
(1999) 05 DEL CK 0083
In the Delhi High Court
Case No : CW. No. 2125 of 1998

Surender K. Dhawan

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 03-05-1999

Acts Referred:

Citation : (1999) 50 DRJ 309

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Ajay Verma, for the Appellant; S.K. Kaul and L.R. Goel, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The short point necessary for the appreciation of the question raised by the petitioner can be recounted in the following terms:-

The petitioner joined service in the second respondent College on 01.08.1968. The 3rd respondent joined service in the second respondent College on 02.08.1968. They have been functioning in the College since the date of joining. The petitioner was appointed as Teacher In-charge in 1974-75, 1984-85, 1989-90 and 1995-96 and he was also appointed as Member of the Governing Body in 1978. The 3rd respondent was not appointed as such. On 06.11.1997 the 3rd respondent made a representation to the Principal of the 2nd respondent for rectification of his position in the Seniority List. The representation reads as under:-

"There is an obvious mistake in the Seniority list. I am senior to Mr. Surinder Kumar for the following reasons:-

1. The Selection Committee had put me No. 1 - We were selected by the same Selection Committee.
2. I was selected as a Lecturer whereas he was selected as an Assistant Lecturer.

The mistake may be rectified for future atleast."

2. The petitioner was asked for his Explanation on the representation made by the 3rd respondent and on 18.11.1997 the petitioner sent his representation and the same reads as follows:-

With reference to your letters dated 7.11.97 No. 6/2619 and No. 2619-A, kindly supply me the authenticated copies of the following documents, to enable me to comment in this regard:-

1. The minutes of the selection committee meeting relating to our appointments in this College, Along with the applications of both of us and advertisement related to this appointment.

2. The rules under which Mr. Anil Kumar had demanded seniority after 29 years of service and the rules for determining seniority, then prevailing, under which college made me senior to him and for all purposes I remained senior to him for 29 years and continue to be so.

3. The Executive Councils resolution abolishing Assistant Lectureship.

4. The letter I had written to the then Principal, Dr. B.M. Bhatia on the basis of which I was given the Provident Fund Benefit retrospectively from the date of my appointment.

The above documents may please be supplied to me at the earliest to enable me to reply in the matter.

Sir I request you not to take any action in the matter suo motu and to maintain the status quo, till the matter is finally decided, otherwise I shall be constrained to move legally in the matter."

3. The Principal forwarded the matter to the University on 24th December, 1997. The University wrote to the Principal and the same is as under:-

"Please refer to your letter No. 9/2751 dt.5.12.97 on the above cited subject.

In this connection, I am directed to inform you as under:-

The seniority of the teacher will be determined from the date of the appointment as a lecturer on permanent basis."

4. By this the University had made it clear that the 3rd respondent is senior to the petitioner. On the basis of this representation the Principal sent a note on 25th March, 1998 to the Assistant Registrar (University). The same reads as under:-

Please refer to your letter No. CB-I/98/41471 dated 19th January, 1998 on the abovenoted subject, (photocopy enclosed for ready reference). In this connection, I would like to inform you that the matter with regard to determination of seniority of Shri S.K. Dhawan and Dr Anil Kumar of the

Department of Commerce was referred to Shri Viresh Pratap Chowdhary, Senior Advocate for his legal opinion. Shri Chowdhary has communicated his legal opinion to the College and the operative part of his note in this regard is reproduced hereunder for your perusal:

The representation of Dr Anil Kumar liable to be rejected for also the reason that he acquiesced in the position given to him vis-a-vis Shri S.K. Dhawan in the seniority list inasmuch as not less than 4 occasions, it is Shri S.K. Dhawan who proceeded him as the Teacher in charge of the Department of Commerce and Shri S.K. Dhawan was also appointed earlier as a Teachers' Representative on the Governing Body of the College. Dr. Anil Kumar was fully aware of this situation and he did not question the same at any point of time earlier. If at all, Therefore, he had any right to be treated as senior to Shri S.K. Dhawan (on which point I am expressing no opinion), that right must be deemed to have been consciously abandoned by him.

In view of the foregoing, I am of the clear opinion that it would not be advisable to disturb the seniority list at this stage at the instance of Dr. Anil Kumar and his representation is liable to be rejected by the College.

