

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Dr. Rajendra Kumar Kumbhat v. J.N.V. University, Jodhpur and others

S.B.CIVIL WRIT PETITION NO.3287/2008
under Article 226 of the Constitution
of India.

Date of Order :: 22nd December, 2008

P R E S E N T

HON'BLE MR. JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr.Advocate with Mr. Ashok Kumar, for the petitioner.

the petitioner:
Mr. A.K.Rajvanshy]

Mr. P.R.Singh] for the respondents.

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BY THE COURT :

Under an order dated 30.4.2008, the vice Chancellor, Jai Narain Vyas University, Jodhpur (hereinafter referred to as "the University"), while exercising powers under statute 8(c)(1)(i) of the Jai Narain Vyas University Statutes, appointed Dr. Gopi Chand Tikkial, respondent No.3, as Head of the Department of Mathematics and Statistics w.e.f.

1.5.2008 for a period of three years. The order aforesaid is questioned by the petitioner in this petition for writ.

The factual matrix as available on record and necessary for adjudication of this petition is that the Director, Technical Education, Government of Rajasthan by an order dated 21.7.1977 accorded an appointment to the petitioner as a Lecturer in the subject of Mathematics at Government Polytechnic College, Bikaner on urgent temporary basis as per the provisions of Rule 27 of the Rajasthan Technical Education Service Rules, 1973 (hereinafter referred to as "the Rules of 1973"). The appointment aforesaid was for a term of four months or till the availability of the selected incumbents as per the provisions of the Rules of 1973, whichever is earlier. The petitioner as a consequent to his regular selection came to be appointed as Assistant Professor in the subject of Mathematics with the respondent University under an order dated 1.10.1984 and in pursuant thereto he joined the post on 1.12.1984. On the recommendation of the selection committee constituted under Rule III of the Career Advancement Scheme the syndicate of the University in its meeting held on 15.1.1992 promoted the petitioner as Associate Professor in the grade of Rs.3700-5700 w.e.f. 23.7.1990. A promotion was given to the petitioner as Professor also under Career Advancement Scheme w.e.f. 19.5.2001 vide order dated

19.4.2007. By the same order the respondent No.3 was also promoted as Professor. In the order dated 19.4.2007 name of the respondent No.3 and the petitioner are shown at Serial No.8 and 9 respectively. By a corrigendum dated 7.8.2007 the dates of promotion as Professor relating to the petitioner and the respondent No.3 were changed as 23.7.1998 and 19.12.1998 respectively. A document (Anx.4) is placed on record by the petitioner wherein his name figures at Serial No.17 with 23.7.1990 shown under the column relating to the "date of appointment in the University on present post". In the same document name of the respondent No.3 appears at Serial No.18 by showing 19.12.1990 in the column referred above. The document Anx.4 is not bearing any number, date, signature of the author or any process giving rise to the document aforesaid. The identity of the document is absolutely undisclosed. A part of the provisional seniority list of the teachers as on 30.11.2003 in the faculty of science of the respondent University is also placed on record as Anx.5 wherein name of the respondent No.3 and the petitioner are placed at Serial No.4 and 5 respectively in the category of Associate Professors (Mathematics and Statistics). According to the petitioner the respondent University determined his seniority in the cadre of Assistant Professor by taking into consideration the services rendered by him with the Directorate of Technical Education and as such he was

throughout treated senior than the respondent No.3, but due to resolution No.84/05 undertaken by the syndicate of the University relating to interse seniority of teachers either promoted or selected is effecting his rights adversely. The relevant portion of the resolution No.84/2005 reads as follows:-

“III.(a)A Professor shall be senior to a Associate Professor (Reader) either selected through CAS/PP Schemes or on direct post and

(b)A Associate Professor shall be senior to a Assistant Professor (Lecturer) either selected through CAS/PP Schemes or on direct post and

(c)The seniority of teachers in each category of posts shall be determined by the date of appointment on a post in that category (Professor / Associate Professor / Assistant Professor)

The seniority of those appointed on the recommendation of the same statutory selection committee by the open selection shall be in accordance with the merit list prepared by the selection committee irrespective of the date of joining.

(d)In case the date of appointment of Professor / Associate Professor promoted is the same as of a Professor / Associate Professor selected through open selection then the following shall be used to determine the seniority:

(i)The teacher who has longer continuous service in immediate lower position/post in the University after selection by the selection committee shall be ranked senior.

(ii)If the length of service mentioned in (i) above is equal, the teacher who has rendered longer continuous service in the next lower post/grade in the University shall be ranked senior.

(iii)If the length of service mentioned in (i) and (ii) above is equal, the one older in age shall be ranked senior.

(iv)When two or more persons are appointed on the basis of two different selections held on the same day in the same cadre then their seniority shall be determined on the basis of comparing the first in the first list with the first in the second list and so on, the senior in age being senior.

(v)The seniority shall be determined department-wise (subject-wise)

(vi)The inter-se-seniority of teachers promoted to the post of Professor from Associate Professor (Reader) under Career Advancement Scheme of UGC / AICTE/PP Schemes in one process of selection will remain the same as that of Associate Professor (Reader).

