
(1999) 09 AHC CK 0151
In the Allahabad High Court
Case No : C.M.W.P. No. 1229 of 1982

Smt. Usha Singh	Vs	APPELLANT
Vice-Chancellor, Gorakhpur University, Gorakhpur and others		RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:

Citation : (2000) 1 AWC 125 : (2000) 2 UPLBEC 56

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant; B.D. Agarwal and V.K. Upadhyay, for the Respondent

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The petitioner, who claims to be the senior Lecturer in the Department of Education, Sri Agrasen Mahila Mahavidyalaya, Azamgarh, has come up with a prayer to quash the communication dated 8.1.1982 made by the Registrar, Gorakhpur University to respondent No. 3 Smt. Uma Tripathi, another Lecturer of the Department of Education of her college, as contained in Annexure-13 to the writ petition.

1.1. A perusal of the impugned communication shows that in regard to the representation dated 1.9.1981 of respondent No. 3 concerning claim of her seniority vis-a-vis the petitioner, the Vice-Chancellor despite non-expression of the words "in order of merit" by the Selection Committee in its recommendation opined that the mentioning of the names against Serial Nos. 1, 2, 3, 4 and 5 will mean that it was in order of merit and thus there cannot be any doubt about her seniority since her name figure against serial No. 1.

2. Shortly put, the case of the petitioner is that even though she and respondent No. 3, both were appointed on the same day as Lecturers, she having born on 12.7.1950 was always treated as senior to respondent No. 3, who was born on 22.8.1953 by the Gorakhpur University on account of that fact which has also

been maintained by the College. To support the aforementioned fact, she has also brought on record (i) the letter/order of the Vice Chancellor. Gorakhpur University, communicated to her through the Principal of the College, as contained in Annexure-9 to the writ petition, (ii) a copy of the leave application of respondent No. 3 addressed to the principal of the College, which was forwarded to the petitioner as contained in Annexure-10 to the writ petition, (iii) a copy of letter No. 4-1981-82 of the Principal, as contained in Annexure-11 to the writ petition, showing her as Senior Lecturer, (iv) A communication, bearing letter No. 19439/affiliation/ dated 19.6.1981 made by the Deputy Registrar (Affiliation), as contained in Annexure-12 to the writ petition of the University addressed to the Principal of the College with a copy to the petitioner and respondent No. 3, declaring that from the facts brought by the Principal and the provisions of the Statute she is seniormost Lecturer of the College. She further asserts that even though this matter had become final, respondent No. 3 made some representation on 1.9.1981 about which she had no knowledge, on which the impugned communication has been made, which apart from being violative of the principles of the natural justice appears to have been result of wrong application of Statute 18.13 of the University which has apparently no application, rather Statute 18.12 in the facts of the present case, was applicable, besides the Vice Chancellor has no powers to review his earlier orders and thus it is absolutely without Jurisdiction.

3. In the counter-affidavit filed on behalf of respondent No. 1, which has been sworn by the Office Assistant of the office of the Registrar of the University, it has been stated, inter alia, that at the time of making its recommendations the Selection Committee had found the respondent No. 3 as most meritorious and her name was accordingly recommended against serial No. 1 whereas the name of the petitioner was recommenced as against serial No. 3 whereas the University was intimated by the Principal of the College that the petitioner was seniormost ; that for determining the seniority the letter (Annexure-9) cannot be relied upon : that the Vice Chancellor has placed reliance on Statute 18,13 and Statute 18.11 is not applicable ; that no opportunity was required to be given by the Vice Chancellor to the petitioner, that the order has not been passed on review ; that the question of seniority has to be decided by the Principal of the College and then only an appeal lies to the Vice Chancellor against the decision of the Principal ; and that since the petitioner has a remedy by way of representation before the Chancellor u/s 68 of the U. P. State Universities Act she is not entitled to the reliefs claimed for by her.

4. The respondent No. 3, in her counter-affidavit also disputes the claim of the petitioner. According to her also, from the recommendations made by the Selection Committee, it is clear that her name was recommended against serial No. 1, whereas of the petitioner against serial No. 3 ; the University never treated the petitioner as seniormost Lecturer ; the letter, as contained in Annexure-9, does not mention the name of the petitioner but was only addressed to the senior Lecturer in the Education Department of the College ; the Principal

of the College, who is in league with the petitioner, has sent the said letter to her for compliance treating as seniormost Lecture in the department ; treating of the petitioner as senior by the Principal or even by the Registrar of the University will not make her seniormost Lecturer ; no letter was ever written by her to the petitioner for grant of leave treating her seniormost Lecturer in the Education Department ; the petitioner had managed to obtain the letter from the Deputy Registrar (Affiliation), who had no jurisdiction to determine the seniority of the Lecturers of affiliated colleges like that of the petitioner and respondent No. 3 ; Statute 18.13 is mandatory and leaves no option except to determine the relative seniority of the teachers in accordance with the order and merit as Indicated by the Selection Committee and keeping in view this fact the Vice Chancellor had rightly allowed her representation.

