

(2015) 11 DEL CK 0236

In the Delhi High Court

Case No : W.P. (C) 6998, 6999, 7004/2013, 7554/2014, CM Nos. 25369 and 25385/2015

Ashok Kumar and Others

APPELLANT

Vs

The Vice Chancellor Rashtirya Sanskrit Sansthan and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Citation : (2015) 11 DEL CK 0236

Hon'ble Judges : V. Kameswar Rao, J.

Bench : Single Bench

Advocate : Gyan Prakash and Neeraj, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.

W.P.(C) Nos. 6998/2013, 6999/2013, 7004/2013 & 7554/2013 with CM Nos. 25369/2015, 25385/2015 [in W.P.(C) 7554/2014]

1. By this order, I shall decide two applications, filed by the petitioners in W.P.(C) No. 7554/2014, and the respondents in the same petition. The application filed by the respondents being CM No. 25369/2015, with averments that in compliance of order dated April 21, 2015 passed in LPA 228/2015, the Board of Management of the respondents-institution in its 43rd meeting dated September 15, 2015, decided to constitute an Enquiry Committee. The Enquiry Committee shall look into the issue of 19 persons in compliance of orders dated December 16, 2013 and November 13, 2014 in above-said writ petitions and the order dated April 21, 2015 in LPA No. 228/2015. There is also an averment that the enquiry in this regard is in progress and the Committee has already met thrice for the purpose of matter assigned to it and the Committee is likely to take 3-4 months in finalising its report with regard to 19 persons and consequences arising therefrom. The second application being CM No. 25385/2015 filed by the petitioners in W.P.(C) 7554/2014, wherein they have inter alia prayed for a

direction to the respondents to produce the decision/discussion, if any taken on the enquiry report submitted to this Court and with a further direction to the respondents to submit to this Court a copy of the minutes relating to 42nd meeting of the Board of Management on June 3, 2015.

Background:-

2. The three writ petitions being W.P.(C) Nos. 6998/2013, 6999/2013 and 7004/2013 were filed by the petitioners seeking regularization of their services with the respondents-Rashtriya Sanskrit Sansthan (deemed University). The case of the petitioners in these writ petitions was that their services be regularized as 19 similarly situated employees were made permanent. 12 out of the 19 employees also filed writ petition being W.P.(C) 7554/2014, inter alia, seeking a direction to quash the orders through which the representations of the petitioners were rejected, with a further prayer to command and direct the respondents to make available a copy of the enquiry report to the petitioners, and to challenge the same as it contained adverse remarks and references against them. The writ petitions being W.P.(C) Nos. 6998/2013, 6999/2013 and 7004/2013 came up for hearing on November 11, 2013 and the Court issued notices to the respondents to produce the file concerning the decision taken to regularize the services of 19 employees, and was prima facie of the view that the regularization of 19 employees violated law declared by the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, On December 16, 2013, this Court in para 4 has observed as under:

"4. In the present case, therefore, certain persons numbering 19 as contained in Annexure P5 to the writ petition have been regularized in violation of ratio of judgment in Uma Devi's case. It is hence necessary that the highest body in the respondent No. 1/University appoints a Committee of senior level officers to enquire as to why and in what circumstances the categorical directions of the Constitution Bench of the Supreme Court in Uma Devi's case have been violated. The Committee will also accordingly take a decision in accordance with law on the fate of regularization of the 19 persons as mentioned in Annexure P5 to the writ petition. The Committee will also give hearing to the 19 persons before taking any action against them."

3. The matter was adjourned to April 28, 2014, when the report of the Committee was placed before the Court. The matter thereafter was adjourned to August 14, 2014, on which date, the matter further got adjourned to November 13, 2014. At that stage, the 12 out of the 19 persons filed writ petition being W.P. (C) 7554/2014. A composite order was passed on November 13, 2014 in all the writ petitions. In para 15 and 18, this Court has observed as under:

"15. Having regard to the Report submitted by the Committee constituted by the respondent/University, it is deemed appropriate to direct the University to place the said Report before the Board of Management, for it to examine the same and take further action thereon. The Board shall ensure that before proceeding to

take any adverse action against the 19 employees named by the petitioners in Annexure P-5, the principles of natural justice are followed strictly, by issuing them a notice to show cause, whereafter they shall be afforded an opportunity of hearing. The notice to show cause shall mention the specific irregularities pointed out in the Report with regard to their appointments. After considering the reply of the concerned employees, the competent authority shall pass appropriate orders, in accordance with law, under written intimation to such employees. Further, the Board of Management of the respondent/University shall undertake an independent exhaustive enquiry as to whether any other contractual/adhoc/temporary appointments have been made in the University, which may not have been mentioned by the petitioners, but are contrary to the ratio of the judgment in the case of Uma Devi(surpa) and if so, appropriate action shall be taken to reverse the said illegality, in accordance with law, within four months from today.

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18. On 16.12.2013, directions were also issued that in case any of the authorities/officers are found to be negligent or found to have illegally regularized the contractual appointments, then the Committee shall recommend appropriate action and remedial measures. In the penultimate para of its Report at pages 27-28, the Inquiry Committee has pointed out the deficiencies in discharge of obligations on the part of some of its officers and has referred to six officials by designation, who were directly associated with recommending/approving/ implementing the proposals of regularization of 19 persons. Unfortunately, the Committee has not named the said officers which would be necessary for the Board of Management to fix the responsibility and take action against the said officials, in accordance with law. The Committee is directed to furnish the names of the officers mentioned in the Report along with the relevant period when the illegality was committed and the findings returned vis-a-vis each of the said officer. The said information shall be placed in a sealed cover before the Board of Management for it to initiate appropriate action against them, in accordance with law, after following the principles of audi alteram partem. The action taken by the respondent/University shall be set out in the additional affidavit that shall be filed by the last week of February 2015."

