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PROF. S.A. SIDDIQUI

v.

PROF. M. WAJID KHAN AND ORS.

JANUARY 11, 1999

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[MRS. SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

Universities :

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Aligarh Muslim University Act, 1920 : Sections 2(k), 5(7), 24, 25 and

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Seniority—Professor appointed under Merit Promotion Scheme (MPS) and Professor appointed under general scheme—Inter-se seniority between—Held : Persons appointed under both the schemes are treated as belonging to the same cadre—Length of continuous service in a grade is the criterion for seniority—Hence, a person who is promoted as Professor earlier under MPS is senior to a person who is appointed later under general scheme—Statutes of Aligarh Muslim University, Statutes 17(2), 27(7), 29(2)(a) and 30(1)—Service Law.

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The University Grants Commission formulated a scheme of Merit Promotion. The Academic Council of the University recommended that the Merit Promotion Scheme be accepted with the modifications suggested by the Vice-Chancellor. The Executive Council accepted the recommendations of the Academic Council and under Statute 30 of the Statutes of the Aligarh Muslim University framed regulations for determining the *inter-se* seniority amongst persons holding regular posts and those holding the same posts under the Merit Promotion Scheme.

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The appellant, who was appointed as Professor under the Merit Promotion Scheme. Respondent No. 1 was appointed as Professor under the General Scheme much later than the appellant. In the seniority list of Professors the appellant was shown as senior to respondent No. 1. Respondent No. 1 filed a writ petition before the High Court contending that since the appellant was promoted as Professor under the Merit Promotion Scheme he could not be considered for seniority or other promotions and, therefore, the appellant could not be shown as senior to respondent No. 1, the High Court allowed the petition. Hence this appeal.

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Allowing the appeal, this Court

HELD : 1.1. The Executive Council has treated all posts of Readers and all posts of Professors - whichever be the method of appointment, as belonging to the same cadre and has prescribed rules for *inter se* seniority between persons appointed under the Merit Promotion Scheme and persons appointed to general posts treating them as belonging to the same cadre. In fact, the question of *inter se* seniority would arise only if all these persons belonged to the same cadre. [32-E-G]

1.2. The Aligarh Muslim University Act, 1920 and the Statutes framed thereunder do contain provision for the posts of Readers/Professors under the Merit Promotion Scheme and hence persons holding such posts on Merit Promotion Scheme cannot be considered as outside the cadre. Section 2(k) of the Act, which defines "Teachers", does not make any difference on the basis of method of appointment. Under Section 5(7) of the said Act the University has the power to institute Professorships, Readerships, Lecturerships and other teaching or academic posts required by the University and to appoint persons to such Professorships, Readerships, Lecturerships and other posts and determine their conditions of service in accordance with the Statutes. The Statutes framed under Section 27 *inter alia*, provide for the manner of appointment of teachers and other academic staff and their emoluments and the principles governing seniority of service of employees. [33-A-C]

2.1. Statute 30(1) provides that seniority "shall be determined according to the length of continuous service of such person in his grade, and, in accordance with such other principles as the Executive Council may from time to time prescribe." Under the Act, there is no specific provision laying down that appointments to the posts of Professors can only be made in a specific manner or by following a specific procedure. Statute 27(7) gives an express power to the Executive Council to appoint a person to the post of Professor in the University on such terms and conditions as it deems fit if the person possesses high academic distinction and professional attainment. The Executive Council also has the power to appoint Professors, Readers, Lecturers and other members of the teaching and academic staff on the recommendation of the Selection Committee constituted for the purpose. It has to act on the recommendation of the Academic Council in laying down the number, qualifications, emoluments

A and other conditions of service of such teachers. The Executive Council has accordingly in exercise of its powers under Statutes 17 and 27 framed regulations for appointments to the posts of Professors and Readers under the Merit Promotion Scheme. It has also in exercise of its powers under Statute 30 laid down rules providing for *inter se* seniority between Professors appointed under the Merit Promotion Scheme and Professors appointed under the general scheme. In doing so, the Executive Council has acted within its statutory powers. The University has, therefore, rightly prepared seniority list of Professors in accordance with the regulations framed by the Executive Council in which the appellant is shown as senior to respondent No. 1. [34-G-H; 35-A-B]

C *Dr. Rashmi Srivastava v. Vikram University*, [1995] 3 SCC 553, held inapplicable.

