
(1972) 04 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.P. No. 374 of 1971

Bhagwat Prasad Sao

APPELLANT

Vs

Ravishankar University, Raipur and others

RESPONDENT

Date of Decision : 07-04-1972

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 16

Citation : (1973) JLJ 46 : (1973) 18 MPLJ 158

Hon'ble Judges : Bishambhar Dayal, C.J;A.P. Sen, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; R.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.

This is a writ petition by Bhagwat Prasad Sao questioning the validity of his termination of service as Principal of a private College.

The facts, in brief, are these--By its letter of appointment dated 25/27-7-1966, Badri Prasad Education Society, Arang, registered under the M.P. Non-Trading Corporations Act, 1962, temporarily appointed the petitioner to be the Principal of Badri Prasad Arts and Commerce College, Arang, run by it. The appointment was subject to approval of the Ravishankar University to which the College is affiliated and of the Governing Body of the College.

The appointment of the petitioner was purely of a temporary nature liable to be terminated by service of one month's notice or on payment of a month's salary in lieu thereof.

In due course, the requisite approval was accorded both by the University and the Governing Body. On 1-7-1968, the Governing Body of the College terminated the services of the petitioner and directed payment of one month's salary to him in lieu of notice. The petitioner, who being the Ex Officio Secretary, was present

at the meeting of the Governing Body but he refused to accept the notice. Eventually, he handed over charge of his office and made a representation to the University against the termination of his service.

The University by its letter dated 7-12-1968 declined to interfere in the matter on the ground that there was no legal basis for such interference. Meanwhile, the Committee of Enquiry appointed by the University to go into the affairs of the Society--on the complaint of the petitioner pointing out various irregularities in its working, reported that the Governing Body was not duly constituted as two of its members, B.L. Choube and Rudra Saheb Guru-swami, had not been nominated by the Society. That defect in its constitution was, however, removed as their appointment subsequently was approved by the Society. The petitioner then by his letter dated 18-12-1969 invoked clause 8 of the College Code, and wanted a reference of the dispute to a Tribunal for arbitration. The University by its letter dated 14-1-1970, declined to constitute a Tribunal stating that the College Code was made applicable w. e. f. 29-11-1968, while the services of the petitioner were dispensed with on 1-7-1968, i.e., prior in point of time.

On these facts, four contentions have been raised on behalf of the petitioner, namely,--

- (1) The termination of his services was not with the prior approval of the Executive Council as required under Statute No. 22 (3) framed by the University and, therefore, invalid.
- (2) The University was in duty bound under clause 8 of the College Code to refer the dispute to a Tribunal for arbitration.
- (3) The Governing Body was not duly constituted and, therefore, the impugned resolution was not legal in effect.
- (4) The way in which the resolution was passed was not fair and just as the item was not on the agenda of the meeting.

There is, in our opinion, no force in any of the contentions.

There is a preliminary objection raised as to the tenability of the petition on the ground of unexplained delay. The objection must, in our view, be sustained. The impugned resolution terminating the services of the petitioner was passed on 1-7-1968. The present petition was not filed until 3-7-1971, i.e. for three years. There is no plausible explanation why the petitioner did not approach the Court with promptitude. The reason given by the petitioner that he had approached the University and, therefore, the delay, does not appeal to us. The University by its letter dated 7-12-1968 (Annexure--E) had categorically declined to interfere. Thereafter, there was no point in pursuing the matter with the University. The petitioner was not governed by the College Code. His application under clause 8 thereof for reference to arbitration was therefore, misconceived. The University by its subsequent letter dated 14-1-1970 (Annexure--G) clearly pointed out that no such reference could be made. There is no explanation, much less any

reasonable explanation, for the undue delay in presenting the petition. The petition, therefore, deserves to be rejected on this short ground alone.

Even on the merits, the contentions raised are devoid of substance. The first contention that the termination of service required prior concurrence of the Executive Council under Statute No. 22 (3) (i) is obviously wrong. Statute 22 (3) (i) reads :

22. Subject to the provisions of the Act, colleges and other institutions may be admitted to such privileges of the University as the Executive Council may decide, on the following conditions, namely,

..

(i) the appointment of the Principal and other members of the teaching staff shall be made after advertisement.

