

PETITIONER:
DR. KM. SUMAN AGARWAL

Vs.

RESPONDENT:
THE VICE-CHANCELLOR & ORS.

DATE OF JUDGMENT 29/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (1) 632 JT 1995 (9) 238
1995 SCALE (7) 320

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides. The appellant was a direct recruit as a Reader and was appointed with effect from July 1987 in the Home Science Institute, Agra University. The third respondent Dr. (Mrs.) Hiru Kumar was appointed as a Lecturer with effect from July 6, 1968 and she was confirmed on May 13, 1969. She was promoted as a Reader on February 18, 1985 pursuant to the personal promotion scheme. On appointment as Vice Chancellor of Bundelkhand University, Dr. Mrs. S.P. Ragquir proceeded on a long leave. Consequently, the post of the Director became vacant. The question then arose as to who is to be nominated to hold that post temporarily till the Director is appointed. Dr.(Mrs.) Hiru Kumar claimed the post, but the University did not accede to that request. The Vice-Chancellor, to avoid controversy, had appointed a Committee headed by Dr.S.V. Pandey and the appellant and the third respondent as the members, with effect from January 9, 1995. Dr.(Mrs.) Hiru Kumar filed a writ petition in the High Court claiming that she had earlier officiated as Director in leave vacancies of the erstwhile Director viz. Dr.(Mrs.) S.P. Rahquir. She is the senior-most teacher in the Institute and consequently, she is entitled to be appointed temporarily as Acting Director. Initially, the appellant was not impleaded as party-respondent to the writ petition. At her behest, she was impleaded as a respondent. The Division Bench of the High Court held that since the Executive Council had not approved of the appointment of the Committee by the Vice-Chancellor, and Dr. (Mrs.) Hiru Kumar being the senior-most teacher is entitled to be temporarily kept in-charge of the post of Director. In addition, the High Court also directed to finalise the appointment to the post of Professor within one month from the date of the order. This

order came to be issued on May 24, 1995 in writ Petition No.10669/95. Thus this appeal by special leave.

Shri Dhinra, learned counsel for the appellant, contended that the appellant being a direct recruit, by operation of Sub-section (3) of s.31(A) of the U.P. State Universities Act, 1973 (for short, 'the Act') which was brought into force by way of an amendment, the post of Reader is reserved for a direct recruit in accordance with the provision of Section 31. The promotion given to Dr.(Mrs.) Hiru Kumar as a Reader is one time promotion by operation of para 11.12-B(6) of the statutes. She is not a member of the cadre of Reader. The appellant, having been appointed to a substantive vacancy in the year 1987, is a member of the cadre while the third respondent was appointed as a reader to an ex-cadre post by Personal Promotion Scheme, which is only personal to her. So she did not become part of the regular cadre. Therefore, she cannot claim seniority over the appellant for appointment as Director. Thereby the appellant alone is entitled to be considered as acting Director, pending appointment of the Director. The contention has been resisted by Shri Dhawan, learned senior counsel for the third respondent.

The question, therefore, is, whether the appellant is senior to the respondent in the cadre as a Reader. The High Court has left open the inter seniority and directed the appropriate authority to consider the question of seniority. The approach of the High Court is not correct. Unless this is decided, the question of consideration of the parties as acting Director cannot be solved. Clause (c) of Ordinance-4A reads as follows :-

"The Institute shall be headed by a Director who shall be appointed from amongst the permanent Professors of the Institute".

Clause 4A(b) of the Ordinance Provides that till the regular appointment of a Director, a Professor; and in the absence of a Professor, a Reader of the Institute; and in the absence of a Reader, a Lecturer of the Institute, may be appointed as Acting Director. The appointment of a Lecturer as Acting Director will terminate within two months of the appointment of a permanent Reader and if a Reader as Acting Director will terminate within two months of the appointment of the permanent Professor. Clause (c) provides that in the event of casual vacancy caused by the Director or Acting Director, being on leave other than duty leave or casual leave, the next senior-most teacher of the Institute shall discharge the functions of the Director, unless otherwise decided by the authority competent to sanction the leave, i.e., the Vice-Chancellor or the Executive Council as the case may be.

In view of the above provisions, the question emerges as to whether the third respondent, Dr.(Mrs.) Hiru Kumar, is senior to the appellant as a reader. She may be senior-most Lecturer. But that does not solve the problem unless inter se seniority as Reader is determined since the appellant is not claiming as a Lecturer. The inter se seniority would depend upon the reading of the appropriate provisions of the Ordinance and the Statutes and the provisions of the Act.