Dr. Suman Agarwal v. Vice-Chancellor, [1996] 1 SCC 632 and *Dr. Bal Krishna Agarwal v. State of U.P.*, [1995] 1 SCC 614, relied on.

D 2.2. Looking to the Act and the relevant Statutes it has to be held that the appellant is a part of the cadre of Professors in the University and is entitled to seniority above respondent No.1 in the light of the regulations for determining *inter se* seniority framed by the Executive Council. He is entitled to all consequential benefits. [36-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7769 of 1997.

F From the Judgment and Order dated 4.4.97 of the Allahabad High Court in C.M.W. No. 5821 of 1996.

Rakesh Dwivedi and Rajesh for the Appellant.

Ambrish Kumar for Respondent No. 1.

G B.D. Agarwala, Ashish Dayal and Vinay Garg for the Respondent Nos. 2-4.

G.K. Banerjee, (S. Bhatnagar,) for Mrs. Nandani Gore for the Respondent No. 5 (UGC).

H The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. The appellant, Prof. S.A. Siddiqui, and the first respondent, Prof. M. Wajid Khan, are both Professors in the Botany Department of the Aligarh Muslim University. The dispute pertains to seniority as between the appellant and the first respondent. The appellant was appointed as Lecturer in the Aligarh Muslim University on 30th of April, 1965. He became a Reader in the open post of Reader on 30th March, 1979 upon his selection by the selection committee. He was subsequently selected under the Merit Promotion Scheme for promotion to the post of Professor. On 14th of March, 1987, he was promoted as Professor under the Merit Promotion Scheme. The first respondent was appointed as Lecturer much later on 2nd of April, 1973. He was also promoted as Reader much later under the Merit Promotion Scheme on 1.1.1983. Thereafter he has been appointed to the open post of Professor on 10.3.1992 on his selection by the selection committee. Although the first respondent has been appointed as Professor much later than the appellant, he contends that he alone is to be considered for the purpose of seniority and promotion since he holds the post of a Professor on regular selection. He contends that since the appellant was promoted as Professor under the Merit Promotion Scheme, he cannot be considered for seniority or further promotions. It is the contention of the Aligarh Muslim University as well as the appellant that both the appellant as well as the first respondent hold the post of professors and they have been throughout considered as Professors and have been shown in the common seniority list of all professors. From the year 1992 onwards, that is to say after the appointment of first respondent as Professor, in the seniority list of Professors the appellant was shown as senior to respondent no.1. For the first time in 1995, the first respondent challenged the placement in the seniority list of the name of the appellant. On 12.6.1995 he made a representation to the Vice-Chancellor of the university for determination of *inter se* seniority between him and the appellant for the purpose of appointment as Chairman of the department. The Vice-Chancellor on 21.6.1995 appointed a sub-committee for the determination of the issue of seniority of the first respondent. On 22.2.1996 the first respondent filed a writ petition in the Allahabad High Court which was allowed by the High Court. The High Court directed that separate seniority lists be prepared and the parties appointed under Merit Promotion Scheme be not appointed or continued as Chairman/Dean of any Department or Faculty of the Aligarh Muslim University. Aggrieved by this judgment and order, the appellant has filed the present appeal.

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A In 1983 the University Grants Commission formulated a scheme of Merit Promotion with a view "to give recognition to the outstanding work done by the University teachers and to provide for reasonable opportunities to them for professional advancement". It was so stated by the Chairman of the University Grants Commission in letters addressed to the Vice-Chancellors of various Universities. The University Grants Commission felt that the Merit Promotion Scheme would improve the overall morale of the University teachers and would also minimise to some extent, demands for increasing the number of senior positions during the sixth plan period in the Universities. The following objectives, *inter alia*, were stated by the University Grants Commission as forming the basis of the Merit Promotion Scheme :

D 1. The basic objectives of the scheme should be (1) to recognise outstanding work done by the University teachers in the areas of teaching and research (2) subject such work to objective evaluation by experts in the subjects/areas concerned and (3) to provide for reasonable opportunities for professional advancement to such teachers, who merit academic recognition, on a competitive basis. The scheme should, therefore, be appropriately named as "Merit Promotion Scheme for University Teachers". This would be in the nature of a "flexible complementing scheme", no additional posts would be created and the existing persons on the basis of critical assessment were to be promoted to the next higher level and the position would be held by such incumbents as personal to them, no resulting vacancy was required to be filled and no new posts were required to be created.