It is urged that the initial appointment having been made with the approval of the Executive Council, the power of termination was subject to like restriction.

The contention rests on section 16 of the Madhya Pradesh General Clauses Act of 1957. It reads as follows :

Where, by any enactment, a power to make any appointment is conferred, then, unless a different intention appears, the authority for the time being having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

A similar contention has been rejected by me in another Division Bench in *Ramchandra v. Jawaharlal Nehru Krishi Vishwa Vidhyalaya and others* 1970 MPLJ 748 in these words:

....Emphasis is laid on the words "unless a different intention appears", and it is urged that section 48 (1) (d) postulates that the exercise of the power thereunder shall be subject to the sanction of the Chancellor. That being so, it is said that the power of termination is also conditioned likewise, and the Vice-Chancellor could not take recourse to the power of termination, if any, without obtaining sanction of the Chancellor clearly.

We are of the view that while section 48 (1) (d) makes the power for initial appointment subject to sanction of the Chancellor, there was no necessity for the Vice-Chancellor to secure the prior concurrence of the Chancellor, before serving the order of termination on the petitioner. Nothing would have been easier for the Legislature to provide in section 48 (2) that the setting aside of an order passed u/s 48 (1), which is subject to the approval of the Chancellor, shall not be modified or set aside, unless approval of the Chancellor is first obtained. It appears to us, on the terms of section 48 (2), that "a different intention appears", within the meaning of section 16 of the Madhya Pradesh General Clauses Act. The power of termination not being subject to any restrictions, the Vice-Chancellor was competent to terminate the services of the petitioner,

without obtaining the sanction of the Chancellor for the action proposed to be taken against him.

We see no reason to take a different view in this case.

It is clear on the language of Statute No. 22 (3) that "a different intention appears", within the meaning of section 16 of the Madhya Pradesh General Clauses Act. Agreeing with the view taken in that case, we could also like to say that if the University intended that the services of a teacher should not be terminated without prior approval of the Executive Council, nothing would have been easier for the University to make such a provision in Statute No. 22 (3). The first contention, therefore, fails.

The next contention is whether the services of the petitioner were governed by the College Code and, therefore, he had an enforceable legal right. The answer to that question must clearly be in the negative. The present College Code was framed by the University and made applicable w. e. f. 29-11-1968. Previously, the College Code of the Saugar University was in force. Now, u/s 32 (h) of the Saugar University Act, 1946, the Saugar University was empowered to frame an ordinance to regulate:

the term of office, duties and conditions of service of the teachers of the University.

Ordinance No. 20 made by the Saugar University had, therefore, statutory force. That distinguishes the decision of the Supreme Court in Prabhakar Ramkrishna Jodh v. A.L. Pande 1970 MPLJ 983 (SC). The expression "teachers of the University" used in section 32 (h) *ibid* was wide enough to bring within its purview not only teachers of the University paid by the University, but also teachers of colleges affiliated to the University. Their Lordships of the Supreme Court, therefore, upheld in Prabhakar Ram Krishna Jodh's case (*supra*) the contention that the College Code had a statutory force and the petitioner in that case could enforce his right by a writ of mandamus.

The State Legislature then stepped in and amended section 32 (h) *ibid* by the M.P. University Laws (Amendment) Act, 1965, by restricting the powers of the Saugar University. The amended section reads as follows:

32. Subject to the provisions of this Act and the Statutes and in addition to all matters which, by this Act or the Statutes, are to be provided for by the Ordinances, the Ordinances may provide for all or any of the following matters, namely :--

(h) the term of office, duties and conditions of service of officers and teachers of the University paid by the University in so far as these are, by or under this Act, subject to the Executive Council.

We do not think it necessary for our purposes to decide the effect of the amending Act. Suffice it to say, the petitioner was not a "teacher of the

University paid by the University", within the meaning of section 32 (h) and, therefore, even the Saugar University had no power to frame any ordinance regulating the conditions of service of teachers like him. Though the College Code of that University was in force until 28-II-1968, the petitioner could not enforce the provisions of the same.

Under the Ravishankar University Act, 1963, the University is empowered to frame Statutes u/s 35, pertaining amongst others the following subjects:

35. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:--

... ..

