

(1972) 09 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 128 of 1071

Shyam Mohan Shrivastava	Vs	APPELLANT
University of Indore and others		RESPONDENT

Date of Decision : 28-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) JLJ 201 : (1973) 18 MPLJ 141

Hon'ble Judges : S.B. Sen, J;G.L. Oza, J

Bench : Division Bench

Advocate : A.K. Chitale, for the Appellant; S.D. Sanghi, R.G. Waghmare and P.K. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sen, J.

This is a petition under article 226 of the Constitution. In this case we have to decide the claims of two lecturers for the Deanship of the Faculty of Law in the Indore University. One of them claims to be a whole-time lecturer and the other a part-time one. The main grievance as appears from the petition is that as a whole-time lecturer the petitioner should be preferred for Deanship to one Shri C.P. Chhazed (who is respondent No. 2 in this petition) as the latter is only a part-time lecturer.

The facts that give rise to this petition are simple. The petitioner Shyam Mohan Shrivastava is a full-time teacher of law. He was designated as Assistant Professor in the Department of Law in the P.M.B. Gujarati Arts, Commerce and Law College, Indore (hereinafter referred to as the "Gujarati College") since 15th November 1966. The respondent No. 2 Chandra Prakash Chhazed is a part-time teacher of law also employed in the same Gujarati College as part-time Professor of Law. It is further alleged by the petitioner that in the Indore University there are three colleges teaching law, namely, the Government Arts & Commerce

College, the Indore Christian College and the said Gujarati College. The first two are the constituent colleges of the University while the Gujarati College is an affiliated college. The petitioner as well as respondent No. 3 Ashok Kumar Sarda are Assistant Professors of Law working as whole-time teachers. Of these two the petitioner claims to be the senior. In this petition the petitioner has also referred to other teachers of law and for the sake of completing the story of the petition we are mentioning them. Shri Balwant Singh Johar according to the petitioner is teaching in a constituent college and is the seniormost while others, namely, Shri G.C. Sohani (respondent No. 5) Shri S.M. Garg (respondent No. 6) Shri S.C. Bagdiya (respondent No 7) Shri B.L. Pavecha (respondent No. 8) and Shri S.G. Bapat (respondent No 9) are in the order mentioned senior teachers of law. These persons, however, have not appeared before us, nor do they seem to be interested in this petition eitherway, though powers have been filed by lawyers on behalf of respondent No. 2 Shri C.P. Chhazed and respondent No. 9 Shri A.K. Sarda. Shri Sanghi who is appearing for the University of Indore has also filed his power on behalf of the Kuladhipati Shri S.N. Sinha (respondent No. 10).

The petitioner then submits that u/s 26 of the Indore University Act, 1963 (hereinafter mentioned as "the Act") Deans are appointed for each faculty. The previous Deans were Shri P.P. Pandit and Shri G.C. Kasliwal. After their retirement from Deanship the University appointed Shri C.P. Chhazed as Dean of the Faculty of Law on the 23rd October 1971. The petitioner contends that this appointment is in contravention of section 26 of the Act and is illegal. He has, therefore, filed this petition for a writ of quo warranto to quash the order of appointment of Shri C.P. Chhazed and for a mandamus to appoint the petitioner as Dean.

The grounds on which this petition is based are that only whole-time teachers of law can be appointed as Dean because the part-time teachers cannot be properly considered for this appointment as they rank below a whole-time teacher as provided in "Statute 7-B" of the Vikram University as adopted in the University of Indore. It is also mentioned that the practice in the Indore University has been to appoint only whole-time teachers of law as Dean. Further, that there is no one among the principals of the constituent colleges who is a teacher of law; therefore no appointment u/s 26 (3) (a) or (b) of the Act is possible. Similarly, in the absence of a professor of a constituent college teaching law no appointment can be made under sub-clause (c), or as for that matter under sub-clause (d) for the absence of any principal of an affiliated college teaching law. The petitioner therefore submits that under the residuary sub-clause (e) of this section the appointment can be made as Dean of persons who are not below the rank of a lecturer and that Shri C.P. Chhazed being a Part-time teacher of law is not entitled to be appointed as Dean. In spite of a representation made to the Chancellor the petitioner submits that Shri Chhazed was appointed Dean which was a flagrant violation of the provisions of the Act.