In view of the facts stated above, you are requested to examine the case and communicate to the College the final decision with regard to determination of seniority of both Shri S.K. Pawan and Dr. Anil Kumar immediately to enable the College to take further action.

As the College has to appoint Teachers in charge in the various Department before 31st March, 1998, an immediate reply in the matter would be highly appreciated."

5. On 31.03.1998 (02.04.1998) the University wrote to the Principal - second respondent in the following terms:-

"With reference to your letter No. 9/379 dated 25th March, 1998 in regard to the seniority of Sh. S.K. Dhawan and Dr. Anil Kumar. In this connection, I am directed to inform you that the matter of seniority of teaching staff has again been examined in light of the provisions of the Ordinance and the decision already conveyed to you vide this Office letter dated 24th December, 1997 is reiterated."

6. On 29-4-1998 the petitioner filed the writ petition seeking the following reliefs:-

i) issue a writ, order or direction in the nature of a writ of mandamus directing respondent Nos.1 and 2 to maintain petitioner's seniority over respondent No. 3 in the seniority list of teaching staff of respondent No. 2;

ii) issue a writ, order or direction in the nature of a writ of prohibition restraining respondent Nos. 1 and 2 from granting respondent No. 3 seniority over petitioner for any purpose including specifically for appointment to the post of Teacher in

charge and membership on the Governing Body of Respondent No. 2;

iii) issue a writ, order or direction in the nature of a writ of certiorari quashing letters dated 24.12.97 and 2.4.98 of respondent Nos. 1 and 2 based thereon purporting to grant respondent No. 3 seniority over petitioner in any manner and for any purpose whatsoever;

iv) issue any writ, order or direction as this Hon"ble Court may deem fit."

7. Mr. Ajay Verma learned counsel for the petitioner submitted that the petitioner was senior to the 3rd respondent right from the date of appointment. He was recognised as such by the Principal and also the University and that was the basis on which he was appointed as Teacher in charge and also appointed as Member of the Governing Body, which fact was well known to the 3rd respondent and acquiesced in the position given to him that the petitioner was senior to 3rd respondent. The 3rd respondent did not challenge any of the proceedings issued by the College and Therefore the 3rd respondent cannot seek rectification of his position in the seniority list after a long lapse of time. The learned counsel Mr. Ajay Verma submitted that the 3rd respondent is guilty of laches and his claim cannot be considered and he cannot seek to resist his claim which has become state. Mr. Ajay Verma referred to the CM 189/99 filed by the petitioner.

8. The learned counsel Mr. L.R. Goel, appearing for the 3rd respondent submitted that the petitioner was appointed as Assistant Lecturer in a lower grade on the lower scale of pay while the 3rd respondent was appointed as Lecturer in a higher scale of pay on a higher grade. By order dated 26.12.1969 the University appointed the petitioner as Lecturer w.e.f. 11.09.1969 and then in the relevant part of the proceedings which is filed as annexure "R-2"; that was also approved by the Executive Council. Learned counsel for respondents 1 and 2 Mr. Sanjay Kaul referred to paragraph 37 of annexure "R-8" to the counter, the extract of which reads as under:-

(1) Whenever in accordance with these Statutes, any person is to hold an office or be a member of any Authority of the University by rotation, according to seniority such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain, in respect of each class of persons, to whom the provisions of this Statute apply, a complete and up-to-date seniority list in accordance with the provisions of the foregoing clause.

(3) If two or more persons have equal length of continuous service in a particular grade or post, or the relative seniority of any person or persons is otherwise in doubt, the Registrar may on his own motion and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall

be final."

9. The learned counsel Mr. Sanjay Kaul also referred to annexure "R-9 and R-10". Annexure R-I to the counter to the application (CM189/99) is minutes of the meeting of the Selection Committee wherein it is stated "the University appoints two persons instead of one", which reads as follows:-

"It was decided to appoint two persons instead of one person:-

1. Dr. Anil Kumar - Lecturer - Rs. 400/-

2. Surinder Kumar, Assistant Lecturer - Rs. 300/-."

Alongwith this counter to the CM the University had filed annexure R-5 which shows the list of teachers, as per date of joining as maintained in the college office by Shri S.K. Dhawan, Ex-Section Officer Administration. In this list the petitioner is shown above the 3rd respondent as the petitioner had joined on 01.08.1968 and the 3rd respondent joined on 2.08.1968.

