

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.26448 of 2016

ORDER :

Heard the counsel for petitioner; Sri P. Rajasekhar, counsel for 2nd respondent, and Sri C.R. Sridharan, learned Senior Counsel appearing on behalf of Sri Salloori Ramesh, counsel for 3rd respondent.

2. The issue in this Writ Petition relates to the appointment as In-charge Vice-Chancellor of the 2nd respondent which is a Deemed University.

3. The petitioner herein was appointed on 30.11.1992 by way of a Direct Recruitment as a Reader and later promoted as Professor under the Merit Promotion Scheme with effect from 28.09.1997 vide Proceedings F.No.RSV/MPS/97 dt.21.11.1997 by the Board of the 2nd respondent-University.

4. The 3rd respondent was appointed as a Reader by Direct Recruitment on 03.12.1992 and he was appointed as a Professor vide Proceedings F.No.RSVT/Appointments/TS/97 dt.28.09.1997 and he joined in the post of Professor on 28.09.1997.

5. Thus, it is not in dispute that both petitioner as well as 3rd respondent were employed as Professors in the 2nd respondent-

University at the time when the post of Vice-Chancellor of the 2nd respondent-University fell vacant on 30.06.2016.

6. It is not in dispute that as per Rule 34 of the Memorandum of Association of the 2nd respondent-University seniority list would be determined according to the length of continuous service of a person in a particular grade; and if two or more persons have equal length of continuous service in a particular grade or cadre, or the relative seniority of a person or persons is in doubt, the Registrar of the 2nd respondent-University may, on his own motion and at the request of any such person, submit the matter to the Board whose decision would be final and binding.

7. The counsel for petitioner contends that the Registrar of the 2nd respondent-University in a letter dt.27.06.2016 addressed to the Joint Secretary (CU&L), Department of Higher Education, Ministry of Human Resource Department, Shastri Bhavan, New Delhi had taken a view that petitioner is one day senior to 3rd respondent and has more length of service as Professor than the 3rd respondent, and that even in the grade of Reader, the petitioner is three days senior; that no provisional Seniority List has been displayed by 2nd respondent-University at any point of time showing 3rd respondent as senior to him and inviting objections from petitioner; and without following this procedure, it is not permissible for the Board of 2nd respondent-University to decide that the 3rd respondent is senior to petitioner. He also contended that though he was promoted as Professor under the

Merit Promotion Scheme vide proceedings dt.21.11.1997, he had completed eight years of service as on 28.07.1997, and he was placed in the Professor scale with effect from 28.09.1997 itself, and therefore, his seniority ought to be counted from 28.09.1997 in the category of Professor and not with effect from 21.11.1997.

8. The 3rd respondent, on the other hand, contended that vide proceedings dt.13.11.2000, the Registrar of 2nd respondent-University had already determined that the 3rd respondent is senior to petitioner, and that petitioner had not questioned the same till date, and therefore, the issue of seniority cannot be re-opened at this stage.

9. Sri P. Rajasekhar, counsel for 2nd respondent, referred to Rule 34 of the Memorandum of Association and stated that the Registrar has no power to determine the relative seniority of petitioner and the 3rd respondent, and it was only for the Board to decide the same. He further contended that the decision taken on 30.06.2016 by the Board of Management of the 2nd respondent-University is a correct decision, and that valid reasons have been given therein by the Board to hold that the 3rd respondent is senior to petitioner.

10. A perusal of the Board Resolution dt.30.06.2016 shows that two reasons have been given by the Board of Management of the 2nd respondent-University to hold in favour of 3rd respondent, viz., (a) that as per Rule 34 of the Memorandum of Association of the 2nd respondent, the issue of *inter se*-seniority has to be determined

according to length of continuous service of a person in a particular grade in the Vidyapeetha; and (b) that as per the notification dt.24.12.1998 of the University Grants Commission *inter se*-seniority between merit promotees and direct recruits has to be decided based on the date of selection. The Board opined that the date of selection under Direct Recruitment as Professor of the 3rd respondent is 27.09.1997 and that of petitioner is 10.11.1997 under the Merit Promotion Scheme, and therefore, the 3rd respondent's date of selection is prior to that of the date of selection of petitioner.

11. It is not disputed that while the petitioner was given the scale of Professor on 28.09.1997 on completion of eight years of service in the cadre of Reader on 28.07.1997 vide proceedings dt.21.11.1997, the 3rd respondent was promoted as Professor on 28.09.1997 and he joined in the said post in the afternoon on 28.09.1997. Therefore, if the length of continuous service of the parties in the grade of Professor is taken into consideration as per Rule 34 of the Memorandum of Association of the 2nd respondent, the petitioner would have longer period of service than the 3rd respondent.

12. Again, even if the notification dt.24.12.1998 of the University Grants Commission is taken into account, it is not in dispute that the promotion of petitioner to the post of Professor was made by 2nd respondent by proceedings dt.21.11.1997, but he was placed in the scale of Professor with effect from 28.09.1997 itself. The appointment of 3rd respondent as Professor is made vide proceedings

dt.28.09.1997 and he joined on the afternoon of 28.09.1997. Therefore, it is not known on what basis the Board of Management of 2nd respondent-University treated the date of promotion of petitioner as 10.11.1997 instead of 28.09.1997 and the date of appointment of 3rd respondent as Professor as 27.09.1997 instead of 28.09.1997.

13. Since the determination by the Board of Management of the 2nd respondent-University is clearly contrary to the norms which it proposed to follow, the determination by the Board of Management of 2nd respondent-University that 3rd respondent is senior to petitioner in the grade of Professor, cannot be sustained.

14. Accordingly, the Writ Petition is allowed. It is declared that petitioner is senior to 3rd respondent in the cadre of Professor and that on the basis of his seniority, he is eligible to be appointed as In-charge Vice-Chancellor of the 2nd respondent-University, and not the 3rd respondent. Therefore, the respondent nos.1 and 2 are directed to appoint the petitioner as In-charge Vice-Chancellor of 2nd respondent-University till a regular Vice-Chancellor is appointed by 1st respondent. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-11-2016

Ndr/*