

Dr. N.N. Pathak. Vs. the State of Madhya Pradesh, and ors.

Dr. N.N. Pathak. Vs. the State of Madhya Pradesh, and ors.

SooperKanoon Citation : sooperkanoon.com/911796

Court : Madhya Pradesh Jabalpur

Decided On : Jul-02-2010

Judge : Rajendra Menon, J.

Appeal No. : Writ Petition No : 5415 of 2009(s).

Appellant : Dr. N.N. Pathak.

Respondent : The State of Madhya Pradesh, and ors.

Advocate for Def. : Shri Vivek Agrawal, Adv.

Advocate for Pet/Ap. : Shri Manoj Sharma, Adv.

Judgement :

1- Petitioner, who is substantively holding the post of Professor (Forestry) and is Head of Department of Forestry in Jawaharlal Nehru Krishi Vishwa Vidyalaya (hereinafter referred to as 'JNKVV'), Jabalpur has filed this writ petition challenging the order-dated 28.2.2009, passed by the University transferring him as Professor and Head of the Department, College of Agriculture, Ganj Basoda, District Vidisha. He is also challenging the order by which the current duties and charge on the post of Dean, College of Agriculture, Ganj Basoda is granted to him. Inter alia contending that many persons junior to him and who were officiating on the post of Professor, by virtue of the Career Advancement Scheme are holding superior posts in the Headquarters of the University at Jabalpur and petitioner is being singled out and posted to a college at Ganj Basoda, District Vidisha, challenge is

made to the impugned action.

2- It is the case of the petitioner that he was selected in accordance to the rules for appointment on the post of Professor on 24.2.2001 and since then is Professor in Forestry and Head of Department (Forestry) in JNKVV, Jabalpur. As a Senior Professor he was also granted officiating duties of Director of Institutions etc. It is the case of the petitioner that UGC had evolved a policy known as Career Advancement Scheme (hereinafter referred to as 'CAS'), and by virtue of this policy various persons, who are stagnating in the lower post for a number of years, have been granted the benefit of promotion under the scheme and promoted as Professors. It is stated that such of the persons, who are promoted as Professors under the CAS, would rank junior to regularly appointed Professors, like the petitioner, who were appointed under the normal rules of promotion and not under the benefit scheme formulated by the UGC.

3- Inviting attention of this Court to the principles laid down by the Supreme Court in Civil Appeal No.5981/1997 Annexure P/2, it is the case of the petitioner that he ranks senior to all such Professors, who are appointed under the CAS. Contending that such Professors, who are junior to the petitioner, are retained in Jabalpur in the Headquarter of the University and they are posted as Director Extension Services, Director Instructions, Dean College of Agriculture in Jabalpur, and petitioner is transferred to Vidisha and as officiating Dean or Professor he is required to report to such Directors and Deans, who are junior to the petitioner, challenge is made to the action of the respondents. Giving the particulars of Dr. O.P. Ved Director Instructions; Dr. Devkant Director Extension Services; and, Dr. P.K. Mishra Dean College of Agriculture, who have been granted promotion under CAS, Shri Manoj Sharma, learned counsel for the petitioner, argued that petitioner will have to report to these juniors and as he is senior in cadre by virtue of his regular promotion on the post of Professor, the transfer which creates this anomaly is unsustainable. Referring to the provisions of the statute of JNKVV and the duties and powers of Directors of Research Services; Director of Extension Services, Director of Instructions, Director of Farms, as contemplated under Statute 15, 16, 17 and 17-A and the powers of a Dean as contemplated under statute 19, Shri Manoj Sharma tried to emphasize that as the Directors and Deans

working in the Headquarter of the University at Jabalpur are responsible for supervising the work of the petitioner and as petitioner has to report to these officers, it is submitted that the transfer is unsustainable. 4- Taking me through the powers of a Director of Research Services, as contained in Statute 15, particularly 15(4), Shri Manoj Sharma, learned counsel, tried to argue that petitioner is being transferred to a post in a College in Vidisha from where he will have to report to such Directors and Deans, who are junior to him and, therefore, the transfer is illegal and contending that petitioner being the senior most Professor is entitled to work in the Headquarter of the University at Jabalpur and he cannot be transferred to a place from where he is required to report to junior persons, petitioner has challenged the action of the respondents.

5- Placing reliance on a judgment of the Supreme Court, in the case of Vice-Chancellor, L.N. Mithila University v. Dayanand Jha, (1986) 3 SCC 7, petitioner contends the petitioner can only be transferred to an equivalent post and as petitioner is transferred to an inferior post, from which he is to report to certain junior persons at Jabalpur, the transfer is illegal.