It is seen that Section 31-A reads thus:

1. "Notwithstanding anything to the contrary contained in any other provisions of this Act a Lecturer or Reader in the University substantively appointed under Section 31, who has put in such length of service and possesses

such qualifications, as may be prescribed, may be given personal promotion respectively to the post of Reader or Professor, as the case may be. 2. Such personal promotion shall be given on the recommendation of the Selection Committee, constituted under clause (a) of Section 31 in such manner and subject to such conditions as may be prescribed therein and subject to the condition as specified therein. 3. Nothing contained in this section shall effect the posts of the Teachers of the University to be filled by direct appointment in accordance with the provisions of s.31."

Though the appointment by promotion to the post of Reader or Professor, as the case may be, has been given under Section 31A(1), their promotion does not get entrenched into the cadre of the direct recruits quota provided by sub-section (3) of Section 31A. Sub-section (3) of Section 31A preserves to the direct recruits their quota of posts in each cadre, i.e., Reader or Professor. However, that conclusion does not give satisfactory solution to the problem of inter-se seniority unless we look into the statutes. Statute 11.12-B provides thus:

"Notwithstanding anything to the contrary contained in Statute 11.02 or in any other Statute, the following categories of teachers of the University shall be eligible for personal promotion to the post of Readers or Professors, as the case may be."

Thus, conditions of eligibility have been provided for promotion to the post of Reader and Professor with which we are not concerned in this case. Sub-clause (2) provides that the services referred to in clause (1) must have been rendered on an approved post in a permanent capacity or ad hoc capacity in the University or any other universities enumerated in clause (b). Clause (6) is relevant for the purpose of this case which reads as follows:

"The benefit of personal promotion shall be admissible to Lecturers for promotion to the post of Reader only and Reader so appointed by promotion shall not be entitled to personal promotion on the post of Professor."

In other words, a Lecturer appointed on personal promotion to the post of Reader will be eligible only for one time promotion as a Reader and thereafter as Reader he/she has no right to claim promotion to the post of Professor. However, by operation of Clause (b), as a result of personal promotion, there shall be no reduction in the workload of the teacher of the University with which we are not concerned in this case. The work load of the Lecturer and Reader are distinct and separate. On the facts of the case, it is not necessary to elaborate the same.

Clause (11) is relevant in this case which reads as follows :

"11(i) : The post of Reader or Professor to which personal promotion is made, shall be temporary addition to the cadre of Professor or Reader, as the case may be, and the post shall stand abolished on the incumbent ceasing to occupy it."

The personal promotion, though does not have any effect on the post held by the direct recruit by operation of clause 11(i), the post held by the promotees on personal promotion to the cadre of Reader or Professor, as the case may be, will be a temporary addition to the cadre of the Reader or the Professor, as the case may be, will be a temporary addition to the cadre of the Reader or the Professor, as the case may be. In other words, the temporary promotions so long as the candidate continues to hold the post as Reader or Professor will be in addition to the sanctioned strength of the reader or Professor direct recruit. The post held by a promotee is conterminus with the holder of the post ceasing to exit either on retirement or termination, removal, dismissal etc. In other words, both the direct recruits as well as the temporary promotee on personal promotion would form part of the cadre as Reader or the Professor, as the case may be. But the promotee is ineligible to get a berth into the quota of direct recruits. He/she would only be a temporary addition to the sanctioned quota to which direct recruit alone is eligible to hold the post as a reader or Professor, as the case may be.

The question, then, is how would inter se seniority between direct recruit and promotee is required to be determined. This has specifically been provided in Statute 17.05. Clause (b) is relevant which reads as follows:

"In the same cadre, inter-seniority of teachers, appointed by personal promotion or by direct recruitment, shall be determined according to length of continuous service in such cadre."

If a teacher is appointed as a Reader by personal promotion, his/her continuous length of service in the cadre of Reader should be determined and the inter-se seniority should be decided accordingly. It is seen that admittedly, Dr. (Mrs.) Hiru kumar was promoted on regular basis by personal promotion as a Reader on February 18, 1985, while the appellant was recruited as a direct recruit on July 19, 1987. Thereby Dr.(Mrs.) Hiru Kumar becomes senior to the appointment as a Reader.

Shri Dhingra, learned counsel for the appellant, placed strong reliance on the judgement of this Court in Dr. Rashmi Srivastava vs. Vikram University and Ors. [(1995) 3 SCC 653] to which one of us (Majumdar, J.) was a member. That case was to deal with an appeal arising from the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. Therein, this Court has pointed out that there was no statutory source for appointment by promotion on personal promotion scheme. This Court pointed out the distinguishing features between the claims of the direct recruit and the claims of the promotees, which are relevant in this case, and are as follows:

