

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.268-269 of 2021
(arising out of SLP(C)Nos.17665-17666 of 2019)

POORAN CHAND . . . APPELLANT(S)

VERSUS

CHANCELLOR & ORS. . . RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. These appeals have been filed challenging the Division Bench judgment of High Court of Judicature at Allahabad, Lucknow Bench dated 12.04.2018 by which writ petition filed by respondent No.4 has been allowed and the order of the Chancellor dated 08.07.2009 rejecting the representation made by respondent No.4 was set aside.

3. Brief facts of the case for deciding these appeals are:

3.1 King George Medical University is a Medical University under the by U.P. Act No.8 of 2002 namely the King George Medical University Act, Uttar Pradesh Act, 2002. An advertisement dated 15.03.2005 was issued by U.P. King George's University of Dental Sciences, Lucknow (hereinafter referred to as "University") inviting applications for the post of Professors, Associate Professors, Asstt. Professors and Lecturers.

3.2 The appellant made an application for appointment on the post of Assistant Professor whereas respondent No.4 made an application for appointment on the post of Lecturer. Both the appellant and respondent No.4 were considered by the same Selection Committee and recommendations of the Selection Committee were approved by Executive Council in its meeting dated 08.08.2005 approving the appointment of appellant as Assistant Professor and that of respondent No.4 as Lecturer. The appellant,

who was working as Assistant Professor in BRD Medical College, Gorakhpur after obtaining permission from State of U.P. joined as Assistant Professor on 08.12.2005.

3.3 The respondent No.4 submitted his joining as Lecturer on 08.08.2005. The respondent No.4 was promoted on the post of Assistant Professor on 08.08.2007 after completing three years experience. The representations were submitted by respondent No.4 to the University claiming seniority over the appellant. A representation was addressed by respondent No.4 to the Chancellor dated 13.02.2009 regarding the appointment and claim of seniority as Assistant Professor in the University. The respondent No.4 claimed that his experience at the time of appointment as Senior Research Fellow in W.H.O. was not considered. His representation to the Chancellor principally claimed seniority over appellant based on his experience claiming that he has also

completed requisite experience at the time of his appointment on the post of Assistant Professor.

3.4 The Chancellor vide his order dated 08.07.2009 rejected the representation made by respondent No.4. The Chancellor in his order referred to the report sent by the University that experience of the appellant as Senior Research fellow in W.H.O. cannot be counted as experience. Aggrieved by the order of the Chancellor dated 08.07.2009 rejecting his claim, the respondent No.4 filed a writ petition being Writ Petition No.1350(SB) of 2009 praying for following reliefs:-

- "i. Issue a writ of certiorari quashing the impugned order dated 08.07.2009 passed by Opp. Party No.1 and impugned appointment order dated 08.08.2005 of OPP. Party no.4 as Asstt. Professor contained in Annexure No.1 & 2 to the writ petition.
- ii. issue a writ of mandamus / prohibition commanding the OPP. Party No. 1 to 3 to revert, back the OPP. Party

NO.4 from the post of Asstt. Professor and post him in the post Lecturer from the date of joining forthwith.

- iii. issue a writ of mandamus commanding the Opp. Party No.1 to 3 to declare the petitioner senior to the Opp. Party No.4 with all consequential service benefits.
- iv. issue a writ of mandamus commanding the Opp. Parties to count the period of Senior Research Fellow as teaching experience in promoting the petitioner, as Asstt. Professor.
- v. any other writ, order or direction which this Hon'ble Court deem fit in the circumstances of the case may also be passed.
- vi. Allow the Writ Petition with cost."

3.5 In the writ petition both the appellant as well as University has filed their counter affidavit and contested the claim of the respondent No.4. Division Bench of the High Court vide its impugned judgment dated 12.04.2018 allowed the writ petition. The operative portion of the order of the High

Court is as follows:-

"The writ petition is accordingly allowed. The order dated 8.7.2009 passed by the Chancellor is hereby quashed and the University concerned is directed to treat opposite party no.4 having been appointed initially on the post of Lecturer in accordance with his qualification. Consequences shall follow accordingly. However, no recovery shall be made from opposite party no.4 from the payment made to him on account of said initial appointment on the post of Assistant Professor."

