

Court No. - 1

Case :- WRIT - A No. - 2000890 of 2002

Petitioner :- Dr. Desh Deepak

Respondent :- State Of U.P.Through Secy.Higher Education

Counsel for Petitioner :- U.S.Sahai

Counsel for Respondent :- C.S.C.,Rajesh Tewari,Savitra Vardhan Singh

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the petitioner, Sri Rajesh Tiwari for opposite party no. 2, Chancellor, Lucknow University and Sri Savitra Vardhan Singh, learned Standing Counsel for the Lucknow University.
2. The writ petition is directed against the order dated 31.5.2002 passed by the Chancellor, Lucknow University, opposite party no. 2 by means of which appointment of the petitioner on the post of Reader in the Chemistry Department of Lucknow University has been cancelled on the ground that the petitioner does not possess requisite educational qualification as per the First Statutes of the University of Lucknow.
3. The brief facts of the case are that by advertisement no. 2000/20 published in July/August, 2000, applications for the two posts of Reader, one for general category and the other for reserved category (scheduled caste), in the Chemistry Department of the University were invited. The petitioner applied for the said post against the general category in August/September, 2000.
4. The petitioner was called for interview and he appeared before a duly constituted Selection Committee consisting of Prof. D.P. Singh, Vice Chancellor, Lucknow University,

Prof. H.M. Chawla of IIT, New Delhi, Prof. S.P. Gupta of Birla Institute of Technology and Science, Prof. (Mrs) A. Khare, Head of the Chemistry Department of Lucknow University and Sri C.P. Tripathi, Registrar, Lucknow University.

5. The Selection Committee after considering the academic record, research publications, teaching experience as well as research supervision coupled with the overall performance in the interview recommended for the appointment of the petitioner on the post of Reader. However, the Committee did not find the sole reserved category candidate suitable for appointment against the reserved vacancy and recommended the reserved category post to be re-advertised.
6. The proceedings of the Selection Committee were placed before the Executive Council in its meeting on 11.4.2001 and the Executive Council in turn approved the recommendations of the Selection Committee and consequently, an appointment letter dated 11.4.2001 was issued to the petitioner for the post of Reader on which he joined on the same day i.e. 11.4.2001.
7. The petitioner thus continued to perform his duties on the post of Reader in Chemistry Department of the University and there was no complaint against him from any corner nor he was faced with any disciplinary proceedings and, therefore, his services were liable to be confirmed after one year of probation on 11.4.2002.
8. However, the petitioner received a letter from the Legal Advisor to the Chancellor intimating that a question

having been raised by one Sri Panchanan Rai, MLC in the Legislative Council was referred to the Chancellor, who has required the petitioner to submit his comments relating to his appointment on the post of Reader in the Chemistry Department of Lucknow University.

9. The letter issued by the Legal Advisor consequent upon an issue raised in the Legislative Assembly, as a matter of fact, did not seek any clarification from the petitioner on any specific issue relating to his selection but it vaguely required the petitioner to make his comments on his appointment.
10. The petitioner instead of indulging into further communication or seeking clarification proceeded to submit his comments as required in the letter dated 19.5.2001. The petitioner in his detailed comments dated 4.6.2001 submitted that he possesses the requisite qualifications for the post of Reader and has a large number of publications, high standard of research work and number of honour and awards to his credit. However, after submission of comments by the petitioner, no further communication was received in this regard.
11. Learned counsel for the petitioner submitted that without there being any dissatisfaction with regard to the reply of the petitioner or so to say any communication in this regard, to his utter dismay and surprise, the petitioner was served with the impugned order dated 31.5.2002 on 1.6.2002 cancelling his appointment on the post of Reader in the Chemistry Department of Lucknow University.

12. It is against the order dated 1.6.2002 that the petitioner approached this Court by filing this writ petition in September, 2002. This Court while entertaining the writ petition and issuing notice to opposite parties no. 7, 8 and 9, stayed the impugned order dated 1.6.2002 by an order dated 6.6.2002 which is reproduced hereinbelow:

“Admit.

The notice on behalf of opposite parties No.2, 4, 5 and 6 has been accepted by Sri P.C. Agarwal. The notice on behalf of opposite parties No.1 and 3 has been accepted by the learned chief Standing Counsel, who prays for and is granted six weeks' time to file counter affidavit.

Issue notice to opposite parties No.7 to 9.

The candidature of the petitioner for the post of Reader in Chemistry was recommended by the Selection Committee on 23.2.2001 which was duly accepted by the Executive Council on 11.4.2001 and since then the petitioner was working as Reader in Chemistry.

Dr. L.P. Misra, learned counsel for the petitioner submits that the Chancellor has wrongly interrupted Clause 11.02. He further submits that before passing the impugned order no copy of the representation preferred by the opposite parties No.7 to 9 were given to the petitioner and no opportunity was afforded to the petitioner.

