

**Dr. A.R. Sircar and ors. Vs. State of U.P. and ors.**

**Dr. A.R. Sircar and ors. Vs. State of U.P. and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/484129](http://sooperkanoon.com/484129)

**Court :** Allahabad

**Decided On :** Nov-27-2001

**Reported in :** 2002(1)AWC323A; (2002)1UPLBEC615

**Judge :** M. Katju and ;Kamal Kishore, JJ.

**Acts :** [Constitution of India](#) - Article 14; U.P. State Universities Act, 1973 - Sections 2(19)

**Appeal No. :** Writ Petition No. 2057 of 1999 (SB)

**Appellant :** Dr. A.R. Sircar and ors.

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

**Advocate for Def. :** C.S.C.

**Advocate for Pet/Ap. :** S.K. Kalia, Adv.

**Disposition :** Petition allowed

**Judgement :**

**M. Katju, J.**

1. The petitioners are either retired or working professors of different departments of King George's Medical College, Lucknow (hereinafter referred as 'the Medical College') which is a constituent college of Lucknow University as defined in

Section 2 (6) of U. P. State Universities Act, 1973. Statutes 12.01 III of the first statutes of Lucknow University mentions the Medical College as a constituent college. The medical college is also a faculty of the Lucknow University.

2. The grievance of the petitioners' is that they are being subjected to hostile discrimination in the matter relating to post-retiral benefits vis-a-vis other teachers of Lucknow University in other departments/ faculties.

3. The petitioners have prayed for a mandamus directing the respondents to count the entire length of service rendered by the petitioners from the date of their initial appointments to the date of retirement at the age of 60 years for the purposes of calculating pension including service rendered by them in the capacity of ad hoc/temporary/ administrative appointment. They have also prayed for a mandamus to grant all benefits for computation of pension to the extent of 40%. They have also prayed for a mandamus directing the respondents to take into account and treat the amount of non-practicing pay or non-practicing allowance as a part of pay for the purpose of computation of pension of those petitioners who are getting non-practicing pay or allowance.

4. The petitioners were Initially appointed as lecturers in the ad hoc/ administrative/temporary capacity in the medical college and subsequently, their appointments were made substantive on the said post without any break in service. Later on, they were promoted as Reader and then Professor without any break in service. Most of the petitioners have retired. The details regarding the petitioners' service is given in Annexure-1 to the petition.

5. In paragraph 3 of the petition, it is alleged that though the last pay drawn by the petitioners at the time of superannuation at the age of 60 years is being taken into consideration but the length of service for the purposes of computation of pension which is being taken into consideration is only till the age of 58 years and not till the age of 60 years, which results in heavy loss to them.

6. In paragraph 4 of the petition, it is alleged that the action of the respondents in not counting the period of service rendered by the petitioners in ad hoc/temporary/ administrative capacity as lecturer/ demonstrator results in heavy loss to them.

The petitioners claim that the entire service of ad hoc/ administrative/ temporary capacity should be added for the purposes of calculating pension. In paragraph 5 of the petition, it is alleged that the petitioners are teachers of the Lucknow University in view of the Statute 12.01 and the age of superannuation of a teacher is 60 years as per the Statute 16.24 of the First Statute of Lucknow University.

7. It is stated in paragraph 6 of the writ petition that the State Government issued a G.O. dated 24.12.1983 vide Annexure-2 to the writ petition relating to post-retiral benefits to the teachers of the University. Under this G.O., those who opted to retire at the age of 58 years were given benefit of pension, gratuity, etc. while those who opted to retire at the age of 60 years were given the benefit of pension, family pension and G.P.F. Thus, the benefit of gratuity was not given to those who opted to retire at 60 years. In paragraph 8 of the petition, it is stated that the petitioners opted to retire at the age of 60 years. The G.O. dated 24.12.1983 was amended by another G.O. dated 22.10.1995 vide Annexure-3 to the petition. The amendment made by this new G.O. was that for those teachers who opted to retire at 60 years, the pension/family pension would be computed on the basis of the pay drawn at the time of retirement at 60 years. Since the petitioners opted to retire at the age of 60 years, their pension was also to be calculated as per the procedure prescribed for the Lucknow University teachers. The State Government vide letter dated 21.5.1997 Annexure-4 to the writ petition wrote to the Vice Chancellor of the University clarifying that in relation to the teachers of the medical college, the Government Orders which are applicable to grant of pension/ family pension to the teachers of Lucknow University will also be applicable.

