

Dr H. P. Hajela

Vs

N. S. Verma and Others

Civil Appeal No. 1477 of 1986

(A. P. Sen, S. Natarajan JJ)

02.05.1986

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave is directed against the order of a learned Single Judge of the Allahabad High Court in Civil Misc. Writ Petition 3710 of 1985 filed in the High Court by the first respondent herein. The appeal lies within a narrow compass as the limited question for consideration is whether the extraordinary leave granted to the appellant for the period December 24, 1980 to July 31, 1983 on the request of the Government of India for his being posted on a teaching assignment in the University of Aden (South Yemen) effected a break in service so as to deprive the appellant his seniority in the Department of Zoology in the DAV College, Kanpur.

2. The facts, which are not in controversy, of the case, are briefly as set out below.

3. On September 1, 1949 the appellant was appointed as lecturer Zoology in a substantive capacity in the DAV College, Kanpur. About six weeks later i.e. on October 12, 1949 the first respondent was also appointed as a lecturer in zoology in the same college. In the year 1974 the appellant was appointed as the Head of the Department of Zoology in the said college. On December 24, 1980 the appellant was granted extraordinary leave on the request of the Government of India for being sent on a teaching assignment to the University of Aden (South Yemen) on the express condition that his lien on the post in the college will be maintained and his seniority will be protected. On the basis of such an arrangement the appellant fulfilled his teaching assignment at the University of Aden and on return to India he sought to resume his post in the college. The first respondent who was acting as the Head of the Department refused to hand over charge on the ground that he had attained seniority over the appellant. It is relevant to mention here that the first respondent did not also continuously serve the college but left its services and went to other teaching institutions and after stints of service therein, he rejoined the Department of Zoology in the DAV College, Kanpur. It would appear that the first respondent went over on January 21, 1978 as Principal of the DAV College, Dehra Dun and thereafter he went over as Principal of the DBS College, Kanpur and subsequently he came back to the DAV College, Kanpur.

4. As the first respondent refused to hand over charge of the department, the appellant made a representation to the Principal and sought his intervention. After considerable delay the Principal refused to countenance the appellant's claim to seniority and sustained the stand taken by the first respondent.

5. The appellant challenged the order of the Principal before the Vice-Chancellor of Kanpur

University. While contending that he had not suffered a break in service and his seniority over the first respondent has remained intact all through his period of service on deputation, the appellant further contended that the first respondent had in fact suffered break in service because of his spells of service at the DAV College, Dehra Dun and the DBS College, Kanpur and as such the first respondent's claim of continuous service was an untenable one. The Vice-Chancellor upheld the appellant's claim that he had not suffered any break in service and by virtue of his lien he was entitled to his rightful place of seniority. Aggrieved by the order of the Vice-Chancellor, the first respondent preferred an appeal to the Chancellor but the Chancellor affirmed the order of the Vice-Chancellor and dismissed the appeal.

6. Thereafter the first respondent filed Civil Misc. Writ Petition 3710 of 1985 under Article 226 of the Constitution before the High Court at Allahabad. By the impugned order a learned Single Judge of the High Court allowed the writ petition holding that in terms of either the Old Statutes or the First Statutes of the Kanpur University the appellant herein is not entitled to reckon the period of service at the University of Aden for computing the length of service in the DAV College and as such the recognition of the seniority of the appellant over the first respondent by the Vice-Chancellor and the Chancellor in their respective orders cannot be sustained. Accordingly the learned Judge has issued a rule in favour of the first respondent and it is against that order this appeal by special leave has been filed.

7. While presenting the case of the appellant before us Shri S. N. Kacker, learned counsel did not press the alternative contention of the appellant that the first respondent had suffered break in service in the DAV College, Kanpur and as such he has no locus to claim seniority. Consequently, the only ground on which the order of the High Court was assailed is that the High Court was in error in holding that the deputation service of the appellant has effected a break of service and as such he has lost his original seniority in the Department of Zoology. As the High Court has held that neither under the Old Statutes nor under the First Statutes of the Kanpur University the appellant is entitled to tack on his service in the University of Aden with his service in the DAV College, Kanpur it is necessary to advert to the relevant provisions in the two statutes. However, before such advertence, it will be relevant to refer to the letter of consent issued to the appellant by the then Principal viz. Shri S. C. Srivastava of the DAV College, Kanpur as condition precedent for his accepting the teaching assignment abroad. The letter, addressed to the Ministry of Home Affairs, is worded as under :

From :

Principal DAV College, Kanpur, U.P. India

To

Ministry of Home Affairs, Department of Personnel and Administrative Reforms,  
(Foreign Assignment Section) New Delhi

Assignment of Indian Experts abroad

Certified that the applicant Dr K. P. Hajela, Head of Zoology Department, DAV College, Kanpur, will be relieved for service abroad on foreign service terms in public interest (i.e. retaining the applicant's lien and protecting his seniority) within thirty days of selection if need be. It is further stated that the applicant, Dr Hajela,

can be released for service abroad for a total period of three years.

