

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th July, 2012

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LPA NO.93/2012 & CM APPL.2285-86/2012

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K.S. JAWATKAR

.....

Appellant

Through: In person.

Versus

**CHANCELLOR JAWAHARLAL NEHRU UNIVERSITY
& ORS.**

..... Respondents

Through: Mr. S.C. Dhanda, Advocate for
JNU.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 16th September, 2011 of the Learned Single Judge disposing of WP(C) No. 2044/1992 and dismissing WP(C) No.911/2007, both preferred by the appellant. Though two separate appeals ought to have been filed but we have, with consent, finally heard the appellant who appears in person as well as counsel for the respondent Jawaharlal Nehru University (JNU) who appeared on advance

notice. During the course of hearing, the files of the writ petitions from which this appeal arises were also called for and perused.

2. The appellant joined the JNU w.e.f. January, 1971 as a Research Assistant in the Department of South Eastern Studies and was on 29th November, 1973 offered and on 3rd December, 1973 accepted the post of Associate Fellow in the Post Graduate Studies Centre (PGSC) of JNU at Imphal, Manipur, for a period of one year and which period was extended from time to time. Upon the PGSC at Imphal inviting applications for the posts of Associate Professor and Assistant Professor in Political Science Division, the appellant applied and was appointed as Assistant Professor, initially on *ad hoc* basis but was subsequently regularized. Upon the PSGC being transferred to Manipur University, according to the JNU the appellant became an employee of the Manipur University and ceased to be an employee of JNU. This led to a round of litigation (first round of litigation) and which culminated in the judgment titled ***Jawaharlal Nehru University Vs. K.S. Jawatkar*** AIR 1989 SC 1577 and it was held that the transfer of PGSC from JNU to Manipur University could not result in transfer of the employment of the appellant to Manipur University and the

appellant was held to be continuing in the service of JNU. The appellant, during the first round of litigation, had continued to work in the JNU.

3. The appellant thereafter filed WP(C) No. 2044/1992 (from which this appeal arises) seeking direction to JNU to, i) release his revised salary and other allowances including arrears and interest as of the post of Assistant Professor w.e.f. 1st January, 1986; (ii) to promote him w.e.f. 1st January, 1983 and give the benefit of the Merit Promotion Scheme (MPS); and iii) impugning the list of faculty members of JNU as on 1st October, 1989 which did not show the name of the appellant.

4. The learned Single Judge in the impugned judgment has noted that vide interim order dated 15th July, 1992 in WP(C) No. 2044/1992 JNU was directed to, without prejudice to rights and contentions pay to the appellant salary at the revised scale of pay and under the Career Advancement Scheme. While disposing of this petition, JNU has been directed to pay to the appellant simple interest at 9% per annum for the period from 1st January, 1986 to the date of payment of arrears in terms of interim order dated 15th July, 1992. Thus relief no. (i) in WP(C) No. 2044/1992 stands granted to the appellant and the appellant before us has not urged any

grievance qua the same. Insofar as the challenge in WP(C) No. 2044/1992 to the list of faculty members [relief No. (iii)] was concerned, the learned Single Judge held that the name of the appellant was not mentioned therein owing to the pendency then of the first round of litigation. It was further noticed that the position had since been rectified and the name of the appellant had been included in the subsequent list of faculty members. It was thus held that the only relief surviving in WP(C) No. 2044/1992 was of the claim of the appellant of entitlement to MPS.

5. Qua the entitlement to MPS, the case of the appellant was that though he had applied on 5th September, 1983 but his case was not considered and therefore one Mr. Sushil Kumar who was junior to the appellant and did not possess Ph.D. was promoted under the MPS Guidelines w.e.f. 1st January, 1983; that the appellant, after the judgment (supra) of the Supreme Court in the first round of litigation again represented for consideration of his case under the MPS and his said representation was considered on 23rd April, 1991 by a Selection Committee constituted for the said purpose but he was not found suitable for promotion to the post of Associate Professor under the MPS; however

the Selection Committee in its meeting held on 15th March, 1993 considered his case and found him suitable and promoted him to the post of Associate Professor w.e.f. 1st January, 1984.

6. Thus the controversy qua MPS also, is only as to whether the appellant was entitled to be promoted w.e.f. 1st January, 1983 instead of 1st January, 1984 from which date he was promoted. The challenge by the appellant on this account is predicated on the averment that the Selection Committee which rejected his case for promotion under MPS w.e.f. 1st January, 1983 was not properly constituted. It is averred that the 'expert members' thereof were experts in international relations and not in international politics as they ought to have been.

