

A BANARAS HINDU UNIVERSITY, VARANASI AND ANR.

v.

DR. INDRA PRATAP SINGH

JANUARY 24, 1992

B [L.M.SHARMA, V. RAMASWAMI AND B.P.JEEVAN  
REDDY, JJ.]

*University Grants Commission—Merit Promotion Scheme—Para 2*  
(a)—Object and scope of.

C University—Lecturer—Promotion as Reader—Requirement of “eight years continuous service”—Appointment as temporary lecturer in Banaras Hindu University—Gap of 3 months and 20 days in service—Appointment as Reader in Nagpur University—Reappointment as permanent Lecturer in Banaras Hindu University—Claim for promotion as Reader held sustainable—Held para 2 (a) recognizes eight years service in more than one University—Gap in service held of the nature contemplated by para 2 (a)—Service rendered in Nagpur University held liable to be counted towards eight year's service.

E With a view to providing an incentive to teachers, preventing stagnation and also for improving their efficiency the University Grants Commission evolved a scheme called “Merit Promotion Scheme”. On being selected under the said scheme a lecturer is designated as Reader and becomes entitled to a higher pay scale. One of the conditions under the scheme which a lecturer must satisfy before he becomes entitled to promotion is eight years's of continuous service of which at least four years should be in the institution where he is being considered for promotion.

G The respondent was appointed as a lecturer by the appellant-University, on temporary basis, on 26.8.1974 in the Department of Basic Principles in the Institute of Medical Sciences for a period of eleven months. At the end of eleven months, he was re-appointed on the same basis for a further period of eleven months. By means of such appointments he served as a temporary Lecturer from 26.8.1974 till 31.3.1980. There was no re-appointment thereafter and from 1.4.80 to 20.7.80 he remained, without a job. On 21.7.80 he was appointed as a Reader in the Nagpur University where he served till 20.9.82. On 22.9.82 he was appointed as a permanent lecturer in the appellant-University in the same Department where he worked ear-

lier temporarily and his salary was fixed by giving him fourteen increments so as to protect his last pay drawn at Nagpur. A

In 1983 the respondent claimed promotion under the Merit Promotion Scheme but the University rejected his case on the ground that he does not satisfy the requirement of eight years' of continuous service in the cadre because there was a break in his service between 1.4.80 to 20.7.80 and that his service in the Nagpur University cannot be counted. B

The respondent filed a writ petition in the High Court and pursuant to an interim order passed by the High Court the respondent's case was considered by the Selection Committee and the decision of the Committee was kept in a sealed cover. C

The High Court allowed the petition by holding: (i) that the respondent's service in the Nagpur University was liable to be counted towards the eight years' continuous service because para 2 (a) of the scheme expressly recognizes service in more than one University; (ii) a long-standing practice of the University was to condone the breaks in service in such cases. Consequently the High Court quashed the University's order rejecting respondent's application and directed the University to place recommendations of the Selection Committee before the Executive Council and to promote him as Reader if he was approved by the Executive Council. D E

The University filed an appeal in this Court contending that (i) the High Court erred in holding that the respondent satisfied the requirement of eight years' continuous service; (ii) the power of the University to condone short breaks in service was exercised in cases only where the delays in reappointment were caused by procedural delays in the office of University; (iii) there was a definite break in the respondent's service and such a break has never been condoned by the University. F

On behalf of the respondent it was contended that para 2 (a) of the scheme recognizes a teacher serving two or more Universities for the purposes of "continuous eight years" service; (ii) the requirement of continuous service should be understood having regard to the underlying aim and object; (iii) In many other cases the University has condoned similar breaks and refusal to do so in his case was arbitrary and discriminatory. G H

A Dismissing the appeal, this Court,

HELD: 1. The expression "continuous service" has no single unalterable meaning and its content varies having regard to the context. [368-C]

B *Jeevan Lal Ltd. v. Its workmen*, [1962] 1 S.C.R. 717; referred to.

"Words and Phrases" Vol. 9; referred to.