8. In paragraph 11 of the petition, it is alleged that the first grievance of the petitioners is that the entire period till the age of retirement at 60 years is not being counted for the purposes computing pension, though the G.O. dated 22.9.1995 says that those teachers who have opted for retirement at 60 years will have their pension computed on the basis of the last pay drawn by them at the age of 60 years. It is alleged that the respondents are no doubt taking the last pay drawn by the teachers of the medical college at the age of 60 years for calculating the pension but the period till the age of 60 years is not being taken into consideration, rather the period of service till the age of 58 years is being taken into

consideration. In paragraph 13 of the writ petition, it is alleged that for computing the pension of the teachers of other faculties of Lucknow University (i.e., other than the faculty of medicine), the entire period of service till the age of 60 years is being taken into consideration vide letter dated 13.5.1998 Annexure-5 to the writ petition. Thus, it is urged that there is discrimination against the petitioners.

9. The second grievance of the petitioners is that their uninterrupted services rendered in ad hoc/ administrative/ officiating capacity as lecturer and demonstrator is not taken into consideration for calculating the pension. It is alleged that this is also discriminatory as teachers of other faculties are getting this vide order dated 23.4.1998 Annexure-6 to the petition.

10. In paragraph 17 of the writ petition, it is alleged that the State Government vide order dated 14.10.1999 has provided that service rendered by teachers working in the State Universities in temporary/ administrative capacity will be counted for the purposes of pension provided there is no Interruption in service. True copy of the G.O. dated 14.10.1999 is Annexure-7 to the writ petition.

11. In paragraph 21 of the writ petition, it is alleged that the ad hoc appointments of the petitioners were made through a selection committee but after their appointments their services have been continued and they were made permanent. Hence, there was no interruption in service.

12. The petitioners are also aggrieved by the action of the respondent in not computing their pension to the extent of 33% to 40% as it is alleged that this benefit was given to some other similarly situated persons mentioned in paragraph 25 of the petition.

13. In paragraph 29 of the petition, it is alleged that non-practicing allowance of the petitioners is not being taken into consideration for the purposes of reckoning the pension although the same form part of the pay as per G.O. dated 23.10.1997 vide Annexure-12 to the writ petition. A perusal of clause 4 of this G.O. shows that non-practicing allowance is to be treated as part of the pay. The petitioner made a representation dated 8.5.1998 to the Vice Chancellor vide Annexure-13 and another representation dated 25.5.1998 to the Secretary, Medical Education

Department. U. P. vide Annexure-14 and another representation dated 29.4.1999 Annexure-15 to the writ petition. However, this representation was rejected on 5.10.2000 vide Annexure CA-1. Hence, this petition.

14. A counter-affidavit has been filed on behalf of the respondent No. 1 and we have perused the same. In paragraph 6 of the same, it has been stated that the petitioners' services till the age of 58 years alone has to be taken into consideration for the purposes of pension since by the G.O. dated 24.12.1983, it was provided that the pension will be calculated taking into consideration the service till the age of 58 years. This G.O. was amended by the G.O. dated 22.9.1995 which provided that pension of those teachers who have opted to retire at the age of 60 years will be calculated on the basis of pay drawn by them at the age of 60 years. This G.O. dated 22.9.1995 was interpreted by the University that service till the age of 60 years for the purposes of pension was to be taken into consideration and benefit of this was given to the teachers of other faculties vide order of the Finance Officer of the Lucknow University. dated 13.5.1998. Annexure-5 to the writ petition. This benefit was given to other faculties of the University like Art, Science, Law, etc.

15. Section 2 (19) of the Act states :

'teacher of the university' means a teacher employed by the University for imparting instruction and guiding or conducting research either in the university or in an institute or in a constituent college maintained by the university.'

16. In our opinion, the petitioners are also the teachers of the university as the medical college is a constituent college and it is also a faculty of the university under the university. Hence, the authorities are discriminating against the teachers of the medical college vis-a-vis teachers of other faculties. Hence. Article 14 is clearly violated by this action of the authorities.

17. Similarly, the petitioners have also been discriminated because their service as ad hoc/ temporary/ officiating/ administrative has not been taken into account for calculating their pension although the teachers of other faculties have been given this benefit.

18. As regards the petitioners' claim that non-practicing allowance should be included in the pay, the stand of the petitioners appears to be correct in view of the G.O. dated 23.10.1997, Annexure-12 to the writ petition.

19. For the reasons given above, the petition is allowed. The respondents are directed to take the entire service of petitioners upto the age of 60 years for the purposes of calculating their pension, and their service in ad hoc/temporary/administrative capacity is also to be included in their service for the purposes of calculating pension. The non-practicing pay and allowance has also to be included in the pay for the purposes of calculating pension. The authorities will forthwith comply with the above directions given in this judgment and refix the petitioners' pension. The arrears will be paid within two months of production of a certified copy of this order before the State Government.

20. As regards other claims mentioned in the petition, the petitioners may make a representation to the State Government which will decide the same within two months thereafter in accordance with law by a speaking order.

21. No order as to costs.