

YAMUNA SHANKAR SHARMA
v.
STATE OF RAJASTHAN & ORS.

JANUARY 9, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Service Law:

Pay scale—Assistant Professor filed writ petition seeking direction to University to grant pay scale of Rs.700-1600 recommended by UGC—This Court had directed that petitioner be allowed a consolidated salary worked out by placing them at a basic salary of Rs.700 p.m., which was the minimum of the scale of Rs. 700-1600—On recommendations of the Committee constituted by Board of Management, University allowed the UGC pay scales to the petitioner—Notice issued by University for recovery on the ground that UGC scale was wrongly allowed to petitioner which resulted in excess payment—Held, order was passed by University on the basis of the recommendations of the Committee to pay the UGC pay scale at a particular scale which was applicable at the relevant point of time—Hence, Notice of recovery cannot be maintained.

Appellant was appointed as Assistant Professor of Law in College of Law, Udaipur on *ad hoc* basis in the regular pay scale of Assistant Professor. In 1983, he was interviewed for the purposes of selection to the post of Assistant Professor on regular basis. He, however, was not selected and as a result whereof, his services were not continued after 31.5.1983. After a gap of about nine months, he was again appointed in the University on 23.2.1984 against the post of Legal Assistant/Associate but the appointment was liable to be terminated without notice. As Legal Assistant/Legal Associate, appellant was paid a consolidated salary of Rs.1,200 per month which was enhanced to Rs.1,620 per month. He was terminated from services w.e.f. 14.11.1988 on account of absence from duty. The absence was due to his having undertaken Ph.D work at Delhi University.

After acquiring the Ph.D Degree, he was again appointed by the University on the post of Legal Assistant by its order dated 8.2.1990 on fixed salary of Rs.2,070 per month as stop-gap arrangement. The appointment

A was extended from time to time and the final extension was granted to him until 31.3.2003. After 31.3.2003 services were not extended, with the result that the appellant ceased to be an employee of the University.

B Appellant along with other Research Assistants/Associates filed batch of writ petitions under Art. 32 of the Constitution of India seeking directions to the University to grant to them the scale of Rs. 700-1600 recommended by the Grant Commission w.e.f 1.1.1973.

C In that batch of writ petitions, this Court rejected the demand of the petitioners for placement in the scale of Rs.700-Rs.1600. This Court, however, directed that the Research Associates be allowed a consolidated salary to be worked out by placing them at a basic salary of Rs.700 per month, which was the minimum of the scale of Rs.700-1600 and also monetary benefits in the form of allowances admissible to regular employees drawing a basic pay of Rs.700 per month.

D The Vice Chancellor allowed the UGC pay scales to the appellant. Though initially the appellant was allowed to draw the UGC pay scale, on 13.1.2003 notice was issued to show cause as to why the excess payment made was not to be recovered from him. It was indicated that the UGC scale was wrongly allowed to the appellant which resulted in excess payment.

E Subsequently, Registrar of the University informed the Dean, College of law, Udaipur that the term of temporary appointment to the appellant was not extended beyond 31.3.2003 as per the decision of the Board of management. Aggrieved appellant successfully filed writ petition. On appeal, the Division Bench partly modified the order and held that regularization was not to be granted as claimed but directed that the appellant's case was to be considered on following the criteria as per the applicable rules and that while subjecting appellant for selection process, past service rendered by him was to be given due weightage.

G In appeal to this Court, the appellant contended that the High Court did not consider the effect of the fact that the appellant was highly qualified and had rendered uninterrupted and unblemished service of more than a decade; that to deny regularization would be inequitable and unjust and that the notice on the ground that excess payment have been made is without basis.

H Disposing of the appeals, the Court

HELD: 1. In *Secretary, State of Karnataka, a Constitution Bench of this Court has considered the matter at great length. In view of what been held therein, the conclusions of the High Court in the matter of regularization suffered from no infirmity. [Para 12] [295-D, E]

**Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors., [2006] 4 SCC 1, relied on*

2. The residual question is whether the University's view regarding the alleged over payment is correct. In the order dated 27.12.1999 it was indicated that the appellants will be placed in the pay scale of Rs. 8000-275-13500 w.e.f. 1.1.1996. He was also treated to be entitled in the scale equivalent to Assistant Professor for the purpose of scale only not for designation. This Court in its order dated 16.9.1992 directed that the consolidated salary be worked out by placing the petitioners in the scale of Rs.700-1600 which was the minimum in the scale and allowing benefits thereof in the form of such allowance allowed to be a regular employee drawing a basic pay of Rs.700 per month. The order passed by the University was on the basis of the recommendations of the Committee to pay the UGC pay scale at a particular scale which was applicable at the relevant point of time and revised pay scale. That being so, the view that he had been paid contrary to the order of this Court is not correct and cannot be maintained. Accordingly, the notice for recovery cannot be maintained. To that extent the appellants is entitled to the benefit.

