

(2002) 03 CHH CK 0003

In the Chhattisgarh High Court

Case No : Writ Petition No's. 232 and 233-234 of 2002

Chandrakumar Gendele and Others

APPELLANT

Vs

Guru Ghasidas Vishwavidyalay, Bilaspur and Another

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 3 CGLJ 210 : (2002) 94 FLR 964 : (2002) 2 MPHT 77

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Dharendra Mishra and Praveen Das, for the Appellant; Manindra Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

Fakhruddin, J.—With the consent of the parties the matter is heard finally. This order shall dispose of W.P, Nos. 232/2002, 233/2002 and 234/2002.

2. The petitioners have filed this petition against the order dated 21-1-2002 whereby his services have been terminated by the Registrar of the University as per the orders passed by the Vice-Chancellor on the ground that the Vice-Chancellor passed the order on 20-1-2002 and as such their services are terminated with immediate effect.

3. Learned counsel for the petitioners submits that names were called from the employment exchange as well as from the employees of the University. The petitioners were also called for written test and interview. The petitioners were duly selected and were appointed vide order dated 24-12-2001. They gave their joining report on 15-1-2002 and thereafter their services have been terminated by the impugned order dated 21-1-2002. It is submitted that the action of the respondents is arbitrary, before passing the impugned order no notice was given and no enquiry was conducted.

4. Respondents have filed their return in which it is stated that on certain

complaints made by the members of the association the Vice-Chancellor directed termination of services and cancellation of appointment order. Document Annexure R-1 has been taken on record. It is pertinent to quote the Annexure R-1, which is quoted hereinbelow:--

^^fnukad 18&1&2002 dks dk;Zifj"kn dh vR;ar gh egRoiw.kZ vkikr cSBd ds le{k deZpkjh la/k ds inkf/kdkfj;ksa ,oa izfrfuf/k;ksa us vR;Ur gh vkif?ktud n`"; mifLFkr d;k o bu fu;qf?;ksa dk fojks/k djrs gq, dgk fd ;s fu;qf?;ka fujLr dj nh tk;sa vFkok fo"ofokj; ds vU; IHkh nSfud osru ,oa 89 fnol ij dk;Zjr deZpkfj;ksa dks fu;fer djus dh ekax dh] tks leUo; lfefr ds 29&5&2000 ds fu.kZ; ,oa jkT; "kklu ds vkns"k ds izdk"k esa IEHko ugha gS mUgksaus ckjackj ekax dh fd mijks? vkns"k ds }kjk fu;q? O;f?;ksa dk vkns"k fujLr fd;k tk; A

eSa Hkkst fo"ofokj; esa dqyifr ds in dk inHkkj xzg.k djus ds fy, izLFkku dj jgk gwa deZpkfj;ksa dh bl ekax ds laca/k esa bl le; fu.kZ; laHko ugha gS vr% mudh ekax ds vuqlkj mijks? fu;qf? ds fy, esajs }kjk vknsf"kr vkns"k rRdky izHkko ls fujLr fd;k tk; ,oa dh xbZ dk;Zokgh ls eq>s voxr dj;k tk; A

lgh@&

dqylfpo

dqyifr

5. A perusal of this document shows that on 18-1-2002 before the Executive Council Meeting, some employees of the Association raised objection and they also said that other persons like daily wagers and 89 days be also regularised and as such if this is not done the appointments be cancelled. It is stated that since the Vice-Chancellor was going to Bhoj Open University and he is unable to take decision of the employees' demand regarding regularization, he has directed cancellation of the appointment order.

6. The case was listed many a times, the University was given full opportunity to defend and produce any other document to justify their stand but it is stated that except the document Annexure R-1 there is no other basis for passing impugned order of termination.

7. Learned counsel for the petitioners placed reliance on a decision of Apex Court in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, , in which it is held that :--

"In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and he prepared to give way or be pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in

the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."

The position of Vice-Chancellor and the status, which he enjoys, is certainly a key position in any State. He is not supposed to mortgage his own discretion, volition and decision-making authority and be prepared to give way or be pushed back or pressed ahead at the behest of anyone for carrying out commands having no sanctity in law. He has to act in accordance with law. He has to perform his duties and exercise powers conferred on him as per his own best judgment and not at the dictate of some union employees.