6- Respondents have filed the return and have refuted the contention of the petitioner. Shri P.N. Dubey, learned counsel for the respondents, submits that the petition filed by the petitioner is wholly misconceived. It is submitted that petitioner is substantively holding the post of Professor and Head of the Department (Forestry), he has remained in Jabalpur for a long period of time and as a new college was set up in Ganj Basoda, it was required that a senior persons is sent there to establish the college and manage it effectively. It was taking in view the aforesaid administrative consideration that petitioner, a senior Professor, was transferred and made Incharge Dean to establish the college. Contending that the petitioner is not required to report to any Dean or Director as contended by the petitioner, he is only required to report to the Vice Chancellor or the Dean Faculty of Agriculture, one Dr. S.S. Tomar, who is senior to the petitioner and is the senior most Professor of the University, Shri P.N. Dubey refutes the aforesaid contention.

7- Taking me through the provisions of the JNKVV Act, 1963; and, the Statutes of 1964, Shri P.N. Dubey submitted that petitioner is not required to report to the so-

called juniors, who are working in the Headquarter at Jabalpur as Deans or Directors. It is emphasized by Shri Dubey that the petitioner is only to report to the Vice Chancellor or the Dean of Faculty, Dr. S.S. Tomar, who is senior to the petitioner and as such his arguments are misconceived. That apart, it is submitted by Shri P.N. Dubey that petitioner is substantively holding the post of Professor and if the petitioner feels that by giving him officiating charge of Dean, he is being humiliated, it is stated that petitioner is free to refuse acceptance of the aforesaid assignment. Contending that petitioner has filed this petition only to continue to remain at Jabalpur to serve his vested interest, Shri Dubey refutes the contention and prays for dismissal of this writ petition.

8- During the course of hearing of this writ petition on 29.3.2010, this Court directed the University to indicate as to whether petitioner is required to report to any person, who is junior to him, while discharging his duties as Professor and Incharge Dean, in the College of Agriculture at Ganj Basoda. In response thereof affidavit of Shri G.K. Chawla, Assistant Registrar of the University, has been filed refuting the aforesaid and substantiating the contentions as advanced hereinabove. Even though by filing a counter-response I.A.No.5737/2010 petitioner has tried to refute the averments made by Shri Chawla in the affidavit, this Court proposes to deal with the issue in the light of the factual scenario and the requirements of the Statute.

9- I have heard learned counsel for the parties at length and perused the record. It is clear from the records that petitioner is substantively holding the post of Professor and Head of the Department and in the same capacity he has been transferred to the College of Agriculture, Ganj Basoda, District Vidisha. It is also a fact that in the light of the law laid down by the Supreme Court, vide Annexure P/2, petitioner who is a duly promoted Professor in accordance to the Recruitment Rules would rank senior to such persons who are granted this benefit under the CAS.

10- However, the question requiring consideration is that as Professor and Head of the Department of College of Agriculture, at Ganj Basoda or in his capacity as Incharge Dean of the College at Ganj Basoda, petitioner is required to seeks

instructions or report to or work under the supervision and guidance of such Deans or Directors, who are Professors holding the post on the basis of CAS. Petitioner has given the example of Dr. O.P. Ved Director Instructions; Dr. Devkant Director Extension Services; and, Dr. P.K. Mishra Dean, College of Agriculture, Jabalpur. In the affidavit filed by Shri G.K. Chawla, Assistant Registrar, it is clearly stated by him that as Professor and Head of Department and officiating Dean in the College of Agriculture at Ganj Basoda petitioner will not be subordinate to any other Dean or Director working in the University except the Dean of Faculty namely one Dr. S.S. Tomar, who is the senior most Professor of the University. Petitioner's counsel by referring to the provisions of Statute 15, 16, 17 and 17-A had tried to emphasize that as Dean of the College at Ganj Basoda petitioner is required to report to various Deans and Directors and, therefore, his transfer is not permissible. That being so, it would be appropriate to consider the provisions of the Statute referred to Shri Manoj Sharma, learned counsel for the petitioner. 11- The Statute filed and produced for perusal of this Court are the Jawaharlal Nehru Krishi Vishwa Vidyalaya Statutes 1964, which have come into force with effect from 1.12.1964 and is formulated under the JNKVV Act, 1963. Statute 15 deals with Director of Research Services, the duties to be performed by such a Director and his emoluments. Similarly, Statute 16 deals with the powers, duties and emoluments of a Director of Extension Services; Statute 17 deals with the powers, duties and emoluments of Director of Instructions; and, Statute 17-A deals with the powers, duties and emoluments of Dean of Farms. Thereafter, the constitution of the Academic Council is contemplated under Statute 23 and various faculties are contemplated in Statute 24. As far as the provisions of Statute 15, 16, 17 and 17-A are concerned, all these provisions deal with the powers, duties and emoluments of various Directors. The emoluments of all the Directors are identical, it is in the pay scale 16400-450-20900-500-22400. The Directors are appointed for a period of three years after approval of the Board. Statute 15(3) contemplates that the post of Director of Research Services shall be interchangeable with all other Directors, so also with Deans of Colleges and Dean of Student Welfare. A perusal of the Statutes indicates that the pay scale, emoluments, powers and duties of various Directors and Deans of Colleges are identical and all these posts are interchangeable. There is nothing in these Statutes to indicate that a Director or