F Detailed guidelines were laid down by the University Grants Commission for the implementation of the scheme. There was a ceiling on the number of positions which could be held in a department on such merit promotion.

G The Academic Council of the Aligarh Muslim University at its meeting held on 15th of June, 1983 recommended that the University Grants Commission's Merit Promotion Scheme be accepted with incorporation of the modifications suggested by the Vice-Chancellor of the said university in his letter of 31.5.1983, namely, (1) the process of screening by experts preceding the Selection Committee be dispensed with in the interest of expedition, (2) there should be no condition of unanimity at the

Selection Committee or among the experts serving on it, and (3) the university Grants Commission be approached to raise the ceiling of 33.3% whenever this should become necessary. Pursuant to this recommendation of the Academic Council, the Executive Council at its meeting held on 18-20th of February, 1984 approved the above recommendation of the Academic Council. The Executive Council also decided that if the University Grants Commission accepts or announces any concessions in its scheme to other Central Universities, including Delhi University, these will be applicable to the Aligarh Muslim University also.

At the said meeting of 18-20th of February, 1984 the Executive Council after approving the Merit Promotion Scheme of 1983 for the Aligarh Muslim University also resolved in the exercise of its powers under Statute 30(1), that the *inter se* seniority among (a) those who were selected to general posts and (b) those promoted under Merit Promotion Scheme would be determined subsequently. Thereafter the Executive Council in the exercise of its powers under Statute 30 framed regulations to determine the *inter se* seniority amongst persons holding a regular post and those holding the same post under the Merit Promotion Scheme. This was done under its resolution dated June 18/19, 1988 as modified at its meeting of December 10/11, 1988. The selection of those appointed to the general post as also those appointed under Merit Promotion Scheme was to be made by the Selection Committee constituted under Statute 27. The rules for determining *inter se* seniority so framed and modified are to the following effect :-

(a) The seniority of a Professor/Reader appointed under the Merit Promotion scheme should be counted from the date of issue of order relating to such appointment notwithstanding the fact that he has been given retrospective appointment from an earlier date. Such retrospective appointment should be deemed to be for the purpose of payment of salary and retirement benefits etc. and not for the purpose of seniority.

(b) The seniority of Professors/Readers appointed against the general posts should continue to be determined in accordance with the principles laid down by the Executive Council vide its resolution under item No. 4 of its meeting held on 18/19/20 February 1984.

- A (c) In case the date of issue of appointment order of a Professor/Reader promoted under merit promotion scheme is the same as the date of commencement of continuous approved service for a Professor/Reader appointed against the general post, then the following principles should be used to determine the seniority.
- B (i) The teacher who has longer continuous temporary service in the same grade, after selection by the Selection Committee constituted under Statute 27, shall be ranked senior.
- C (ii) If the length of service mentioned in (i) above is equal the teacher who has rendered longer continuous approved service in the next lower grade/grades shall be ranked senior.
- (iii) If the length of service mentioned in (i) and (ii) above is equal the one older in age shall be ranked senior."
- D Thereafter on the basis of the recommendations of the Academic Council made vide its Resolution No. 44 dated 28/29.11.1988 the Executive Council prescribed certain regulations at its meeting held on 10/11.12.1988 to govern implementation of the Merit Promotion Scheme subsequent to the adoption of revised pay-scales of teachers in the Aligarh Muslim University, Aligarh. Under the regulations so framed also it was specifically
- E provided that the principles governing *inter se* seniority of Readers/Professors appointed under this Scheme vis-a-vis Readers/Professor appointed against a general post as laid down by the Executive Council, shall apply. Clearly, therefore, seniority between Readers/Professors appointed under the Merit Promotion Scheme vis-a-vis Readers/Professors appointed to
- F general posts is governed by the regulation laid down by the Executive Council. The Executive Council has treated all posts of Readers and all posts of Professors - whichever be the method of appointment, as belonging to the same cadre and has prescribed rules for *inter se* seniority between persons appointed under the Merit Promotion Scheme and persons appointed to general posts treating them as belonging to the same cadre. In
- G fact, the question of *inter se* seniority would arise only if all these persons belonged to the same cadre.

