

**Saurabh Kumar Vs. State of U.P. and Another**

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**Court :** Allahabad

**Decided On :** May-03-2001

**Reported in :** [2001(90)FLR283]; 2001LabIC3928; (2001)2UPLBEC1848

**Judge :** M. Katju and ;O. Bhatt, JJ.

**Acts :** [Constitution of India](#) - Article 14

**Appeal No. :** C.M.W.P. No. 22355 of 2000

**Appellant :** Saurabh Kumar

**Respondent :** State of U.P. and Another

**Advocate for Def. :** P. Padia, ;A.B.L. Gaur and ;P.C. Shukla, Advs.

**Advocate for Pet/Ap. :** T.P. Singh, ;Akhilesh Chandra Srivastava and ;Anupam Kumar, Advs.

**Judgement :**

**M. Katju, J.**

1. This writ petition has been filed with a prayer for mandamus directing the respondents to designate the petitioner as Lecturer since the date of his initial appointment as Instructor, i.e.. 24.4.1992 and to pay salary and other consequential benefits accordingly with retrospective effect. The petitioner has

also prayed that he should be given the benefit of the G.O. dated 17.10.98 with retrospective effect,

2. We have heard learned counsel for the parties.

3. The petitioner was appointed on 24.4.92 as Instructor in J.K. Institute of Applied Physics and Technology, University of Allahabad (hereinafter referred to as the Institute) after a selection by a Selection Committee as stated in para 3 of the petition and since then he has been continuing in service as such. In para 4 of the petition, it is stated that the petitioner has a good academic record and he got first division upto to B. Tech. Degree which he obtained in 1990. In para 5 of the petition, it is stated that the duty of the Instructor are to teach students including teaching Engineering Drawing, Workshop and Surveying to B. Tech students and to look after practical classes. In this connection, the certificate issued by the Incharge, Workshop of the Institute is Annexure-1 to the writ petition.

4. In para 6 of the petition it is alleged that the work and duty of Instructor are same as that of Lecturer in the University but there is a different pay scale. The Instructor has the pay scale of Rs. 4,000-7,000 while the pay scale of Lecturer is Rs. 8,000-13,000. In para 7 of the petition. It is stated that the Instructor of other Departments have been designated as Lecturer and are also paid pay scale on the post of Lecturer, e.g.. Dr. Shyam Behari Agrawal, Dr. Ajay Kumar Jetali and Smt. Manju Agarwal who have been appointed as Instructors in the Department of Visual Arts, and Himanshu Tewari in the Department of Music who have been redesignated as Lecturer and have been given the pay scale of Lecturer. Hence it is alleged that the petitioner has been discriminated against. In para 8 of the petition, it is alleged that the petitioner has been assigned 15 classes in a week (Duty-hours are 6 hours per day) pertaining to the students of B. Tech. 1st Year and IInd year. True copy of the timetable of B. Tech. 1 year and II year for the academic sessions 1999-2000 is Annexure 2 and 2A to the writ petition. It is further alleged that apart from duty of teaching students and supervising staff, the petitioner has been further assigned the Job of paper setting, tabulation, Invigilation, examining the answer books and awarding sessional marks to students of the Institute. In para 10 of the writ petition, it is stated that the

University authorities made a recommendation to the State Government for converting the post of Instructor/Research Assistant to the post of Lecturer in various Departments of the University but the State Government did not pay attention hence writ petition was filed in 1988. Pankaj Kumar and others v. University of Allahabad and others, and the Court held that the Instructors were entitled to get designation as Lecturer from the initial date of appointment including salary. A true copy of the judgment is Annexure-3 to the writ petition. In para 11 of the petition, it is stated that the pay scale of Instructor. Research Assistant, Cartographers and Curators are the same and hence the case of the petitioner who is Instructor and of Research Assistant are at par. In para 12 of the petition, it is stated that the claim of the Instructor was considered by the Executive Council and a resolution was passed recommending to the State Government to award designation of Lecturer and pay scale to the Instructor. True copy of the resolution of the meeting of the Executive Council dated 14.11.1998 is Annexure-8.

