

VINDU KISHORE SHARMA

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v.

CHANCELLOR, CHAUDHARY CHARAN SINGH
UNIVERSITY, MEERUT & ORS.

(Civil Appeal Nos.13724-13725 of 2015)

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NOVEMBER 26, 2015

[JAGDISH SINGH KHEHAR AND R. BANUMATHI, JJ.]

Service Law – Promotion – Claim of – Post of professor – Promotion of appellant-reader under the Personal Promotion Scheme to the post of Professor – However, revocation of order of promotion since the appellant did not exercise his option for continuing to be governed under the erstwhile instructions/Scheme – Writ petition challenging revocation order of promotion – High Court dismissed the writ petition as also the review petition – On appeal, held: For continuing in the erstwhile scheme, it was imperative for a teacher governed by the conditions of s. 31A, to opt in writing to remain under the said scheme – All those who did not exercise their express option in writing, would automatically be deemed to have accepted to be governed by the amended scheme – Appellant did not exercise his option, even after the issuance of the amended scheme to continue in the original scheme – Claim of the appellant for personal promotion could not have been considered under the original scheme – Thus, there is no infirmity in the revocation of promotion order – Respondent-University not to make any recovery of emoluments released to him, consequent upon his promotion to the post of Professor – Appellant having retired from service on attaining the age of superannuation, the respondent to release the retiral benefits to him – In case the appellant is entitled to promotion (or for the benefit of a higher grade) under the amended scheme, appellant to be

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- A *allowed the same – Uttar Pradesh State Universities Act, 1973 – s. 31A.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 13724-13735 of 2015

- B From the Judgment and Order dated 11.07.2014 of the High Court of Judicature at Allahabad, in Review Petition No. 9632 of 2014 in CMWP No. 32271 of 2002 and dated 12.12.2013 in CMWP No. 32271 of 2002.

- C WITH

CONMT. PET. (C) NOS. 479-480/2015

IN

- D SLP (C) NOS. 33090-33091/2014

Yatish Mohan, Kedar Nath for the Appellant.

- E Pramod Swarup, Ameet Singh, Pareena Swarup, Sushma Verma, Ankit Malik, Praveen Swarup for the Respondents.

The Judgment of the Court was delivered by

- F **J. S. KHEHAR, J.** C. A. Nos.13724-13725 of 2015 (Arising out of SLP(C)Nos.33090-33091 of 2014)

1. Leave granted.

- G 2. The appellant – Vindu Kishore Sharma was appointed as a Reader in the Department of Physics of the Chaudhary Charan Singh University, Meerut (hereinafter referred to as 'the University') on 30.03.1982. The appellant claimed onward promotion to the post of Professor under the "Personal Promotion Scheme". The promotion under the "Personal Promotion Scheme" was introduced by an amendment of the
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Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as 'the University Act') by inserting Section 31A therein. Section 31A being relevant for the present controversy, is extracted hereunder:

"31-A. Personal promotion to Teachers of University :

(1) Notwithstanding anything to the contrary contained in any other provision of this Act, a Lecturer in the University appointed under Section 31, or a Reader in the University appointed under Section 31 or promoted under this section, who has put in such length of service and possesses such qualifications, as may be prescribed, may be given personal promotion, respectively to the post of Reader or Professor.

(2) Such personal promotion shall be given on the recommendation of the Selection Committee, constituted under clause (a) of sub-section (4) of Section 31, in such manner and subject to such conditions as may be prescribed.

(3) Nothing contained in this section shall affect the posts of the teachers of the University to be filled by direct appointment in accordance with the provisions of Section 31."

A perusal of Section 31A reveals, that a scheme of personal promotion is contemplated for Lecturers, who can be promoted as Readers; and for Readers, who can be promoted as Professors. Section 31A also contemplates that eligibility for promotion under the "Personal Promotion Scheme" would be determined on the basis of "...such qualifications, as may be prescribed..."

