

Court No. - 35

Case :- WRIT - A No. - 13667 of 2023

Petitioner :- Vinod Kumar Singh

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Kamlesh Kumar Yadav

Counsel for Respondent :- A.S.G.I.,Anupama Parashar,Hem Pratap Singh,Pooja Agarwal

Hon'ble Vikas Budhwar,J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Kamlesh Kumar Yadav, learned counsel for the writ petitioner, Sri Anupam Parashar, learned counsel who appears for respondents No. 1 and Ms. Pooja Agarwal, learned counsel who appears for respondents No. 2 to 4.

2. Since a counter affidavit has been filed by Ms. Pooja Agarwal on behalf of respondents No. 2 to 4 University to which a rejoinder affidavit has also been filed and the counsel appearing for the Union of India does not propose to file any response, thus, with the consent of the parties, the writ petition has been decided at the fresh stage.

3. The case of the writ petitioner is that he pursuant to a regular selection conducted by the Lucknow University, Lucknow was appointed as a Routine Grade Clerk in the faculty of Education, Lucknow University on 01.07.2000 and, subsequently as per the writ petitioner he continued since 01.07.2000 to 31.11.2006 as a Routine Grade Clerk in the Lucknow University and, thereafter, the writ petitioner claims to have been selected/appointed as Lecturer in the Institute of Education run by the Society for Higher Education and Practical Applications (SHEPA), Varanasi and he was issued appointment order on 25.09.2006. The writ petitioner claims to have joined the post of Lecturer on 01.12.2006 till 02.08.2009. It is further the case of the writ petitioner that subsequently for the period from 03.08.2009 to 30.06.2010 he again joined the Lucknow University as a Routine Grade Clerk. As per the writ petitioner, an advertisement is stated to have been published by the Banaras Hindu University (BHU) being Advertisement No. 1 of 2009-10 inviting applications from the post of Lecturer in Education (Mathematics) in Faculty of Education, Banaras Hindu University, Varanasi, the writ petitioner

claims to have subjected himself before the Selection Committee and subsequently he was issued an appointment order on 28.06.2010 appointing him on the post of Lecturer in Education (Mathematics), in the Rajiv Gandhi South Campus- Barkachha (Mirzapur), Faculty of Education, Banaras Hindu University in the grade of Rs. 8000-275-13500 (pre-revised). It is the further case of the writ petitioner that by virtue of the order dated 1.10.2012 he was confirmed on 01.07.2011. As per the writ petitioner he applied for promotion under Career Advancement Scheme from Assistant Profession (Stage-I) to Assistant Professor (State-2). An order is stated to have been passed on 09.11.2016 by the Deputy Registrar (Recruitment and Assessment Cell) whereby the writ petitioner was granted promotion as Assistant Registrar (Stage-II). The writ petitioner further claims to have joined the promotional post on 11.11.2016, however, by virtue of a subsequent order dated 29.07.2017 issued by Assistant Registrar (Administration-Teaching) the date of the eligibility of promotion as Assistant Professor (Stage-II) under Career Advancement Scheme was fixed from 01.07.2014. The writ petitioner claims to have represented his cause that he should have been granted the said benefits from 05.08.2011 instead of 1.07.2014 by virtue of the representation dated 7/9.10.2017 to which on 15.12.2017 a notice which is stated to have been issued to the writ petitioner which the writ petitioner claims to have replied to. However, according to the writ petitioner on 21.02.2018, the fourth respondent, Assistant Registrar (Admin-Teaching), Banaras Hindu University, Varanasi proceeded to negate the claim of the writ petitioner coming with a stand that in view of clause 10.1(b) of the UGC Regulations, 2010 the services undergone by the writ petitioner as an Assistant Professor at SHEPA, Varanasi on 01.12.2006 to 02.08.2009 for promotion to the next higher grade under CAS cannot be counted. As per the writ petitioner he kept on representing the matter and now again an order is stated to have been passed on 04.02.2023 reiterating the said stand which has already been taken by the University on 21.02.2018.

4. Questioning the order dated 21.02.2018 and 04.02.2023 passed by the fourth respondent institution the writ petitioner has preferred the present writ petition. This Court entertained the writ petition while calling for the response from the respondents.

5. Pursuant thereto, a counter affidavit has been filed on behalf of the respondent No. 2 to 4 sworn by the Law Officer B.H.U., Varanasi dated 25.09.2023 to which a rejoinder affidavit has been filed by the learned counsel for the writ petitioner.

