

Court No. - 5

Case :- WRIT - A No. - 14072 of 2021

Petitioner :- Dr. Neeraj Jain

Respondent :- University Of Lucknow Thru. Registrar And Ors.

Counsel for Petitioner :- Anupam Mehrotra, Shubham Singh

Counsel for Respondent :- C.S.C., Anurag Kumar Singh

Hon'ble Abdul Moin, J.

1. At the very outset, Shri Anurag Kumar Singh, learned counsel appearing for the respondents No.1 & 2 states that he does not intend to press on with the preliminary objections that have been raised by him and the matter may be decided on merits.

2. Heard learned counsel for the petitioner, Shri Anurag Kumar Singh, learned counsel for the respondents No.1 & 2 and learned Standing counsel appearing for the respondent No.3.

3. Under challenge is the order dated 22.06.2021, a copy of which is annexure 1 to the petition, passed by the Vice Chancellor of the Lucknow University. By the said order, the representation preferred by the petitioner has been rejected.

4. Further prayer in the petition is for a mandamus commanding the respondents to make personal promotions of the petitioner in the concerned department to the post of Associate Professor & Professor w.e.f. 01.07.2017 & 01.07.2020 respectively with all consequential benefits.

5. Bereft of unnecessary details, the facts are that earlier, the petitioner had preferred **Writ Petition No.7913(S/S) of 2021 in Re: Dr. Neeraj Jain Vs. University of Lucknow and Another** before this Court contending that although the first, second and

third stage benefits under the career advancement scheme have been granted to the petitioner with retrospective effect, however he has not been considered for grant of stage 4 and stage 5 benefits under the said Statutes.

6. It is contended that stage 4 and stage 5 benefits under the Statute are promotion to the post of Associate Professor and Professor.

7. This Court, vide judgment and order dated 22.03.2021, a copy of which is annexure 21 to the petition, disposed of the petition with a direction that the application of the petitioner dated 23.10.2020, which had been submitted to the Chancellor, so far as it relates to stage 4 and stage 5 benefits under the career advancement scheme w.e.f. 01.07.2017 & 01.07.2020 respectively, be considered by the competent authority of the Lucknow University in accordance with law.

8. In pursuance thereof, the order impugned dated 22.06.2021, a copy of which is annexure 1 to the petition, has been passed whereby the claim of the petitioner has been rejected.

9. Incidentally, subsequent to the aforesaid order, the petitioner has already retired from service after attaining the age of superannuation on 30.06.2021, having been granted the end of session's benefit, his actual retirement being 06.11.2020.

10. The contention of learned counsel for the petitioner is that a perusal of the order impugned dated 22.06.2021 would indicate that it is the Vice Chancellor who had passed the order and that too, on the basis of the legal opinion that had been obtained by him, by simply reproducing the legal opinion of the advocate.

11. The argument is two fold namely that (a) there is no application of mind on the part of Vice Chancellor while

passing the order impugned inasmuch as, he has simply reproduced the legal opinion of the advocate in the order impugned without indicating as to whether the said legal opinion is, in fact, in accordance with law or the Statute or the U.P. State Universities Act, 1973 (**hereinafter referred to as "Act, 1973"**) and; (b) once the order of the writ Court was for the competent authority to consider the application of the petitioner, even though the said application had been preferred to the Chancellor, consequently, it is the competent authority which should have decided the said application which, as per the provisions of Sections 31, 31-A, 21(1)(vii) of the Act, 1973 along with the Statutes 11.04.08 read with 11.04.03 of the Lucknow University's First Statutes, is the Executive Council who was to decide the said application.

12. On the other hand, Shri Anurag Singh, learned counsel appearing for the Lucknow University has argued that once the application preferred by the petitioner was addressed to the Chancellor and the competent authority to decide the said application under 13(1) of the Act, 1973 is the Vice Chancellor, who is the Principal Executive and the Academic Officer of the University, consequently, he has decided the said application.

13. As regards the reproduction of the legal opinion in the order impugned, it is contended that once, as per the legal opinion itself, the claim of the petitioner could not be considered on account of he having retired and continuing in service only up to the end of the present session i.e. up to 30.06.2021, consequently it was not possible to assess the petitioner on the performance criteria which assessment is to be done by the duly constituted Selection Committee and hence, his representation was rejected.

14. Shri Singh argues that considering the aforesaid, there is no

illegality or infirmity in the order impugned.

15. Heard learned counsels for the parties and perused the record.

16. From a perusal of the record, it emerges that the petitioner had approached this Court praying for consideration of grant of stage 4 and stage 5 benefits under the Statutes. The writ Court, vide judgment and order dated 22.03.2021 has required the competent authority to consider the application of the petitioner dated 23.10.2020. Though the application was addressed to the Chancellor yet the same has been decided by the Vice Chancellor of the University vide the order impugned dated 22.06.2021 whereby the application of the petitioner has been rejected. A perusal of the order impugned would indicate that the legal opinion that had been obtained by the University has only been reproduced in the said order and based on the said legal opinion, it has been opined that the application of the petitioner cannot be acceded to and it has been rejected.

17. Incidentally, a perusal of the order impugned does not reflect any independent application of mind by the Vice Chancellor of the University.

18. From a perusal of the order impugned, it also does not emerge that once the application of the petitioner was addressed to the Chancellor and the writ Court had required the competent authority to take a decision on the said application, as to what prevailed on the Vice Chancellor to decide the said application at its own end.

19. Sections 31, 31-A, 21(1)(vii) of the Act, 1973 along with the Statutes 11.04.08 read with 11.04.03 of the Lucknow University's First Statutes indicate that the said power of

appointment is vested with the Executive Council. At the same time, Section 13(2) of the Act, 1973 permits the Vice Chancellor of the University to pass orders in certain eventualities which provision indicates that the Vice Chancellor shall be ex-officio member and Chairman of the Executive Council, Academic Council, and the Finance Committee. It was in the fitness of things that the Vice Chancellor, once he proceeded to decide the application of the petitioner in terms of the directions issued by the writ Court dated 22.03.2021, should in fact have indicated the power which he was exercising while deciding the said application as the writ Court had required the "competent authority" to decide the said application and therefore, the Vice Chancellor should have indicated as to how he was the "Competent Authority" to decide the application endorsed to the Chancellor. Even this aspect, as to the power which the Vice Chancellor is deriving under the provision of the Act, 1973, is missing from the order impugned.

20. Keeping in view of the aforesaid discussions, the order impugned dated 21.06.2021, a copy of which is annexure 1 to the petition, is **quashed**. The competent authority is required to pass an order in accordance with law considering the judgment of this Court dated 22.03.2021 and the discussion made above. Let such an order be passed within a period of six weeks from the date of receipt of certified copy of this order.

Order Date :- 20.11.2024

S. Shivhare