

(2002) 05 DEL CK 0070

In the Delhi High Court

Case No : Regular Second Appeal No. 37/99

University of Delhi and Another

APPELLANT

Vs

Dr. (Mrs.) Neelam Gaur

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 226, 32
Delhi University Act, 1922 — Ordinance 11

Citation : (2002) 4 AD 933 : (2002) 98 DLT 145 : (2002) 63 DRJ 469

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Sudhir K. Luthra and Pankaj Aggarwal, for the Appellant; Sumant Bhardwaj and Mona, for the Respondent

Final Decision : Allowed

Judgement

R.C. Jain, J.—This second appeal is directed against the judgment and decree of the first appellate court dated 6th March, 1999 thereby dismissing the appeal of the appellant University against the judgment of the trial court dated 28th September, 1996 by which the learned trial court had disposed of the suit of the plaintiff-respondent with certain directions to the appellant-University.

2. Briefly, the relevant facts necessary for the decision of the present appeal are that in May 1992 Dr. (Mrs.) Neelam Gaur, plaintiff-respondent filed a suit against the Delhi University with the averments that she was M.Sc. in Anthropology and was registered for Ph.D. in the year 1975 and since then she had continued in the Department of Anthropology as a pre-doctoral/post-doctoral researcher in various capacities without interruption for the last 17 years. She was awarded Ph.D. in November, 1980 and Senior Research Fellowship after Ph.D. by the Department of Anthropology. In 1983 she was awarded Research Associateship of U.G.C. on a Research Project in the pay-scale of Rs. 950-1400 (revised to Rs. 2200-2700) for five years. Thereafter she worked on a Research Project of IGAV beside she was empanelled in SCIR's Scientists Pool in the year 1988 and placed

as Pool Officer in the Department of Anthropology, Delhi University. The plaintiff was again selected for the award of Research Associate of U.G.C. on a project in the pay-scale of Rs. 3700-4325 with effect from 1-8-1990 and she continued to work in that position in the Department of Anthropology of the Delhi University. Beside she had published/presented nearly 45 research papers in Journals/Scientific seminars in India and abroad and was the seniormost research scholar. She had been taking classes of under-graduate/post-graduate level in the Department of Anthropology since 1983. Despite all this, she was not regularised in the Department of Anthropology and, so relying upon a Supreme Court decision in the case of Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, , filed a suit claiming the following reliefs:-

"a) a decree for mandatory injunction in favor of the plaintiff and against the defendants thereby issuing a mandate to the defendants to regularise the plaintiff on a suitable post in the pay scale of Rs. 3700-125-4325 in the defendant No. 2 with immediate effect;

b) a decree for permanent injunction in favor of the plaintiff and against the defendants, thereby restraining the defendants, their agents, servants, employees/officers etc. from filling the posts of lecturers till the decision of the case of the plaintiff;

c) costs of the suit be also awarded to the plaintiff; and

d) any other or further relief which this Hon"ble Court may deem fit and proper in the circumstances of the case be also granted in favor of the plaintiff and against the defendants."

3. The appellant contested the suit on a variety of grounds, inter alia, pleading that the plaintiff had no vested right to be appointed against any post in the pay-scale of Rs. 3700-4325 as in terms of Ordinance IX Clause B(1) of the Delhi University Act, 1972, the post of teachers are required to be filled up after advertisement by open recruitment after due consideration of their basic qualifications and suitability. It was denied that the plaintiff was highly qualified person with merit and it was stated that the plaintiff had secured 45.4% marks (III Division) in B.Sc. course and 50% marks in the M.Sc. It was, however, admitted that the plaintiff worked as Research Associate of U.G.C. and ICMR from 1983 to 1988 and thereafter she was accommodated as Pool Officer (CSIR) from January 1989 to July 1990 and that she was awarded research associate ship by the U.G.C. and she is under supervision of the University and over all administrative control of the Department by virtue of she having been attached to it at her request. It was explained that she applied for the post of permanent lecturer in the Department on at least two earlier occasions but was not found competent by the Selection Committee. The plaintiff-respondent had been given teaching work occasionally but it was stated to be a part of the research work. It was also pleaded that the University advertised the post of Social Anthropology, Physical Anthropology and Pre-historic Anthropology and only 30 candidates out

of the total applicants were called for interview fell in Category I and II whereas the plaintiff-respondent being in sub-category II of Category III was not called for interview. On the pleadings of the parties the trial court framed the following issues:-

"1) Whether any cause of action accrued in favor of the plaintiff? OPP

2) Whether the plaintiff is entitled to be absorbed on the cadre of Lecturer/Reader with the Defendants? OPP

3) If the answer to the relief No. 2 in affirmative in which scale of pay and from which date the plaintiff is entitled? OPP

4) Relief.