5. In paragraph 13 of the writ petition, it is stated that the Executive Council of the University granted pay scale and designation of Lecturer to four Research Assistants working in the Departments of Urdu, Commerce and Political Science on 15.10.1994 but the petitioner has not been given the same benefit. In para 15 of the petition, it is stated that one Dr. Sudhakar Malviya and others filed a writ petition before this Court being Civil Misc. Writ Petition No. 339 of 1985 which was allowed. A true copy of the judgment is Annexure-5 to the petition. S.L.P. against the said judgment has been dismissed by the Supreme Court vide Annexure-6. In para 16 of the petition, it is stated that on 17.10.98. the State Government issued a Government Order to all the State Universities in U.P. whereby the post of Instructors have been converted into the post of Lecturer alongwith the pay scale and other consequential benefits from the date of the aforesaid Government Order and not from the date of initial appointment. A true copy of the G.O. is Annexure-7 to the petition. The second part of the G.O. dated 17.10.98 was challenged in this Court in Writ Petition No. 32098 of 1999 and Dr. Swatanta Bala Sharma v. State of U. P. and others, which was allowed and the Court directed the respondents to treat the petitioner as Lecturer from the date of her initial appointment as Instructor and to pay arrears of salary within three months. A true copy of the said judgment is Annexure-8 to the petition. Subsequently, several other writ petitions were

allowed with the same relief vide Annexure-9 to the petition. However, the petitioner has not been given this benefit. In paragraph 16 of the petition it is stated that the petitioner is performing the same work as Lecturer and hence on the principle of equal pay for equal work he is entitled to salary as Lecturer.

6. The University has filed a counter-affidavit. In paragraph 4 of the counter-affidavit, it is stated that the petitioner's case is not covered by the G.O. dated 17.10.98. as he does not have the minimum qualification for Lecturer as required in the Government Order. In paragraph 5, it is stated that other persons have been designated as Lecturer but the petitioner was not given this benefit, as he does not have the minimum qualification as he does not have a Master's degree but only Bachelor's degree. In paragraph 9, it is stated that the minimum qualification for Lecturer is M. Tech, while petitioner has only B. Tech degree. In paragraph 11, it is stated that decision in the case of Shyam Behari Agarwal and Ajay Kumar Jattly, are not applicable to the petitioner. In paragraph 16, it is stated that the State Government has rejected the recommendation of the Executive Council. In paragraph 16, it is stated that the decision in the case of Shyam Behari Agarwal, is also not applicable to the petitioner since the petitioner does not have the minimum qualification. The respondents have relied on the decision of this Court in Radhey Shyam Bhatt, 1996 ALJ 1424, where it has been held that Instructors are not to be treated as Lecturers, and the decision of this High Court has been affirmed by the Supreme Court in SLP filed by Dr. Ram Kumar Vishwakarma which was dismissed by the Supreme Court. The respondents have also relied on the decision of the Full Bench of this Court in the case of Ajay Kumar Jaitly v. State of U. P., 1999 (I) UPLBEC 388, wherein it has been held that the designation of the post and pay scale are matters for consideration by the Employer.

7. A rejoinder-affidavit has been filed. In paragraph 4 of the rejoinder-affidavit, it is stated that the petitioner possesses the minimum qualification required by the G.O. dated 17.10.98 Annexure-7 to the petition. It is alleged that the petitioner had obtained 1st Class in B. Tech and possesses the minimum qualification of Lecturer as recommended by All India Council for Technical Education and approved by Government of India. True copy of the recommendation dated 15.3.2000 is Annexure-RA-1 to the rejoinder-affidavit. The petitioner has relied on the letter of

the Ministry of the Human Resources Development, Government of India dated 28.2.1989 dealing with technical education and on the basis of the same, has alleged that the minimum qualification for Lecturer in a Technical Institution is 1st Class Bachelor's degree in the appropriate branch of Engineering/ Technology or 1st Class Master's degree in the appropriate branch of study in the case of post in Humanity and Sciences. True copy of the letter dated 28.2.89 is Annexure-RA-3. It is further alleged that other Universities and Degree level Technical Institutions are following the Government norms recommended by All India Council for Technical Education vide Annexures-RA-4 and 5. In the Motiial Nehru Regional Engineering College. Allahabad also the same qualification has been prescribed, but in the institution in question a different standard is being applied, which is discrimination, it is alleged that U.S. Tripathi and T.N. Venkatesh when appointed as Lecturers in the institution possessed qualifications of B. Tech and AM1E respectively, and did not have Master's degree vide Annexure-5. It is further alleged that the present Head of the Department of Electronics and Communications in the Institution also docs not possess the minimum qualification for Lecturer.