Dean of College is subordinate to any other Director or Dean of College. If the duties of various Directors as contemplated under sub- section (4) of Statute 15, 16, 17 and 17-A are perused, it would be seen that each of the Director is responsible to the Vice Chancellor and they are to assist the Dean of Faculty in the supervision over the members of the College of Staff in the matter of approved research programmes. The duties of the Directors contemplated under Statute 15(4) as under: "15(4). It shall be the duty of the Director of Research Services -

(a) to exercise overall control of the planning and prosecution of research conducted by the Vishwa Vidyalaya, excepting research done by

students to meet degree requirement and by teachers of the Vishwa Vidyalaya to improve teaching ability;

(b) to prepare Research Service Programmes and annual budget estimates as may be required by the Vishwa Vidyalaya;

(c) to assist the Dean of Faculty concerned in the supervision over the members of the College of staff engaged on approved research programmes under the general purview of the research service;

(d) to require and supervise the compilation of research result, and the proper publication of the research findings;

(e) to approve for publication, in consultation with Deans of Faculties concerned, research manuscripts in such general form and such number as may be determined;

(f) to assign numbers to all publications and to maintain official record of all publications;

(g) to be responsible to the Vice-Chancellor in exercise of the powers and discharge of the duties under the Act;

(h) to undertake teaching work;

(i) to perform such other duties as may be conferred or imposed on him by Statutes, Regulations or by the Vice-Chancellor with the prior approval of the Board."

12- A perusal of the Statute indicates that none of the Director has any role to play in supervising the work of any Professor or Head of the Department or Dean of a College. It is not known as to on what basis the averment is made or the contention raised that the petitioner is to report to the Director or Dean in the University. It seems that each Director or Dean except the Dean of Faculty hold identical position and their positions are interchangeable. It is only the Dean of Faculty who has some power apart from the Vice Chancellor, in the matter of working of Directors or Deans. The Professor or Head of the Department of a College or the Dean of a College in no manner is required to report to any of the Directors as per the aforesaid provision. On the contrary, powers and duties of a Dean of Faculty as contemplated under Statute 19 does indicate that he is the Chief Advisor to the Vice Chancellor and is Chairman of the Faculty and, therefore, the Deans and Directors are required to report to him. If the constitution of the Faculty as is contemplated in Statute 24 is taken note of, it would be seen that the four Faculties contemplated therein consist of Dean of Faculty as the Chairman; all Deans of Colleges; Head of the Department of Studies in the Faculty; and, the Directors hold equal status as Members of the Faculty. It is, therefore, clear from the statutory provision that the petitioner as Incharge Dean of the College in Ganj Basoda or as Head of the Department is not required to report to any other Dean of the College or Director as canvassed by the petitioner. He is only required to report to the Vice Chancellor or the Dean of Faculty and as the Vice Chancellor and Dean of Faculty are persons senior to the petitioner, contention of the petitioner cannot be accepted. The interpretation given by the petitioner to the statutory rules and his submission that he is to work as a subordinate to other Deans of the Colleges or Directors is a wholly misconceived submission, which cannot be accepted. The Deans of Colleges and the Directors exercise similar functions, their duties are interchangeable, have similar emoluments and they are not subordinate to each other.

13- It seems that petitioner, who had been working in the Headquarter of the University at Jabalpur, feels aggrieved by his transfer to a College and it is on this count that he is agitating the matter. The statutory provisions as indicated hereinabove does not contemplate any provision on the basis of which it can be said that as Professor and Head of the Department, College of Agriculture, Ganj Basoda or as Acting Dean of the College, petitioner is to work or report to any other Dean or Director holding analogous status. This argument advanced during the course of hearing is wholly misconceived and cannot be accepted. 14- Accordingly, the grounds raised by the petitioner in this writ petition is wholly misconceived. The judgment in the case of Dayanand Jha (supra) is also distinguishable on facts, as that was a case where a Principal of a college was transferred to the post of Reader in another college and it was found that these posts are not equivalent, even if they carry same pay. The working of both these posts were found to be different whereas in the present case, the provision of the statutes as indicated hereinabove does show that the post of Dean of a College or Professor is subordinate to or inferior to the post of Director working in the Head of Department of the University, at Jabalpur. All the posts are identical in powers and duties and all of them work as subordinates to the Vice Chancellor and the Dean of Faculty. Accordingly, no case is made out for interference on the grounds raised in this petition. 15- Accordingly, finding no merit in the claim of the petitioner, the same is dismissed.