H The first respondent has, however, contended that under the Aligarh Muslim University Act 40 of 1920 as also under the Statutes framed for the Aligarh Muslim University there is no provision for the posts of

Reader/Professors under the Merit Promotion Scheme and hence persons holding such posts on Merit Promotion Scheme have to be considered as outside the cadre. This contention does not appear to have any basis if one examines the Aligarh Muslim University Act of 1920 and the relevant statutes. Under Section 2(k) of the Aligarh Muslim University Act, "Teachers" are defined to mean Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction in the University or a Hall and are designated as teachers by the Ordinances. No difference based on the method of appointment to these posts has been spelt out in the definition. Under Section 5(7) of the said Act the University has the power to institute Professorships, Readerships, Lecturerships, and other teaching or academic posts required by the University and to appoint persons to such Professorships, Readerships, Lecturerships and other posts and determine their conditions of service in accordance with the statutes. Under Section 24 of the said Act the Executive Council shall be the principal executive body of the University. Its constitution and the terms of office of its members and its powers and duties shall be prescribed by the Statutes. Under Section 25 the Academic Council shall be the principal academic body of the University and it shall, subject to the provisions of this Act, the Statutes and the Ordinances co-ordinate and exercise general supervision over the academic policies of the University. Section 27 deals with the power to make Statutes. Under the said section the Statutes may, *inter alia*, provide for the manner of appointment of teachers and other academic staff and their emoluments and the principles governing seniority of service of employees. Section 31 gives to the authorities of the University including the Executive Council power to make regulations consistent with the Act, the Statutes and the Ordinances providing, *inter alia*, for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by regulations.

Under Statute 17(2) of the Aligarh Muslim University dealing with powers and functions of the Executive Council it is provide as follows :-

"17(2)(i) : to appoint the Registrar, Finance Officer, Librarian, Principals of Colleges and Institutions established by the University and such professors, Readers, Lecturers and other members of the teaching and academic staff as may be necessary, on the recommendation of the Selection Committee constituted for the

A purpose :

Provided that no action shall be taken by the Executive Council in respect of the number, qualifications, emoluments, and other conditions or service of teachers, without consideration of the recommendation of the Academic Council."

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The Statute 27 deals with the constitution of the Selection Committee for appointments to various posts including the post of Professor and the post of Reader. The composition of the Selection Committee is set out against each post. Under Statute 27(7) it is provided as follows :-

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"27(7) : Notwithstanding anything contained in the foregoing clauses of this Statute or Statute 29, the Executive Council may invite a person of high academic distinction and professional attainment to accept a post of Professor in the University, on such terms and conditions as it deems fit, and on the person agreeing to do so, appoint him to the post."

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Under Statute 29(2)(a) all appointments to permanent posts of teachers in the University shall be made by the Executive Council on the recommendation of a Selection Committee in the manner set out there. Under Statute 30(1) it is provided as follows :-

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"30(1) : Whenever, in accordance with these Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade, and, in accordance with such other principles as the Executive Council may from time to time prescribe.

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Thus, under the Aligarh Muslim University Act of 1920, there is no specific provision laying down that appointments to the posts of Professors can only be made in a specific manner or by following a specific procedure. Statute 27(2) gives an express power to the Executive Council to appoint a person to the post of Professor in the University on such terms and conditions as it deems fit if the person possesses high academic distinction and professional attainment. The executive Council also has the power to appoint Professors, Readers, Lecturers and other members of the teaching and the academic staff on the recommendation of the Selection Committee con-

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stituted for the purpose. It has to act on the recommendation of the Academic Council in laying down the number, qualifications, emoluments and other conditions of service of such teachers. The Executive Council has accordingly in exercise of its powers under Statutes 17 and 27 framed regulations for appointments to the posts of Professors and Readers under the Merit Promotion Scheme. It has also in exercise of its powers under Statute 30 laid down rules providing for *inter se* seniority between Professors appointed under the Merit Promotion Scheme and Professors appointed under the general scheme. In doing so, the Executive Council has acted within its statutory powers. The Aligarh Muslim University has, therefore, rightly prepared seniority list of Professors in accordance with the regulations framed by the Executive Council in which the appellant is shown as senior to respondent no. 1.