In his petition the petitioner has impleaded several persons as respondents.

Respondent No. 1 is the University of Indore and Nos. 2 to 9 are the teachers of law while No. 10 is the Kuladhipati of the said University. Return has been filed only on behalf of the respondent No. 1, that is the Indore University.

The University while replying admitted that the petitioner as well as respondent No. 2 Shri Chhazed are teachers of law in the Gujarati College. It has been further admitted that as teacher the petitioner has been a whole-time employee while respondent No 2 Shri. Chhazed has all along been a part-time employee. The respondent No. 2 was appointed much earlier than the petitioner. Shri Chhazed was appointed from 29-7-1963 as part-time professor and was also made head of the department of law from 10-10-1966 while the petitioner was appointed from 15-11-1966 as assistant professor and is continuing as such. In the return the University has no doubt opposed the assertions made by the petitioner about the seniority of the other respondents, but as none of them has appeared here we do not think it necessary to go into that question except where it would be necessary for our decision.

The respondent No. 1 has further submitted that "Statute 7-B" of the Vikram University has been adopted by the Indore University; but there is no classification amongst the teachers in different categories. It is also asserted that no distinction has been made between a "whole-time teacher" and a "part-time teacher". So far as the appointment of Dean is concerned, there is nothing in any provision of the Statute to support the contention of the petitioner that all part-time teachers, - whether professors, assistant professors or lecturers, - rank below a whole-time lecturer. The assertion that part-time teachers are not qualified to impart instructions to postgraduate classes nor do they receive salary according to the scale prescribed for professors and therefore they are not "professors" within the meaning of section 64 of the Act has been denied. The respondent's assertion is that the Act makes no distinction between a whole-time teacher and a part-time teacher in different categories of professors, readers, assistant professors and lecturers. The respondent No. 1 agrees that there is no person eligible for appointment under sub-clauses (a) (b), (c) (d) of section 26 (3). The appointment was made u/s 26(3) (e) of the Act. And as Shri Chhazed is senior to the petitioner in the same category, the appointment was quite legal and according to the provisions of the Act.

Before going into the merits, we note that it is possible to dispose of the petition u/s 50 of the Act as there is a dispute regarding the interpretation of the provisions regarding appointment. No doubt the petitioner had made a representation to the Chancellor; but this was not in accordance with section 50 of the Act which says,--

50. If any question arises regarding the interpretation of any provisions of this Act or of any statute, ordinance or Regulation or as to 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, the matter shall be referred to the Kuladhipati whose decision thereon shall be final.....

The petitioner had no doubt made an application to the Kuladhipati; but that was before the appointment of the Dean was made. If he was aggrieved by the order of appointment of Dean, the petitioner should have acted u/s 50. He has not done so. However, as we find there is no substance on merits also, we do not dispose of the petition on this ground alone.

In order to deal with the arguments it will be helpful to quote section 26 of the Act:--

26. (1) The University shall have Faculties of Arts, Science, Law Education, Engineering, Medicine, Ayurved, Home Science, Commerce and other Faculties as may be prescribed by the Statutes.

(2) Each Faculty shall consist of such members and shall have such powers as may be prescribed by the Statutes.

(3) There shall be a Dean for each faculty who shall be appointed by the Kuladhipati for a period of two years as follows, namely:--

(a) where amongst the Principals of constituent colleges there are teachers in any of the subjects assigned to the Faculty- each Principal according to seniority by rotation,

(b) Where amongst the Principals of constituent colleges there is only Principal teaching any of the subjects assigned to the Faculty -- such Principal in the first instance and then each Professor of a constituent college teaching any of the subjects assigned to the Faculty according to seniority by rotation;

(c) Where there is no Principal of a constituent college teaching any of the subjects assigned to the Faculty -- each Professor of a constituent college teaching any of the subjects assigned to the Faculty according to seniority by rotation;

(d) Where there is no Principal or Professor eligible under clauses (a), (b) or (c) --: each Principal of an affiliated college teaching any of the subjects assigned to the Faculty according to seniority by rotation;

(e) Where there is no person eligible under any of the aforesaid clauses - each of the persons according to seniority by rotation from amongst other teachers (not below the rank of lecturer in any of the subjects assigned to the Faculty.)

Explanation :--For purposes of this section, "seniority" in the particular cadre shall be determined by the length of continuous service in such cadre.