(j) the conditions under which colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges;

(k) qualifications of professors, readers, assistant professors, lecturers, and other teachers in affiliated colleges and recognised institutions;

.. ..

(n) the emoluments and terms and conditions of service of the officers and the emoluments and terms and conditions of service other than pay scales of teachers of the University paid by the University.

Under section 35 (n), the Statutes made under the Act may only regulate the conditions of service of "teachers of the University paid by the University". The petitioner admittedly does not answer that description. The College Code was, therefore, not applicable to the petitioner. The University was, therefore, not in duty bound under clause 8 of the College Code to refer the dispute to a Tribunal for arbitration.

It is rather difficult for us to hold that the College Code is a "Statute" framed under the Act, regulating terms of appointments and conditions of service of teachers of the affiliated colleges. The University is empowered u/s 35 to frame Statutes, consistent with the Act, to provide for the matters enumerated therein. Now, the power to frame the College Code vis-a-vis the affiliated colleges is only referable to clauses (j) and (k) of section 35. As already stated, clause (n) only invests the University to make a Statute to regulate the conditions of service of "teachers of the University paid by the University" and, therefore, teachers of the affiliated colleges do not come within the purview of that clause. Under clause (j), the University can lay down the conditions for affiliation of colleges to the University and for the withdrawal of such affiliation. While, under clause (k), the University can prescribe the minimum qualifications of teachers of the affiliated colleges. They are both matters pertaining to affiliation of colleges. We are reinforced in that view by the decision of the Supreme Court in Dr. Ram Pal Chaturvedi v. State of Rajasthan and others 1970 (1) SSC 75. While dealing with Ordinance No. 65 framed by the Rajasthan University under a like provision

contained in the University of Rajputana Act, 1946, their Lordships observed as follows:

.... The field of operation of this Ordinance appears to us to be restricted to the question of affiliation of the colleges concerned with the Rajasthan University..... If there is any violation of a provision of this Ordinance then that may appropriately be taken into account by the Rajasthan University for the purpose of withdrawing or refusing to continue affiliation of the colleges in question.....

That being so, the College Code in so far as it seeks to regulate the "conditions of service of teachers of the affiliated colleges, has no statutory force. Any breach of the provisions of the College Code by an affiliated college may visit the college with the withdrawal of affiliation and with no other consequence.

The relations between the petitioner and the Society were governed by the law of master and servant. The rights of the petitioner were purely contractual. The termination of his service was in terms of the contract of employment as it stipulated termination of service by notice of one month by either side. The petitioner accepted the employment under those conditions. If there it a breach of that contract, the remedy of the petitioner is by way of a suit for damages. This is not a case where a statutory body acted in breach of a mandatory obligation imposed by a Statute. There is no question of compelling the Society to reinstate the petitioner which is a matter in the realm of contractual rights and obligations. Nor is the petitioner entitled to enforce the College Code against the Society.

In Kumari Regina Vs. St. Aloysius Higher Elementary School and Another, their Lordships of the Supreme Court while dealing with the same question have stated as follows:--

Ordinarily, the relations between the management of an elementary school and the teachers employed in it would be governed by the terms of the contract of employment and the law of master and servant in the absence of any statute controlling or abrogating such a contract of employment and providing to the contrary. The mere fact that such a school has obtained recognition and aid from the education department would not mean that the relationship between its management and its employees has ceased to be governed by the contracts of employment under which the employees are recruited and by the law of master and servant unless there is some provision in the Act overriding that law as one finds in statutes dealing with the industrial disputes and similar other matters. There is in fact no such provision in the Act and none was pointed out to us. The result is that the relations between the management and the teachers even in a recognised elementary school have to be regarded as being governed by the contracts of employment and the terms and conditions contained therein Part II Rules, which cannot be regarded as having the status of statutory rules made u/s 56, cannot be said to have the effect of controlling the relations between the management of a school and its teachers or the terms and conditions of

employment of such teachers or abrogating the law of master and servant which ordinarily would govern those relations.

..

If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either the denial or withdrawal of recognition and aid. The management of a school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, as such a teacher aggrieved by some order of the management, cannot derive from the rules any enforceable right against the management on the ground of a breach or non-compliance of any of the rules.....