[Paras 13, 14] [295-E-H, 296-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 130 of 2007.

From the final Judgments and Orders dated 5.9.2003 and 5.2.2004 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (W) No. 407/2003 and D.B.C.M.R.P. No. 56/2003 respectively.

Jayant Das, K. Vijayan and Ajit Pudussery for the Appellant.

Aruneshwar Gupta, Naveen Kumar Singh, Mukul Sood, Shashwat Gupta and Shikha Tandon for the Respondents.

The Judgment of the Court was delivered by

A **DR. ARIJIT PASAYAT, J.:** 1. Leave granted.

B 2. Challenge in these appeals is to the judgment rendered by a Division
C Bench of the Rajasthan High Court at Jodhpur, partly allowing the Civil
Special Appeal filed by the present Vice Chancellor, Mohan Lal Sukhadia
University (in short the 'Union') and others questioning correctness of the
order passed by the learned Single Judge. By the order which was impugned
before the Division Bench, the learned Single Judge held that order dated
25.4.2003 passed by the University was not sustainable and both the Vice
Chancellor and the University were directed to take back the present
appellant in service as Legal Assistant with all consequential benefits. The
Single Judge directed the University and the Vice Chancellor to absorb the
present appellant on a regular post from the date when the vacancy arose
pursuant to the order of this Court dated 16.9.1992.

3. Background facts in a nutshell are as follows:

D Appellant acquired L.L.M Degree in the year 1977. The Udaipur
University, re-christened as Mohan Lal Sukhadia University, appointed him
as Assistant Professor of Law in its College of Law, Udaipur on ad hoc basis
in the regular pay scale of Assistant Professor. The post also entitled the
E appellant to regular annual grade increments, which were consequently
given during the course of his service in his capacity as assistant Professor.
Later, in the year 1983 the appellant was interviewed for the purposes of
selection to the post of Assistant Professor on regular basis. He, however,
was not selected and as a result whereof, his services were not continued
after 31.5.1983. Thus, he worked as Assistant Professor from 14.11.1977 until
F 31.5.1983 in the regular pay scale of Assistant Professor on ad hoc basis in
the college of Law, Udaipur University. After a gap of about nine months,
he was again appointed in the University on 23.2.1984 against the post of
Legal Assistant but the appointment was liable to be terminated without
notice. Subsequently, the post of Legal Assistant was re-designated as
Legal Associate by the order of the University dated 19.9.1987. As Legal
G Assistant/Legal Associate, appellant was paid a consolidated salary of
Rs.1,200 per month. By the order dated 19.6.1987 the consolidated salary was
enhanced to Rs.1,620 per month. On 3.3.1990, the University terminated the
services of the appellant with effect from 14.11.1988 on account of the
absence of the appellant from duty. The absence was occasioned by the fact
H of his having proceeded for undertaking Ph.D work at University of Delhi.

4. After he acquired the Ph.D Degree, the appellant was again appointed by the University on the post of Legal Assistant by its order dated 8.2.1990 on fixed salary of Rs.2,070 per month as stop-gap arrangement until 31.3.1991 or till the selection and appointment of a candidate to the post of Legal Associate, whichever was earlier. The appointment as Legal Associate was extended from time to time and the final extension was granted to him until 31.3.2003. After 31.3.2003 services were not extended, with the result that the appellant ceased to be an employee of the University. In this regard the Registrar of the University by its letter dated 25.4.2003 informed the Dean, College of Law, Udaipur that the term of temporary appointment of the appellant as Legal associate has not been extended beyond 31.3.2003.

5. In order to complete the narration of facts, it is necessary to refer to a development which took place as a result of filing of a batch of writ petitions before this Court by Research Assistants/Associates on account of refusal of the University to grant to them the scale of Rs.700/1600 recommended by the Grant Commission with effect from 1.1.1973. Even though the University had implemented the UGC recommendations and granted UGC scales in the case of members of teaching staff, it failed to grant the benefit of UGC scale to the Research Assistants/Associates.

