
(2014) 07 MP CK 0192

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10907/2014

Chandrama Prakash Upadhyay

APPELLANT

Vs

Hari Singh Gour Vishwavidyalaya

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Central Universities Act, 2009 — Section 21, 33, 35

Citation : (2014) 07 MP CK 0192

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : V.S. Shrotri, learned Senior Counsel and Amit Nagpal, Advocate for the Appellant; Shobha Menon, learned Senior Counsel and Rahul Choubey, Advocate for the Respondent

Judgement

K.K. Trivedi, J.—Heard learned counsel for the parties on admission and interim relief.

The grievance of the petitioner is with respect to the order dated 8.7.2014 (Annexure P/11) by which the Registrar of Dr. Hari Singh Gour Vishwa Vidyalaya, Sagar (hereinafter referred to as "the University") has communicated him the decision that his appointment as Assistant Professor (Stage-II), in the Department of Biotechnology under School of Biological Science of the University stands terminated. It is contended that since the appointing authority of the petitioner was the Executive Council of the University, he could not have been terminated by an order of the Registrar of the University. It is further contended that the order impugned is also illegal inasmuch as the petitioner is fully qualified to be appointed on the post of Assistant Professor as he has obtained the required qualifications according to which the selection was made and the petitioner was appointed on the said post. Since only on a complaint, CBI enquiry is going on in the matter of such appointments, hastily action has been taken with malafide intention to dispense with the services of the petitioner.

2. Learned senior counsel for the respondents has invited attention of this Court

to the order dated 21.7.2014 passed in W.P. No. 10744/2014 (s) and analogous petitions and contended that since the Coordinate Bench of this Court has refused to entertain the petition and has relegated the matter to the Executive Council of the University for taking a decision in the matter in terms of the provisions of the Central Universities Act, 2009 (hereinafter referred as "the Act"), this writ petition is also required to be disposed of in the same manner. Much emphasis has been placed by the learned senior counsel for the respondents on availability of the alternative remedy to the petitioner under the Act aforesaid and it has been contended that since other petitions have been disposed of in the manner indicated hereinabove, this writ petition may also be disposed of in the like manner to maintain the parity and judicial discipline.

3. Since this objection has been raised by the learned senior counsel for the respondents, the learned senior counsel for the petitioner has addressed this Court on the judicial discipline and testing the propriety of the orders so passed, in view of the specific provisions made under the Act and it has been contended that in view of the law well settled if an order is not passed adjudicating any dispute on merits by a Coordinate Bench, the same would not be binding in the present petition. The merits in the present writ petition are required to be adjudicated keeping in view the submissions, which the petitioner has raised in the present petition with respect to the competence of the authority. In respect of the aforesaid submissions, learned senior counsel for the petitioner has placed reliance in the Full Bench decision of this Court in the case of Jagdish Prasad Tripathi Vs. State of Madhya Pradesh and Others, and has contended that in terms of the law well explained by the Full Bench of this Court in Paragraph-11 of the aforesaid decision, the well settled principle is that a petition filed by somebody, who was not party to the earlier litigation, has to be decided on merits. Further relying in the case of Satpura Narmada Kshetriya Gramin Bank, Chhindwara Vs. A.K. Chaturvedi and Others it is contended by the learned senior counsel for the petitioner that objection raised by the learned senior counsel for the respondents regarding the maintainability of the writ petition on the ground of availability of alternative statutory remedy has to be ignored and the merits of the case are to be considered.

4. Per contra, learned senior counsel appearing for the respondents has heavily placed reliance in the cases of Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, and Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, and a Division Bench decision of this Court in the case of Jodhraj Vs. Shri Bhuteshwar Mahadev Mandir Trust, Mandsaur, and contended that in view of the availability of the statutory remedy, the matter has to be relegated to the competent authority of the University to decide the matter and take a decision and there is no question of deferring from the view expressed by the Coordinate Bench of this Court in the case of Dr. M.M. Deshmukh and others and companion cases. It is contended that the petitioner was not eligible to be appointed as he has not cleared the National Eligibility Test and for that reason, since he was not entitled to the exemption granted in view of the fact that he has

obtained a degree of Ph.D. much before coming into force, the regulation made by the University Grants Commission in the year 2009 in respect of grant of Ph.D. degree. That being so, since he has not obtained the NET certification, his initial appointment was itself bad. In view of the well settled law, it is contended that if an illegal appointment was made, the observation of rules of natural justice was not necessary and, therefore, the order of dispensing with the services of the petitioner was rightly issued. That being so, since the matter is in seizin before the Executive Council of the University, no adjudication of the merits of the claim made in the present writ petition is necessary by this Court at this stage.

