

(2001) 10 SC CK 0032

In the Supreme Court Of India

Case No : Civil Appeal 213 of 1995 and Civil Appeal 6525 of 1995

State of U.P. and Another

APPELLANT

Vs

Surendra Nath Misra

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Uttar Pradesh Higher Education (Group A) Service Rules, 1985 — Rule 20(1)

Citation : (2002) 92 FLR 683 : (2001) 10 JT 408 : (2002) 1 UPLBEC 922 :
(2002) 1 UPLBEC 508

Hon'ble Judges : Ruma Pal, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These two appeals are directed against the judgment of Allahabad Bench as well as the judgment of Allahabad High Court, Lucknow Bench. By the impugned judgment, the High Court having held Rule 20 (1)(c) of the U.P. Higher Education Service Rules, 1985 to be ultra vires, the State has come up in these appeals. Be it be stated that prior to merger of the cadres, in the State of Uttar Pradesh there were two cadres, one lecturer in the postgraduate colleges and the other lecturer in the degree colleges. From 1965 onwards, though their pay-scales became the same, but they yet maintained their different identities. The qualification for being appointed was the same and the process of selection was through the Public Service Commission. The State Government decided to merge the two cadres by order dated 4th September, 1973, and in the said merger order, it was stated that the lecturers of Government degree and postgraduate colleges shall be deemed to have been amalgamated into one cadre with effect from 5th June, 1972. It also stipulated that the combined seniority list of lecturers of postgraduate and degree colleges shall be prepared. It did not indicate as to how the seniority inter-se shall be determined. Government then issued a D. O. stating therein that the lecturers in postgraduate colleges selected prior to 5th June, 1972 must be held to be senior to all the lecturers appointed in

degree colleges prior to that date irrespective of their length of service. The lecturers in degree colleges assailed the validity of the said D. O. by approaching the public service tribunal. The tribunal having quashed that principle of determination of seniority, the State approached the High Court in appeal. During the pendency of the appeal, the High Court by an interim order called upon the State Government to frame the rules under proviso to Article 309, codifying the service conditions of these employees including their seniority. The State Government framed a set of rules in July, 1985, called the U.P. Higher Education (Group A) Service Rules, 1985. Rule 20(1)(c) of that rules was assailed before the High Court by filing a writ petition by one Shri Surendra Nath Misra. The High Court by the impugned judgment being of the opinion that there is no rhyme or reason to ignore the entire past service of those who were appointed as lecturers in degree colleges prior to 5th June, 1972, and there being no purpose or object for the rules in question, the rules must be held to be ultra vires. It appears earlier, against a judgment of the Lucknow Bench, the matter had been carried to this Court where in the Lucknow Bench of the Allahabad High Court had determined the seniority-with reference to rules of 1991. This Court being of the opinion that the seniority would be governed by the Rule of 1985, remitted the matter to the Lucknow Bench for re-consideration. The Lucknow Bench also followed the judgment of the Allahabad Bench and disposed of the matter against which the State has preferred C.A. No. 6525/1999. The question for consideration therefore is whether the impugned judgment striking down the provision of the Rule 20(1)(c) of the Rules is sustainable in law or not. Mr. Singh, the learned Standing Counsel for the U.P. Government vehemently contended that the High Court committed error in striking down the rules inasmuch as the source of recruitment were different, and the lecturers of the postgraduate degree colleges were always enjoying a higher status, and consequently prior to the merger those who are already in cadre, their seniority would be jeopardised by taking into the past services rendered by the lecturers of degree colleges in the combined cadre. According to the learned Counsel the unequals would be treated as equals, if the seniority is determined on the basis of the entire length of service. We see no force in the aforesaid contention, particularly when the recruitment to the different posts in the degree colleges as well as in the post graduate colleges was being made by process of selection through Public Service Commission, and further the prescribed qualification was one and the same. The pay-scale also after the pay revision became same with effect from 1965. In fact, in view of the similarity in the situation of the employees in the two cadres, Government thought it fit to merge into one cadre. Having done so by virtue of an order of merger, and not having indicated in the merger order that the past services of the employees of the degree colleges would be wiped off it will be wholly unreasonable, irrational and arbitrary on the part of the State Government to frame a rule by which the past services can be wiped off. The effect of the Rule 20(1)(c) is that so far as the employees who were appointed as lecturers in the Degree Colleges must be held to be a fresh appointee on the date of the merger in the combined cadre. This, in our view, was wholly

unreasonable, and High Court was fully justified in striking down the relevant rules in question. We, therefore, do not see any merit in these appeals, which are accordingly dismissed.