

CASE NO.:
Special Leave Petition (civil) 1957 of 2000

PETITIONER:
STATE OF UTTAR PRADESH & ANR.

Vs.

RESPONDENT:
DR.K.U.ANSARI & ORS.

DATE OF JUDGMENT: 22/11/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

With
Civil Appeal No. of 2001
(Arising out of S.L.P.(C)No.3429 of 2000)

J U D G M E N T

D.P.Mohapatra, J.

Leave granted in both the cases.

The State of Uttar Pradesh, through the Principal Secretary, Department of Medical Education and the Director, Medical Education and Training, have filed these appeals challenging the judgments rendered by the Allahabad High Court, in Civil Miscellaneous Writ Petition Nos.14686/88 and in Civil Miscellaneous Writ Petition No.15989/87. Both the writ petitions were filed by Dr.K.U.Ansari, respondent no.1 herein, citing the appellants, Dr.S.S.Mishra, retired Director, Medical Education, U.P., the Principal, Motilal Nehru Medical College, Allahabad and Dr.A.K.Kapoor, Lecturer in Pharmacology, Motilal Nehru Medical College, Allahabad and some other officers of the Department of Pharmacology in the Medical Colleges at Meerut and Kanpur as respondents. In Writ Petition No.14686/88 the prayer of the petitioner was for quashing the adverse character roll entries for the years 1979-80, 1980-81, 1984-85 and to direct the respondent to grant the Efficiency Bar to the petitioner from 1.7.1982 instead of 1984. In W.P.No.15989/87 the petitioner prayed for quashing of the selection made by the Departmental Promotion Committee on 7.7.1987 for the post of Reader in Pharmacology and for quashing the appointment of respondents 5 and 6 in the writ petition.

In the Writ Petition No.147686/88 the High Court allowed the writ petition, quashed the order of the State Government dated 22.4.1988 permitting the petitioner to cross the Efficiency Bar with effect from 1984 and directed the respondents to permit the petitioner to cross the

Efficiency Bar with effect from 1.7.1982. In the later case the High Court referring to its decision in the aforementioned case held that the petitioner should have been considered for the post of Reader in Pharmacology in the Selection held on 7.7.1987 and issued a direction that the Departmental Promotion Committee shall consider the petitioners claim for promotion as Reader with retrospective effect from 7.7.1987. The relevant portion of the order is quoted hereunder :

The petitioner was promoted as Reader on 14.1.1999 but in our opinion the petitioner should have been considered in 1987 but he was not considered then in view of the adverse entries which we have quashed in the aforesaid petition. Hence we dispose of this writ petition with the direction that the Departmental Promotion Committee shall now consider the petitioners claim for promotion as Reader with retrospective effect from 7.7.87 and this shall be done within two months of production of certified copy of this order before the authority concerned. If the DPC allows the petitioners claim arrears of salary shall be given to the petitioner within three months therefrom.

Both these cases are interlinked as the judgment in the later case has been passed as a consequence of the judgment in the former case. Therefore, both the appeals were heard together and they are disposed of by this judgment.

The core question that arises for determination in the case relates to validity and/or justification of the entries made in the character rolls of respondent No.1 for the years 1979-80 and 1980-81. Though, a similar entry made in respect of the year 1984-85 was also challenged in the writ petition that entry is no longer in issue since the State Government accepting the representation made by respondent No.1 expunged the entry. Undisputedly the sole reason for refusal of the State Government to permit the respondent No.1 to cross the Efficiency Bar with effect from 1.7.1982 was the adverse entries in the character rolls. The adverse entries in the character roll for the two years are similar in nature; they were communicated to the respondent No.1 by the letter dated 21.2.1984 from the Director to the Principal, Medical College, Allahabad. The entry made for the year 1979-80 against Item No.4 reads as under :

- | | | | |
|-----|------------------------------|---|----|
| (1) | Interest in Research Work | - | No |
| (2) | Publication of Research Work | - | |

In respect of the year 1980-81 the entries in question against Item No.4 reads :

- | | | | |
|-----|------------------------------|---|-------|
| (A) | Interest in Research Works | - | No |
| (B) | Publication of Research Work | - | Wrote |

one article

The respondent no.1 submitted a representation on receipt of the communication of the adverse entries to the State Government through proper channel seeking expunction of the same on the grounds, inter alia, that the entries are factually incorrect and legally untenable. The

said respondent further contended that it was absolutely incorrect to state that he had no interest in research work, when in fact he had published more than 40 research papers by then. The Head of the Department of Pharmacology who was the immediate superior authority of respondent no.1 about his interest in research work and that such work undertaken by him was highly satisfactory. The respondent further alleged that the entries were vitiated on account of bias and malice on the part of the Principal of the Medical College and they were intended to help Dr.A.K.Kapoor who was much junior to the respondent as Lecturer, to get promotion to the rank of Reader in the Pharmacology Department. The representation in respect of the two years in question was rejected by the State Government. Therefore, the respondent no.1 filed the writ petition for the reliefs noted earlier.

It is relevant to note that so far as the writ petitioner is concerned the Motilal Nehru Medical College, Allahabad was the reporting officer at the relevant time, the Principal of the Medical College was the authority to record the entries and the Secretary in the Department of Medical Education and Training was the authority to confirm the entry.

After the representation of respondent no.1 against the adverse C.C.R. entries were rejected he was taken as a person who crossed the Efficiency Bar in 1984 and on that basis he was not considered for promotion by the Departmental Promotion Committee in July, 1987. He was given promotion as Reader longer thereafter in January, 1999. The case of respondent no.1 in the second writ petition filed against non-consideration for promotion to the post of Reader was that if the adverse entries which are factually incorrect and vitiated by bias and malice are expunged and consequently the order declining permission to cross the Efficiency Bar with effect from 1.7.1982 are quashed then his case for promotion should have been considered by the D.P.C. in July, 1987 since by then he had acquired the eligibility qualifications for promotion to the post of Reader.