Learned counsel for the petitioner submitted that the office of Dean is a very important office. He has to apply his mind whole-heartedly to the academic side of law and a practitioner, in particular a busy practitioner, has not the time to devote or energy to apply to it. Therefore, the appointment of Dean cannot be made from the category of persons who are employed as part-time lecturers. According to learned counsel it is the person who is engaged as a whole-time

lecturer or teacher that is in a position to do this job, at least in a much better manner. It is also argued that according to the Explanation to section 26 (3) seniority in the particular cadre has to be determined by length of continuous service in such cadre. Learned counsel has not challenged that Shri Chhazed was appointed much earlier. But that appointment being as part-time lecturer he cannot be made senior to the petitioner. It was suggested that the cadre of the petitioner is higher than that of the respondent No. 2 a part time lecturer. So the contention is that not only from the Act itself it can be spelt out that a part-time lecturer cannot be appointed Dean in preference to a whole-time lecturer, but is also against the spirit of the Act to appoint a person who is not a whole-time lecturer.

Let us first of all, therefore, take the question of propriety without looking to the actual definition of "lecturer". We do not agree with the contention that a lawyer who practises in Courts would not be in a position to apply his mind to the functions of the Dean. In fact, a person who has been practising and knows the practical side of the law is in a position to help the University as to what type of education should be imparted to the student. An academician simply sitting within the four corners of the institution may have no practical experience. He would depend upon only his own imagination and thoughts whereas a practising lawyer who comes to the Courts day to day and applies his mind to various legal problems and is mixing with persons requiring legal help may be in a better position to be the Dean. If we are to improve any faculty it will not do by sitting in one's library only and then either writing or giving lectures. Therefore, this argument that a part-time lecturer is not suited to act as Dean cannot be accepted. Instances are not at all rare where we find that a person who is a busy legal practitioner or an Acting Judge of the High Court has been chosen to be the Vice Chancellor and there has been no complaint that any duties of Vice Chancellor have been interfered with on this account. The job of a Vice Chancellor is definitely more onerous than that of the Dean of a faculty; the former has to look to all the faculties whereas a Dean is concerned with only one.

It was also contended that a whole-time lecturer gets more remuneration and other benefits and has got more onerous duties; therefore, a whole-time lecturer should be appointed as Dean. It is not necessary for me to repeat what we have stated just now, that an active lawyer, if he wants to do any good to the faculty for which he is Dean is in a better position.

As regards the question of cadre it was submitted that under "Statute 7-B" a part time lecturer has been put in a lower category than a whole-time lecturer. "Statute 7-B" while mentioning the classes of teachers says as follows :--

"1. The following shall be the classes of teachers in the Affiliated and Constituent Colleges:--

(a) Professors;

(b) Associate, Assistant or Junior Professor; or Reader;

(c) Senior Lecturer;

(d) Junior Lecturer;

(e) Part-time Lecturer;

(f) Demonstrator (in the case of Medical, Agriculture, Engineering and Veterinary Science Faculties).....

While referring, to "Statute 7-B" of the Vikram University the petitioner's learned counsel has referred to the various advantages and disadvantages of a whole-time lecturer and a part-time lecturer and by pointing them out he wants to say that a whole time lecturer is in a higher category than a part-time lecturer. Therefore, while interpreting section 26 (3) (e) we have to bear in mind the various categories mentioned in "Statute 7-B".

