2023 SCC OnLine P&H 851

In the High Court of Punjab and Haryana at Chandigarh

(BEFORE JAISHREE THAKUR, J.)

Manoj Kumar Verma ... Petitioner;

Versus

Management Board of Ansal Institute of Technology and Others ... Respondents.

CWP No. 27944 of 2013

Decided on July 5, 2023, [Reserved on 01.05.2023]

Advocates who appeared in this case:

Mr. Tarunvir Singh Khehar, Advocate for the petitioner.

Ms. Shruti Munjal, Advocate, for the respondents.

The Judgment of the Court was delivered by

JAISHREE THAKUR, J.:— The instant writ petition has been filed under Article 226/227 of the Constitution of India praying for the issuance of a writ in the nature of certiorari seeking quashing of order dated 07.08.2013 Annexure P-19 passed by respondent No. 1 dismissing the appeal filed by the petitioner against the order of termination of his service, with a further prayer for issuance of a writ in the nature of mandamus for directing respondent Management to reinstate the petitioner with continuity of service and to pay him all arrears of pay and other consequential benefits along with interest.

2. The petitioner was appointed as Senior Lecturer-Mass Communications with Ansal Institute of Technology respondent No. 2 herein, (now merged with Sushant School of Architecture w.e.f. 2012 and renamed as Ansal University, impleaded as respondent No. 3) where his services were confirmed w.e.f. 01.07.2007. He continued to work with the Institute and was given additional responsibilities of Post Graduate Diploma in Retail Management (PGDRM) course Coordinator up to 01.02.2011. On 01.01.2009, he was promoted as Assistant Professor in School of Management. Based on his performance and annual appraisal, the petitioner was given an increment on 17.08.2009 and also given an additional increment on 27.12.2010. Petitioner was then promoted as Assistant Dean (Marketing) on 08.02.2011 with additional honorarium of Rs. 5,000/- per month w.e.f. 01.02.2009. The petitioner proceeded on leave on 07.10.2011 as he was suffering from jaundice and had been advised bed rest. He duly informed respondent No. 2 through email. On resuming work on 08.11.2011, respondent No. 2 asked him to hand over his laptop and vacate cubicle. His salary was not released for the period October 2011 to March 2012 and was paid

after some time. On 19.03.2012, the services of the petitioner were terminated on the ground of poor intake of students for the subject taught. The petitioner filed a civil suit which was withdrawn to approach the Educational Tribunal, which dismissed the appeal of the petitioner against the order of termination on the ground that the termination is nonstigmatic and there exists a relationship of master and servant between the petitioner and respondent No. 2. Hence, the present writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the order of termination of his services is illegal as within a month of terminating his services, the Management of Ansal University advertised the post of Assistant Professor in management, the post he was holding. It is argued that the petitioner was competent to teach the post which had been advertised. It was further submitted that the post was abolished by the respondent so as to dismiss the petitioner from service. The Ansal Institute of Technology (AIT for short) where the petitioner worked was affiliated with Guru Gobind Singh Indraprastha University, New Delhi, and thereafter AIT and Sushant School of Architecture were merged to form Ansal University on 10.02.2012 (prior to the termination of the petitioner). It is further submitted that the services cannot be terminated without issuing show cause notice to the employees even if it is on account of abolition of the post. In this regard, counsel would rely upon judgment rendered in *Raghubir Singh* v. *State of Haryana*, PLR (1994) 106 P&H 133. It is further argued that the other employees' services were terminated as well by respondent No. 2 who challenged the termination and the said orders were set aside. In those petitions, the argument as raised by the respondent that the order of termination could not be interfered on account of the fact that the existence of master and servant relationship was rejected. It is also argued that the judgment rendered in *Central Inland Water Transport Corporation Limited* v. *Brojo Nath Ganguly*, (1986) 2 SLR 345, has held that the clause which allows the Management to terminate the services of a permanent employee by giving him three months' notice is ultra vires of Article 14 of the Constitution of India. Therefore, the impugned order terminating the services of the petitioner without a show cause notice and merely relying upon the appointment letter which permits the Management to terminate the services of an employee by giving him three months' notice is illegal and deserves to be set aside.