The first respondent has relied upon a decision of this Court in *Dr. Rashmi Srivastava v. Vikram University and Ors. Etc. Etc.*, [1995] 3 SCC 653. In that case this Court considered the position of university teachers promoted under the Merit Promotion Scheme vis-a-vis University teachers who were directly recruited to their posts. After examining the provisions of the M.P. Vishwavidyalaya Adhinyam, 1973, the Court said that under the said Act, the only source of appointment was by direct recruitment. Hence direct recruits alone formed the regular cadre. The merit promotees would, therefore, fall outside the cadre under the Madhya Pradesh Adhinyam unless the Act was amended introducing Merit Promotion as an additional source of recruitment. Ordinances and Statutes issued by the University providing for promotion as a new source of recruitment and determination of *inter se* seniority would be *ultra vires* the Act and of no effect. The provisions, however, of the Aligarh Muslim University Act of 1920 do not prescribe that direct recruitment is the only source of recruitment to the regular cadre of teachers in the Aligarh Muslim University. The method of recruitment or appointment is not prescribed in the Act but is left to be formulated by the Statutes of the University. The Statutes give to the Executive Council the power of appointment even otherwise than by direct recruitment. The Merit Promotion Scheme has been adopted by the Aligarh Muslim University, on the basis of the recommendations made by the Academic Council which have been accepted by the Executive Council as provided under Statute 17. The ratio, therefore, of *Rashmi Srivastava's* case (*supra*) will not apply.

In the case of *Dr. Suman Agarwal v. Vice-Chancellor and Ors.*, [1996] 1 SCC 632, this Court considered the same question of a person directly

- A recruited as a Reader and a person promoted as a Reader under the Merit Promotion Scheme. The Court rejected the contention that a Reader appointed by personal promotion was not a member of the cadre of Readers, on the basis of the provisions of the U.P. State Universities Act, 1973. Distinguishing the case of *Rashmi Srivastava* (Supra) this Court said that under the Scheme of Section 31A(1) of the U.P. State Universities
- B Act, 1973 read with Statute 17.05-B and Statute 11.12-B Clause 6, a personal promotee gets a berth through statutory force under Section 31A(1) and the post held by the promotee becomes a temporary addition to the sanctioned cadre occupied by direct recruits. In the case of a personal promotion, so long as the candidate holds the post, the post
- C remains in the cadre. It ceases with the cessation of the service of the holder of the post. Nevertheless, the post of a promotee is a temporary addition to the cadre strength. Rules for *Inter se* seniority have also been provided as between direct recruits and merit promotees. The Court said that the candidates from two streams fused into the relevant cadre of Professor or Reader. The same is the position here looking to the
- D provisions of the Aligarh Muslim University Act and the Statutes.

- In the case of *Dr. Bal Krishna Agarwal v. State of U.P. and Ors.*, [1995] 1 SCC 614 also this Court specifically stated that under the U.P. State University Act 1973 read with the relevant Statutes, as between direct appointees and persons promoted under the Merit Promotion Scheme,
- E *inter se* seniority was to be determined according to the length of service in such cadre. The Court, therefore, relied on a specific provision in the Statute which regulated the *inter se* seniority between direct recruits and merit promotees. This judgment has also been cited in the case of *Dr. Suman Agarwal v. Vice-Chancellor and Ors.*, (supra) while distinguishing
- F *Dr. Rashmi Srivastava's* case (supra).

- Looking to the Aligarh Muslim University Act and the relevant Statutes the appellant is, therefore, a part of the cadre of Professors in the Aligarh Muslim University and is entitled to seniority above the first respondent in the light of the regulations for determining *inter se* seniority framed by the
- G Executive Council. He is entitled to all consequential benefits.

The appeal is accordingly allowed and the impugned judgment and order of the Allahabad High Court is set aside. There will, however, be no order as to costs.