5. Due consideration has been done whether an order passed by the Coordinate Bench of this Court would be applicable in the present case or would not be a bar to consider the claim of the petitioner in the present petition. Not much debate is necessary in this respect as the judicial discipline demands that in case an order passed by the Coordinate Bench is not acceptable by another Bench on any reasons based on law, the matter is required to be referred to the Larger Bench and adjudication of the claim itself is not required to be done by the subsequent Bench. After due consideration of the submissions, this Court is of the view that the order referred to hereinabove passed by the Coordinate Bench cannot be said to be improper or incorrect order in view of the discussion made hereinafter. Rather, it would be proper to follow the said order in view of the fact that making reference of such matter would not serve any purpose of the petitioner immediately as the Court would not be required to adjudicate the matter once again, rather it has to be referred to the Larger Bench for the opinion. In view of this and since the order referred to hereinabove appears to be just and proper and correct order, making of reference is not required.

6. The scheme of the Act is that there are various provisions made with respect to the action to be taken in the matter of grievance of the employees. First of all it is to be seen that the Executive Council of the University is the Principal Executive Body of the University and has the supreme powers within the University in terms of the provisions of Section 21 of the Act. The Vice-Chancellor has powers to exercise powers of such authority of the University in emergent circumstances, but is required to refer the matter to the said authority at its next meeting. The competent authority is then required to examine whether such an action taken is in accordance to law or not. In case the Executive Council is of the opinion that such action ought not to have been taken, it may refer the matter to the visitor, whose decision thereon shall be final. Yet another provision is made under Section 33 of the Act where the conditions of service of employees are prescribed. Every employee has a right to raise a dispute arising out of the contract of appointment between the University and the employee, by making a request to refer the matter to the Tribunal of Arbitration consisting of two Arbitrators and one Umpire. The third provision is under Section 35 of the Act; where right to appeal is provided to the employee or to the students, which is to be preferred before the Executive Council of the University, which has power to

confirm, modify or reverse the decision appealed against. These are the provisions made under the Act itself for redressal of the grievances.

7. Whether the petitioner was qualified to be appointed on the post of Assistant Professor or not, or as is alleged that the power was not exercised by the Vice-Chancellor of the University on the other hand it was exercised by the Registrar of the University whether such an action was proper or not, still can be examined by the Executive Council and, therefore, adjudication on such issues by this Court would not be necessary. In any case, if it is found by the Executive Council of the University that the order of dispensing with the services of the petitioner was issued by the authority not competent to do so, still in case it is found that the petitioner was ineligible, he can be removed from the post by the orders of the competent authority. Only difference would be that the order would be prospective and not retrospective. In that case, the petitioner would be entitled to claim monitory and other service benefits from the University till such order is issued by the competent authority and nothing more. This situation is also required to be kept in mind and is not to be ignored.

8. In view of the aforesaid, it cannot be said that the order passed in Writ Petition No. 10744/2014 (s)-Dr. M.M. Deshmukh Vs. Dr. Hari Singh Gour Vishwa Vidyalaya, Sagar & Ors. on 21.7.2014 is not justified or not acceptable. In case of appeal/representation, or, the action reported to the Executive Council resulted in affirmation of the order of termination of services of the petitioner, the action and the order of the Executive Council would be opened to the judicial scrutiny by the Course of law because in that circumstances the aforesaid remedies available to the petitioner are to be treated as exhausted.

9. In view of the aforesaid, this Court is of the view that the order passed by this Court in W.P. No. 10744/2014 (s) on 21.7.2014 is squarely applicable in the case of the present petitioner. The present writ petition is also disposed of in terms of the aforesaid order, which would be applicable mutatis mutandis in the case of the present petitioner.

10. The writ petition is disposed of accordingly.