5. In her rejoinder-affidavit, the petitioner has come up with a stand that it is wrong to state that the Selection Committee had made any recommendation in order of merit apart from reiterating correctness of her statement made in the writ petition.

The Submissions :

6. Mr. R. N. Singh, learned senior counsel appearing in support of this writ petition, contended as follows : (i) No document having been brought by respondent Nos. 1 and 3 showing that the Selection Committee had placed respondent No. 3, as against serial No. 1 and the petitioner No. 3 at serial No. 3 Statute 18.11 governed the matter but was wrongly overlooked (ii) No opportunity having been granted to the petitioner the order declaring respondent No. 3, as senior to her was violative of principles of natural justice. (iii) Representation should have been rejected but wrongly allowed.

For these reasons the impugned order be set aside.

7. Sri V. K. Upadhyay, learned counsel appearing on behalf of respondent No. 3, on the other hand, contended that since the Principal of the College had informed the University that the petitioner is senior to respondent No. 3, and, therefore, she validly made a representation before the Vice Chancellor in the form of an appeal, on which the Vice Chancellor correctly, invoking the provisions and recommendations of the Selection Committee declared her as senior to the petitioner. Respondent No. 3 never filed her leave application before the petitioner or applied through her and therefore her statement is incorrect. No such document has been brought on the record by the petitioner to substantiate her claim. In forwarding her leave application the Principal. (Respondent No. 2) has acted in league with respondent No. 3. Accordingly, this writ petition be dismissed with costs.

Our Findings :

8. Statute 18.11 of the First Statute of the Gorakhpur University reads thus :

"Where more than one teacher are entitled to count the same length of

continuous service, the relative seniority of each teacher shall be determined as below :

(i) In the case of the Principal, the length of substantive service as a Lecturer shall be taken into consideration ;

(ii) In the case of Lecturers, the seniority in age shall be taken into consideration."

8.1. Statute 18.13 of the First Statute of the Gorakhpur University reads thus :

"1. When two or more persons are appointed as teachers in the same department or in the same subject, their relative seniority shall be determined in order of preference or merit in which their names were recommended by the selection committee.

2. If seniority of two or more teachers has been determined, information of the same shall be communicated to the teacher concerned before their appointment."

8.2. The petitioner places reliance on Statute 18.11 (ii) aforesaid asserting that undisputedly she was born earlier than respondent No. 3. On the other hand, respondent No. 3 has placed reliance on Statute 18.13 (1). Undisputedly nothing has been brought on the record by any party that in terms of Statute 18.13 (2) seniority of the petitioner vis-a-vis respondent No. 3 was determined before their appointment on 2.3.1978. According to the averments made in paragraph 10 of the writ petition, the Principal prepared a seniority list showing the petitioner senior and on a representation, the Registrar made the communication as contained in Annexure-12. True it is that there is no reference in this communication that such a decision has been taken by the Vice Chancellor, specific finding was required to be given by the Vice Chancellor in this regard before treating respondent No. 3 senior to the petitioner. It is clarified in this regard that if there was no adjudication by him, then there cannot be any question of review. The petitioner has not brought on record anything from which we could infer that the Registrar was vested with jurisdiction to determine the question of seniority inter se between the petitioner and respondent No. 3. Unfortunately, the Vice Chancellor has not brought on the record his order for our perusal.

9. Despite the stand taken by the petitioner, the recommendation of the Selection Committee in question has not been brought on the record by respondent No. 1 or by respondent No. 3, which would have proved as to whether the name of the petitioner was recommended at serial No. 3 in order of merit or of respondent No. 3 against serial No. 1.

10. This glaring aspect apart, we find that no opportunity was given to the petitioner to have her say on the appeal/representation preferred by respondent No. 3, before the Vice Chancellor claiming relief against her. The principles of natural justice required giving of opportunity to petitioner and the Principal both. Thus, it was violated by the Vice Chancellor of the University in deciding the

issues.

11. For the reasons aforementioned, we are of the view that the matter requires objective re consideration by the Vice Chancellor of the University first.

The Result :

12. Accordingly, we dispose of this writ petition with a direction to respondent No. 1 to reconsider the matter after giving an opportunity to the petitioner as well as respondent No. 3 both determining afresh the question of seniority inter se between the petitioner and respondent No. 3 in accordance with law, expeditiously preferably within a period of three months from the date of receipt of a copy of this order from any quarter.

12.1. Having regard to the peculiar facts and circumstances of this case we, however, make no order as to cost.

13. The office is directed to hand over a copy of this order within one week to Sri Dilip Gupta, learned counsel for the Gorakhpur University for its intimation to and follow up action by respondent No. 1 who will see that his order re-determining the question of seniority is communicated to the petitioner and respondent No. 3 both.