3.6 The appellant aggrieved by the judgment of the High Court has come up in these appeals.

4. We have heard Ms. Meenakshi Arora, learned senior counsel for the appellant. Shri S.R. Singh, learned senior counsel appearing for respondent No.4. Shri Vishnu Shankar Jain, learned counsel has appeared for respondent No.3.

5. Learned counsel for the appellant contends that the appellant had started working in the University as Assistant Professor in BRD Medical College from 19.07.2003 to 07.12.2005. It is submitted that prior to his deputation in BRD Medical College, Gorakhpur,

he was a member of Provincial Medical Services w.e.f. 01.09.1992 and had been working for more than a decade as Dental Surgeon. It is submitted that Selection Committee after considering the service experience and working of the appellant found him eligible for the post of Assistant Professor, and recommended as Assistant Professor, who was appointed as such. It is submitted that the respondent No.4 did not fulfil qualifications of Assistant Professor since at the time of application, he had only one year's experience, hence, he rightly applied for the post of Lecturer only. It is submitted that the appointment of the appellant as Assistant Professor was never challenged by respondent No.4 and it is with regard to claim of seniority of respondent No.4 over the appellant he submitted his representation both to the University and the Chancellor. Representation to the Chancellor was also submitted after more than three years from the appointment of the appellant and representations were submitted by respondent No.4 only when he was promoted as Assistant Professor in the year 2007. It is

submitted that High Court committed error in entertaining the challenge to the appointment of appellant as Assistant Professor whereas appointment was never challenged before the Chancellor or within a reasonable period by the writ petition, which was filed in the year 2009. The respondent No.4 cannot be permitted to challenge the appointment of appellant after a period of more than four years. It is submitted that the appellant was senior to the respondent No.4 right from the very beginning and the claim of respondent No.4 regarding seniority of the appellant was misconceived and the dispute was initiated by respondent No.4 only for purpose of claiming himself to be senior to the appellant. The appellant fulfilled the qualifications for appointment on the post of Assistant Professor and has been working on his post since the date of joining.

6. Shri S.R. Singh, learned senior counsel appearing for the respondent No.4 submitted that the experience of the appellant as member of Provincial Medical Services was wholly irrelevant for the purpose of

appointment on the post of Assistant Professor. At best, the appellant's experience as Assistant Professor in BRD Medical College, Gorakhpur in Department of Dentistry from 19.07.2003 to 07.12.2005 can be taken into consideration, which is only two years four months and 19 days, which was less than three years, hence, he did not fulfil the eligibility for the appointment on the post of Assistant Professor. Shri S.R. Singh submitted that the appellant, who did not fulfil the eligibility for the post of Assistant Professor, his appointment on the post of Assistant Professor was void and is nullity and the decision of the High Court holding that respondent No.4 not eligible is correct, which needs no interference by this Court.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. For the post of Assistant Professor and Lecturer advertised by advertisement dated 15.03.2005 qualifications were referred to as qualifications

required as in the first Statute of Lucknow University. Section 42 of the Act, 2002 provided for first Statutes of the University. The Section further provided that for so long as the First Statutes are not so made, the Statutes of the Lucknow University as in force immediately before the appointed date in so far as they are not so inconsistent with the provisions of the Act, 2002, shall, subject to such adaptations and modifications, continue in force. The relevant Statute of the Lucknow University, which provides for qualification for the post of Assistant Professor is Statute 11.02 B2, which is to the following effect:-

"11.02 B2. Assistant Professor: MDS or equivalent degree as recognised by the Dental Council of India in the subject concerned with at least three years teaching experience as Lecturer/Chief Resident/Senior Resident/ Demonstrator / Tutor or equivalent after obtaining MDS degree in the subject concerned.

Provided that if suitable candidates with requisite teaching experience are not available the selection committee may recommend candidates for appointment in lower grade i.e. Lecturers."

9. There is no dispute to the fact that in pursuance

of advertisement dated 15.03.2005 both appellant and respondent No.4 had applied respectively for the post of Assistant Professor and Lecturer and Selection Committee recommended their appointment and Executive Council in the meeting dated 08.08.2005 approved the recommendations of Selection Committee appointing appellant as Assistant Professor and respondent No.4 as Lecturer.