3. The first prescription of qualifications for promotion under the "Personal Promotion Scheme", contemplated under Section 31A of the University Act, came to be issued on 25.02.1984. Under the aforesaid instructions, a Reader who

- A had completed 10 years regular service against the post of Reader (out of which 5 years should have been rendered in the same University) would be eligible for personal promotion to the post of Professor. The 1984 instructions also postulated, that such of the teaching staff as are eligible, and would apply
- B for personal promotion in the prescribed proforma, would be allowed personal promotion subject to their work being adjudged as satisfactory, by a Selection Committee.

4. Having been inducted into the service of the University
- C on 30.03.1982, the appellant became eligible for personal promotion, under the instructions dated 25.02.1994, on 30.03.1992. Consequent upon the appellant having raised a claim for promotion, the Chancellor of the University allowed him personal promotion against the post of Professor, with
- D effect from 11.03.1992. This promotion was granted to the appellant, only after he had been cleared for the same by the Executive Council of the University.

5. Even though the appellant was promoted under the
- E "Personal Promotion Scheme" to the post of Professor with effect from 11.03.1992, the order of promotion came to be revoked on 05.06.2008. A perusal of the aforesaid order dated 05.06.2008 reveals, that the order of personal promotion was recalled because the appellant had not opted to be governed
- F by the policy of promotion contemplated under the instructions dated 25.02.1984. It was the express case of the University, set up in the order dated 05.06.2008, that to continue to be governed by the instructions dated 25.02.1984, it was imperative for the appellant to have opted out of the schemes,
- G that came to be issued through the instructions dated 10.09.1987 and 07.01.1989. Since the appellant had not exercised his option for continuing to be governed by the scheme of 25.02.1984, his claim could not be considered under the said "Personal Promotion Scheme" regulated by
- H the instructions dated 25.02.1984.

6. The order dated 05.06.2008, passed by the University, came to be assailed by the appellant by filing Civil Miscellaneous Writ Petition No.32271 of 2002, in the High Court of Judicature at Allahabad, wherein, the prayer of the appellant was for the issuance of a writ, order or direction in the nature of writ of certiorari for quashing the order dated 05.06.2008 passed by the University. The above writ petition was disposed of by the High Court, through an order dated 12.12.2013, declining the prayer made by the appellant (for quashing the order dated 05.06.2008). The aforesaid order dated 12.12.2013 (as also, the order dated 11.07.2014, rejecting the review petition) is assailed by the appellant, through the instant appeals.

7. The solitary contention advanced at the hands of the learned counsel for the appellant, during the course of hearing was, that the appellant having applied for promotion under the "Personal Promotion Scheme" should be deemed to have opted for being governed under the scheme of 25.02.1984. At this juncture, it would be relevant to indicate, that the appellant had applied for promotion under the Personal Promotion Scheme on completing 10 years of service (on 30.03.1992) as Reader, in 1998.

8. The solitary question that arises for our consideration is, whether the appellant could claim promotion under the "Personal Promotion Scheme" of 25.02.1984. Whilst it is the contention of the appellant, that the appellant could be considered under the "Personal Promotion Scheme" of 25.02.1984; it is the submission of the learned counsel for the respondent, that the scheme of 25.02.1984, having been superseded by the schemes of 10.09.1987 and 07.01.1989, clearly debarred the claim of the appellant under the earlier scheme of 25.02.1984.

9. We have perused instructions dated 10.09.1987. The same have been placed on the record of this case as Annexure

G The aforesaid extracts from the scheme of 10.09.1987, leaves no room for any doubt, that such of the teachers who desired to continue to be governed under the erstwhile scheme of 25.02.1984, were required to exercise an express option to remain out of the new scheme of 10.09.1987, in writing within 90 days, failing which it would be deemed as if, they had opted

to be governed by the amended scheme of 10.09.1987. The express stance adopted by the appellant was, that there was no requirement for the appellant to exercise an option, to remain under the erstwhile scheme of 25.02.1984. It is therefore, that he did not tender such an option. The extracted paragraphs of the second scheme dated 10.09.1987 clearly reveals, that the view of the appellant was misconceived. Factually, the scheme of 10.09.1987 expressly required all teachers who desired to continue under the prevailing scheme of 25.02.1984, to make an option in writing to that effect. Since the appellant did not exercise such an option, we have no doubt whatsoever, that the appellant after the introduction of the scheme of 10.09.1987, came to be governed by the latter scheme of 10.09.1987.