In view of the aforesaid facts, the operation and enforcement of the impugned order dated 31.5.2002, a copy of which has been annexed as Annexure No.1 to the writ petition shall remain stayed till further orders of this court.”

13. The main ground taken in the impugned order for cancellation of the petitioner's appointment is that the petitioner did not possess the requisite educational qualification on the post of Reader as per the Statute applicable. The appointment was thus rejected terming it to be unlawful.
14. Learned counsel for the petitioner has vehemently argued that before passing the impugned order of cancellation of

appointment, the petitioner was not served with any show cause notice nor any opportunity of hearing was provided to him and the impugned order has been passed on the basis of a letter written by a MLC Sri Panchanan Rai which is said to have been based on the representations made by (i) Dr. Padam Kant, Reader in the Chemistry Department of Deen Dayal Upadhyaya Gorakhpur University (ii) Sri R.N. Singh, Lecturer in the Chemistry Department of Lucknow University and (iii) Sri P.N. Tripathi from Gonda.

15. Submission is that Dr. Padam Kant had applied for the post of Reader against a reserved category vacancy and since the petitioner had applied and selected against general category vacancy hence his case cannot be assessed at par with Dr. Padam Kant. So far as Sri R.N. Singh and Sri P.N. Tripathi are concerned, they were interviewed alongwith the petitioner and after deliberations of the Selection Committee, the petitioner was recommended for appointment and was accordingly appointed. The recommendations made by the Selection Committee were duly approved by the Executive Council and the selection of the petitioner was duly approved.
16. Initially the writ petition was filed with the prayer for quashing the impugned order dated 31.5.2002 and to allow the petitioner to continue on the post of Reader in the Department of Chemistry and pay salary to him accordingly. However, pursuant to an order dated 28.8.2023, the writ petition was amended and the following reliefs were added in view of subsequent developments:

(iii)-a - issue a writ, order or direction in the nature of MANDAMUS commanding the opposite to consider promotion of the petitioner to the post of Professor under the Career Advancement Scheme within the time provided by this Hon'ble Court and promote him to the post of Professor from the date he became entitled and provided him arrears of salary and other dues consequent upon his promotion to post of Professor under the Career Advancement Scheme within the time provided by this Hon'ble Court.

(iii)-b issue a writ, order or direction in the nature of MANDAMUS commanding the opposite parties to pay the pension and other retiral benefits including arrears of salary inclusive of arrears as a result of promotion of the petitioner to the post of Professor under the Career Advancement Scheme (CAS), leave encashment and Group Insurance maturity value etc. and continue pay pension to the petitioner month to month as per his entitlement.

17. The aforesaid reliefs came to be added in the wake of the fact that the petitioner continued to remain service on the strength of the interim order passed by this Court, as quoted above and ultimately retired on attaining the age of superannuation on 30.5.2022 while working on the post of Associate Professor (renamed post of Reader) in the Department of Chemistry w.e.f. 30.6.2022 by virtue of extension upto the end of academic session 2021-2022.
18. It would thus be seen that the petitioner who was initially appointed as Research Scholar and later as a part-time Lecturer has continued to perform his duties on being selected as Reader and has retired while serving an

Associate Professor, as the nomenclature of Reader came to be changed to 'Associate Professor'. The impugned order was passed questioning the appointment of the petitioner on the post of Reader and he was allowed to perform his duties on the post of Associate Professor till his retirement, however, the department has not granted the benefit of Career Advancement Scheme which became due to the petitioner on completion of eight years of service, due to the pendency of the present writ petition, as alleged by the petitioner.

19. The petitioner has continuously worked on the post of Reader on the strength of the interim order dated 6.6.2002 without any break or any complaint with regards to his conduct and performance till the date of his retirement i.e. 30.5.2022. However, the grievance raised by way of amendment after his retirement is that the petitioner was denied promotional scale of the higher of Professor which fell due after eight years of service, in 2009 under the Career Advancement Scheme on the ground of the pendency of this writ petition and the same depends upon the outcome of the same.
20. That apart, the petitioner has also not been granted pension for which he is entitled having been appointed in the year 2002 nor any post retiral dues have been paid to him.
21. Learned counsel for the petitioner has vehemently impressed upon the court to justify the eligibility of the petitioner on the post of Reader and made submissions at

length enumerating the research work done and achievements made by him.

22. We have heard learned counsel for the parties at length and perused the record.
23. The qualifications for the post of Reader (now termed as Associate Professor) are provided in para 11.02 of Chapter XI of the First Statutes of Lucknow University which reads as under:

“11.02 - In the case of the Faculties of Arts, Commerce, Science, Education & Law, the following shall be the minimum qualifications for the post of Reader & Professor

(1) A Reader in the University, namely -

(2) Ph.D degree with Good Academic Record and 55% marks at Post-graduate level or 'B' grade in 7 point scale of the University Grants Commission.