10. The University in its counter affidavit has relied and referred to Section 53 of the U.P. Act No. 8 of 2002. Section 53 of the Act, 2002 is as follows:-

"53- If any question arises whether any person has been duly elected or appointed as, or is entitled to be a member of any authority or other body of the University (including any question as to the validity of a Statute, Ordinance or Regulation, not being a Statute or Ordinance made or approved by the State Government or by the Chancellor) is in conformity with this Act or the Statutes or the Ordinances made thereunder, the matter shall be referred to the Chancellor, and the decision of the Chancellor thereon shall be final:

Provided that no reference under this section shall be made-

(a) more than three months after the date when the question

could have been raised for the first time,

(b) by any person other than an authority or officer of the University or a person aggrieved:

Provided further that the Chancellor may in exceptional circumstances-

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso,

(b) where the matter referred relates to a dispute about the election, and the eligibility of the persons so elected is in doubt, pass such orders of stay as he thinks just and expedient."

11. Section 53 provides that if any question arises whether any person has been duly elected or appointed, the matter shall be referred to the Chancellor, and the decision of the Chancellor thereon shall be final. The Section also contains proviso to the effect that no reference in this Section shall be made more than three months after the date when question could have been raised for the first time. Although, by the second proviso, Chancellor can entertain a reference after expiry of the said period. There is an object and purpose for

entertaining any question regarding appointment of member of any authority or body whether any person has been duly appointed within a period of three months. The members of the teaching faculty of the University be it Lecturer or Assistant Professor are entrusted with teaching, which is to be imparted according to academic calendar. It is in the interest of the University that all doubts regarding appointment of teachers are raised within a period of three months to have an early decision by Chancellor to give quietus to the disputes in the University.

12. From the facts, which have been brought on record, it is clear that the reference to the Chancellor was made by respondent No.4 only on 13.02.2009, i.e., subsequent to he was promoted as Assistant Professor. Chancellor in his order has noticed the substance of claim of respondent No.4. Respondent No.4 has claimed to include the experience of Senior Research Fellow in W.H.O. The respondent No.4 has complained non-consideration of experience as Senior Research Fellow with the W.H.O. in his

experience for appointment on the post of Assistant Professor. Chancellor noticed the stand of the University with regard to claim of respondent No.4 to include his experience as Senior Research Fellow in W.H.O. and made following observations:-

“The University has informed that the experience of Dr. Rao for his service with the WHO as Senior Research fellow in the teaching experience was not considered for the appointment on the post of Assistant Professor because there is no such scheme in the bylaws. The applications sent by Dr. Rao time to time had been disposed off. The university has also informed that case of Dr. Amit Nagar and Dr. G.K. Singh has no similarity with the case of the complainant and the case of Dr. Nagar is different.

At the end the statement of the university is that Dr. Rao has presented applications without knowing the truth of the facts mentioned therein and that through unauthorised manner and since the above case of Dr. Rao is meritless, having no force and based on the false facts and causing disillusion hence it has been requested to reject the complaint.”

13. The Chancellor has further observed that the respondent No.4 has mainly requested to establish his seniority over the appellant. In the last paragraph of the order, Chancellor has made following

observations:-

"The respondent has mainly requested to establish his seniority against the respondent Dr. Puran Chand and has mainly stated that his experience as Senior Research Fellow with Government of India and WHO has not been counted as experience by the Medical University. In the report sent by the vice chancellor of the Chhatrapati Shahu Ji Maharaj Medical University, Lucknow in this regard, it has been clarified that in section 10.01 (A) of the First bylaws of the Lucknow University which has been currently made applicable to the Medical University also there is no provision for considering the services done with WHO as Senior Research Fellow. The reason given by the university is as per the law and the present application lacking force is rejected."

14. The copy of the complaint to the Chancellor which was filed on behalf of respondent No.4 has not been brought by the respondent No.4 on the record, but after perusal of the order of the Chancellor, the main grievance of the respondent No.4 was non-inclusion of his teaching experience, as Senior Research Fellow in W.H.O. and his claim of seniority over the appellant. The respondent No.4 has filed a counter affidavit in this appeal where in paragraph No.9, following has been pleaded by respondent No.4:-

"9. That in respect of the seniority between the answering respondent and Dr. Pooran Chand, a representation was submitted by the answering respondent before the University; but the same was not considered and as such the answering respondent approached the Hon'ble Chancellor as per the provisions of Section 68 of the State Universities Act, 1973."