10. Even after the scheme of 10.09.1987, the competent authority issued a further "Personal Promotion Scheme", on 07.01.1989. On this occasion also, similar stipulations, as were made in the scheme of 10.09.1987, were again made in the revised scheme, which are apparent from the following paragraphs of the revised scheme dated 07.01.1989 :

"1. This scheme applies to teachers in all State Universities/Colleges administered by the U.P. State Universities Act, 1973 admitted to the privileges of the Universities unless they have already specifically exercised an option in writing to remain out of this Scheme as referred to in para 19 hereinafter.

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19. These teachers in Universities and colleges will continue; to be governed by the provisions of the aforesaid personal promotion/selection grade scheme who have already exercised that option in writing within 90 days of the date of issue of Government order dated 10 Sept 1987. Such teachers will also be entitled to the

- A designation envisaged for various categories of teachers in these schemes but the scales of pay will be as follows:-
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| (i) Lecturer | Rs. 2,200-4,000 |
| (ii) Reader/Lecturer
(Selection Grade) | Rs. 3,000-5,000 |
| B (iii) Professor/Principal
(Selection Grade) | Rs. 4,500-5,700" |

- C For exactly the same reasons as have been recorded by us with reference to the "Personal Promotion Scheme" of 10.09.1987, we are satisfied, that for continuing in the erstwhile scheme of 25.02.1984, it was imperative for a teacher governed by the conditions of Section 31A of the University Act, to opt in writing to remain under the scheme of 25.02.1984. All those who did not exercise their express option
- D in writing, would automatically be deemed to have accepted to be governed by the amended scheme of 07.01.1989. Yet again, it is apparent, that the appellant did not exercise his option, even after the issuance of the amended scheme of 07.01.1989 (to continue in the original scheme of 25.02.1984).

- E 11. In the above view of the matter, there can be no doubt, that the claim of the appellant for personal promotion could not have been considered under the original scheme of 25.02.1984. Accordingly, we find no infirmity in the impugned
- F order dated 05.06.2008 passed by the University, whereby, the personal promotion granted to the appellant against the post of Professor with effect from 11.03.1992 has been revoked. The order of promotion was revoked because the claim of the appellant had been considered under the
- G "Personal Promotion Scheme" of 25.02.1984. The appellant's claim was wrongly considered under the "Personal Promotion Scheme" because he had not exercised an option in writing to be governed by the same, after the schemes of 10.09.1987 and 07.01.1989 were issued.

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12. It is, however, apparent, that the appellant enjoyed the benefit of personal promotion, till the order of promotion was revoked on 05.06.2008. Such being the situation, we are of the view, that it would be extremely unjust to require the appellant to refund the emoluments paid to him beyond his entitlement (with effect from 11.03.1992 till 05.06.2008). We therefore direct the respondent-University not to make any recovery of the emoluments released to him, consequent upon his promotion to the post of Professor with effect from 11.03.1992.

13. We have been informed, that the appellant has since been retired from service on attaining the age of superannuation. We are satisfied, that the ends of justice would require the respondent-University to calculate and release the retiral benefits to the appellant. However, before such retiral benefits are released to the appellant, we direct the respondent-University to consider the claim of the appellant for personal promotion (or for his placement in a higher grade) under the amended scheme of 07.01.1989. And in case the appellant is entitled to promotion (or for the benefit of a higher grade) under the amended scheme, the appellant shall be allowed the same by the respondent-University in consonance with law. The instant exercise shall be carried out by the respondent-University within three months from the date of receipt of a certified copy of this order.

14. The appeals are disposed of in the above terms.

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15. In view of disposal of main appeals, nothing further survives in these petitions, and the same are disposed of as such.