

Mohd. Qasim vs Union Of India And Others on 28 February, 2025

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

2025:AHC:28055

Reserved - 13/02/2025

Delivered - 28/02/2025

Court No. - 10

Case :- WRIT - A No. - 2521 of 2009

Petitioner :- Mohd. Qasim

Respondent :- Union Of India And Others

Counsel for Petitioner :- Vishnu Shanker Gupta,Ashok Khare,Y.S.Gupta

Counsel for Respondent :- A.S.G.I.,Prem Narayan Rai,S.C.,Shashank Shekhar,Smt. Sunita Ag

Hon'ble Saurabh Shyam Shamshery,J.

1. Petitioner has filed this writ petition to direct the State-respondents to consider him for promotion on the post of Assistant Librarian. The writ petition was filed in the year 2009 when the petitioner had declared himself to be aged about 59 years, therefore, during pendency of this writ petition, petitioner has attained the age of superannuation.

2. Petitioner was appointed as Senior Library Attendant in respondent University viz. Aligarh Muslim University on 12.09.1969. Thereafter, he was appointed on 09.02.1978 as a

Semi-Professional Assistant and he was confirmed on said post in the year 1979. In the year 1985, University has advertised certain posts of Professional Assistant and invited application from eligible candidates. The petitioner has applied and was interviewed along with other candidates by a Selection Committee on 22.03.1985 and thereafter by an Office Memo dated 27.03.1985, 23 persons were granted promotion as Professional Assistant.

3. According to the claim of petitioner, out of said 23 persons, 17 persons were granted appointment by way of a direct recruitment and 6 persons were appointed through promotion on the post of Professional Assistant.

4. Learned counsel for petitioner has submitted that ratio of filling up post by promotion and by direct recruitment was wrongly applied. It ought to be that only 75% post could be filled up by direct recruitment and remaining 25% post were required to be filled up by promotion but it was not strictly followed, thereafter, he was not granted promotion.

5. Learned counsel has submitted that way back on 06.09.1975, a resolution was taken to said effect, however, it was not followed and same is extracted below being relevant in para 8 of instant writ petition :-

"The ratio in the case of Office Superintendent, Head Clerks and equivalent posts including technical posts, henceforth be 75, 25 i.e. 75% of the vacancies may be filled by promotion and 25% by open recruitment."

6. Learned counsel has further submitted that on an appeal against rejection of petitioner's representation, Visitor passed a communication to Registrar dated 29.01.1998 whereby his claim was accepted and direction was passed to put him and one another in the pay scale of Professional Assistant and same is quoted below :-

"I am directed to invite reference to two appeals made by Shri Sharifur Rahman and others and by Shri Mohd. Qasim and others working as Semi Professional Assistants in the University on 06.02.1987 and 19.12.1988 respectively before the Visitor in light of the Hon'ble Allahabad High Court's orders dated 10.04.1987 and to convey that the President of India as the Visitor of the University after careful consideration of the matter has passed the following orders:

"The representation of Shri Sharifur Rahman and others as also that of Shri Mohd. Qasim and others be admitted. The representationists be placed in the scale of pay attached to the post of Professional Assistant, i.e., without giving them the benefit of arrears for the previous 8 years or so, subject, however, to their being otherwise eligible and free from any disciplinary or vigilance proceedings. Their pay be refixed in the scale of pay attached to the post of Professional Assistant and actual payment made prospectively from the date the Visitor passes an order in this behalf.

2. You are requested to ensure compliance to the aforesaid orders under intimation to this office."

[emphasis supplied]

7. Above referred order was later on modified by a subsequent order dated 19.02.2002 which is also quoted below :-

"As in the letter No. G-31/38/Desk (U) dated 29.01.1998 from the Minister of Human Resources Development (Department of Education) the President of India in a capacity of visitor has not given the approval what was mentioned in para 2 of the office memo No. Admin/ 30/2785 dated 23.07.1998 the Vice Chancellor after careful consideration has ordered that the para 2 of the office Memo No. Admin/ LD/ 2735 dated 23.07.1998 be deleted."

8. As referred above, by deleting paragraph 2, an earlier direction to comply the order dated 19.01.1998 was relaxed and since there was no bound to follow it, therefore, said order was never followed and petitioner was not placed in pay scale of Professional Assistant despite being eligible and an order of Visitor in his favour which has prejudiced the petitioner.

9. In above background, the petitioner again submitted a representation, however, it was rejected by an order dated 27.08.2002 passed by Deputy Registrar, A.M.U. which was a subject matter of Writ A No. 51996 of 2002 filed by petitioner.

10. The above referred writ petition was allowed by an order dated 23.11.2006 and for reference, relevant part of it is quoted below :-

"In the present case too, notional promotional pay scale was given to the petitioner by the Visitor. The date of the notional promotional pay scale as clarified by the Visitor is 27.03.1985 i.e. the date from which the benefits of the petitioner ought to have reckoned with. Not to do so and not to give effect thereto would result in rendering the relief given by the Visitor as redundant.