2. The expression "eight years of continuous service" in para 2 (a) of the scheme should be understood in a reasonable manner

C having regard to the underlying aim and object. In understanding and construing the said expression the object underlying the said requirement should be taken into consideration. The object behind para 2 (a) of the scheme is to ensure that a teacher does have eight years' teaching experience. [366 F, H, 367-A]

D 2.1. Para 2 (a) of the Merit Promotion Scheme itself expressly recognizes that the eight years' service may be in more than one institution, the only requirement being a minimum of four years service in the institution where he is being considered for promotion under the scheme. In case of shift from one University to other or from one institution to the other it can reasonably be presumed that E there is bound to be some interval. The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. However, the length of such interval is not totally irrelevant; but one must take into consideration the reason for which break, or the circumstances in which such break, has occurred. [366 F-H]

F 2.2 The gap in the respondent's service is of the nature contemplated by para 2 (a) of the scheme. True it is that it is a bit too long but even so in the light of the circumstance that the respondent was reappointed on a permanent basis, on the very same post, in the very same department, the length of the said break pales into insignificance. [369 B-C]

G 3. It is also evident from record that in case of other two teachers who had not completed eight years' service by the prescribed date the Vice-Chancellor and the Executive Council decided to extend the eligibility period till the date of interview so as to make them eligible for consideration which shows that the Univer-

sity has been passing appropriate orders wherever the justice of a case demanded. The same treatment ought to have been extended to the respondent, in all the circumstances of the case. [370 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1626 of 1988.

From the Judgment and Order dated 22.12.1987 of the Allahabad High Court in Civil Misc. Writ Petition No. 3396 of 1985.

M.L. Verma, L.R. Singh, Vikas Singh and Yunus Malik for the Appellants.

P.P. Rao, T.N. Singh, B.M. Sharma and S.N. Singh for the Respondents.

The Judgment of the Court was delivered by

**B.P JEEVAN REDDY, J.** This Civil Appeal is preferred against the judgment and order of a Division Bench of the Allahabad High Court allowing the writ petition filed by the respondent Dr. Indra Pratap Singh.

The respondent was appointed as a lecturer by the appellant-University, on temporary basis, on 26.8.1974 in the department of Basic Principles in the Institute of Medical Sciences. His appointment was effective for a period of eleven months. At the end of eleven months, he was re-appointed on the same basis for a further period of eleven months. By means of such appointments, he was continued upto 31.3.1980. There was no re-appointment thereafter. On 21.7.1980, the respondent was appointed as a Reader in Sri Ayurved College of the Nagpur University. He worked there till 20.9.1982. On 22.9.1982, he was appointed as a lecturer in the appellant-University in the very same department, on a permanent basis. On this occasion, his salary was fixed giving him as many as fourteen increments so as to protect his last drawn pay at Nagpur.

Banaras Hindu University is a Central University. It is entirely funded by the University Grants Commission (U.G.C.). The U.G.C. had evolved a scheme called 'Merit Promotion Scheme' with a view to provide an incentive to teachers, to prevent stagnation and also to improve their efficiency. One of the conditions which a lecturer must satisfy before he becomes entitled to promotion is eight years' continuous service. Clause (a) of para 2 of the Scheme which provides for the said qualification reads thus:

A "2 (a). Teacher in the University departments engaged in advance teaching and research and whose contribution and achievements are such as to merit recognition must be considered for merit promotion in the first instance after completing eight years of continuous service in their respective cadre, of which at least four years should be in the institution where he/she is being considered for such assessment and merit promotion."

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On being selected under the Merit Promotion Scheme a lecturer is designated as Reader and becomes entitled to a higher pay scale. The selection under this scheme has to be made by the University concerned no doubt in accordance with the criteria evolved by the U.G.C.

C The respondent applied for being selected under said scheme in the year 1983. The University, however, was of the opinion that he is not eligible for being considered inasmuch as he does not satisfy the requirement of eight years' continuous service in the cadre. The objection was that there was a break in his service between 1.4.1980 and 20.7.1980 (both days inclusive) which means that his continuous service can be counted only from 21.7.1980. If so calculated, he does not satisfy the said requirement by the year 1983. Another objection raised by the University was that the service rendered by the respondent in the Nagpur University cannot be counted. The respondent's case, however, was not only that his service at Nagpur is liable to be counted but that the university was competent to and ought to condone such breaks in service and that indeed it has condoned such breaks in service in the case of other teachers. Refusal to do so in the case of respondent, it was submitted, was discriminatory and arbitrary.