That really concludes the matter.

Even otherwise, the petitioner was not governed by clause 8 (vi) of the College Code and, therefore, the University was fully justified in refusing to constitute a Tribunal. Clause 8 (vi) of the College Code reads as follows:

8. Conditions of services of Teachers.

(vi) The Governing Body of the college shall not terminate the service or reduce the pay of any teacher confirmed in the service of the college :

(a) Without holding a full enquiry into the matter. The teacher concerned shall be given in writing a statement of charges against him and afforded every possible opportunity of defending himself. His previous service and character shall also be taken into consideration.

(b) No decision for such termination of service, or reduction of pay shall have any effect unless passed by a majority of two thirds of the members of the Governing Body;

(c) At the request of the teacher concerned any difference or dispute either arising out of the contract, or, otherwise, shall be referred to a Tribunal or Arbitration consisting of the Vice-Chancellor, and two other persons appointed by the Executive Council of the University, one of whom shall possess a status not lower than that of a District Judge. The decision of this Tribunal shall be final and binding on both the parties.

There is a three-fold protection, namely, (i) the services of a teacher cannot be terminated or his pay reduced without holding a full enquiry. In such an enquiry, the teacher concerned has to be given full opportunity of defending himself; (ii) no termination of service or reduction of pay can have effect unless the

Governing body by a majority of two thirds of members, takes a decision in the matter and (iii) the teacher is entitled to raise a dispute and upon this, the University is in duty bound to constitute a Tribunal of arbitration. These safeguards contained in sub-clauses (a), (b) and (c), however, form part of the substantive provision contained in clause 8 (vi). They are qualified by the words "any teacher confirmed in the service of the college" and as such the different safeguards, including protection against termination and the right to arbitration, are given only to confirmed teachers. The petitioner was not only appointed temporarily, but there was also no contract in writing in the form prescribed in Schedule A as envisaged by clause 7 (i).

The third contention is of no avail. We must decline to go into the question whether B.L. Choubey and Rudra Saheb Guruswami were or were not two representatives of the Foundation Society, as required under clause 3 (i) (b), and if not, whether the Governing Body was not duly constituted. The reason is obvious. In the first place, the petitioner participated at the meeting of the Governing Body held on 1-7-1968. He, not having taken any objection to their participation as members, is now estopped from contending either that they were not so entitled to participate as representatives of the Foundation Society or the Governing Body, in the absence of such representation, was not duly constituted. Secondly, the defect, if any, in the constitution of the Governing Body stands removed by the resolution of the Society dated 22-8-1969. By that resolution, the nomination of B.L. Choubey and Rudra Saheb Guruswami, as representatives of the Foundation Society under clause 3 (i) (b), was duly ratified. Lastly, if they were not the representatives of the Foundation Society and, therefore the Governing Body was not duly constituted, then its resolution dated 20-4-1968 according approval to the appointment of the petitioner was itself invalid, as at that meeting one of them, B.L. Choubey, was present. If the appointment of the petitioner was not legal, then he has no kind of any right whatsoever. It would be deemed as if he was not appointed at all.

The last contention that the termination of service of the petitioner is tantamount to his expulsion from the office by Secretary of the Governing Body and, therefore, he should have been served with a notice to show cause why his services should not be terminated, cannot be accepted. No doubt it is settled on principle and authority that when there is expulsion of a member the rules of natural justice require that he should have an opportunity of defending himself. That principle has, however, no application here. There was no question of expulsion of any member from his office. The petitioner was Ex Officio Secretary of the Governing Body, by virtue of his being the Principal. With the termination of his services, he automatically ceased to be Ex Officio Secretary of the Governing Body. The question of invalidity of the meeting for want of notice really does not arise. The notice of the meeting was issued by the petitioner himself. It stated that apart from the subjects mentioned in the agenda, any other subject may be taken up for consideration with the permission of the Chairman. The petitioner was present at the meeting, and never raised any

objection as regards the invalidity of the meeting.

The result, therefore, is that the petition fails and is dismissed with costs. Hearing fee Rs. 100, if certified. The outstanding security amount, if any, shall be refunded to the petitioner.