(1972) 03 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3448 of 1970

Anand Krishna Purohit APPELLANT

Vs

Board of Governors and others RESPONDENT

Date of Decision : 22-03-1972

Acts Referred:
Constitution of India, 1950 — Article 311(2)

Citation : (1972) 03 P&H CK 0006

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Harbhagwan Singh with Mr. Ram Lal Sharma, for the Appellant; H.L. Sarin with Messrs Jagmohan Malhotra and M.L. Sarin for Respondent Nos. 1 and 2 and Mr. A.L Bahri, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Tuli, J.—The Regional Engineering College Kurukshetra (hereinafter called ''the College''), was established in 1963 as a joint venture of the Central Government and the Punjab State. It was registered as a society under the Societies Registration Act, 1860, under which litrary, scientific and charitable societies are registered, on April 25, 1964, on the basis of Memorandum of Association and Rules which enumerate its objects and provide for its administration and management. The registered name of this society is "Regional Engineering College (Kurukshetra) Society". It has also framed bye-laws for its day-to-day administration. The governing body of the College, known as the Board of Governors, consists of representatives of the Central Government, the State Government, the All India Council for Technical Education (Northern Regional Committee), and non-official representatives of the States of Rajasthan Utter Pradesh, Jammu and Koshmir, and Punjab, appointed by the respective State Governments in consultation with the Central Government. The Central Government undertook to provide the entire non-recurring expenditure on the College building and equipment, and fifty percent of the recurring expenditure for a period of five years, while the remaining expenditure w as to be borne by the State Governments. The Central Government also undertook to provide fifty percent of the expenditure on construction of staff quarters as grant-in-aid and the balance as loan on current rate of interest. The entire expenditure on hostels was also to be provided by the Central Government as interest free loan. It is thus clear that when the College was established, the financial liabilities for running it were undertaken by the Central and the State Governments. Since its establishment the College has its own sources of income such as tuition fees, rent from hostels, residences and surplus lands given on lease. The deficit, if any, is met by the State Government. The administration of the College is carried on by the Board of Governors, and all appointments of the employees of the College are made by the Board, which is also the final punishing authority of all the employees of the College and no appeal lies against its decision. Neither the Central nor any State Government is the appointing or the punishing authority in respect of any of the employees of the College. The College is thus an institution which is administered by the Board of Governors and not by the Central or any State Government.

2. The petitioner was appointed Assistant Professor in Mechanical Engineering in the College by letter of appointment, dated June 25, 1966. He was issued a charge-sheet on March 12, 1970, containing seven charges and after receiving his reply an Enquiry Committee was appointed which submitted its report exonerating the petitioner. The date of that report is not known, as it is not mentioned anywhere in the petition or the written statement. On May 26, 1970, another charge-sheet was issued to the petitioner containing 15 charges including the seven charges which had been issued to him earlier and of which he had been exonerated by the Enquiry Committee. After receiving a reply from the petitioner, Shri S.M. Mukherji, Professor and Head of the Chemistry Department, Kurukshetra University, was appointed as the Enquiry Officer, who submitted his report, dated July 31, 1970, which was considered by the Board of Governors of the College at its meeting held on August 26, 1970. It was resolved that the report of the Enquiry Officer be accepted and the petitioner should be asked to show cause within ten days from the receipt of the notice as to why he should not be dismissed from service of the College. The petitioner submitted his reply which was considered by the Board of Governors at a meeting held on October 8, 1970, and the following decision was taken:-

Considered the reply of Shri A.K. Purohit to the show-cause notice. It has come to our notice that the Enquiry Officer had examined a peon in connection with charge No. XIV but did not record his statement. In view of this, this charge cannot be taken as proved. But after careful consideration of the reply of Shri Purohit, the Board finds no reason to revise the acceptance, in its meeting held on August 25, 1970, of the findings of the Enquiry Officer in respect of other charges. The Board is of the opinion that in view of the gravity of the charges, the findings on which were so accepted, dismissal of Shri Purohit is the proper punishment.

Resolved that Shri A.K. Purohit be dismissed with immediate effect.