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F In view of the stand taken by the University, the respondent approached the Allahabad High Court by way of Civil Miscellaneous Writ Petition No. 3396 of 1985. At his instance the High Court made an interim order directing the University to place the petitioner's case before the Selection Committee (constituted for the purpose of selection under the said scheme).

G According to the counsel for the University, the respondent's case has accordingly been considered and the decision of the Selection Committee kept in a sealed cover. The matter has not yet been placed before the Executive Council of the University which is the final authority in the matter of selection under the scheme, says the counsel.

H The High Court has allowed the writ petition on the following rea-

soning; a long-standing practice in vogue in the University is to condone breaks in service in such cases. Refusal to condone the break in service in the case of the respondent, more so when he was given extra increments at the time of his permanent appointment as a lecturer in this University in the year 1982 (with a view to bring his salary on par with the salary he was drawing as a reader in the Nagpur University) is not justified. The service rendered by the respondent in the Nagpur University is also liable to be counted towards the eight years' continuous service. Indeed para 2 (a) of the Scheme expressly recognizes service in more than one University. In as much as the respondent's case has already been considered by the Selection Committee in pursuance of the interim orders, his case should now be placed before the Executive Council and if he is found suitable he should be entitled to promotion/Selection under the scheme with effect from the same date from which other teachers of the University interviewed for the first round of promotion were appointed. The operative portion of the judgment reads thus:

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"In the result, the writ petition succeeds and is allowed. The orders of the University rejecting applications of the petitioner for condoning break in service and for being considered for merit promotion are quashed. The University is directed to place the recommendation of the Selection Committee before the Executive Council in its next meeting. It is further directed to appoint the petitioner on the post of Reader in the Department of Basic Principles in the Institute of Medical Sciences of the University, if he has been selected for promotion by the Selection Committee and its recommendation is approved by the Executive Council with effect from the same date from which other teachers of the University interviewed for first round of promotions were appointed. We direct the parties to bear their own costs."

The principal contention urged by the learned counsel for the petitioner-University is that the Court was in error in holding that the respondent satisfied the requirement of eight years' continuous service. The counsel did not dispute the power of the University to condone short breaks in service, but such power, he said, was exercised in cases only where the delays in re-appointment were caused by procedural delays in the office of the University. There has been no case, he submitted, where the University condoned the break in service of the nature concerned, herein. The respondent left this University, remained out of job for a period of three months 20 days and then was appointed as a Reader in the Nagpur University. This is a definite break in service and such a break has

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- A never been condoned by the University. The counsel, however, did not urge before us that the service rendered by the respondent in the Nagpur University should not count towards the eight years' qualifying service. On the other hand, learned counsel for the respondent supported the judgment of the High Court on the following reasoning: Para 2 (a) of the scheme recognizes a teacher serving two or more Universities during the
- B said period of eight years, the only requirement being that at least four years out of it should be in the institution where he is being considered for promotion/selection under the said scheme; the requirement of eight years' continuous service must be reasonably understood having regard to the underlying aim and object; where a teacher serves two or more Universities during the said period, it can reasonably be presumed that there will
- C be breaks in his service, whether the break is of a day, a week, a month or a couple of months, it is unlikely—ordinarily speaking—that a teacher gets re-employment in another University and joins there on the very next day of his being relieved from the first University. The object behind para 2 (a) of this scheme is to ensure that a teacher does have eight years' teaching experience. Moreover, in the case of this very respondent there
- D were gaps of about a week or so on every occasion he was re-appointed prior to 1980; the University never treated them as breaks in service. Above all, at the time of his permanent appointment in the year 1982 he was given a large number of increments both in view of his past service in the University and also with a view to protect his last pay drawn in the University at Nagpur. In many other cases the University has condoned similar breaks of two to three months; refusal to do so in the case of the respondent is arbitrary and discriminatory.

