

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.24524 of 2005

ORDER:

Challenging the communication of the 2nd respondent vide MR 288/1/2005/Adm-I-1, dated 08.11.2005, wherein and whereunder application submitted by the petitioner for promotion as Assistant Professor under Career Advancement Scheme (hereinafter referred as "CAS") under UGC RSP 1996 was rejected on the ground that the petitioner is not having total 9 years of service with Ph.D., the present Writ Petition came to be filed.

2. The averments in the affidavit filed in support of the Writ Petition show that the petitioner, after completing his LL.M., with 63%, joined as Lecturer in CR Reddy College of Law, Eluru and worked therein from 10.02.1986 to 03.12.1989. Meanwhile, the respondents-University, i.e., Osmania University issued an advertisement and after complying with all the requirements, the petitioner was selected as Lecturer. He worked in the said post from 04.12.1989 to 04.02.1993. Pursuant to the order dated 29.09.1992 passed by a Division Bench of this Court in W.A.Nos.854, 864 and 977 of 1991, wherein the selection process of the petitioner and others was vitiated, the petitioner was terminated from service. Thereafter, he was again selected, pursuant to which he joined service on 30.09.1997. Even before termination of the petitioner, pursuant to the orders passed by this Court, services of the petitioner were regularized by Osmania University, declaring his probation. During interregnum, i.e., between 04.02.1993 and 30.09.1997, the petitioner joined

Sultan-ul-Uloom College of Law as a Lecturer and worked there till he joined Osmania University on 30.09.1997. In view of the circulars issued by Osmania University dated 01.01.2005 and 10.02.2005, calling for applications to extend promotion as Assistant Professor under CAS, the petitioner applied for the same, which led to passing of the impugned order, rejecting his request. Challenging the same, the present Writ Petition came to be filed.

3. Learned counsel for the petitioner mainly submits that the University has not considered the period of service rendered by the petitioner in a private college, which is affiliated to Osmania University. He further submits that in view of the regulatory scheme of the University Grants Commission and taking into consideration the pay scale in both the colleges, the University erred in rejecting the request of the petitioner.

4. Learned standing counsel for the respondents-Osmania University filed counter, opposing the averments made in the affidavit filed in support of the Writ Petition. He submits that the selection procedure, which has been followed by Sultan-ul-Uloom College while taking the petitioner into service, is not in accordance with Section 43 of the Andhra Pradesh Universities Act, 1991. He further submits that unless selection of the petitioner in the private college is ratified, the services of the petitioner in the private college cannot be counted for the benefit of promotion.

5. By an order dated 10.11.2015, this Court, while admitting the Writ Petition, directed the 2nd respondent to consider the case of the petitioner by subjecting him to interview for promotion under CAS; however, directed that the result of the interview shall be kept in a sealed cover and further action shall depend upon the outcome of the Writ Petition.

6. As things stand today, petitioner got himself selected under CAS for the next year and also retired from service. The issue now is whether the authorities were right in rejecting the request of the petitioner for the year 2005. Regulation 10 of UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (for short “the Regulations”) refers to counting of past services for direct recruitment and promotion under CAS. Regulation 10(1) reads as under:

“Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT etc., should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III- Table No.II provided that:

- (a) XXXX
- (b) XXXX
- (c) XXXX
- (d) XXXX
- (e) XXXX

(f) The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided that:

- (i) the period of service was of more than one year duration;
- (ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and
- (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.

(g) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause.”

7. Regulation 10 of the Regulations clearly shows that no distinction shall be made with reference to the management of the institution where previous service was rendered while counting past services. The said regulation categorically speaks about the services being rendered in private/local body/Government. Further, the University Grants Commission has issued letter dated 25.12.1998 to Osmania University, Hyderabad, wherein the said Regulation was quoted. As stated earlier, learned counsel for the respondent-University mainly relied upon Section 43 of the Andhra Pradesh Universities Act, 1991, which speaks about constitution of Selection Committee with regard to appointment of professors, readers and lecturers. The said Section reads as under:

“43. Constitution of Selection Committee:- (1) There shall be constituted a Selection committee in regard to the appointment of professors, readers and lecturers which shall consist of the following, namely,

- (i) the Vice-Chancellor;
- (ii) three experts from outside the University to be nominated by the Vice-Chancellor from out of panel prepared every year by the Board of Studies and approved by the Board of Management of whom at least two shall be present in the selection committee;
- (iii) Chairman of the Board of Studies concerned;
- (iv) Head of the Department”

8. A reading of the said provision does not anywhere indicate that the said Committee also selects lecturers in private colleges. That does not appear to be the purport of the said section. If the interpretation, as suggested by the learned standing counsel for the respondent-University is to be accepted, the Vice-Chancellor would be left with no other work except appointing lecturers in all the private colleges, which are affiliated to the said University. That would not have been the purport of the said provision. It applies only to the selections made for the posts referred to therein, in the University.

9. The second ground which has been urged by the learned standing counsel for the respondent-University is that period of past service can be taken into consideration only if the grade and scale in both institutions are one and the same. Insofar as equivalence of grade is concerned, the learned standing counsel was not able to explain as to how the grades would be counted, when the petitioner has been inducted into service either in a private college or Government college. Insofar as scales of pay are concerned, the letter dated 21.07.2000 issued by Sultan-ul-Uloom College of Law, the contents of which are not disputed by the

respondents-University, would show that the petitioner was appointed having been selected by the Selection Committee and that he was being paid UGC Scales, at the time of leaving services of the college. Therefore, the argument of the learned standing counsel for the respondents-University that there is variance in the scale also appears to be incorrect.