15. From the facts as noticed above and the pleadings of the respondent No.4 in paragraph 9 of his counter affidavit, it is clear that the respondent No.4 had submitted his representation to the Chancellor regarding seniority over the appellant and the appellant's appointment as Assistant Professor w.e.f. 08.08.2005 was not challenged. Respondent No.4 wanted that his experience as Senior Research Fellow in W.H.O. be also included, which was not acceded to. Section 53 of the Act, 2002 as noticed above when provides that any dispute regarding appointment in the University has to be raised within a period of three months, the respondent No.4 could not have raised any challenge to the appointment of appellant after lapse of more than three years. The Chancellor considered the representation of the respondent No.4

and decided it on merits, since the Chancellor was of the view that the claim is essentially of seniority by respondent No.4 over the appellant.

16. We, thus, are of the view that the appointment of appellant as Assistant Professor, which is approved on 08.08.2005 was not challenged or questioned by respondent No.4 in accordance with provisions of the Act, 2002. Although, in the writ petition filed by respondent No.4, he has made a prayer for quashing the appointment order dated 08.08.2005 of the appellant as Assistant Professor but we are of the view that the appointment of appellant as Assistant Professor having not been challenged before the Chancellor, he could not have been permitted to challenge the appointment of appellant. Appointment dated 08.08.2005 could not be allowed to be challenged after four years in the writ petition.

17. Learned counsel for the appellant is right in her submission that it was after respondent No.4 was promoted as Assistant Professor, he submitted representations and claimed before the Chancellor

seniority over the appellant. In the counter affidavit filed by the University, details of the representations, which were given by respondent No.4 to the Chancellor have also been mentioned in paragraph 2.9, which are to the following effect:-

"2.9 That Dr. Jitendra Kumar Rao preferred a representation to His Excellency, the Chancellor of K.G.M.U. on 13.02.2009 with the following prayer:-

- (a) My seniority in the department as Assistant Professor may be looked at.
- (b) The seniority of Dr. Pooran Chand may be reverted back as per rules.
- (c) If some conspiracy to hide the facts in the appointment of Dr. Pooran Chand is proved, then an appropriate action should be taken against concern person."

18. The prayer of the respondent No.4 that appellant should be reverted on the post of Lecturer could not have been entertained. There is no question of reversion of the appellant on the post of Lecturer when he was appointed as Assistant Professor on 08.08.2005.

19. Now, we may notice the judgments, which have been relied by learned counsel appearing for respondent No.4 in support of his submissions. Learned counsel for the respondent No.4 has placed reliance on judgment of this Court in **Nagendra Chandra and Ors. Vs. State of Jharkhand and Ors., (2008) 1 SCC 798.** The above case related to the appointment on the vacancy for the post of Constables. The vacancies were neither advertised through the Employment Exchange nor in a newspaper, which was a requirement of Rule 663(d) of Bihar Police Manual but was displayed only on the notice board. The appellants of the said case, who were appointed without advertisement of the vacancy, were dismissed from service. The writ petition was filed, which too was dismissed. Challenging the order of the High Court, the appeal was filed before this Court. Paragraph 3 of the judgment notices the submissions, which is to the following effect:-

"3. Learned counsel appearing on behalf of the appellants submitted that though the vacancies were neither advertised through the employment exchange nor in any

newspaper, as required under Rule 663(d) of the Bihar Police Manual, but as the same were displayed on the noticeboard, it cannot be said that there was infraction of the said Rule; as such the services of the appellants should not have been terminated, more so when they have continued in service for a period of fourteen years. On the other hand, learned counsel appearing on behalf of the State of Jharkhand submitted that as the appointments, being in infraction of Rule 663(d), were illegal, the competent authority was quite justified in terminating services of the appellants."

20. In paragraph 9 of the said judgment, this Court laid down following:-

"9. In view of the foregoing discussion, we have no option but to hold that if an appointment is made in infraction of the recruitment rules, the same would be violative of Articles 14 and 16 of the Constitution and being nullity would be liable to be cancelled. In the present case, as the vacancies were not advertised in the newspapers, the appointments made were not only in infraction of Rule 663(d) of the Bihar Police Manual but also violative of Articles 14 and 16 of the Constitution, which rendered the appointments of the appellants as illegal; as such the competent authority was quite justified in terminating their services and the High Court, by the impugned order, was quite justified in upholding the same."