4. On April 7, 2015, this Court had passed the following order:

"2. On behalf of the respondents, it is also stated that the respondents will file an affidavit of respondent no.2/Registrar, Rashtriya Sanskrit Sansthan that the Committee Members had no intention whatsoever to re- look any aspect which achieved finality in terms of the orders passed by this Court on 16.12.2013 and 13.11.2014 viz Committee has no intention to again decide as to whether 19 persons who have been given employment were in fact not given employment in violation of the ratio of the judgment in the case of Umadevi (supra).

3. The affidavit of the respondent no.2 will also be supported by the letters of the Committee Members who have sought to question the finality of the orders

passed by this Court on 16.12.2013 and 13.11.2014 by issuing directions of again re-examination of issue of appointment of 19 persons whether the same was or was not in violation of the ratio in Umadevi's case (supra). Necessary affidavit with the supporting letters of the Committee Members be filed by the respondent no.2 within a period of two weeks from today.

4. Ministry of Human Resources Development (HRD) through its competent officer will file its affidavit as required in terms of the order of a learned Single Judge of this Court dated 13.11.2014 that the ratio of Umadevi's case (supra) has been brought to the notice of all organizations and institutions coming under the control of the Ministry of HRD."

5. The aforesaid order dated April 7, 2015 was taken in appeal by some of the petitioners in W.P.(C) 7554/2014 in LPA No. 228/2015 titled as Suman and Ors. Vs. Rashtriya Sanskrit Sansthan, deemed University and Ors. wherein, in para 19 to 22, the Division Bench has passed the following order:

"19. Suffice it to state that paragraph 4 of the order dated December 16, 2013 passed in WP(C) No. 6998/2013, WP(C) No. 6999/2013, WP(C) No. 7004/2013 and WP(C) No. 7554/2014 expressly recognizes the fact that based on the report of inquiry the 19 persons likely to be affected would be put to notice. They would have an opportunity to present their case. Considering their representations decisions would be taken. The impugned order could not have taken away said right of the appellants.

20. If the executive cannot violate principles of natural justice, the courts are least expected to do so.

21. The two orders which we have noted hereinabove reserve the right of the appellants to be give Show Cause notices and make a representation. It has to be followed by a reasoned decision. Inherent in the aforesaid process would be the consideration of the report placed before the learned Single Judge in light of the representations made by the appellants and thus the learned Single Judge could not have directed that the respondents would not re-consider their report. If this was so, the issuance of the Show Cause notice to the appellants envisaged by the orders dated December 16, 2013 and November 13, 2014 would be illusory.

22. Under the circumstances, we dispose of the writ petitions quashing the directions issued by the learned Single Judge in the impugned order dated April 07, 2015 prohibiting the respondents to re-examine the issue of appointment of 19 persons. We clarify, based on the report placed before the learned Single Judge, Show Cause notices would be served upon the 19 persons in which the grounds on which the respondents propose to terminate their services would be indicated. The said 19 persons would be given opportunity to make representations. The representations would be considered. Reasoned decision, dealing with the submissions made by the 19 persons would be taken.

23. The said 19 person, if aggrieved, would be entitled to remedy as per law."

6. I note that the petitioners in W.P.(C) Nos. 6998/2013, 6999/2013, 7004/2013 are not appearing in these proceedings.

7. Be that as it may, all the writ petitions were disposed of on November 13, 2014 and were directed to be listed on April 7, 2015 in the category of "Directions" for perusing the affidavits to be filed by the respondents with regard to the action to be taken by the respondents in terms of the directions in para 18 of the said order. Thereafter, the order dated April 7, 2015 passed by this Court prohibiting the respondents to re-examine the issue of appointment of 19 persons has been set aside by the Appellate Court in LPA 228/2015. It has been clarified by the Court in the appeal that based on the report placed before this Court, show cause notices would be served on 19 persons, if their services are proposed to be terminated, in which show cause notices the grounds on which the respondents proposed to terminate the services, would be indicated and the said 19 persons would be given an opportunity to make representation(s), which would be considered and reasoned decision, dealing with the submissions made by 19 persons in their representation(s), would be taken. The order of the Division Bench in LPA 228/2015 is very clear. It is expected, the respondents shall take action strictly in terms of the directions of this Court and the Appellate Court, which have been reproduced above, which are November 13, 2014 (in these writ petitions) and order dated April 21, 2015 in LPA No. 228/2015.

8. I may note here, in para 18 of the order dated November 13, 2014, this Court has directed the respondents to file additional affidavit on the action taken by the respondent University against the officers, who were responsible for recommending/approving/implementing the regularisation. After the exercise as directed by this Court in order dated November 13, 2014 and the Appellate Court, in LPA 228/2015 dated April 21, 2015, is carried out within two months from today, an additional affidavit shall be filed by the respondent University within four weeks thereafter. This disposes of the CM No. 25369/2015.

9. Insofar as CM No. 25385/2015 is concerned, it appears that in this application the petitioners are seeking an order against the respondents to produce the deliberation taken place on the enquiry report submitted to this Court and the Minutes of Meeting of the Board of Management on June 03, 2015. These developments have taken place post order dated November 13, 2014, by which order these petitions were disposed of and also post order dated April 21, 2015 in LPA 228/2015. They can't seek a direction of such a nature now, when the petitions have already been decided. As has been made clear, the respondents are required to take action in accordance with order of this Court dated November 13, 2014 read with order dated April 21, 2015 in LPA 228/2015. The present application is dismissed.

10. List on 10th March, 2016 under the heading "Directions".