(3) At least five years' teaching experience in a University/College with research experience and significant achievement in the field of education which may be verified with his published work, innovation in academic field, contribution in framing new courses.

Provided that the requirement contained in clause may be relaxed in the case of a candidate who, in opinion of the Selection Committee, has outstanding research work to his credit.”

24. The Chancellor, however, while passing the impugned order has taken into account clause 11.01 of the Statutes which deals with the ‘qualifications and appointment of Lecturers in the university’ has emphasizing upon the term used in clause 11.01(5)(a) viz. ‘consistently good academic

record’ and observed that the petitioner does not fulfill the requirement of having consistently good academic record.

25. It is specifically submitted by learned counsel for the petitioner that the Chancellor has erred in considering the clause 11.01 which is not applicable for the post held by the petitioner as the same governs the appointment on the post of Lecturer. It is the clause 11.02 quoted above which specifically governs the appointment of a candidate on the post of Reader and the same does not provide for ‘consistent good academic record’ rather in clause 11.02(1) (b) *‘good academic record with a doctorate degree or equivalent published and active engagement in research of innovation in teaching methods or production of teaching materials’*, has been provided.
26. From a perusal of the academic record of the petitioner, it is clear that he fulfills the requirement of clause 11.02 and has a sufficiently good academic record and an excellent research work to his credit. The Selection Committee duly constituted for conducting the selection has scrutinized the academic record, research publication, teaching experience and overall performance of all the candidates and finding the petitioner most eligible and deserving, recommended his name for appointment. The Committee gave due recognition to the academic achievements after his masters degree and Ph.D. The Selection Committee while recommending the petitioner for the post of Reader in Chemistry, in the minutes of meeting, has specifically observed as under:

“Dr. Desh Deepak: His brilliant academic achievements after his Master’s degree and Ph.D. far overweighs his deficiency at B.Sc. Level. The Committee feels that Dr. Desh Deepak is the best choice for his position.”

27. From the above, it is clear that the Selection Committee being well aware of the requisite qualifications recommended the name of the petitioner for appointment considering his brilliant academic achievements after master’s degree, which according to the Committee overweighed the deficiency at B.Sc. Level invoking the proviso attached to clause 11.02 applicable in the case of the appointment on the post of Reader. For making selection on the post of Reader weightage and emphasis is given to the published work and research undertaken. This is also in keeping with the UGC Regulations, 2000 wherein clause 1.3.2 deals with the qualifications for the post of Reader and the same is reproduced as under:

1.3.2 Reader

Good academic record with a doctoral degree or equivalent published work. In addition to these, candidates who join from outside the university system, shall also possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A,B,C,D,E and F at the Master's degree level.

Five years of experience of teaching and/or research excluding the period spent for obtaining the research degrees and has made some mark in the areas of scholarship as evidenced by quality of publications, contribution to educational innovation, design of new courses and curricula.

28. It would thus be seen that the Chancellor has erred while scrutinizing the appointment of the petitioner on the post of Reader by relying upon a provision which was not applicable to the petitioner. The petitioner, in view of the aforesaid facts, withstands the scrutiny of his appointment

on the anvil of qualifications as prescribed for the post of Reader.

29. It may not be out of place to submit that before passing of the impugned order no opportunity of hearing or putting his defence was ever afforded to the petitioner. The petitioner was even not issued a show cause notice before taking such a harsh decision of cancelling his appointment.
30. In view of the entire conspectus and peculiarity of the case coupled with the fact that the impugned order has been passed on incorrect appreciation of the qualification prescribed for the post in question and no irregularity or illegality having been pointed out in the appointment of the petitioner on the post of Reader, we are of the considered opinion that the impugned order cannot be sustained and deserves to be quashed. The impugned order dated 31.5.2002 passed by the Chancellor, Lucknow University, Lucknow, opposite party no. 2, is thus quashed.
31. The petitioner shall be treated to be a regularly appointed Reader and shall be paid all the consequential benefits, as may be admissible to him like difference of salary, gratuity, pension, GIS and all the post retiral benefits. The petitioner shall be also be granted the benefit of Career Advancement Scheme from the date the same fell due. The salary from the date when the benefit of Career Advancement Scheme is made available to the petitioner till the date of his retirement as well as the arrears and current pension shall be fixed accordingly within a period

of two months and the same shall be paid to him within next two months.

32. The writ petition is accordingly **allowed**. No order as to cost.

(Hon'ble Brij Raj Singh,J.) (Hon'ble Attau Rahman Masoodi,J.)

Order Date :- 20.3.2024

Fahim/-

Dr. Desh Deepak versus State Of U.P. and others