- F We agree with the learned counsel for the respondent that the expression "eight years of continuous service" in para 2 (a) of the scheme should be understood in a reasonable manner having regard to the underlying aim and object. Para 2 (a) itself expressly recognizes that the eight years' service may be in more than one institution, the only requirement being a minimum of four years service in the institution where he is being considered for promotion under the scheme. In case of shift from one University to other—or from one institution to the other—it can reasonably
- G be presumed that there is bound to be some interval. The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. We do not mean to say that length of such interval is totally irrelevant; what we mean, however, is that one must take into consideration the reason for which break—or the circumstances in which such break—has occurred. Another factor to be taken into consideration in understanding and construing the said ex-
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pression is the object underlying the said requirement. According to us, the object is to ensure eight years' teaching experience. It is true that there is a break of three months 20 days in the respondent's service and teaching experience. We also take note of the fact that it was not the vacation time for academic institutions. But this circumstance must be weighed against a counter-vailing circumstance in favour of the respondent viz., his re-appointment on a permanent basis in the very same department in the University in the year 1982. As stated above, he served as a temporary lecturer from 26.8.1974 till 31.3.1980. From 1.4.1980 to 20.7.1980 he remained without a job. On 21.7.1980 he was appointed as a Reader in the Nagpur University—in the very same subject—where he served till 20.9.1982. On 22.9.82 he was appointed as a permanent lecturer in this very University and in the same category and subject. On this occasion, he was granted a good number of increments. The University says that these increments were granted with a view to protect his last pay drawn by him in the Nagpur University while the respondent says that it was granted not only for the said purpose but also in the light of his past service in this University. It is true that he was not given seniority since 26.8.1974. Even so the question is whether the gap of three months 20 days is such a long gap as not to merit condonation—or for that matter to be termed as a break in service for purposes of para 2 (a) of the scheme.

In *Jeevan Lal Limited v. Its Workmen*, [1962] 1 S.C.R. 717, the expression "continuous service" fell for consideration of this court. The employee joined the appellant's service as a workman in 1929 and resigned in 1957. During this period he remained absent from duty without permission or leave for nearly eight months between February, 1945 to October, 1945. Under an award made between the employer and the workmen, a scheme was framed wherein the concerned clause was that "on voluntary retirement or resignation of an employee after fifteen years continuous service, gratuity at the same rate as above" was payable. The question was whether the respondent-workman satisfied the requirement of 15 years' continuous service. Gajendragadkar, J. speaking for the Division Bench held in favour of the workmen on the following reasoning:

".....there can be no doubt that in a different context the same words can and often have different meanings. As this Court has observed in *Budge Budge Municipality v. P.R. Mukherjee*, "the same words may mean one thing in one context and another in different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when

A we have to deal with a specific statute of our own; they may be helpful but cannot be taken as guides or precedents"....."Continuous service" in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If an employer terminates the service of his employee that again brings the continuity of service to an end. If the service of the employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service."

This decision does emphasises the fact that the said expression has no single unalterable meaning and that its content varies having regard to the context.

D In "Words and Phrases" Vol. 9, the word "continuous employment" is assigned the following meaning:

"It means working with reasonable regularity, and work does not cease to be "continuous" because of interruptions in occupation due to periods of temporary illness, such as are incident to people of normal health. "Continuously", as used in regulations defining total permanent disability under war risk policy, does not denote absolute continuity."

Again, the word "continuous service" is given the following meaning:

F "Phrase "continuous service", as contained in collective bargaining agreement, had to be viewed in light of terms of agreement which provided for work schedule of eight hours per day for a five-day week, Monday to Friday, inclusive and, therefore, one working regular prescribed hours of labour would be rendering "continuous service" within agreement even though not working on Saturdays or Sundays or more than eight hours in any 24."

The above two meanings, among the several set out therein, are in our opinion contextually relevant. We are also of the view that a literal interpretation of the said words is ruled out by the context, as the preceding discussion shows.