6. The appellant was also one of the writ petitioners before this Court. In that batch of writ petitions this Court rejected the demand of the petitioners for placement in the scale of Rs.700-Rs.1600. This Court, however, directed that the Research Associates be allowed a consolidated salary to be worked out by placing them at a basic salary of Rs.700 per month, which was the minimum of the scale of Rs.700-1600. This Court also allowed monetary benefits in the form of allowances admissible to regular employees drawing a basic pay of Rs.700 per month. It was clarified that the appointments will continue to be what they were and the incumbents will not belong to the cadre of Research Assistants merely because their consolidated salary is ordered to be worked out on the minimum of the time scale allowed to Research Assistant. It was further clarified that they will not be equated with Lectures/Assistant Professors. They were to continue to carry on the same duties, which they were carrying out including assisting Assistant Professors. The benefit of the revised consolidated salary was made available to them from the date of their appointment as Research Associates. On behalf of the

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A petitioners it was urged before this Court that even though they had put in long years as Research Associates they were still treated as ad hoc employees with no security of service. This Court, keeping in view the plea of the petitioners, observed as follows:-

B “We would leave it to the authorities to consider the feasibility of preparing a scheme whereunder such research Associates can be absorbed in the regular cadre of research Assistants as and when vacancies arise. Since the educational requirements, process of selection and jobs-charts are also identical such a scheme can be of mutual benefit to the employees as well as the University, the employees getting security of tenure and University getting experienced hands. We would expect the University to examine the feasibility of preparing such a scheme at an early date”.

D 7. Keeping in view the order passed by this Court and on the recommendation of the Committee constituted by the Board of Management, the Vice Chancellor was allowed the UGC pay scales to the appellant. An undertaking was given on 27.12.1999 pursuant to the aforesaid order. Though initially the appellant was allowed to draw the UGC pay scale, on 13.1.2003 notice was issued to show cause as to why the excess payment made was not to be recovered from him. Notice referred to the order of this Court dated 16.9.1992 by which it was directed that Research Associates were to be allowed a consolidated salary to be worked out by placing them on a basic salary of Rs.700 per month. It was indicated that the UGC scale was wrongly allowed to the appellant which resulted in excess payment. Subsequently, Registrar of the University informed the Dean, College of law, Udaipur that the term of temporary appointment to the appellant was not extended beyond 31.3.2003 as per the decision of the Board of management. This order and the show cause notice formed subject matter of challenge before the learned Single Judge who as noted above allowed the writ petition.

G 8. The order was challenged before the Division Bench which as noted above partly modified the order and held that regularization was not be granted as claimed but directed that the appellant’s case was to be considered on following the criteria as per the applicable rules. It was further directed that while subjecting appellant for selection process, pass service rendered by him was to be given due weightage. It was further directed that he was

not to be denied regularization on the ground that he has become overage. But no other relief was given.

9. In support of the appeals learned counsel for the appellant submitted that the High Court did not consider the effect of the fact that the appellant was highly qualified and had rendered uninterrupted and unblemished service of more than a decade. To deny regularization would be in equitable and unjust. It was further submitted that the notice on the ground that excess payment have been made is without basis. The conclusion that over payment has been made is really not correct. This Court's order is being wrongly interpreted.

10. A review petition was filed before the High Court which was dismissed. But, however, time for compliance was fixed.

11. Learned counsel for the respondents on the other hand supported the judgment of the High Court.

12. The manner in which the claim for regularization has to be dealt has been the subject matter of this decision in several cases.

In *Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors.*, [2006] 4 SCC 1, a Constitution Bench of this Court has considered the matter at great length. In view of what been held therein, the conclusions of the High Court in the matter of regularization suffered from no infirmity.

13. The residual question is whether the University's view regarding the alleged over payment is correct. In the order dated 27.12.1999 it was indicated that the appellant will be placed in the pay scale of Rs.8000-275-13500 w.e.f. 1.1.1996. He was also treated to be entitled in the scale equivalent to Assistant Professor for the purpose of scale only not for designation. This Court in its order dated 16.9.1992 directed that the consolidated salary be worked out by placing the petitioners in the scale of Rs.700-1600 which was the minimum in the scale and allowing benefits thereof in the form of such allowance allowed to be a regular employee drawing a basic pay of Rs.700 per month.

14. The order passed by the University was on the basis of the recommendations of the Committee to pay the UGC pay scale at a particular

A scale which was applicable at the relevant point of time and revised pay scale. That being so, the view that he had been paid contrary to the order of this Court is not correct and cannot be maintained. Accordingly, the notice for recovery cannot be maintained. To that extent the appellant is entitled to the benefit.

B 15. The appeals are disposed of. No costs.

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Appeals disposed of.