4. The learned trial court felt that the case could be adjudicated upon on the basis of the admitted documents without leading any evidence. The trial court on a consideration of the matter and more particularly taking note of the observations of the Supreme Court in the case of Dr. (Mrs.) V.L. Chandra & Ors. (Supra) disposed of the suit with the following observations and directions:-

"Coming to the observations made by the Supreme Court in judgment cited as Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, , where services of the researchers were terminated by the department for the want of research project with the institution. Directions were made for evolving scheme by the institution to built a team of researcher to meet the general requirement of the researchers. ICMR was also directed to give employment to the researchers/petitioners.

The facts of the present case are analogical to the present case except for the fact that this time this is Delhi University and not A.I.I.M.S. Under Article 141 of Constitution of India, it is not only ratio decidendi but obiter dicta also, which has to be followed. Even otherwise, Delhi University cannot brush aside the personality of the petitioner and her achievement. For its, benefits and for the benefit of general public and the subject, the defendant University shall explore the possibility of offering a solution to the problem, sympathetically.

In the event, I give directions to the deft. Delhi University for evolving a scheme by the institution in co-ordination with the concerned departments dealing in the subjects, and in co-ordination with the concerned ministries and research bodies, so that a team of researchers is built-up to meet the general requirement of researchers on continuous basis. I, command Delhi University to initiate a serious action in this regard without any delay and suggest Delhi Government to co-operate with the University to work-out employment to the petitioner either as a researcher or in any suitable alternative employment until her name is included in a team of researcher as per the scheme to be evolved.

My this order is on the lines of the judgments passed by the Supreme Court, Copy of this order be sent to the Chief Minister of N.C.T. of Delhi and also to the

Vice Chancellor, Delhi University to consider the order in its true spirit and contour".

5. Aggrieved by the aforesaid judgment, Delhi University filed an appeal before the Senior Civil Judge, Delhi but without any success. The appellate court has dismissed the appeal with the following directions:-

"I have give my considered thought to the arguments addressed on behalf of Id. counsel for the parties. The Id. counsel for the appellant has argued that the directions of the Supreme Court given in the AIIMS case are not applicable in the present case since Supreme Court can give any direction in respect of any matter in suit because of special power of the Supreme Court and that order cannot be mae applicable to the Id. trial court or appellate court. I am of the considered view that in view of the judgment of Hon''ble Supreme Court ratio decindi and even obiter dicta is also binding on the lower courts. The order of the Id. trial court in directing the Delhi University to evolve a scheme for research scholars on the line of direction given by the Hon''ble Supreme Court In A.I.I.M.S. case as cited supra to create a pool of research scholars so that the qualification and experience of the persons like the respondent are not wasted and are utilised by the University properly. Hence the judgment of the Id. trial court is upheld the Delhi University is directed to evolve a scheme of research scholars where persons having done research for more than 15 years can be duly accommodated and a general pool is created for meeting the general requirement of research. The Delhi University is directed to consider the case of the respondent on sympathetic ground and provide her a job in commensurate with her experience and in order to see that the research experience of the respondent is not wasted. With these observations, the appeal is devoid of merits and the same is dismissed."

6. I have heard Mr. Sudhir K. Luthra, Senior learned counsel for the appellants and Mr. Sumant Bhardwaj learned counsel for the respondent and have given my thoughtful consideration to their respective submissions. The directions contained in the impugned judgments are sought to be assailed on different grounds; the first being about the competence of the civil court to give directions of the nature and the extent which have been given by the trial court and first appellate court while refusing the substantial relief claimed by the plaintiff. In this regard learned counsel for the appellants has submitted that the jurisdiction of the civil court is limited to the adjudication of the questions in controversy in the suit so as to reach a conclusion, whether relief(s) claimed in the suit can be granted or not. It will be beyond the scope of the suit and jurisdiction of the trial court to give directions to opposite side who is not a party in the proceedings (in this case Government of N.C.T. of Delhi) whatever laudable object, such directions are intended to achieve. It is submitted that the learned trial court could either decree the suit or dismiss it but it was beyond its competence to issue the directions as aforesaid on the basis of certain directions given by the Supreme court in some other case the facts of which were entirely different than the case

in hand. It is also the contention of the learned counsel for the appellate that the jurisdiction and powers of the civil court while disposing of a suit are much narrower than the powers of the High Courts and the Supreme Court while sitting in writ jurisdiction.