21. There cannot be any dispute to the proposition that when the appointment is made in infraction of the recruitment rules, the same would be liable to be cancelled. The present is not a case where appointment of appellant was cancelled by any competent authority. The appellant was appointed, recommended by Selection Committee with due approval of the Executive Council and the appointment was made after due advertisement. The above judgment, thus, is distinguishable and does not help the respondent No.4.

22. Another judgment relied by learned counsel for the respondent No.4 is **Government of Andhra Pradesh and Ors. Vs. K. Brahmanandam and Ors., (2008) 5 SCC 241**, which was a case where management neither obtained the prior permission of school authorities nor advertised the vacancy in two newspapers and made appointment. The appointees, i.e., Secondary Grade Teachers filed representations for their salary, which was rejected by the District Education Officer. A writ petition was filed, which petition was allowed

directing for their continuance. In the appeal filed by the State, the judgment of the High Court was set aside. This Court held that the appointments made in violation of the mandatory provisions of a Statute would be illegal and, thus, void. There can be no dispute to the above proposition but the above was a case where the appointment of the teachers were neither approved nor was made in accordance with the statutory rules, hence, this Court took the view that they are not entitled for any salary from the State and it was school authorities to pay their salary.

23. Another judgment relied by the learned counsel for the respondent No.4 is **Pramod Kumar Vs. U.P. Secondary Education Services Commission and Ors., (2008) 7 SCC 153**, which was also a case of a teacher, who had obtained B.Ed. degree from an institution, which was not recognised. He was appointed by the Management Committee and filed a writ petition for his salary, his services were terminated. He filed a writ petition, which was dismissed, against which appeal was also dismissed. This Court in paragraph

21 made following observations:-

"21. It is not in dispute that the said institution was not recognised by any university. A degree is recognised only if it is granted by a university constituted in terms of the University Grants Commission Act, 1956 or under any State or parliamentary Act. No university can be established by a private management without any statutory backing."

24. This Court dismissed the appeal filed by the teachers. The above case was also on different premise and does not help the respondent No.4.

25. Appellant has also placed reliance on judgment of this Court in **State of Jammu and Kashmir Vs. R.K. Zalpuri and Ors., (2015) 15 SCC 602** where writ petition was filed challenging the dismissal order after six year. The writ petition was allowed by the learned Single Judge against which LPA by the State was also dismissed. This Court allowed the appeal and held that delay in approaching High Court under Article 226 was fatal in the above case. In paragraphs 26 and 27 following was laid down:-

"26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental

remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "deo gratias"—"thanks to God".

26. As observed above, the Act which Governs the appointment of Assistant Professors and Lecturers in the University itself provides a mechanism for questioning an appointment, i.e., by representation to the Chancellor that too within a period of three months. Any challenge to appointment after more than three years cannot be entertained as we have already held that respondent No.4 in his representation before the Chancellor never challenged the appointment of appellant as Assistant Professor and had filed representation only claiming seniority over

appellant after he got promoted as Assistant Professor himself in the year 2007, High Court ought not to have entertained the challenge to the appointment of appellant in the writ petition and ought to have confined the consideration of claim of respondent No.4 for seniority over the appellant. When the appointment of appellant was not challenged in reasonable time as per the provisions of the Act, 2002, it is not in the ends of justice to permit the respondent No.4 to challenge such appointment in the High Court in the writ petition for the first time, after more than four years of the appointment.

27. We, thus, are of the considered opinion that High Court committed an error in quashing the appointment of respondent No.4 as Assistant Professor, quashing the order of the Chancellor as well as direction to treat the appellant as being appointed as a Lecturer. There was no error in the order of the Chancellor rejecting the representation made by the respondent No.4, which representation was referable to Section 53 of Act No. 8 of 2002. High Court committed error

in quashing the order as well as issuing directions as noted above.

28. In view of the foregoing discussions, we allow the appeals and set aside the judgment of the High Court dated 12.04.2018 and dismiss the writ petition filed by respondent No.4.

.....J.
(ASHOK BHUSHAN)

.....J.
(R. SUBHASH REDDY)

.....J.
(M.R. SHAH)

New Delhi,
January 29, 2021.