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**(2002) 10 AHC CK 0019**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 8764 of 1991**

Shakuntala Saxena

APPELLANT

Vs

Director of Higher Education, U.P. and Others

RESPONDENT

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**Date of Decision :** 29-10-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2002) 5 AWC 4115

**Hon'ble Judges :** A.K. Yog, J

**Bench :** Single Bench

**Advocate :** S.N. Varma, A.N. Sinha, Rakesh Bahadur and K.C. Sinha, for the Appellant; Abhinav Upadhyay and Asheesh Srivastava, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Yog, J.—Shakuntala Saxena, the Petitioner before this Court filed present writ petition under Article 226, Constitution of India praying for following reliefs:

(i) to issue a writ, order or direction in the nature of certiorari quashing the letter/order dated 11.1.1991 (Annexure-8) passed by the opposite party No. 1 ;

(ii) to issue a writ, order or direction in the nature of mandamus directing the Respondent No. 1 to grant approval to the selection of the Petitioner on the post of Librarian and to pay salary as Librarian with effect from 3.9.1990 ;

(iii) to issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case ;

(iv) to award costs of this petition to the Petitioner.

2. The requisite facts of the case for the purpose of the present case are as follows:

Guru Nanak Girls Degree College, Sunder Nagar, Kanpur, is an educational institution affiliated to the University of Kanpur (as stated at the Bar)

3. One Smt. Pushpa Nandwani who was holding the post of Librarian proceeded on leave as she was to be married. She married and never came back and finally submitted her resignation on 31.8.1979, as a consequence whereof the post of Librarian in the institution fell substantially vacant. The case of the Petitioner is that she though was appointed on 28.9.1973, on the post of Lab Assistant but she was required to work as Librarian throughout, i.e., w.e.f. 28.9.1973 (Annexure-R.A. 1 to the rejoinder-affidavit filed in reply to the counter-affidavit of Respondent No. 1). Petitioner claimed that since post of Librarian fell substantially vacant and erstwhile incumbent never came back, she completed course of Library Science (Diploma) in the year 1974 and ultimately she pursued and obtained degree in Library Science with the permission of the management in the year 1987.

4. The management approached the concerned educational authorities, namely, Director of Higher Education for granting permission to fill up post of Librarian immediately when the erstwhile incumbent (Smt. Pushpa Nandwani) resigned on 31.8.1979 and the then Director (Higher Education) granted approval to fill up post on substantive basis vide letter dated September 30, 1980 (para 5 of the counter-affidavit filed by the Respondent No. 1). On the basis of the permission, Management, issued an advertisement dated November 6, 1988, Annexure-1 to the writ petition. Perusal of the said advertisement/ Annexure-1 to the writ petition shows that minimum qualification required for the post of Librarian in question was graduation with first or second division degree in Library Science along with two years' working experience as Librarian. The advertisement did not disclose any specific date/cut off date on which a candidate should have possessed the requisite minimum qualification (academic and experience qualification). It is not clear as to what transpired and what were the reasons/ circumstances in which the process for making substantive selection on the post of Librarian could not be taken from 30th September, 1980 till 6.11.1988 (i.e., the date when permission was accorded by the Director, Higher Education for filling up the post till the date of advertisement). There is, however, no dispute that the concerned Respondent authorities did not object to the advertisement and on the other hand, did appoint vide order dated 6.7.1989 one Prof. M. K. Pathak as its nominee/expert to have its representation in the Selection Committee constituted by the management under law. Interview took place on September 3, 1990 and Petitioner having been found as the best suitable candidate on the requisite qualification and the best suitable candidate available at the time, Selection Committee recommended name of the Petitioner for being appointed substantively on the post of Librarian in question. In this context, letter of Director of Higher Education, U.P., Allahabad addressed to the institution dated 6.7.1989, copy of which has been filed as Annexure-2 to the writ petition be perused.