However, if a person is not found suitable in one selection but is found suitable in subsequent selection he will be placed lower than the person promoted in the previous selection irrespective of his seniority at

the level of Associate Professor (Reader). Similar principle will also be applicable in case of promotion from Assistant Professor to Associate Professor. Previous service (other than Jai Narain Vyas University, Jodhpur) shall not be counted for the purpose of deciding inter-se-seniority. The same norms will be followed for inter-se seniority from Assistant Professor to Associate Professor.

with regard to appointment of Heads of departments/Deans of Faculties, the newly prepared seniority list of Professors, Associate Professors and Assistant Professors should form the only basis."

As per the petitioner, the respondent University in view of the resolution No.84/2005 has altered its earlier decision to include the service rendered by him with a Directorate of Technical Education while reckoning his seniority and that resulted into an upper hand to the respondent No.3 in seniority. It is asserted that the University by a resolution reckoned seniority of the petitioner by taking into consideration the earlier services rendered as Lecturer at Government Polytechnic College and, therefore, now by a subsequent resolution (resolution No.84/2005) a benefit already extended cannot be undone specially looking to the fact that the same shall be having adverse effect upon the accrued rights of the petitioner. According to the petitioner the order dated 30.4.2008 giving

appointment to the respondent No.3 as Head of the Department (Mathematics and Statistics) is bad as the resolution No.84/2005 deserves to be quashed being based on a resolution (84/2005) which is unjust, arbitrary and, therefore, bad in eye of law.

A reply to the writ petition is filed by the University as well as by the respondent No.3 According to the respondents the petitioner's claim is having no merit in view of the fact that the services rendered by him in Government Polytechnic College were taken into consideration only for grant of selection grade as per the Career Advancement Scheme and not for the purpose of reckoning the seniority. The respondent No.3 has alleged that the services rendered by the petitioner with Government Polytechnic College could have not been taken into consideration even for the purpose of determining the period for extending the benefit of Career Advancement Scheme. It is stated that the petitioner was employed as Lecturer in the Directorate of Technical Education purely on urgent temporary basis and that too with certain breaks and as such he was not entitled for getting the period concerned included in determination of the term for grant of selection grades under the Career Advancement Scheme. It is pointed out by counsel for the respondent University that the petitioner has not placed on record the complete document Anx.5 intentionally just to mislead the Court regarding the

applicable provisions for determination of the seniority. It is asserted that the document Anx.5 was circulated under a notification dated 28.11.2003 inviting objections, if any, by the teachers affected. The seniority rules for teachers of the University notified on 7.1.1984 were also accompanied to the notification dated 18.11.2003 but the petitioner did not choose to place on record the notification dated 28.11.2003 and the seniority rules just for the reason that no objections in pursuant to the notification dated 28.11.2003 were submitted by the petitioner and the rules for determination of seniority for teachers specifically provide that the seniority of teachers in each category of posts shall be determined by the date of order of substantive appointment on a post in that category. While supporting the stand of the University it is stated by counsel for the respondent No.3 that respondent Shri Gopi Chand Tikkial entered in the services of the University in substantive capacity on 19.12.1977 being appointed as Assistant Professor in the subject of Mathematics and, therefore, from inception he is senior to the petitioner.

The petitioner has filed separate rejoinders to the reply submitted by the respondents mainly reiterating whatever already stated in the writ petition.

Heard counsel for the parties.

The stand of the petitioner is that the respondent University reckoned his seniority in the cadre of Assistant Professor by taking into consideration the services rendered by him as Lecturer in the subject of Mathematics at Government Polytechnic College and, therefore, he is required to be treated senior than the respondent No.3. The stand taken is not at all supported by any resolution, statute or provision otherwise applicable in present controversy. While extending benefit of Career Advancement Scheme the respondent University has taken into consideration the previous services rendered by the petitioner in view of an office order dated 25.7.1991, relevant portion of which reads as follows:-

“Accordingly, the Vice-Chancellor has been pleased to incorporate the following rules/guidelines received from which has been accepted by the Government of Rajasthan under letter no. F.3/Edu-4/88/pt dated 18-1-1991 for counting previous services for purpose of placement in senior/selection grade under said scheme.

1. Previous service without any break as a Lecturer or equivalent in a University, college, national laboratory or other scientific organizations (CSIR, ICAR, DRDO, UGC etc.) and as a UGC Research Scientist should be counted for placement of lecturers in senior scale/selection grade provided that:-

- a)The post was in an equivalent grade/scale of pay as the post of a Lecturer;
- b)The qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer;
- c)The Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturer;
- d)The post was filed in accordance with the prescribed selection procedure as laid down by the University/State Government.
- e)The appointment was not adhoc or on a leave vacancy of less than one year duration.”

The inclusion of previous service for determination of the term for grant of selection grade is having no relevance so far as the seniority is concerned. The seniority of the petitioner and the respondent No.3 is required to be determined as per notification dated 7.1.1984 which prescribes that “the seniority of the teachers in each category of posts shall be determined by the date of order of substantive appointment on a post in that category”.

The respondent No.3 entered in the services of the University as Assistant Professor in substantive capacity in the year 1977, whereas the petitioner was employed on the post concern in the

year 1984. The grant of selection grade by taking into consideration the previous service is not at all relevant for determination of seniority, thus, the claim made by the petitioner relating to his seniority for appointment as Head of the Department is absolutely misconceived.

The petition for writ, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.