#August 21, 1978

Sd/ -

S. C. Srivastava##

It may be seen from this letter that the appellant had been granted leave for a period of three years and a specific undertaking had been given on behalf of the college that the appellant's lien in the college will be retained and his seniority also will be protected during his period of service abroad. It will also be relevant to mention in this context itself that even now the present Principal, who has declined to uphold the seniority of the appellant, has conceded in his order dated September 1, 1983 that the appellant's lien has been maintained. The relevant portion in the order is contained in para 6 and reads as under :

Dr Hajela's lien has been maintained on his post here insofar as he was granted extraordinary leave without pay for the period of contract service abroad and that no appointment was made in his place. Other claims are not admissible.

8. No doubt the first respondent and the present Principal of the college have taken the stand that the former Principal had no authority to guarantee the appellant his lien in the department and his rank of seniority. The merit of this stand will be gone into later but for the moment we would only like to point out that one part of the undertaking given by the former Principal namely, retention of lien has been conformed to and what is disputed is only the guarantee regarding the protection of seniority.

9. Now coming to the statutes the relevant one in the Old Statutes is 11.34 and the one in the First Statutes is 18.10. They are in the following terms :

Old Statutes

Seniority of Teachers in Affiliated Colleges :

11.34(1) Subject to the provisions of this statute the seniority of teachers in a particular college shall be determined by the length of service in that college in the same cadre and in the same grade.

(2) The periods of service in another University associated/affiliated college in the same or higher cadre and grade shall also count towards seniority if the University or college is situated in Uttar Pradesh and the college is affiliated to or associated with one of the Universities in the State.

(3) Service in an officiating capacity shall not be counted. Temporary service shall be counted only if it is in continuation of a subsequent permanent appointment.

(4) The period of leave without pay shall not be counted in calculating the seniority unless during such leave another position involving similar work was held or it was medical leave.

First Statutes

## Seniority of Principals and Teachers of affiliated colleges

18.10 The following rules shall be followed in determining the seniority of Principals and other teachers of affiliated colleges :

- (a) the Principal shall be deemed senior to other teachers in the college :
- (b) the Principal of a post-graduate college shall be deemed senior to the Principal of a degree college;
- (c) the seniority of Principals and teachers of the affiliated colleges shall be determined by the length of continuous service from the date of appointment in substantive capacity;
- (d) service in each capacity (for example, as Principal or as a teacher), shall be confirmed from the of taking charge pursuant to substantive appointment;
- (e) service in a substantive capacity in another University or another degree or post-graduate college whether affiliated to or associated with the University or another University established by law shall be added to his length of service.

Another provision, which has not been adverted to by the High Court, is also set out, as it has relevance :

18.16 The statutes contained in this chapter shall not affect the inter seniority of teachers employed in this University from before the commencement of these statutes.

10. In order to give operative force to the First Statutes over the Old Statutes in the event of any conflict in the provisions of the two statutes a specific provision has been made in Chapter I Section 50(1)/1.02(1) and it is worded as under :

All existing statutes and all such ordinances in force in the University, as are inconsistent with these statutes are to the extent of such inconsistency, hereby rescinded and shall forthwith cease to have effect except as respects things done or omitted to be done before the commencement of these statutes.

11. The High Court has taken the view that there is no inconsistency between Statutes 11.34 of the Old Statutes and Statute 18.10 of the First Statutes and as such the seniority of the appellant should be determined in accordance with Statute 11.34(2). As it is provided in sub-clause (2) of Statute 11.34 that the periods of service in another University or college would count for seniority only if the University or college is situated in Uttar Pradesh and the college is affiliated to or associated with one of the Universities in the State, it has been held that the appellant cannot tack the period of his service in the University of Aden with his service in the DAV College for purposes of seniority. The High Court has further held that even if the First Statutes are held applicable the appellant will fare no better because under sub-clause (e) of Statute 18.10 it is only the service rendered in a substantive capacity in another University or affiliated or associated college in the University or another University established by law that would count. As the University of Aden would not fall within the definition of "University or another University established by law" envisaged in the sub-clause the High Court has stated that any service rendered in a foreign University has to be

necessarily excluded while computing the length of continuous service.