8. We have also perused the Supplementary Rejoinder-Affidavit filed by the petitioner.

9. A Supplementary Counter Affidavit has been filed by the respondents. In paragraph 3, it is stated that in the case of Sri Venkatesh his initial appointment was made by the University about 40 years earlier and at that time, the statute in question had not come into existence. The said Sri Venkatesh has already retired as Lecturer in 1990 and subsequently he has died. The petitioner cannot claim any parity in this respect. As regards the case of Sri U.S. Tripathi. he obtained B. Tech degree in 1983 and in 1986 the Council of Scientific and Industrial Research gave him Senior Fellowship. In 1988 Sri Tripathi was appointed as Lecturer in Madan Mohan Malaviya Engineering College. Gorakhpur through a Selection Committee and in September. 1988 he was appointed as Lecturer through a Statutory Selection Committee in the Allahabad University. He has subsequently obtained Ph. D. degree and has been appointed as Reader. As regards. Sri Ashok Kumar Gupta he was appointed as Lecturer in the University long back in the year 1963, thereafter appointed as Reader in 1981 and in the year 1985 he was selected as

Professor in Physics/ Electronics in Avadh University. Subsequently in the year 1988 he was appointed as Professor in Computer Science in Allahabad University.

10. In the Supplementary Counter Affidavit, it is stated that the petitioner is only B. Tech. and he has been appointed as Instructor. In our opinion, the petitioner cannot be designated as Lecturer in view of the University Statute 11.01 (4) which requires a Master's degree. Merely because some mistake was made in respect of some other persons that does not mean that the mistake has to be perpetuated. The minimum qualification for the post of Lecturer is a Master's degree, and without that a person cannot be designated as Lecturer. In the Judgments referred to by the learned counsel for the petitioner, there was no dispute that the petitioners in these cases had a Master's Degree, and the only question was whether such persons who are working as Instructors should be designated as Lecturers. However, the case of the petitioner is different because he has only a Bachelors degree, and that too in Mechanical Engineering. As held by the Supreme Court in Dr. J.P. Kulsheshta v. Allahabad University, AIR 1980 SC 2141, the minimum qualification cannot be relaxed. We have not been shown any provision of law by which the recommendations of the All India Council of Technical Education are binding on the Allahabad University. Unless the University Statutes are amended, the petitioner cannot get the designation of Lecturer. Similarly, merely because other non-qualified persons have been appointed Lecturers, it does not mean that others who are not qualified are also to be given designation as Lecturer. Article 14 of the Constitution does not envisage that illegalities should be perpetuated.

11. Statute 11.01 (4) of the Allahabad University states :

'In the case of Department of Electronics and Communications in Faculty of Science, the minimum qualifications for the post of Lecturer in University shall be Master's degree either in Technology or in Electronics.'

12. In November. 1994 an amendment was made in the Statute by which Master's degree in Computer Science was also recognised as one of the minimum qualification for the post of Lecturer. Hence with mere qualification of a B. Tech. degree one cannot be appointed as Lecturer.

13. There was some controversy as to whether the petitioner is doing the same work as Lecturer. We are of the opinion that the petitioner may make a representation to the Vice Chancellor who should examine this matter and if he finds that the petitioner is doing the same work as Lecturer, then on the principle of equal pay for equal work he should be given the pay scale of Lecturer. The Vice-Chancellor should decide this representation within 6 weeks of receiving a copy of the same. As regards the petitioner's prayer for grant of designation of Lecturer, we are of the opinion that he cannot get the designation of Lecturer without amendment of the aforesaid Statute or other relevant Rules. The petitioner may make a representation to the Vice Chancellor/Executive Council for amendment of the Statutes and it is for the relevant authority to decide whether to amend the Statute in accordance with the prayer of the petitioner or not.

14. With the aforesaid observations the petition is disposed off finally.