7. In support of his contention learned counsel for the appellant has sought support from a Supreme Court decision in the case of State of Punjab and others Vs. Surinder Kumar and others, . In that case the Supreme Court had the occasion to reflect on the powers of the Supreme Court under Articles 32, 141 and 142 and that of the High Court under Article 226 of the Constitution and laid down as under:-

"The order of the High Court directing them to be continued until government made regular appointments of Public Service Commission cannot be sustained by relying upon an order of the Supreme Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. A decision is available as a precedent only if it decides a question of law. Merely because grounds are not mentioned in a judgment of the Supreme Court, it cannot be understood to have been passed without an adequate legal basis therefore. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court between a court whose judgment is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of the Supreme court. It is, Therefore, futile to suggest that if the Supreme Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge. though the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision applications but this discretion has to be confined in declining to entertain petitions and refusing to grant relief, asked for by petitioners, on adequate considerations; and it does not permit the High court to grant relief on such a consideration alone."

8. On the other hand learned counsel for the respondent-plaintiff has submitted that there is nothing wrong or illegal in the courts below giving directions to the appellant university and other concerned authorities because such directions are in consonance to the directions given by the Supreme court in the case of Dr.

(Mrs.) V.L. Chandra (supra) and all courts and authorities in the country are bound to follow the same in view of the mandate of Article 141 of the Constitution of India. It is also submitted that appellant-University being the instrumentality of the State is a model organisation and its action and conduct should be largely aimed at the welfare of its subject. In the case in hand the courts below were convinced with the cause of the plaintiff-respondent and although no specific relief in terms of Clauses (a) and (b) of the prayer clause has been granted, the courts below had all the powers in giving aforesaid directions which are squarely covered by the Clause (d) of the prayer clause in the suit.

9. This Court on a consideration of the entirety of the matter from different angles is of the view that the competence and jurisdiction of a civil court while deciding a civil suit cannot be equated with the jurisdiction vested in the Supreme Court under Article 32 or of High court under Article 226 of the Constitution. The scope and proceedings in a civil suit and the proceedings under writ are quite distinct. The power of the Supreme Court under Article 142 is meant to supplement the existing legal framework - to do complete justice between the parties - and not to supplant it. The Article provides that the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any "cause" or "matter", which would include any proceeding pending in Court and would cover almost every kind of proceeding in Court. The directions given by the Supreme Court in the case of Dr. V.L. Chandra (Supra), it appears were given by the Supreme Court in exercise of its inherent powers under Article 142 of the Constitution. Whether similar directions can also be given by a civil court in a civil suit based on specific averments and pleas and for specific relief(s), the answer would be a plain "no". This would be more so in a civil suit where the court has declined to grant a decree for substantial relief, Civil court does not possess any inherent power to give directions of general nature and far reaching effect to the defendant whatever laudable object such directions may seek to achieve. In the case in hand this is what has exactly happened. The court found that the plaintiff was not entitled to the relief(s) as sought in Clauses (a) and (b) on the face of statutory regulations/ordinances of the appellant University and still it has given the directions not only to the appellee but also to the Government of N.C.T. of Delhi, which was not a party to the suit. In the opinion of this court the courts below ought to have decided the suit either by decreeing it for the reliefs claimed or dismissing it but they had no competence to give directions of such far reaching consequences and that too without giving an opportunity to the concerned quarters who were supposed to take action pursuant to such directions.

10. For the foregoing reasons this Court is of the considered opinion that this second appeal deserves to be allowed and the impugned judgment of the first appellate court dated 6th March, 1999 so far as it has given certain directions to the appellant University to evolve a scheme of research scholars where persons

having done research for more than 15 years can be duly accommodated and a general pool is created for meeting the general requirement of research are hereby set aside. Similarly the other direction to the appellant University to consider the case of the respondent on sympathetic ground and provide her job commensurate with her experience in order to see that the research experience of the respondent is not wasted is also set aside. In the facts and circumstances of the case, the parties are left to bear their own costs.