8. Learned counsel appearing for the petitioners submit that such action is arbitrary and no justifiable ground at all has been mentioned. If certain grievances were made by the office bearers of the Association they are to be enquired into and the appointment could not be cancelled merely by asking. No document as such is there to show that any objection in writing was placed. Even if, any objection is raised, the authorities should have acted in accordance with law. The Apex Court in the case of Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 , has held that the authorities should not act under pressure but they have to act strictly in accordance with law. The persons acting under pressure one way or the other do render no service. His Lordship Hon"ble Justice Y.K. Sabharwal observed in the judgment (supra) as follows :--

"The application and order u/s 321 is a result of panic reaction by overzealous persons without proper understanding of the problem and consideration of the relevant material though they may not have any personal motive. It does not appear that anybody considered that if democratically elected Governments give an impression to the citizens of this country of being lawbreakers, would it not breed contempt for law, would it not invite citizens to become a law unto themselves. It may lead to anarchy. The Governments have to consider and balance the choice between maintenance of law and order and anarchy.

9. In the instant case it is not mentioned that any irregularity in the process of appointment was committed. In fact, the termination has been ordered on the ground that other persons could not be regularised and even notice to show cause has not been issued by the authorities, which violates the principles of natural justice.

10. Learned counsel for the petitioners also relied upon a decision of Apex Court in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, , in which it is held that prior opportunity of hearing should have been given to the affected person.

11. Shri Dharendra Mishra, learned counsel for the petitioners also relied upon an Apex Court decision in the case of A.M.S. Sushant v. M. Sujatha, (2000) 10 SCC 197 in which it is held that the principles of natural justice demanded that any person who was likely to be adversely affected by the order should have been

given opportunity of being heard.

12. Shri Dharendra Mishra specifically referred to the note of Registrar in document Annexure R-1 which is as follows :--

bl laca/k esa lfou; fuosfnr gS fd ;|fi dqyifr egksn; ds vkns"k ls 24&12&2001 dks izlkfjr fu;qf? vkns"k dqyifr egksn; ds mijks? vkns"k ls fujLr dj fn;s x;s gSaa rFkkfi tSlk fd ekSf[kd :i ls dqyifr egksn; ls vuqjks/k ,oa fuosnu fd;k x;k gS] blesa oS/kkfud ,oa fof/k lEer fookn dh laHkkouk gS A ;g Hkh laHko gS fd lacaf/kr O;f? U;k;ky; esa tk;sa D;ksafd 24&12&2001 dks izlkfjr fu;qf? vkns"k dk fujLrhdj.k 20&1&2002 dks fn;s x;s vkns"kksa ls fd;k tk jgk gS ,oa izlkfjr vkns"k ds fujLrhdj.k ds fy, ftu fo"ke ifjLFkfr;ksa dk mYys[k gS] os ifjLFkfr;k? fu;qf? vkns"k ds fujLrhdj.k ds fy, i;kZIr izrhr ugha gksrh gSa A

and submits that Registrar himself noted that there are possibilities of legal dispute and affected persons may approach the Court.

13. Article 14 of the Constitution of India provides "Right of Equality" which say that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In the sphere of contractual relations, the State, its instrumentalities, public authorities are those whose acts bear in signia of public agreement, action to public duty or obligation or enjoyed in a manner that is fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment.

14. In the present case names were called from the employment exchange as well as from the employees of the University, call letters were issued, written test and interview was held then they were selected and duly appointed but have been removed from service without following the established procedure, no show-cause notice was issued, no opportunity of hearing was afforded, merely on the basis of instructions issued on a note-sheet (Annexure R-1) the petitioners have been terminated. The action of the respondents is arbitrary, unreasonable and without following even the principles of natural justice. If any action is required to be taken, it must be only in accordance with law. The respondents have failed to bring on record any reasonable basis for terminating the services of the petitioners.

15. In view of the aforesaid discussion the impugned order dated 21-1-2002, terminating the services of the petitioners deserves to be and is hereby set aside. The petition is allowed with costs.

Parties are entitled for C.C.