We have perused the judgment of the High Court in W.P.No.14686/88 which is assailed by the appellant in the appeal. The judgment extends over 8 pages of which major portion is devoted to the cases pleaded by the parties and the contentions raised by counsel appearing on their behalf. The relevant discussion commences from the latter part of page 7 in which it has been observed, inter alia, that there is no rule or regulation under which a Lecturer is required to do research work; that if a Lecturer also does research work that would be an additional qualification for considering him for promotion, but that is not his main job; that the main job of a Lecturer is to teach. On these observations the High Court has drawn the inference in the following terms :

Hence even assuming that the petitioner did not do research work this could at most affect his chances of promotion, but adverse entry should not have been given to him and the petitioner cannot be stopped from crossing efficiency bar on this account. If the petitioner was doing teaching work properly and attending to his duties no

adverse entry can be given merely because he has not done research work.

Summing up its conclusion, the High Court observed:

A lecturers work is basically teaching work and there is no requirement that he must be in addition do research work. Hence in our opinion the impugned adverse entries are wholly arbitrarily and illegal and are quashed.

From the discussions in the judgment quoted above, it appears that the High Court has drawn a distinction between considerations for crossing the efficiency bar and those for promotion. The High Court has taken the view that research work is not necessary for judging the efficiency of a teacher of the medical college though it may be an "additional qualification for the purpose of promotion. The observations and findings recorded by the High Court in the judgment are clearly erroneous. We are indeed perplexed to find that the High Court has propounded a principle that in the 21st Century a teacher in a medical college need not engage himself in any research work. The concept is not only out of tune with time but an impediment on improving the standard of teaching in medical colleges. If the observations/findings are accepted as correct then it will mean encouraging mediocrity in the line of medical teaching. Research by a teacher in medical college is desirable and relevant for maintaining a high degree of proficiency in teaching. Medical science has progressed very much in recent times and constant efforts are being made in institutions engaged in medical education and research all over the globe for further development in different specialities. In such state of things to take a view that research is not relevant for a teacher in medical college for the crossing of efficiency bar or even promotion (stated to be only an additional qualification) is not correct. We have no hesitation to hold that the observations and findings of the High Court to which reference has been made earlier are unsustainable. Crossing of efficiency bar is a well recognised means of monitoring the efficiency of the employee which helps him to make progress in his service career. In the expression efficiency are included all relevant matters necessary for discharging his duties efficiently and satisfactorily. In the case of a teacher, particularly a teacher in medical college, it is absolutely necessary that he keeps abreast of all developments in the field of the medical science of his specialisation and he can achieve this better if he is engaged in research work. The manner in which he carries out the research and assessment of the results he obtains are matters of scrutiny by experts; but it cannot be said that a teacher in medical college is not expected to do any research. In order to teach his students properly the teacher has to maintain a high degree of proficiency in the subject. It is relevant to note here that in the prescribed format for making entries in the character roll there is a column relating to research work done by the teacher. This, in our view, is sufficient to hold that the authorities did consider and in our view rightly research to be a relevant consideration for the purpose of making proper assessment of the employee. The position is well settled that while making entries in the character roll

proper assessment on the basis of objective standards should be made since character roll is a primary material which forms the basis for further progress of the employee in his service career. The entries in the character roll are necessary and material for the purpose of permitting the employee to cross the efficiency bar as well as for promotion. Unfortunately, the observations and findings of the High Court tend to indicate as if crossing of efficiency bar is a matter of course and an idle formality. Such impression, as noted earlier, is clearly erroneous. Therefore, the judgment of the High Court in W.P.No.14686/88 is unsustainable and has to be set aside. Since the judgment in the other case i.e. W.P.No.15989/87 is entirely based on the judgment in the said writ petition, that has also to be set aside.

The question that remains to be considered is what will be the appropriate order to be passed in the facts and circumstances of the case. As discussed earlier the question to be considered is whether the respondent no.1 was to be considered for crossing the efficiency bar as a lecturer w.e.f. 1.7.1982 instead of 1984 and should have been considered for promotion as Reader in July, 1987 instead of January, 1999. It is the case of the respondent no.1 that during the relevant period he had done research and had produced papers which were appreciated by the superior authorities. A long time has elapsed since the events giving rise to the grievance of respondent no.1 took place. Both the teachers concerned are senior in their cadres. If the respondent no.1 on consideration of the matter is found suitable for promotion with effect from a retrospective date whether he could be given the service benefits of the promotional post depends on several factors including the availability of vacancy at the relevant point of time. We are of the view that in the facts and circumstances of the case it would be proper to direct the Chief Secretary of the State of U.P. to consider the representation made by the writ petitioner Dr.K.U.Ansari after giving reasonable opportunity of hearing to him and to Dr.A.K.Kapoor, respondent no.4 herein, and dispose of the same by passing a reasoned order.

Accordingly, the appeals are allowed. The judgments of the High Court under challenge are set aside. The order rejecting the representation made by the respondent no.1 is also set aside. The Chief Secretary of the State of Uttar Pradesh is directed to consider the representation submitted by respondent no.1 keeping in mind the discussions in this judgment and dispose of the same after giving reasonable opportunity of hearing to the respondents by passing a reasoned order as expeditiously within three months of production of copy of the judgment before him. There will be no order as to costs.

.....J.
(D.P.MOHAPATRA)

.....J.
(SHIVARAJ V.PATIL)

November 22, 2001

JUDIS