6. Sri Ashok Khare, learned Senior Counsel assisted by Sri Kamlesh Kumar Yadav, learned counsel for the writ petitioner while assailing the orders dated 21.02.2018 and 04.02.2023 passed by the fourth respondent has sought to contend that both the orders cannot be sustained for a single moment particularly in view of the fact that they completely overlook and omit to consider the provisions contained under Clause 10.0 of the UGC Regulations dated 30.06.2010 as according to him not only the order in question is bereft of any reason but also it does not take into account the contention raised by the writ petitioner.

7. According to Sri Khare, though the order in question recites the fact that in view of the clauses 10.1 (f) (iii) of the UGC Regulations, the previous services cannot be added but as to why and under what circumstances it is not to be added has not been demonstrated. Learned Senior Counsel for the writ petitioner at this juncture has invited the attention of the Court towards the paragraphs of the counter affidavit so as to contend that possibly there are two reasons for non-suiting the claim of the writ petitioner firstly, on the date of the appointment of the writ petitioner pursuant to the selection conducted by the respondent University i.e. 28.06.2010 based upon the meeting of the Executive Council of the University dated 15.04.2010 while engaging him on the post of Lecturer in Education (Mathematics) the writ petitioner was not working in the same capacity in the same level at that point of time just prior to the selections and issuance of the appointment order as the writ petitioner was working as Routine Grade Clerk. Thus, the writ petitioner is not entitled to the said benefit. The second ground taken is with regard to the fact that the respondents have taken into account clause 10.1 (c) so as to negate the claim as the writ petitioner though applied for direct recruitment but it was not through proper channel.

8. Sri Khare, thus, seeks to submit that so far as the first objection raised by the University is concerned, the same is preposterous besides being out of context particularly in view of the fact that what is to be seen is the application of clause 10.1 (f) which itself provides that the previous appointment should not be as a guest Lecturer for any duration or on ad hoc or any vacancy less than one year duration, ad hoc or temporary services of more than one year duration can be counted provided that the period of service more than one year duration the incumbent was appointed on the recommendation of duly constituted selection committee and the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service with break. He further relies upon

clause 10.1(g) so as to further contend that no distinction could have been made with reference to the nature of Management of the institution where previous services was rendered (private/local body/government), which was to be considered for counting past services under the said clause. He, thus, submits that irrespective of the fact that the writ petitioner was working in a private institute by the name of SHEPA, but the nature of the appointment itself suggest that his case stands covered under the said clause. According to Sri Khare, the objection of not applying through proper channel while invoking the clause 10.1(c) is also not tenable as in the present case it is not a case of direct recruitment, however, it is a case for grant of benefits for the past services for promotion under the CAS category as the writ petitioner's appointment has not been questioned by the University and further as per the respondent themselves as stated in paragraph No. 7 of the counter affidavit the pensionary benefits are being sought to be made available to the writ petitioner while taking into consideration the erstwhile services. Sri Khare, thus, submits that, of course, certain grounds which have been sought to be taken are totally lacking in the order impugned as they stand recited in the counter affidavit.

9. Sri Khare, in order to buttress his submission has sought to rely upon the judgment in the case of ***Sharadendu Bhushan Vs. Nagpur University, Nagpur & Others Civil Appeal No. 3803 of 1986 in Special Leave Petition No. 10901 of 1985*** decided on September 29, 1986 and ***B.H.U. Vs. Indra Pratap Singh 1992 Supreme Court (2) SCC 2*** so as to contend that it is not necessary that prior to the appointment/engagement in the new assignment the same should be followed on the same capacity for the purposes of experience. Submission is that experience at the same level and status can be considered irrespective of any spell of period undergone. Sri Khare, in this regard, has also invited the attention of the Court towards page 30 of the rejoinder affidavit being a certificate issued by the head of the department of Education, University of Lucknow dated 27.08.2010 so as to contend that he had submitted the certificate and the no objection from the concerned employer who was the competent authority at this stage of interview as in this regard he seeks to rely upon para 21 of the rejoinder affidavit. He further seeks to rely upon a certificate dated 19.11.2014 of the SHEPA institute which is at page 21 of the writ petition, thus, according to the learned Senior Counsel for the writ petitioner the order in question be set aside the matter be remitted back to the authorities to pass fresh order.