Undoubtedly, the terms and conditions of service of a whole time lecturer are quite different from those of a part-time lecturer. But we are not concerned with the terms and conditions. What we are concerned with is whether there is any provision in the Act making a part-time lecturer something below a whole-time lecturer as contended by the petitioner. As it is common ground that neither the petitioner nor the respondent No. 2 can claim to be professor, reader or assistant professor as mentioned in sub-section (vi) of section 2 of the Act they can claim only to be teachers. What we have to see is whether amongst teachers there are categories. In the definition as given in the Act there is no definition of "lecturer". Therefore, where there is a mention of "lecturer" either senior, junior or part time, they are classed only as "teachers". This itself would show that the Legislature did not want to make any distinction between lecturers and lecturers of different categories. One must not forget that there is a distinction between "category" and "cadre". The lecturers may be of different categories as has been mentioned in "Statute 7-B". But there is no "cadre" mentioned or any distinction made in "Statute 7 B". In that "Statute" the words used are "classes of teachers", whereas in the "Explanation" to section 26 (3) it is mentioned that for the purposes of this section the seniority in the particular "cadre" shall be determined by the length of continuous service in such cadre. Sub-clause (e) of section 26 (3) which has been already quoted says that where there is no person eligible under sub-clauses (a), (b), (c) or (d) of section 26 (3) the selection will be made from "other teachers". While mentioning "other teachers" there is also a rider which says that the teacher should not be below the rank of lecturer in any of the subjects assigned to the faculty; that means, they should not be "demonstrators." The classes of teachers mentioned in "Statute 7-B" include three types of lecturers; senior, junior and part-time. It may be true that "Senior lecturer" "junior lecturer" and "part-time lecturer" are different classes. But for the purposes of section 26 (3) (e) the word used is "teacher". If the legislature wanted that the claim to Deanship should be in accordance with the classes mentioned in "Statute 7-B" they could have stated so in clear terms. On the other hand, by mentioning that seniority amongst a particular cadre shall be

determined by the length of continuous service they have not placed lecturers of different classes in different position, because the cadre of "lecturers" senior, junior or part time, is the same, i.e. the cadre of "lecturer". In section 26 (3) which is the only section that provides for the appointment of Dean, there is no mention at all of senior, junior or part time lecturers. In the absence of principals, professors and assistant professors the next category mentioned is "other teachers". Therefore, it is clear that after the principals, professors and assistant professors the only category that is left is the category of "teachers". And in the category of "teachers" if any distinction was to be made, it should have been expressly stated as has been done in sub-section (3) clauses (a), (b), (c) and (d) of section 26 of the Act.

Learned counsel for the petitioner has cited the decision in State of U.P. v. Sudarshan Deo AIR 1968 Allahabad 358. But I do not think this decision is of any help to him, in particular, the following paragraph:

Seniority is a question of comparison, a person is senior to somebody. Such a comparison can exist only in respect of incumbents in the same post or in the same grade or in the same cadre, but there can be no comparison between an incumbent of a post in one cadre and an incumbent of a post in another cadre. Thus merely because the scale of pay for Supervisor, Agricultural Schools, happens to be the same as that of Assistant Master, it cannot be said that the two posts are of equivalent grades and that appointment and confirmation in one post is to have the same effect as appointment and confirmation in the other post, regardless of the question of cadres. Even if the post of Supervisor carries a higher scale of pay than the scale Of Assistant Masters, the Supervisor, on his post being included in the cadre of Assistant Masters, cannot claim any seniority over the Assistant Masters.

If there is anything in the above passage, it says that the higher scale of pay or any other advantage will not give seniority. This disposes of also the argument of the petitioner that on account of higher remuneration he should be treated in a high cadre.

As a result we do not find that the appintment of respondent No. 2 Shri C.P. Chhazed has been in any way illegal or in violation of any rule or law. The petition therefore must fail and is hereby dismissed with costs. Counsel fee Rs. 150/- (one hundred and fifty) if certified. The balance of the security deposit after payment of the costs be refunded to the petitioner after verification.

Oza J.-- While agreeing with the conclusions arrived at by my learned brother Sen J. that the appointment of respondent No. 2 as Dean of the Faculty of law cannot be said to be irregular or illegal in view of the provisions contained in section 26 of the Indore University Act, I do not agree with the expression of opinion made by my learned brother about the propriety of the appointment of a Dean from amongst part-time lecturers. Learned counsel appearing for the petitioner contended that a full-time teacher is more suitable for the post of

Dean rather than a part-time Lecturer like respondent No. 2. Although this argument was advanced, still in my opinion while hearing a petition under article 226 of the Constitution we are not expected to decide what the law should be. Consequently it is not necessary for us to express any opinion on the question as to whether a part-time Lecturer would be more suited for Deanship, or a full-time teacher would be more suitable. In this view of the matter, I fail to agree with the observations made by my learned brother. The Legislature in its wisdom had enacted section 26 of the Act, and in view of the provisions contained in that section for appointment of a Dean, there is no restriction imposed to indicate that a part-time Lecturer cannot be appointed a Dean. Consequently the conclusion arrived at by my learned brother that the appointment does not seem to be illegal or irregular is correct, and I am in full agreement with it. The petition should therefore, be dismissed with costs.