view that the petitioner ought to have preferred a representation to the Chancellor in accordance with Section 23 of the U.P. Agricultural Universities Act. Although, the petitioner has preferred representation to the Chancellor. But the Chancellor instead of deciding the same, remitted it to the ViceChancellor, who has rejected the same. The petitioner has, however, an opportunity of filing representation to the Chancellor under the said Section which is reproduced below:

"23. If any question arises whether any person has been duly elected or appointed as or is entitled to be a member of any authority or other body of the University, or whether any decision of any authority or other body of the University, or whether any decision of any authority or officer of the University is in conformity with this Act or the Statute or the Regulations, the matter shall be referred to the Kuladhipati (Chancellor) and the decision of the Kuladhipati (Chancellor) thereon shall be final."

6. In academic matters, particularly, pertaining to the University, it has been the settled view of the Supreme Court that it is incumbent upon a person to exhaust his remedy available under the Act and the Statute before invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Section 23 of the Act mentioned in the foregoing paragraph gives a very vast power to the Chancellor, to set at rest the controversy and he is also possessed with the power to set aside the orders passed by the ViceChancellor. We are of the view that the petitioner should approach the Chancellor of the University by filing a representation, who will decide the same himself and pass appropriate orders. As the petitioner has not exhausted that remedy, we are not inclined to interfere in the matter.

7. The petition is accordingly dismissed. However, we provide that in case the petitioner files a representation under Section 23 of the Act before the Chancellor, within one month that would be entertained, considered and decided by the Chancellor himself. It is expected that the Chancellor shall make an earnest endeavour to dispose of the representation of the petitioner expeditiously.