10. Ms. Pooja Agarwal, while countering the submission of the learned counsel for the writ petitioner submits that the order impugned is perfectly valid and in accordance with law no fault whatsoever attributed in this regard. She submits that once there is a specific provision under clause 10.1 (c), that a candidate for appointment under direct recruitment and promotion has to apply through proper channel, thus, the distinction so carved out by the learned Senior Counsel for the writ petitioner that it is applicable to direct recruitment and not in the case of promotion under CAS is misconceived. She further submits that even in fact clause 10.1(f) also comes into play which itself dis-entitles the writ petitioner from the benefit. Ms. Pooja Agarwal has also invited the attention towards paragraph 6 of the counter affidavit as well as the certificate appended by the writ petitioner from SHEPA Institute of Education at page 21 of the writ petition, dated 19.11.2014 wherein it has been mentioned that the writ petitioner was on leave without pay from 03.08.2009 to 30.06.2010, she further submits that from the sequence and date of events it is explicit that the writ petitioner had not resigned from the institution SHEPA and the writ petitioner had joined the Lucknow University, thus, in fact, the writ petitioner was claiming the appointment of two different places one at SHEPA and second at Lucknow University. She further submits that the pensionary benefits have been accorded to the writ petitioner, thus, now it is not open for him to question the order impugned.

11. I have heard the learned counsel for the parties and perused the record.

12. Undisputedly, as per the averments and the tabular chart so exhibited in para 6 of the counter affidavit filed by the University details of the posting of the writ petitioner has been given. There is no dispute to the said dates and the joining of the writ petitioner, the respondent University has also not questioned the appointment of the writ petitioner on the post of Lecturer in Education (Mathematics) on 28.06.2010 it is also not in dispute that the writ petitioner was confirmed on the post in question on 01.07.2011 with effect from 01.10.2012 and was granted promotion as Assistant Professor (Stage II) on 09.11.2006 and thereafter on 29.07.2017 his eligibility for promotion has been fixed with effect from 01.07.2014.

13. The bone of contention between the parties is with reference to the date on which the said entitlement is to be extended either 05.08.2011 or 01.07.2014. Both the parties seek to rely upon the provisions contained under clause 10.0, counting of past services

for direct recruitment for promotion under CAS. The only question which arises is whether the services undergone by the writ petitioner as a Lecturer in the Institute of Education, SHEPA for the period from 01.12.2006 to 02.08.2009 is to be counted for promotion under CAS category in the respondent-University or not.

14. The contention of the learned Senior Counsel for the writ petitioner is that clause 10.01 (f) and (g) does not stipulate that services undergone by the writ petitioner as a Lecturer in the Institute of Education SHEPA University should be just prior to selection and appointment of the writ petitioner as Lecturer in the respondent-University. According to him what relevant is the appointment, working and experience of an incumbent as a Lecturer and in absence of any provision of working on the post of Lecturer prior to the selections/appointment in the respondent-University in the UGC Regulation, the stand taken by the University is untenable in the eyes of law. Further it is also the case of the writ petitioner that 10.01 (c) applies only for direct recruitment and here it is a case of promotion under CAS for counting of the past services and once the writ petitioner has submitted no objection and the certificate of working by the Lucknow University and SHEPA then the claim of the writ petitioner could not have been negated. Though Ms. Pooja Agarwal, learned counsel who appears for the respondent-University places reliance upon para 6 of the counter affidavit as well as the certificates relied upon by the writ petitioner while arguing that the certificate issued by SHEPA Institute of Education provides that the writ petitioner was working as a Lecturer but he was leave without pay from 03.08.2009 to 30.06.2010 and further the certificate issued by Lucknow University dated 27.03.2010 which the writ petitioner claims to have submitted at the time of interview but both the certificates suggest that the writ petitioner was having lien and was working under two different employers simultaneously, thus, rightly the claim of the writ petitioner was not acceded to.

15. On a pointed query being raised to Ms. Pooja Agarwal whether in the orders impugned in the writ petition, the said issues were deliberated or considered, she submits that the reasons are lacking in the order impugned. At this juncture, Ms. Pooja Agarwal, learned counsel who appears for the respondent University submits that the matter be remitted back to the fourth respondent to pass a fresh order while addressing the said fundamental and core issues.

16. To such a submission, Sri Ashok Khare, learned Senior

Counsel assisted by Sri Kamlesh Kumar Yadav has no objection and he gracefully accepts the same.

17. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided in the following manner: (a) the orders dated 21.02.2018 and 04.02.2023 passed by the fourth respondent, Assistant Registrar (Admin-Teaching), Banaras Hindu University, Varanasi is set aside; (b) the matter stands remitted back to the fourth respondent to pass fresh order strictly in accordance with law after seeking version of the writ petitioner within a period of three months from the date of production of certified copy of the order in accordance with rules and regulations of the UGC governing the field.

18. With the aforesaid observation, the writ petition stands disposed of.

Order Date :- 30.10.2023

Rajesh