4. *Per contra,* learned counsel appearing on behalf of the respondents would argue that the petitioner herein was appointed on the post of Senior Lecturer-Mass Communication with the Ansal Institute of Technology, Gurgaon and it was on account of abolition of the post that he was holding that his services were terminated in terms

of the Service Rules of the Institute. Chiranjiv Charitable Trust (CCT for short) was registered under the Societies Registration Act which was responsible for the establishment and management of AIT. Rule 20.2 of AIT allowed the Management Body of the respondent to terminate the services of any regular member of the staff academic or non-academic without notice and without any cause assigned after giving one month's notice or by giving one month's salary in lieu thereof. The petitioner was served one month's notice for discontinuation of services. In the notice, it was clearly mentioned that the program under which appointment had been made, had been closed at the Institute and thereafter, the Institute had tried to accommodate him in another program i.e. in Post Graduate Diploma in Retail Management (PGDRM), which has also been discontinued due to poor students intake and since the subject was not being taught, his services were no longer required. Counsel appearing on behalf of respondents would further urge that AIT ceased to exist *per se* on merger with Ansal University, Gurgaon and the University was competent in its own right to appoint persons having the necessary qualification to teach at the said University. It is also argued that the writ petition is not maintainable as earlier a civil suit had been filed on the same cause of action which was dismissed as withdrawn and, therefore, the petitioner is estopped from approaching this Court by way of filing the writ petition. Counsel for the respondents would rely upon judgments rendered in *Brainandan Prasad* v. *State of Bihar*, AIR 1955 Pat 353; *P.K. Naik* v. *State of Maharashtra*, AIR 1967 Bom 482; *Hartwell Prescott Singh* v. *State of Maharashtra*, AIR 1957 SC 886 and *Parshotam Lal Dhingra* v. *Union of India*, AIR 1958 SC 36 in support of his arguments.

5. I have heard learned counsel for the parties and with their assistance, have gone through the pleadings of the case.

6. The facts are not in dispute to the extent that the petitioner herein was appointed by AIT on adhoc basis as Senior Lecturer-Mass Communication. He continued to teach against the said post and based on his performance, he was confirmed as Senior Lecturer with one increment. The pleadings would reflect that the petitioner was promoted as Assistant Professor on 01.01.2009 and given full allowances of Rs. 2,000/- per month as Programme Coordinator as PGDRM and was allowed annual increment on 17.08.2009, subsequently on 27.12.2010. Thereafter, he was promoted as Assistant Dean (Marketing) w.e.f. 01.02.2011 till 31.07.2011. However, he was served with a notice for discontinuation of service which was challenged before the Civil Court and withdrawn with liberty to file an appeal before the Educational Tribunal which had been set up in terms of the judgment rendered by the Supreme Court in *TMA Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481. The Tribunal, seized of the

matter, dismissed the case primarily by relying upon the judgment in *Pearlite Liners Pvt. Ltd.* v. *Manorma Sirsi*-PLR (2004) 100 P&H 797 in which it has been held that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. The Tribunal relied on the general rule of law pertaining to the master servant relationship which is subject to three exceptions; where a public service is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; where a worker is sought to be reinstated on being dismissed under the Industrial Law and where a statutory body acts in breach of violation of the mandatory provisions of the statue. Since the case of the petitioner did not fall under any of the three exceptions as culled out in the aforesaid judgment, the Tribunal held that he had no vested right under the rules to continue on the post that stood abolished. Counsel for the petitioner has laid great stress on the judgments rendered in Dr. Sunita Tanwar who was dismissed from service by the same Institute and came to be reinstated by the Educational Tribunal. The writ petition as filed by the Managing Board of the AIT was dismissed in CWP No. 20900 of 2012 vide judgment dated 26.11.2013 which was subsequently upheld by the Supreme Court.

