

Dr. Y.S. Parmar University of Horticulture and Forestry and another

Vs

Raj Kumar Thakur

Civil Appeal No. 3951 of 1990

(L.M. Sharma, J.S. Verma JJ)

17.08.1990

JUDGMENT

VERMA J

1. Special leave granted.

2. Respondent, Raj Kumar Thakur, was a student in the Post-graduate Doctoral Program as a Ph.D. scholar with his subject for doctoral study "Breeding of Honey Bees-A-Mellifera for Honey production through Artificial Insemination" which is a subject under the Department of Agriculture of Dr. Y. S. Parmar University of Horticulture and Forestry and is a course of study available in several other institutions in the country. The respondent was registered for this course in 1985 and was required to complete the same in six semesters with entitlement for extension by the more semesters by the Dean on the recommendation of the Adviser and for a further extension of two by the Vice-Chancellor of the more semesters Horticulture Dr. Y. S. Parmar University of Horticulture and Forestry on the recommendation of the Dean. The respondent completed seven semesters as a student and registered for the eighth semester on 24-7-1989 as a student of the University. However, during this period respondent was appointed as Assistant Scientist in the pay scale of Rs. 2200-4000 vide letter of appointment dated 26-7-1989. The Dean by order dated 27-7-1989 permitted the respondent to register for the eighth semester. This permission of the Dean was granted without the knowledge of the respondent having become an employee of the University as a result of the appointment letter dated 26-7-1989. The respondent joined the post of Assistant Scientist pursuant to this appointment on 29-7-1989. The respondent thereafter applied for a further extension of his registration for the course for the ninth semester. The Vice-Chancellor vide his order dated 22-11-1989 refused the permission on the ground that the respondent having become an employee of the University was not entitled to that benefit in accordance with the provisions applicable. The restrictions in regard to an employee/teacher of the University for this purpose are as under:

"(a) An employee teacher of the University is permitted to undertake, doctoral program only in subjects for which facilities in other Universities in the country are not available. Forestry being one such subject in the petitioner University. The course of study of the respondent viz. Agriculture, is however, available in numerous other institutions and Universities in the country.

(b) An employee/teacher is required to take study leave and the same is admissible for pursuing approved courses outside the University only. It is only in cases where

facilities for the course of study which is not available elsewhere in the country, an in-service teacher is permitted to undertake the same in the petitioner University.

(c) Study leave is not granted as a matter of right and can be granted only after the employee/ teacher has completed five years of continuous service in the University.

(d) Considering the number of employees aspiring to do doctoral program the permission to do the same is given according to seniority."

3. An employee of the University would be required to complete the Ph.D. within eight years of recruitment failing which increments are not admissible till completion of the course. An employee who is Assistant Professor or holds an equivalent post, the respondent being in that category, normally becomes entitled to the senior scale. of Rs. 3000-5000 after completion of eight years of service. However, in case of an employee obtaining the Ph.D. degree the senior scale becomes applicable after five years instead of eight years. On completion of eight years in the senior scale and employee/teacher is promoted to the next higher rank of reader. Thus, a person getting a Ph. D. degree gets the senior scale earlier and consequently he is also promoted earlier to the post of reader. There are 24 other employees who are senior to the respondent and are awaiting completion of their five years service for doing the doctoral program and there are eight other employees who joined initially with the Ph.D. degree and are awaiting completion of five years for getting the senior scale. The consequence of granting permission to the respondent for registration to the ninth semester would be to confer on the respondent the benefit which is not available to an employee of the University because of the aforesaid restrictions and this would result in giving a benefit to the respondent contrary to the provisions applicable while denying the same to others who are senior to the respondent in employment. According to the appellants this was the reason for refusal by the Vice-Chancellor of the permission sought by the respondent.

4. The respondent challenged this refusal of the permission to him by the Vice-Chancellor by order dated 22-11-1989 in the High Court of Himachal Pradesh in C.W.P. No. 12 of 1990. By the impugned judgment dated 10-4-1990, the Full Bench of the High Court by majority allowed the writ petition and directed the Vice-Chancellor to register the respondent for the remaining two semesters, namely, the ninth and the tenth semesters. Hence, this appeal by special leave.

5. The grievance of the appellants is that the result of the impugned majority judgment of the High Court would be that though the respondent is an employee/teacher of the University he would be doing research in a subject in which otherwise employees of the University are not permitted, the respondent would get the senior scale earlier and also be promoted to the post of Reader much before 24 persons senior to him who are awaiting their turn in the order of seniority to undertake the doctoral program after completion of the requisite five years service which is contrary to the statutory provisions; and the 24 other employees senior to the respondent would be adversely affected even without being parties in the writ petition.

6. The statutory provisions applicable to the case and their meaning is not, in controversy. The only controversy is whether the respondent can be treated as an employee or in-service candidate for the Ph.D. course on these facts so as to attract the restrictions which are relied on by the University for refusing the permission for registration to the ninth and tenth semesters sought by the respondent. The majority opinion in the impugned judgment takes the view that the respondent is not an in-service candidate for this purpose as he has already completed eight semesters and requires only two or three months to complete the Ph.D. course. The majority has also been influenced by the fact that

refusal of permission for completing the course at this stage would be hard on the respondent. The minority view of Bhawani Singh, J., is that on appointment to a teaching post in the University, the respondent incurred the disability and attracted the restrictions which are applicable to all employees of the University irrespective of the consequence flowing from it. In our opinion, the minority judgment of Bhawani Singh, J., on this point and the conclusion reached by him that the respondent attracted the restrictions attaching to all employees of the University on his appointment as a teacher of the University is the correct view and the respondent cannot escape from the statutory restrictions which became applicable to him as soon as he became an in service candidate for the remaining part of the Ph.D. course on his taking up of the appointment in the University. The further fact that the benefit claimed by the respondent, if granted, would result in the respondent getting consequential benefits much before his several seniors as a result of this permission alone cannot also be overlooked. It is not a case of merely giving some benefit to the respondent even by relaxation of some statutory provisions without causing any prejudice to anyone else but a case where, such a benefit granted to the respondent alone from amongst a large number of employees of the University would also seriously prejudice their claim and amount to an act of discrimination. Obviously, such a course is impermissible. This is the consequence of the High Court judgment and, therefore, it must be set aside.

7. Consequently, the appeal is allowed and the impugned judgment dated 10-4-1990 of the High Court of Himachal Pradesh in C.W.P. No. 12 of 1990 is set aside.

Appeal allowed.

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