10. Situations identical to the case on hand came up for consideration before the Apex Court and other High Courts in **Sharadendu Bhushan v. Nagpur University and ors.**¹, **S. Palanivel v. The Principal, Pondicherry Engineering College and anr.** (Order dated 26.11.2009 in W.P.No.10049 of 2004) of rendered by the Madras High Court, **Dr. Sunil Vikram Singh v. State of U.P., and others**² and **Dr. Latika Sharma v. The Panjab University & ors.** (Order dated 17.09.2014 in CWP No.8417 of 2005 (O&M) of the Punjab-Haryana High Court.

11. The Apex Court, at para-2 of the judgment, in *Sharadendu Bhushan* (1 supra) held as under:

“The contention advanced by learned Counsel for the University based upon the averment in para 2 of the counter-affidavit that in view of the clarification made by the Additional Director of Education by his letter dt. Nov. 15, 1965, the appellant was not entitled to the benefit of the service with a college affiliated to the Calcutta University, cannot be accepted. It appears from para. 2 of the counter-affidavit that the clarificatory letter of the Additional Director of Education was with regard to determination of seniority. That was not the question before the High Court and merely because there was a break of two years service between the date of

¹ AIR 1988 SC 335

² [2012 (1) ADJ 99 (DB)]

resignation of the appellant from a college affiliated to the Calcutta University and the date of his employment as a Lecturer in MM Science College affiliated to the Nagpur University, could not be regarded a continuous service for purposes of determining his seniority was no ground for denial of the higher grade. In terms of the criterion laid down by the University itself, a Teacher is entitled to the benefit of the higher grade if he has the teaching experience of not less than five years. The emphasis in the circular is on the experience gained by' the Teacher while in the employment of a University and not on the continuity of the service.”

12. In *S. Palanivel* (supra), the Madras High Court held as under:
 “It is not in dispute that the petitioner had worked as lecturer in Regional Engineering College Warangal and as a scientist Grade IV at Structural Engineering Research Centre, CSIR, Chennai for more than six years. When UGC and AiCTE regulations unequivocally stated that past services of the candidates have to be considered for Career Advancement Scheme to move into cadre of Senior scale, the first respondent institution is bound to follow the same. As rightly pointed out by Mr.V.Perumal, learned counsel for the petitioner as well as Mr.N.Muralikumaran, learned Central Government Standing counsel, the first respondent institution cannot insist the guidelines from the second respondent. The regulations are subordinate legislation and they are to be treated as statute. When such is the position, the stand of the second respondent that guidelines are to be approved by a resolution of first respondent's general body has no leg to stand and it has to be negatived. If such a stand is to be approved, it would be ultravires of UGC Act and AICTE and it will not be in the interest of development and acceleration of Career Advancement scheme for higher education in this country. It is seen from petitioner's typed set of papers that Anna University, Chennai counted past service of one Mr.R.Bhuvaneswaran for career advancement as early as on 10.8.1999. When that is the position, there cannot be any prohibition for the first respondent to follow the same.”

The courts have recognised the importance of All India Councils for higher education namely medical council in the medical field and technical council for technical education. These councils are expert bodies and they are alone competent to give guidelines in the respective fields. When such is the position, the stand taken in the counter affidavit filed by the first respondent that AICTE regulations are not mandatory in respect of service condition and that the State has no jurisdiction on service matters are all without any substance and such contention should not be allowed to be raised by the institution, which will go against the intention of the legislature/parliament and it has to be discourage and condemned.”

13. In *Dr. Sunil Vikram Singh* (2 supra), the Allahabad Court, held as under:

“Since the basic fact that the petitioner was in substantive employment as a lecturer in Tilakmanjhi Bhagalpur University, Bhagalpur, State of Bihar from 15.11.1996 to 9.5.2000 have not been disputed or controverted and therefore, the petitioner is fully entitled to claim the benefits of said service rendered in State of Bihar i.e. from 15.11.1996 to 9.5.2000 to be included in his service rendered with respondents.

14. In *Dr. Latika Sharma* (supra), the Punjab & Haryana High Court, dealing with a similar case, held as under:

In view of the above discussion, the Writ petition is allowed and impugned order dated 26.4.2004 (P-5) is set aside. The decision of the respondent-University not to count the past service of the petitioner as Lecturer towards placement in the Senior/Selection Grade in terms of the Letter/Notification dated 24.12.1998(P-8) is declared illegal. It is further declared that the petitioner is entitled to modification of the order dated 24.3.2005 (Annexure P-7) in terms of the considering her date of eligibility for placement in the Senior Scale of Lecturer as 11.6.2001 by counting her claimed previous regular service, with all consequential benefits. VINAY MAHAJAN 2014.12.16 14:42 I attest to the accuracy and

authenticity of this document at Chandigarh CWP No.8417 of 2005(O&M) #31# Accordingly, a Writ of Mandamus is issued to the Respondents/Competent Authority to pass/issue appropriate/modified order granting such relief with all consequential benefits i.e. arrears of salary etc., within four weeks from the receipt of certified copy of this order. Thereafter, consequential benefits would be released within next eight weeks. The petitioner is also held entitled to costs, which are quantified as Rs.10,000/- to be paid by the University.”

15. Having regard to the facts and circumstances of the case on hand and in view of the judgments of the Apex Court and other High Courts, this Court is of the view that the impugned communication/proceedings is liable to be set aside. Accordingly, the communication of the 2nd respondent vide MR 288/1/2005/Adm-I-1, dated 08.11.2005, is set aside.

16. Accordingly, the Writ Petition is allowed. As a consequence, the petitioner shall be entitled to all the benefits he is entitled to.

Miscellaneous petitions pending, if any, in the Writ Petition stand closed. No order as to costs.

C. PRAVEEN KUMAR, J

February 23, 2017
MRR