7. The Institute at that relevant time was affiliated to the University and governed by Guru Gobind Singh Inderprasth University Act, 1988. Section 22 of the said Act dealt with removal of employees of the University, which reads as under:—

> *"Section 22 : Removal of employees of the University : - Where there is an allegation of serious misconduct against a teacher, a member of the academic staff or any other employee of the University, the Vice-Chancellor may, in the case of a teacher or a member of the academic staff, or the authority competent to appoint (hereinafter referred to as appointing authority) in the case of any other employee, as the case may be, by order in writing, place such teacher, member of the academic staff or other employee as the case may be, under suspension and shall forthwith report to the Board of Management the circumstances in which the order was made.*
>
> *(2) Notwithstanding anything contained in the terms of the contract of appointment or in a other terms of conditions of service of the employees, the Board of Management in respect of teachers and other academic staff, and the appointing authority, in respect of other employees, as the case may be, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.*
>
> *(3) Save as aforesaid, the Board of Management or the*

appointing authority, as the case may be, shall not be entitled to remove any teacher, any member of the academic staff or any other employee except for a justified cause and after giving three months' notice to the person concerned or on payment of three months' salary to him in lieu thereof.

(4) No teacher, member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(5) The removal of a teacher, a member of the academic staff or other employee shall take effect from the date on which the order of removal is made.

(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, a member of the academic staff or other employee may resign

(a) if he is a permanent employee, only after giving three months' notice in writing to the Board of Management or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof; or

(b) if he is not a permanent employee, only after giving one month's notice in writing to the Board of Management or the appointing authority, as the case may be, or by paying one month's salary in lieu thereof:

Provided that such resignation shall take effect only from the date on which the resignation is accepted by the Board of Management, or the appointing authority, as the case may be."

8. The said Section clearly reads that the Board of Management shall have the power to remove a teacher or a member of the academic staff on the ground of misconduct. Section 22(3) and (4) of the Act of 1988 provides that the Board of Management shall not be entitled to remove any teacher, any member of the academic staff or any other employee except for a justified cause and after giving three months' notice to the person concerned with a further rider that no teacher, member or academic staff or other employees shall be removed unless he has been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

9. Counsel for the respondents would lay great emphasis on the appointment letter which allowed for termination by giving three months' notice or salary in lieu thereof which is in consonance with the Service Rules of AIT which read as:"*the "MB" shall have the power to terminate the services of any regular member (academic or non academic) of the staff without notice and without any cause assigned*

after giving three months notice or paying three months salary in lieu thereof." The Service Rules of AIT provide for termination, but Section 22 of Guru Gobind Singh Indraprastha University Act, 1988 would override any Rules framed which are contrary or inconsistence with the rules as framed by the University. Section 22 clearly provides for the Board of Management to dispense with service of an employee, but there has to be adequate show cause notice given. Even otherwise the notice for discontinuation of service gives one month's notice whereas the Service Rules themselves provide for a three months' notice and therefore the notice is not in consonance with the Service Rules of AIT, appointment letter and Section 22 of Guru Gobind Singh Indraprastha University Act, 1988. No show cause notice was issued to the petitioner herein who had been confirmed on the rolls of the Institute which was affiliated with the University. The discontinuation letter is clear violation of the Service Rules which provides for a three months' notice or salary in lieu thereof as well as Section 22 of the Act of 1988 which provides for a show cause notice and thus not sustainable.

10. Apart from the above, the Division Bench of this Court in LPA No. 1215 of 2011 decided on July 22, 2011 titled as *Management of Ansal Institute of Technology Gurgaon* v. *State of Haryana* had taken note of *Central Inland Water Transport Corporation's case* (supra) holding that the conditions of dispensing with the services without an opportunity of hearing is unconscionable and *ultra vires* of the Articles 14 and 16 of the Constitution of India. The letter of termination of one Naresh Bhatotia an employee of AIT, relied upon the clause of the appointment letter which allowed for services to be terminated by giving one months notice. The Letters Patent Bench upheld the orders of the Educational Tribunal and the Single Bench, which had set aside the termination order as being violative of Articles 14 and 16 of the Constitution of India.