Since the cut off date as given in the circular dated 15.10.1987 is 1.4.1985 and the date of relief given by Visitor is 27.3.1985, it clearly shows that the notional benefits was given to the petitioner prior to 1.4.1985 and therefore in my opinion, it would be entitled to petitioner to the benefit of the circular dated 15.10.1987. As such the intent of the clarification as given by visitor is clear and requires no further clarification or interpretation.

Even otherwise the relief given by the visitor vide his order dated 19.1.1998 itself appeals out what was not to be given to the petitioner i.e. the wages and arrears for the period of eight years or so, prior to the passing of the order dated 19.1.1998. No other benefit was stopped by the Visitor.

It would be injustice on the part of the respondent. University to put its own interpretation to the order of the visitor when it is clear and specific and it must be complied with by the University in the letter and spirit that it was given in the order of the visitor aforesaid.

Before parting with the petition, learned counsel for the respondent University has informed the Court that in para 30 of the writ petition, it has been stated that the petitioner had already received salary of the Professional Assistant till Oct., 2002 and other than that the petitioner had also received the benefits of the first upward movement with effect from 1.1.1986 as stated in para 13 of the counter affidavit. As such it is directed that after giving an opportunity to the petitioner, the respondent University will make adjustment of the amount, which have already been paid to the petitioner. The benefits which the petitioner are liable to receive will be computed by the concerned authority within the period of three months from the date of production of a certified copy of this order before the said authority and thereafter the same will be released to the petitioner immediately.

In view of the facts and circumstances as stated above, the order dated 19.9.2002 (annexure 18 to the writ petition) passed by the visitor and the order dated 27.8.2002 (Annexure 20 to the writ petition) passed by the Vice Chancellor are clearly vitiated and are hereby set aside."

11. In pursuance of above judgment, the Registrar, Cadre Review Section issued an Office Memo dated 20.03.2007 whereby petitioner was sanctioned salary in the pay-scale of Rs. 700-1600 w.e.f 01.04.1987 and in the pay scale of Rs. 3000-5000 revised in the pay scale of Rs. 10000-15200 w.e.f. 01.04.1994 on notional basis.

12. It was further case of the petitioner that he remained still aggrieved as it was entitled for consideration for promotion as Assistant Teacher that 3 other persons were granted promotions for said post, therefore, he had filed a representation, however, it was not considered and meanwhile he was also not got any benefit of Career Advancement Scheme and therefore, respondent University was treating him to get retired at the age of 60 years and not at the existence age of 62 years.

13. Thereafter, present writ petition was filed with a prayer to consider him for promotion as Assistant Librarian. This writ petition was filed in the year 2009 when petitioner was aged about 59 years and since no interim order was passed, therefore, he must have retired at the age of 60 years.

14. Sri Vishnu Shankar Gupta, learned counsel for petitioner has submitted that petitioner got a favourable order in earlier round of litigation, however, except pay-scale benefit, he was not granted promotion on the post of Assistant Librarian and therefore he could not get benefit of Career Progression Scheme as well as to save 2 years more, therefore, he be granted notional promotion and other benefits.

15. Learned counsel referred subsequent events also and referred paragraphs 3 and 4 of supplementary affidavit filed by petitioner on 20.04.2017 and for reference, same is quoted below :-

"3. That during the pendency of the aforesaid writ petition, the Vice Chancellor of Respondent university has approved the the promotion of the following Assistant Librarian (Senior Scale) as Deputy Librarian/Assistant Librarian (Selection Grade) under Career Advance Scheme in the pay scale of Rs. 12,000-18,300/-+ Allowances (Pre-revised), w.e.f. date of their eligibility.

4. That the junior to the Petitioner's namely Dr. Mohd. Yusuf has been granted a designation of Deputy Librarian w.e.f. 10.12.2004, Mr. Aslam Mehandi, Mrs. Saiyda Rana Askari & Mr. Ch. Abrarul Hasan Jawaid have been granted selection grade of Assistant Librarian w.e.f. 30.08.2005."

16. Per contra, Sri Shashank Shekhar, learned counsel for respondent-University has referred following paragraphs from counter affidavit and counter affidavit to supplementary affidavit and for reference, same are quoted below :-

"9. That in reply to contents of paragraph No. 11 of the petition it may be stated that a communication dated 29th January 1998 was received in the office of the Registrar of the University on 05.02.1998. In the said communication it was directed that the University may ensure compliance of the order passed by the Visitor and the petitioner be notionally placed in the scale of pay attached to the post of Professional Assistant. However, it was directed that the benefit of arrears for the previous year shall not be granted to the petitioner. Since it was not clarified in the order as to from which date the petitioner was notionally placed in the pay scale of Professional Assistant as such a clarification was sought by the University vide communication dated 22nd March 1998 on the subject. In response thereto, a communication dated 02nd April, 1998 was received in the office of the University which clarified that the petitioner shall be notionally placed in the pay scale of Professional Assistant from the date of appointment of those candidates who were not considered internal candidates and not from the date of Appeal made to the Visitor.