The Principal of the Collage, who was the Secretary of the Board of Governors, issued a letter to the petitioner on October 8, 1970, conveying the decision of the Board. The petitioner has challenged the order of his dismissal in this petition to which a written statement has been filed.

3. In my opinion, this petition deserves to be dismissed on the ground that the College is a Society registered under the Societies Registration Act, 1860, and is neither the Central Government nor a State Government. Relationship between the College and the petitioner is that of master and servant and the proper remedy for the petitioner is to file a civil suit for damages, because the contract of personal service between a master and a servant cannot be enforced. The Learned Counsel for the petitioner has, however, strenuously argued that for all intents and purposes the College is a Government institution and, therefore, the petitioner has to be considered as an employee of the Government who is entitled to the protection of Article 311(2) of the Constitution, I regret I cannot accept the submission of the Learned Counsel. It is an admitted fact that the petitioner joined service of the College which is a Society registered under the Societies Registration Act.. The mere fact that this College is being run by the Central Government and the State Governments, through a Board of Governors, does not change its complexion from a "Society" to "Government". The College does not become a department of the Central Government or of the State Government. According to the petitioner himself, as stated in his petition, the College is a joint venture of the Central Government and the State Government it of Punjab. It was held by their Lordships of the Supreme Court in Dr. S.L. Agarwal v. The General Manager, Hindustan Steel Ltd. 1970. S.L.R. 351 "that the employees of the Hindustan Steel Limited do not answer the description of a holder of ''civil post under the Union'', as stated in Article 311 of the Constitution. Hindustan Steel Limited is a company registered under the Companies Act, wholly owned by the Central Government, and is run by the Board of Directors. The position of the College is no different and the observations of their Lordships in that case fully apply to the facts of this case. Their Lordships held that "the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of a ''civil post under the Union'' as stated in the article. The appellant was not entitled to the protection of Article 311. The High Court was, therefore, right in not affording him the protection". On a parity of reasoning it can be stated that the College is a Society registered under the Societies Registration Act and is distinct even from its members. Its employees do not answer the description of a holder of a civil post under the Union or a State as stated in Article 311. No protection of that Article can, therefore, be allowed to the petitioner. The facts that all the finances were originally supplied by the Central Government and the State

Governments and the deficit is even now supplied by the State Governments, and that the Board of Governors consists of the representatives of the Central Government and various State Governments, do not transpose the registered society into a department of the Government.

4. The Learned Counsel for the petitioner laid great emphasis on the fact that in its prospectus the College was described as a Government Institution. This does not mean that the College is a department of the Government or its employees are the employees of a State or the Central Government. In every State many activities are being conducted solely by the Government by forming Corporations. Some companies have been incorporated under the Companies Act while with regard to the other Corporations, Acts, have been passed. Such Companies and Corporations are financed and run by the Government either Central or State, but they do not become departments of that Government and none of their employees can be said to be a holder of a civil post under the Central Government or the State Government.

5. In Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, as per head-note ''D'', their Lordships of the Supreme Court laid down that "Normally a contract of personal service will rot be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case for a master terminating the services of a servant. The exceptions to the normal rule that no declaration to enforce a contract of personal service will be granted are: (1) a public servant who has been dismissed from service in contravention of Article 311; (2) reinstatement of a dismissed worker under Industrial Law or by Labour or Industrial Tribunals; (3) a statutory body when it has acted in breach of a mandatory obligation, imposed by statute." In the instant case the College is not a statutory body and the case of the petitioner is not covered by any of the exceptions enumerated by their Lordships. Even if the dismissal of the petitioner by the College is wrongful, the only remedy available to the petitioner is to file a suit for damages. The dispute is between two private parties, the College, which is a Society, on the one hand, and the petitioner, an individual, on the other. The petitioner does not enjoy any statutory status, nor have any statutory rubs been framed for governing the conditions of service of the petitioner. The rules and bye-laws governing the conditions of service of the Petitioner were framed by the Society or its Board of Governors and not by the Central Government or by the State Government under any statute. This writ petition is, therefore, not maintainable. It is accordingly dismissed, but without any order as to costs. The petitioner will be at liberty to file a suit for redress of his grievances, if

considered necessary.