5. Petitioner has filed copy of certificate issued by one Jagdish Arora/Secretary of the Management of the Institution to verify that the Petitioner was working as an acting Librarian in the institution w.e.f. January 19, 1985, Annexure-4 to the

petition. The management sent requisite papers to the Director of Higher Education, Respondent No. 1 for according approval as required under law vide letter, Annexure-5 to the writ petition. The Management sent another reminder letter dated December 20, 1990, Annexure-6 to the writ petition and subsequently another letter, Annexure-7 to the writ petition informing the concerned authorities that Smt. Shakuntala Saxena was working as an acting Librarian in the institution though her salary was paid from the salary account as a Lab Assistant in the pay scale of Rs. 354-550 whereas the post of Librarian comes in pay scale of Rs. 690-1,420 and difference of the pay scale was paid by the management from its own resources since management was taking work of librarian from the Petitioner. The Joint Director (Higher Education), U.P., sent letter dated 16.1.1991, Annexure-8 to the writ petition and thereby informed that proposal of the Selection Committee for recommending name of the Petitioner for being appointed on the post of Librarian not accorded and in absence of requisite experience, the same is rejected. The authority directed to the concerned authority for advertisement to be made, Annexure-8 to the writ petition.

6. The Petitioner seeks to impugn the above impugned order dated 16.1.1991, Annexure-8 to the writ petition through present petition. At the initial stage, this Court passed an interim order to the effect that operation of impugned order dated 16.1.1991, shall remain stayed and for that reason, there is no dispute that post was never advertised nor selection made earlier.

7. On behalf of contesting Respondent No. 1, emphasis has been laid upon contents of the counter-affidavit wherein it is pleaded that experience gained by the Petitioner after obtaining degree of Library Science alone was acceptable. It is also contended that Petitioner was not appointed on any substantive post in accordance with law on the basis of her working as an acting Librarian or otherwise so as to claim benefit of experience for her working as claimed by the Management and on that basis, it is urged that Petitioner did not possess required experience of working as Librarian.

8. The Respondents' contention is that Petitioner having been appointed as Lab Assistant could not be legally allowed to work/take charge and had not worked as acting Librarian in absence of valid appointment made. In other words, the case of the Respondents appears to be that mere fact that Petitioner worked as an acting Librarian without being appointed in accordance with law, she could not claim benefit of acquiring experience for the period she worked as Librarian according to that which was relevant she has been paid the difference by the Management as stated above. In this context, reference be made to the paras 10 and 14 of the counter-affidavit of the Respondent No. 1.

9. The Petitioner filed rejoinder-affidavit against the said counter-affidavit and in para 19 of the rejoinder-affidavit, it is stated that Petitioner has taken complete charge of Librarian from Smt. Pushpa Nandwani w.e.f. 28.9.1973.

10. In support of the above, copy of the joining letter has been filed as Annexure-R.A. 1 which shows that said joining letter has been duly counter-signed by the erstwhile Librarian Smt. Pushpa Nandwani, the Principal as well as the Petitioner. Along with rejoinder-affidavit, computation sheet prepared by the Selection Committee has been annexed as Annexure-R.A. 2 to the said rejoinder-affidavit. The noting made by Sri M. K. Pathak in his own handwriting in the said sheet wherein he endorsed against the name of the Petitioner reads as follows:

Exp. more than three years.

11. Annexure-R.A. 3 to the rejoinder-affidavit is the result sheet signed by all the three members, namely, Sri M. K. Pathak, Regional Education Officer, Sri Jagdish Lal Arora, Chairman and Mrs. Bhupinder Gujral, Principal of the Institution declaring result indicating name of the Petitioner Smt. Shakuntala Saxena on first preference on the basis of interview and meeting held on September 3, 1990.

12. In para 16 of the writ petition, it is stated that total strength in the Institution was less than 2000 at the relevant time. The said para 16 of the writ petition has not been controverted/denied in the counter-affidavit filed by the Respondent No. 1. In view of the said fact, the post of Librarian in the Institution falls in category "C" and the requisite qualification required for the said post contained in the first Statute-Clause 21.06 is being reproduced:

(B) Librarian "C" Category-Bachelor's degree together with a degree in Library science and two years experience.

13. The expert/nominee of the Respondent No. 1 himself, as seen above, noted that the Petitioner had experience of more than three years. This clearly indicates that members of the Selection Committee had taken into account the work of the Petitioner as acting Librarian after she had acquired, in the year 1987, degree in Library Science.

14. In the facts of the instant case, I find that two questions alone are required to be adjudicated-whether Petitioner is entitled to work, as alleged by the Petitioner, as Librarian in the Institution when department did not pay her salary as such and/or otherwise she was not according to the Respondent department appointed with their consent as such be given benefit of computing the period of her working as Librarian; and (ii) as what shall be the cut off date for computing the period of experience, i.e., to say whether candidate should have acquired minimum two years experience on the date of advertisement or on the date of interview.