H The counsel for the University has conceded that on several occa-

sions prior to 31.3.1980, there were gaps of a week or so in issuing re-appointment order on temporary basis. He says that these delays were in the nature of ministerial delays, and therefore, they were condoned but so far as the gap between 1.4.1980 and 20.7.1980 is concerned he says it is of an altogether different nature inasmuch as the respondent left this University and joined another University. But as we have stated hereinbefore, para 2 (a) itself expressly recognizes the said eight years' service having been put in more than one University. The present gap is of that nature. True it is that it is a bit too long but even so in the light of the circumstance that the respondent was reappointed on a permanent basis, on the very same post, in the very same department, the length of the said break pales into insignificance. We are persuaded to believe that the said increments must have been granted taking into account his past service for a period of six years in this University as well.

The respondent has brought to our notice several instances where the University has condoned breaks of two months or more in the case of other teachers. We do not, however, think it necessary to examine those cases except two. One Dr. L.K. Panda was a teacher in the department of Ob. and Gyn. in the Institute of Medical Science of this University. He was appointed temporarily in 26.5.1973 and resigned on 5.2.1975. He was said to be out of job between 5.2.1975 and 27.4.1975 (for a period of two months 22 days). He was re-appointed as a lecturer in this University on temporary basis on 28.4.1975, and on a permanent basis on 16.10.1978. The respondent's case is that the University has condoned the said gap on two months 22 days in his case and if so there is no reason why the gap on three months 20 days in the case of respondent should not be condoned. The University has, however, explained in its counter affidavit that no such condonation was made in his case and that his service was counted only from 28.4.1975. But if his service is counted from 28.4.1975 only, it is significant to notice, he does not complete eight years service by 15.1.1983 which was the last day of applying—vide University proceeding dated 11/21 December, 1982. The other case is of Dr. A.M. Tripathi who was a teacher in the department of Paediatrics in the Institute of Medical Sciences of this University. He was appointed temporarily on 11.5.1974. According to the respondent, he resigned on 12.8.1975 and was out of job till 24.8.1975 when he went to Kabul. According to him, he served at Kabul in a non-teaching capacity from 25.8.1975 to 8.4.1976 and he was re-appointed as a lecturer in this University on temporary basis on 9.4.1976 and made permanent on 9.2.1979. The respondent says that the entire gap between 12.8.1975 to 8.4.1976 was condoned by the University for considering his case under the scheme. The appellant's case, however, is different. According to the appellant-University, he was sent to Kabul on

A deputation and that the break in his service occurring prior to his going to Kabul has never been condoned. We find that in the rejoinder-affidavit of the University filed in this court, there is a certain mix-up of the relevant dates in the case of these two teachers. Be that as it may, its case appears to be that services of these two were counted only from the date of their re-employment. Then the following significant statement occurs in the B rejoinder-affidavit filed in this court:

C "It is true that by 15.1.1983 he had not completed 8 years of continuous service in the same cadre. However, in the meanwhile the vice-chancellor as also the Executive Council decided that eligibility period of candidature for appointment to teaching posts under Merit Promotion Scheme be counted as on the date of interview, as per existing practice for regular appointments in view of the fact that the Executive Council treats posts in both categories on a part with each other. Accordingly since Dr. Tripathi had completed 8 years of continuous service in the same cadre by the date of interview on 23.6.1983, he was eligible and was selected by the statutory Selection Committee. Applying the very same principal which was approved by the Executive Council, Dr. L.K. Pandey became eligible and was selected."

D E In our opinion, the above statement in the rejoinder-affidavit filed by the University is very revealing. It shows that even though the said two teachers had not completed eight years' service by the prescribed date i.e. by 15.1.1983, the Vice-Chancellor and the Executive Council decided to extend the eligibility period till the date of interview so as to make them eligible for consideration. We are not suggesting any malafides or any unreasonable conduct to the University. All that we are saying is that the F University has been passing appropriate orders wherever the justice of a case demanded. In our opinion, the same treatment ought to have been extended to the respondent, in all the circumstances of the case.

For the above reasons, the appeal fails and is accordingly dismissed. No orders as to costs.

T.N.A.

Appeal dismissed.