10. The learned counsel for the petitioner submitted that the petitioner was also appointed in the same College and there is no difference between an Assistant Lecturer and a Lecturer. The petitioner joined the post on 01.08.1968 and he has been functioning in the College and Therefore, as per Executive Council (Annexure R-3), the petitioner must be deemed to be senior to the 3rd respondent. I am unable to accept the submission on behalf of the petitioner. Right from the beginning taking into account the entry of the petitioner as Assistant Lecturer while the 3rd respondent as Lecturer and the petitioner became permanent Lecturer w.e.f. 11.09.1969 the seniority has to be reckoned and Therefore the petitioner can--not claim to be senior to the 3rd respondent.

11. The appointment of the petitioner as Teacher in charge and as a Member of the Governing Body is a different issue and that could not by itself to the petitioner with any right to claim seniority as against the 3rd respondent. The petitioner had been functioning in that capacity and as regards those appointments in the past the 3rd respondent is not claiming any right.

12. The learned counsel Mr. Ajay Verma vehemently contended that the 3rd respondent by making its representation on 06.11.1997 was guilty of gross negligence and laches and on that ground the University ought to have rejected his stand. In support of this submission, the learned counsel Mr. Ajay Verma referred to the judgment of the Supreme Court B.S. Bajwa and Another Vs. State of Punjab and Others, .

13. The Supreme Court held on the material issue that rights inter se between the parties had crystalised. Neither the College - the 2nd respondent nor the University maintained the seniority list and annexure R-5 produced by the College cannot at all termed as seniority list. It is all well known and well settled principle that whenever the employer proposes to issue a seniority list, in the first instance a provisional seniority list is prepared and notice is given to all

concerned to file their objections and later on after considering the objections final seniority list is issued by the Head of the Department. Once the final seniority list is published, if one feels aggrieved at that, one must swing into action within a reasonable time because by issuing the final seniority list, rights of parties would become crystalised as pointed out by the Supreme Court, then it cannot be challenged. Mr. Ajay Verma, the learned counsel for the petitioner referred to G.C. Gupta and Others Vs. N.K. Pandey and Others, . In paragraph 15 the Supreme Court observed as under:-

"In legal matters, some degree of certainty is as valuable a part of justice as perfection. One reason for consistency is that people often regulate their conduct with reference to existing rules, which makes it important for Judges to abide by them. Innovations can be unsettling and lead to a loss of confidence: Dias" Jurisprudence, 4th edn., p.286. In the present case, the High Court was obviously wrong in proceeding upon the basis that the matter was still rest integra. The decision of the earlier Division Bench was arrived at keeping in view all the aspects and it was held that the claim for re-determination of inter se seniority between direct recruits and promotees could not be agitated after a lapse of 16 years. It is sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, an earlier decision may be overruled if the court comes to the conclusion that it is manifestly wrong and not upon a mere suggestion that if the matter was rest integra, the Court on a later occasion could come to a different conclusion. It cannot be doubted that an unlimited and perpetual May be, there may have been isolated cases of hardship but there must be some reservation about limitation on the court's power in the public interest. Obvious considerations of public policy make it a first importance that the person aggrieved must take action requisite effectively to assert his right to that end so that if the contention can be justified, the government service may be disturbed as little as possible."

Here also I am of the view that ratio would not apply to the facts of the instant case.

14. Mr. Ajay Verma learned counsel referred to K.R. Mudgal and Others Vs. R.P. Singh and Others, . The learned counsel referred to the following observation of the Supreme Court:-

"We may also refer here to the weighty observations, made by a Constitution Bench of this Court in Malcom Lawrence Cecuk D'Souza v. Union of India at pages 413-414 of the Reports which are as follows:

Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position

in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, Therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

The facts of the case are distinguishable and the ratio would not apply to the present case.

15. In the light of these facts, I am clearly of the view that the order passed by University on 24.12.1997 and 31.03.1998 are in accordance with law. It cannot be said to be illegal or irrational.

16. The writ petition is dismissed.

17. There shall be no order as to costs.