7. The learned Single Judge has dealt with the aforesaid, observing that decision of the Selection Committee could not be invalidated on this ground and specially when it is not the case that the members of the Selection Committee which rejected the case of the appellant for promotion w.e.f. 1st January, 1983 were inimical towards the appellant. The learned Single Judge accordingly held the appellant not entitled to the said relief claimed in WP(C) No. 2044/1992.

8. The appellant before us also has argued mainly on this aspect. He has invited our attention to, i) the pleadings in this regard in paras 17 and 18 of the writ petition; ii) the affidavit dated 10th July, 1992 filed by Professor M.L. Sondhi in the writ petition supporting the case of the appellant in this regard; iii) the Report of the Committee on Governance of Universities and Colleges to show that the nominee of the Vice Chancellor in the Selection Committee is to be concerned with the specialty for which the selection is being made and to be nominated after consultation with the Head of the Department and the Dean of Faculty- From the said Report it is also shown that it is advisable for the Vice Chancellor to invariably associate the Professor- in- charge of a particular field of specialization with the Selection Committee recommending appointments in that field; and iv) the Additional Affidavit dated 23rd April, 2010 filed by the Registrar JNU in WP(C) No. 911/2007 to contend that though as per the MPS Guidelines the case of the appellant for promotion under MPS, once rejected, could be considered only after lapse of two years but was considered before two years only. It is thus argued that the denial of promotion to the petitioner w.e.f. 1st January, 1983 is bad.

9. We are not inclined to, in this appeal enter into the controversy as to the qualification of the Members of the Selection Committee which rejected the case of the petitioner for promotion under the MPS Guidelines w.e.f. 1st January, 1983. In the absence of any plea of *mala fides*, the presumption is that the authorities entrusted with the task of constituting the Selection Committee have constituted the same as per the Rules/Guidelines and this Court is not entitled to interfere with the decision of the experts in this regard. We are unable to find any error in the approach of the learned Single Judge in dealing with the said issue. We therefore do not find any merit in the appeal qua the judgment in WP(C) No. 2044/1992.

10. At this stage it may be recorded that the appellant was superannuated from JNU on attaining the age of 62 years, on 31st August, 2000.

11. WP(C) No. 911/2007 was filed seeking (i) a direction to the JNU to grant the appellant promotion as Professor w.e.f. 1st January, 1992 and alternatively as Professor Appadorai Chair in international relations w.e.f. 1995; (ii) a declaration that the appellant is deemed to have continued in

service upto the age of 65 years in terms of statutory provision of clause 6 of the Academic Ordinance made applicable to JNU under the JNU Act, 1966 as well as Resolution dated 19th April, 1976 of the JNU; and (iii) a direction to JNU to pay to the appellant the entire arrears of salaries upto 31st August, 2003 and other statutory dues including pension w.e.f. 1st September, 2003.

12. The learned Single Judge has noted that vide detailed order dated 19th November, 2008 in WP(C) No. 911/2007 the scope thereof was confined to the claim of the appellant to promotion to the post of Professor w.e.f. 1st January, 1992 as the other reliefs claimed by the appellant were held to be barred by *res judicata*. Mention in this regard has been made of WP(C) No. 3502/1995 and WP(C) No. 6107/2000 also filed by the appellant and the judgments therein holding that the appellant had no right to be considered for appointment to the Appadorai Chair and no right to remain in service upto the age of 65 years. It is also not in dispute that the appellant preferred LPA 1/2009 against the said order dated 19th November, 2008 but which was dismissed on 6th January, 2009. It is also not in dispute that the appellant preferred SLP 10313/2009 thereagainst

which was not entertained and disposed of on the statement of the appellant that his claim for continuing till 65 years was pending in other matters. The appellant was however unable to inform the learned Single Judge and has been unable to inform us also as to where else the said claim was pending except in WP(C) No. 911/2007. It thus has to be held that the scope of WP(C) No. 911/2007 is confined only to the claim to the post of Professor w.e.f. 1st January, 1992.

13. Qua the said claim, the learned Single Judge has held that the Committee constituted for the said purpose had in its meeting held on 30th August, 1996 not found the appellant fit for promotion and had recommended the case of the appellant to be considered after two years. The learned Single Judge has further noticed that the appellant did not at any time thereafter and until 7 years after his superannuation, raise the said issue. It has thus been held that the said claim is barred by laches.

14. We are in agreement with the reasoning given by the learned Single Judge. The appellant, if aggrieved by non-grant of promotion to the post of Professor or by Minutes of the Meeting held on 30th August, 1996 of the Selection Committee, ought to have challenged the same immediately.

The learned Single Judge has further rightly observed that no such claim was made in WP(C) No. 6107/2000 preferred by the appellant. No error is found in the said reasoning of the learned Single Judge also. We are thus in agreement with the dismissal of WP(C) No. 911/2007 by the learned Single Judge.

15. Axiomatically this appeal is without merit and is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13, 2012
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