11. That in reply to contents of paragraph Nos. 16 and 17 of the petition it may be stated here that in compliance of the judgment and order dated 23.11.2006 passed by this Hon'ble Court, the petitioner has been placed in the pay scale of 7000-16000 (revised to Rs. 8000-13500) w.e.f. 01.04.1985 and Rs. 3000-5000 (revised to Rs. 10000-15200) w.e.f. 01.04.1984 on personal basis on the conditions as laid down in the office memo dated 20.05.2007. A copy of the office memo dated 20.03.2007 has been annexed as "Annexure No. 11" to the writ petition. The same may be perused by this Hon'ble Court.

12. That in reply to the contents of paragraph nos. 18, 19, 20, 21, 22 and 23 of the writ petition, it may be stated here that the controversy with regard to placement of the

petitioner in the pay scale to which he was entitled as per order of the Visitor dated 19.01.1998 on the representation of the petitioner has been set at rest. The petitioner has been provided the benefits to which he was entitled to as per the judgment and order dated 23.11.2006 passed in writ petition no. 51996 of 2002, has been given to the petitioner vide order dated 20.03.2007 issued by the Dy. Registrar Cadre Review). The petitioner has accepted the Office-Memo dated 20.03.2007 passed by the respondent University and has not challenged the same in the present petition. The reason is that the order dated 20.03.2007 has been passed by the respondent University in compliance of the judgment and order dated 23.11.2006 passed by this Hon'ble Court in its true letter and spirit and the grievances of the petitioner have been met. In view thereof, the contents of paragraphs under reply call for no further comments."

17. In rejoinder, learned counsel for petitioner has referred paragraph 4 and 5 of supplementary affidavit dated 28.08.2018, which are quoted below :-

"4. That the contents of paragraph no. 2 of the supplementary affidavit are not admitted in the manner as stated hence denied. In reply thereto it is submitted that promotion on the post of Assistant Librarian can only be made through Selection Committee and the petitioner did not faced the same thus petitioner has no claim for promotion on the post of Assistant Librarian. It is further submitted that on the basis of the order passed by this Hon'ble Court the petitioner placed in the pay scale of Rs. 700-1600 (revised to Rs. 8000-13500) w.e.f. 01.04.1985 in terms of letter dated 25.03.1985 issued by the University Grants Commission and further placed in the pay scale of Rs. 3000-5000 (revised to Rs. 10,000-15,200) w.e.f. 01.04.1994 on personal basis subject to the conditions contained in Office Memo dated 20.03.2007. A photo copy of the Office Memo dated 20.03.2007 is being annexed herewith and marked as ANNEXURE SCA-1 to this affidavit.

5. That the contents of paragraph no. 3 of the supplementary affidavit are not admitted in the manner as stated hence denied. In reply thereto it is submitted that Senior Scale/Selection Grade in case of Deputy Librarian/Assistant Librarian under Career Advancement Scheme was not applicable upon the petitioner for the simple reason that he was holding the post of Professional Assistant. Since, the Career Advancement Scheme was only for Deputy Librarian and Assistant Librarian. Career Advancement Scheme. Therefore, it is not possible to consider him under Career Advancement Scheme."

18. As referred above, the petitioner was not granted benefit of pay-scale in pursuance of an order passed in earlier round of litigation and was not much disputed and he accordingly accepted notional pay scale without much harping on issue of promotion and was not aggrieved by said order. Therefore, a plea available in earlier round of litigation for promotion was not raised, therefore, on basis of any subsequent event, he cannot raise such grievance when neither he appeared before Selection Committee nor he rushed immediately and waited almost 2 years where he was about to

retire at the age of 60 years, which goes against him. Lis to dispute was over when undisputedly order dated 23.11.2006 passed in earlier writ petition was complied with in its letter and spirit.

19. Court also takes note of a judgment placed by respondent-University in case of Union of India and others vs. Chaman Rana (2018) 5 SCC 798 that there was a direction for retrospective consideration for promotion after more than a decade would not be sustainable. The petitioner has not rushed this Court admittedly when he was not considered for promotion immediately.

20. The University has also explained satisfactorily about the grievance of petitioner so far as juniors were allegedly promoted as well as that petitioner was not beneficiary of Career Advancement Scheme.

21. In view of above, claim of petitioner has lost its efficacy since it was agitated after a long time, therefore, relief sought cannot be granted.

22. Accordingly, writ petition is dismissed.

Order Date :- February 28, 2025 Sinha_N.

[Saurabh Shyam Shamshery, J.]