15. Certain guidelines have been issued by way of instructions, Annexure-3 to the writ petition. Reference of it has been made in para 13 to the writ petition. Respondents have not disputed the correctness of the same in para 7 of the counter-affidavit. These guidelines have been issued incorporating the Government order dated 18.10.1986. Another guideline has been issued making

certain amendment in the earlier. It shows that experience after acquiring degree was alone to be counted and that a person who had worked on a post (professional post like that of being Cataloguer, etc.) was to be counted. According to these guidelines if Petitioner had worked and discharged duties pertaining to the post of Librarian while she held diploma in library science, had to be counted according to the Petitioner's counsel but the same is being disputed by the learned standing counsel.

16. Learned Counsel for the Petitioner in support of his case has placed reliance on the following decisions:

- (i) State of Madhya Pradesh and Another Vs. Laxmishankar Mishra, .
- (ii) Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others, .

17. The ratio decidendi laid down in the aforesaid decisions is to the effect that the determinative factor is where a person concerned had performed duties and discharged functions pertaining to a particular post, i.e., the post in question, had de facto acquired experience.

18. In the case of State of M.P. (supra), the Apex Court observed that a person will be entitled to count for experience even if he had worked as in charge of the duties pertaining to a particular post.

19. In the case of Dr. Asim Kumar Bose (supra), the Apex Court held that if no provision is made in the Rules that teaching experience must be gained on a regular appointment, then teaching experience, whether acquired on regular appointment or not, becomes irrelevant and teacher will be entitled for the benefit of his working.

20. Learned standing counsel has, however, placed reliance on the decision in the case of Bhupinder Singh and Ors. v. State of Punjab AIR 2000 SC 2011, wherein the Apex Court held that relevant cut off date, in case it is not specified elsewhere or mentioned otherwise, is to be taken with reference to the last date for receiving application.

21. If Petitioner is entitled to her work as Librarian after acquiring degree in Library Science, experience is to be taken with reference to the last date for receiving application, viz., 27.11.1989, the Petitioner does not possess the requisite experience. On the other hand, Petitioner cannot be said to be lacking in requisite experience in case her working as Librarian for the period prior to acquiring Library Science degree is computed for the simple reason that she had diploma in Library Science and had de facto worked and discharged duties pertaining to the post of Librarian.

22. From the relevant status quoted above, it is not mentioned that experience of two years on the basis of regular/substantive appointment or after acquiring degree in Library Science in these years and the matter that Petitioner will be entitled to her experience after acquiring degree in Library Science provides de

facto working in the Institution and discharged duties of Librarian whether she worked as acting Librarian or not is irrelevant in view of the Supreme Court decision relied upon by the Petitioner.

23. As record stands today, this Court is unable to find out as to whether the concerned authority had at all initiated enquiry ascertaining that Petitioner had de facto worked as Librarian or not. In view of the above, the argument of the Respondents' counsel cannot be properly appreciated and this Court cannot proceed on that basis in as much as, before authority could come to the conclusion that Petitioner did not possess requisite experience, it ought to have held enquiry as to whether Petitioner has actually worked and discharged duties as acting Librarian (as claimed by the Management and the Petitioner) after she had acquired diploma in Library Science.

24. In view of the discussions made above, Petitioner will be qualified and could not be denied approval if she had de facto worked and discharged duties as acting Librarian/duties pertaining to the Librarian in the Institution after she had acquired diploma in Library Science, that experience has to be counted.

25. In view of the Apex Court decision in the case of Bhupinder Singh (supra) for computing cut off date, last date of application is to be taken into account.

26. In the result the impugned order dated 16.1.1991, Annexure-8 to the writ petition passed by Respondent No. 1 is quashed with a direction to the Respondents to decide the matter of granting approval afresh in the light of the observations made above. It is made clear that if Petitioner had de facto worked and discharged her duties as acting Librarian after possessing diploma in Library Science, she will not be denied benefit of experience that she was not approved or notified by the department. The concerned authority shall decide the question of refusing or granting approval in accordance with law and the observations as well as the relevant record before it within two months of the receipt of the certified copy of this judgment. Management and the Principal of the Institution are directed to provide requisite record to the concerned authority, if any.

27. Writ petition stands allowed.

28. No order as to costs.