"The directly recruited Readers and Professors fill up the vacancies in the cadres of Readers and Professors for which direct recruitment is resorted to, while the promotees under the merit promotion scheme stand outside the cadre and fill no posts as such, since no posts are created. The promotions given to them are purely personal and the posts to which they are upgraded do not survive their service career. Such a promotee fills up no vacancy in the promotional avenue since no post is available by promotion. The directly

recruited Readers and Professors are recruited pursuant to the only source of appointment contemplated by Section 49, that is by way of direct recruitment. The promotee Readers and Professors are appointed not in the cadre posts but under an entirely different scheme, namely, merit promotion scheme. Even under this scheme, no posts as such are created. Those selected under the scheme were given personal posts which cease with their employment. In fact, the posts from which they are promoted do not become vacant and none can be appointed to the said posts while they hold the higher posts. Pay scales of promotee Professors and Readers are different from the pay scales of directly recruited Readers and professors and Readers at least after coming into operation of the career advancement scheme in 1987. The promotee Reader and Professors are not holding any officiating or even temporary post of Reader or Professor nor is there any temporary addition to the cadre strength of Readers and Professors. The workload of directly recruited Reader and Professor is different from the workload of promotee Reader or Professor for who, the workload of a Reader or Lecturer as the case may be would still have to be shared as no vacancies are created for being filled in the cadres from which such promotions are effected. There is a qualitative difference in the process of selection of direct recruits under the scheme of Section 49, as compared to the promotion of the merit promotees. Although for the latter the infrastructure of Selection Committee under Section 49 may be made available, the criteria for their promotion are entirely distinct and different as envisaged by the guidelines governing the merit promotion scheme. There is no question of promotee Reader or Professor being put on probation. There is further no question of confirming them in the posts concerned as they do not occupy any post as such in the promotional avenue. This is unlike the direct recruits".

In that case, the promotees did not form part of the same cadre. On the other hand, they entered into the service under a different scheme which was personal to the post which ceases with the retirement by the candidate. Though, in this case, the ceasation has been provided for, but operation of s.31A(1) reads with Statute 17.05-B and Statute 11.12-B, clause (6) makes all the difference in the case. The personal promotees get berth through statutory force under s.31A(1) and the post held by the promotee becomes a temporary addition to the sanctioned cadre occupied by direct recruits. Such a provision was absent in the Rashmi Srivastava's case. On the other hand, to avoid stagnation,

the benefit has been provided for promotion under s.31A(1) of the Act and it was termed as the "personal promotion" so long as the candidate holds the post. The post remains with the candidate and the post ceases with the cessation of the service with the retirement of the holder of the post etc. Nonetheless, the post of promotees was made as temporary addition to the cadre strength and the inter-se seniority has been provided between the direct recruits and the promotees. The relative seniority of the candidates from two streams fused into the relevant cadre as Professor or the Reader, as the case may be. In the light of the statutory operation of the provisions referred to hereinbefore, the conclusion reached by us is inevitable.

The view expressed by this Court in Dr. Bal Krishna Agarwal vs. State of U.P. & ors. [(1995) 1 SCC 614] is also the same, though no reference expressly was made to the above statutes. Therein this Court in para 14 had specifically stated that under the Statute, as amended by notification dated 21.2.1985, it was laid down in clause (b) of Statute 18.05 that in the same cadre inter se seniority of teachers appointed by personal promotion or by direct recruit shall be determined according to length of service in such cadre. In that case, Dr. Bal Krishna Agarwal was appointed substantively on November 9, 1984, while respondents 4 and 5, though appointed earlier, but as the statute came into effect from February 21, 1985, became members of the service as Professors w.e.f. February 21, 1985. Therefore, this Court held that though the respondents were promoted earlier to Bal Krishna Agarwal, they became junior to him in the cadre as Professors since Bal Krishna Agarwal was a direct recruit w.e.f. November 9, 1984. In Dr. Rashmi's case, statutory source of recruitment was absent. In Dr. Rashmi's case this Court observed that in the absence of similar provision like Section 31A of the U.P. Act, as was considered in Dr. Bal Krishna Agarwal vs. State of U.P., no post could have been created for promotion by way of extension of the cadre of the Readers or Professor, as the case may be. In the absence of statutory provision in the Act, Section 6 by itself could not be of any assistance to the appellant therein. Thus, this Court had pointed out that there is a specific provision in the Act to regulate the inter se seniority which was not available in Dr. Rashmi's case.

Thus, we hold that in the cadre of Reader, Dr. (Mrs.) Hiru Kumar is senior to the appellant, but whether she is entitled to regular promotion as Professor or she is entitled to the post of Director on regular basis would depend upon the filling up the post of a Professor. Since the High Court has already directed to consider the case of the candidates for appointment as a Professor, we reiterate that the University should determine and appoint the eligible candidate as a Professor as expeditiously possible within 6 weeks from the date of receiving this order. Consequential thereto, appointment on regular basis to the post of Director should be made. We are informed that Dr. (Mrs.) Hiru Kumar has already been made incharge Director. She would continue until a regular incumbent takes charge as a Director.

The appeal is accordingly disposed of. No costs.