12. On a careful consideration of the matter we find that the High Court has not properly comprehended the statutes. Taking up Statute 11.34 of the Old Statutes it may be seen that sub-clause (1) deals with the reckoning of seniority on the basis of the length of service in one and the same college and in the same cadre and grade; sub-clause (2) provides for the addition of service in another University or associated/affiliated college etc. provided the University is situated in Uttar Pradesh and the college is affiliated to or associated with one of the Universities in the State; sub-clause (3) excludes service in an officiating capacity and grants recognition of temporary service only if it has continuity with a subsequent permanent appointment; and lastly sub-clause (4) prescribes for tacking on of leave period with the total length of service provided; (1) the period of leave has been spent in holding another position involving similar work or (2) it was medical leave. Admittedly, the case of the appellant would not fall under sub-clause (2) because his service in the University of Aden will not constitute such kinds of services as are envisaged in the sub-clause. However, sub-clause (4) would undoubtedly cover the case of the appellant because he had been granted leave of absence on loss of pay for a period of three years for rendering service in the University of Aden on deputation basis. The words "unless during such leave another position involving similar work was held" would squarely apply to the period of leave of the appellant. It is significant to note that the qualifying words "University or college situated in Uttar Pradesh and the colleges affiliated to or associated with one of the Universities in the State" occurring in sub-clause (2) are conspicuously absent in sub-clause (4). It is not the case of the first respondent and for that matter there can be no such contention also that the position held by the appellant in the University of Aden did not involve the performance of work similar to the one he was performing in the DAV College, Kanpur. Unfortunately, this sub-clause which is the one directly governing the case of the appellant has not been noticed by the High Court. As there is no conflict between sub-clause (4) of Statute 11.34 of the Old Statutes and any provision in the First Statutes there is no room or scope for invoking the overriding provision contained in Statutes 1.02(1) for denying the application of Old Statute 11.34(4) to the case of the appellant. On the other hand the appellant will be entitled to claim the benefit of First Statute 18.16 which preserves "inter-seniority of teachers employed in the University from before the commencement of the statutes".

13. The High Court has failed to notice that sub-clauses (2) and (4) of Old Statute 11.34 contemplate different situations and act in different fields. The service contemplated under sub-clause (2) is a distinctly different service and has no bearing on the service rendered in the particular institution in which seniority is claimed. Even so, a link is provided between the services rendered elsewhere and the services rendered in the concerned University or college because of the similarity of features in the two services and the integral connection between the Universities situated in the State and the affiliation or association of the colleges with one or the other of the Universities in the State. On the other hand the service contemplated under sub-clause (4) is the service rendered elsewhere during leave period even while the teacher continues to be on the rolls of the institution in which he has been rendering service. Thus while sub-clause (4) contemplates service rendered elsewhere during the period of leave, sub-clause (2) does not contemplate any such service but contemplates the service rendered elsewhere without taking leave from any institution. A proper exposition of the fields of operation of sub-clauses (2) and (4) of Old Statute 11.34 will at once bring to light the merit in the contentions of the appellant and the error that has been committed by the High Court. As we have already stated the provision contained in sub-clause (4) of Old Statute 11.34 has not been disturbed in any manner by the First Statutes and hence the appellant will be entitled to the benefit of this provision, especially in terms of Statute 18.16 of the First Statutes. Because of the failure of the High Court to have applied the appropriate provision in the statutes, the

period of service of the appellant on deputation has been wrongly held to be non-includible in the total length of service of the appellant and this has led to the denial of the appellant's rightful seniority.

14. As the appellant's case falls squarely within Old Statute 11.34(1) there is no need or necessity for resorting to the provisions of the First Statutes for determining the appellant's claim of seniority. It is not the case of the appellant that he had rendered service in a substantive capacity in another University or another affiliated or associated college established by law as contemplated by sub-clause (e) of First Statute 18.10. On the other hand his claim is that he had all along continued to be in the service of the DAV College, Kanpur notwithstanding his service on deputation in a foreign University because he had granted extraordinary leave on loss of pay with guaranteed lien and seniority of service.

15. It was hesitantly contended by the counsel for the first respondent that the former Principal of the DAV College had no authority to guarantee the appellant the lien on his post and his seniority rights and that such powers vested only with the University. This contention does not require examination because the Principal, as the Head of the institution, was undoubtedly competent to grant leave on loss of pay to the appellant in order to enable him to take up a foreign assignment on deputation basis. Once it is proved by the appellant that the period of leave was utilized in holding another position involving similar work the appellant is automatically entitled to the benefit of sub-clause (4) of Old Statutes 11.34. On account of this irrefutable position it is needless for us to consider whether the Principal had acted within his powers or had exceeded his powers in committing the college to confer rights of lien and seniority status to the appellant when he was granted leave.

16. In the light of our conclusion the appeal has to succeed. Accordingly it will stand allowed and the judgment of the High Court is set aside. The parties will, however, bear their respective costs.

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