11. The judgments as relied upon by the counsel for the petitioner and in the matter of Dr. Sunita Tanwar and Naresh Bhatotia would be of relevance since the impugned orders of termination were set aside holding that their terminations were violative of the judgment rendered in *Central Inland Water Transport Corporation's case* (supra) and Section 22 of the Act of 1988. The argument that the Institute stood disaffiliated from Guru Gobind Singh Indraprastha University cannot be countenanced since the disaffiliation was only in 2013 well after the impugned orders were passed.

12. An argument has been raised by the counsel for respondents that the writ petition is not maintainable, being barred by the principle of *res judicata* since the petitioner had already approached the civil court. This argument is sans merit as the petitioner had sought liberty to withdraw the civil suit filed and approach the Educational Tribunal in

the light of the judgment rendered in *T.M.A. Pai Foundation's case* (supra). Section 11 of Code of Civil Procedure clearly specifies that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigation under the same title has been decided. The civil suit filed by the petitioner challenging his discontinuation from service was not decided on any issue raised, as the case was withdrawn. In *Sushil Kumar Mehta* v. *Gobind Ram Bohria*, (1990) 1 SCC 193, it has been held "*it is settled law that normally a decree passed by a Court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be.*"

13. Counsel for the respondents has relied upon various judgments to argue that services terminated on abolition of post would not amount to punishment and in case a person employed on probation is terminated by giving one month's notice, such termination would not amount to dismissal or removal from service within meaning of Article 311 of the Constitution of India. Reliance has been placed upon *Brainandan Prasad* v. *State of Bihar*, *P.K. Naik* v. *State of Maharashtra* and *Hartwell Prescott Singh* v. *State of Maharashtra* (supra) where it was held that in case a person employed in temporary capacity on probation (and whose services could according to the conditions of service) contained in Service Rules be terminated by a month's notice, the termination does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution of India. Reliance has been placed upon judgment rendered in *Parshotam Lal Dhingra* v. *Union of India* (supra) to argue that every termination is not a dismissal, removal or reduction in rank and a termination of service brought about by exercise of a contractual right is not per se a dismissal. However, in the opinion of the Court, the judgments relied upon would not be applicable as the petitioner having been confirmed in service could no longer be called a probationer and would be deemed to be a regular employee of the Institute. In fact he was promoted thereafter as Assistant Professor and even given increments for the work done. He was made also Assistant Dean (Marketing). The Institute has flouted the Service Rules with great impunity as the Service Rules itself provide for three months' notice in terms of Rule 20.2 of AIT Service Rules, but Section 22 of the Act of 1988 to which the Institute was affiliated, provided for a show cause notice to be issued before termination which procedure was never followed.

14. The law is well settled to the effect that an employer has the

sole discretion to decide as to whether a post is to be retained or abolished and in the present case, whether the services are to be retained in the light of poor intake of students for the course being taught by the petitioner. The ground for discontinuation of services is that there was poor intake of students which would warrant no interference by the court. It is not for this court to decide what would be an adequate number of students to justify the retention of a teacher. The factum that Management of Ansal University advertised the post of Assistant Professor in management in August 2013, the post he was holding would have no bearing as Ansal University is a newly created entity as per UGC guidelines. However, since there was a violation of Section 22 of the Act of 1988, the termination on account of lack of students or otherwise is illegal and is set aside as well as the order of the Tribunal.

15. Consequently, respondent No. 2 which stands merged with respondent No. 3 is directed to reinstate the petitioner forthwith with all notional benefits. In case the petitioner seeks arrears of salary, the respondents would be at liberty to seek information on whether the petitioner had been gainfully employed during the pendency of these proceedings and take an appropriate decision. The entire exercise regarding entitlement of arrears of salary be completed expeditiously, preferably within a period of three months on the demand being made.

16. Petition stands allowed accordingly.