
(2008) 07 OHC CK 0060
In the Orissa High Court

Dr. Bijaya Nanda Naik

APPELLANT

Vs

F.M. University and Others

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2008) 2 OLR 427

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—The petitioner in this writ application assails the order of termination of his service passed by the Registrar, Fakir Mohan University in Annexure-24 and prays for confirmation in the University as Professor in Environmental Science.

2. Pursuant to an advertisement issued by the Fakir Mohan University for filling up of the post of Professor in Environmental Science, petitioner submitted his application and was selected for being appointed to the said post on 12.4.2005. Since the petitioner was in Government service, he was permitted to be relieved by the State Government on 9.5.2005 and joined in the post as Professor in Environmental Science on 12.5.2005. The Vice-Chancellor of the said University wrote letters to the petitioner as well as the other Professors in other disciplines in Annexure-6 to send Self Appraisal Forms for the purpose of confirmation in service. On 6.2.2007, the services of many Professors, Readers and Lecturers were confirmed by the University. However, the service of the petitioner was not confirmed and on 13.3.2007 in Annexure-12, opposite party No. 3 made serious allegations against the petitioner in the office file which the petitioner came to know from the counter affidavit filed by the University in the earlier writ application filed by the petitioner in W.P.(C) No. 4784 of 2007. From the aforesaid counter affidavit filed in the earlier writ application, the petitioner also learnt that an inquiry committee was formed by the Syndicate to enquire into the allegations and after the formal discussions with the petitioner on 17.3.2007 and

without discussing or disclosing about any allegation, the enquiry committee on 17.3.2007 submitted its observations against the petitioner. This fact also came to the knowledge of the petitioner from the counter affidavit. It was also stated in the said counter affidavit that the Syndicate considering the report of Enquiry Committee resolved that continuance of the petitioner is detrimental to the interest of the department and further resolved to request the Government to revert him back. Pursuant to such decision of the Syndicate, on 22.3.2007 a letter was written by the University not to extend the lien of the petitioner and revert him back with effect from 10.5.2007. The petitioner having come to the University and having been appointed through a selection process, expressed his willingness to continue in the University but he was not confirmed in the post whereas some other Professors in other disciplines were confirmed after their probation period. Therefore, the petitioner approached this Court in W.P.(C) No. 4784 of 2007 and the said writ application was disposed of with a direction to the University to take a decision afresh in accordance with provisions contained in the statute. The said writ application was disposed of on 8.5.2007 and on 18.8.2007 as it appears from Annexure-B to the counter affidavit, a note was again submitted by the Vice-Chancellor reiterating serious allegations and indicating therein that continuance of the petitioner is detrimental to the interest of the University and recommended for termination of the services of the petitioner.

3. On 20.8.2007 the Syndicate accepted the recommendation of the Vice-Chancellor and on the very same day in Annexure-24 an order of termination was passed. Immediately after termination of the services of the petitioner, the petitioner approached this Court on 29th August, 2007 and on 30th August, 2007 an advertisement was issued in Annexure-25 to fill up the post. This Court while issuing notice on 18.9.2007, as an interim measure, directed that the process of selection in terms of Annexure-25 shall be subject to the result of the writ application and no appointment shall be made without leave of this Court. In view of the above, the post, which fell vacant due to termination of the services of the petitioner, is available to be filled up.

4. A counter affidavit has been filed on behalf of the University stating therein that the petitioner was in probation for a period of two years and the termination having taken place during the period of probation, Article 311 of the Constitution of India is not attracted and for unsatisfactory work, the services of the petitioner could be terminated. In course of hearing of the writ application, the learned Counsel for the University relied upon Section 4 Sub-section (6) of Part-I, Chapter II of the Orissa Universities First Statutes 1990, The said provision is quoted below:

Unless appointed on tenure basis the teachers shall, in the first instance, be on probation for a period of two years, on satisfactory completion of the said period such teachers shall be confirmed by the Syndicate on the recommendation of the Vice-Chancellor in their respective appointment.

Provided that if the Vice-Chancellor on consideration of the Annual Performance Appraisal Report or any other report, does not feel satisfied with the performance of any such teacher, he may extend the period of probation of such teacher for one year more, and if at the end of such probation period of two or three years where extended his work is not found satisfactory, the Vice-Chancellor shall place the matter before the Syndicate for termination of his appointment.

5. Relying on the aforesaid provision, it was contended by the learned Counsel for the University that in terms of the said provision, the petitioner was kept on probation for a period of two years and he would have been confirmed by the Syndicate on the recommendation of the Vice-Chancellor. However, from the Annual Performance Appraisal Report, the performance of the petitioner was not found to be satisfactory by the Vice-Chancellor and accordingly, the matter was placed before the Syndicate for terminating the services of the petitioner and the Syndicate on the recommendation of the Vice-Chancellor, terminated the services of the petitioner. The order of termination being in consonance with the aforesaid provision, the petitioner is not entitled to any relief. The learned Counsel for the petitioner drew attention of the Court to the allegations made against him and submitted that since the petitioner's services have been terminated on such allegations, it amounts to termination with a stigma and, therefore, reasonable opportunity of hearing should have been extended to the petitioner.

6. The note of the Vice-Chancellor placed for consideration of the Syndicate is annexed to the writ application as Annexure-12. Following are the allegations made by the Vice-Chancellor in the said letter, which are quoted below.

1. He is not regular in his duties. This is evident from the Attendance Register. Even though he should be present in the practical classes, he has not attended even one.

2. He does not have any control over his students.

3. He lacks leadership quality and he does not have working relation with his colleagues.

4. During his stewardship of the Department for about 2 years he has not formulated any research project/proposal for Funding by any of the Funding Agencies like DST/UGC/CSIR etc. where as all other Department have taken concrete steps in the matter. His Department has not registered any academic growth during his Headship.

5. He lacks consistency and motivation for growth of young Department. He recommended for purchase of particular scientific equipments and the University invited tenders twice and when it came to the final stage of placing orders, he noted in the purchase committee report that this equipment was unnecessary for the Department. This was also wrong because the names of the equipment is printed in the Department's Syllabus. He also noted that this particular equipment is not there in any other University of Orissa. This is factually wrong.

The Sambalpur University's Life Science Department and Chemistry Department and Utkal University's Botany Department possess this equipment.

6. He did not submit the list of chemical requirements for the Department in time and the University was forced to extend the date for receipt of the tender and incurred extra expenditure because of his failure. This was despite the complaints of his own students that their practical suffered owing to lack of adequate chemicals in the Department.

7. Because he commutes by train to Jatni (Khurda Road) (where his family lives) every day, he does not reach the Department in time. That has accepted discipline in the Department.

7. On perusal of the allegations, it appears that the Vice-Chancellor has taken note of certain irregularities not only in official matters but also relating to personal conduct of the petitioner.- The Vice-Chancellor was of the view that because of these allegations, continuance of the petitioner in the post of Professor in Environmental Science is detrimental to the interest of the University. The allegations clearly put a stigma so far as performance of the petitioner both official and personal are concerned. Law is well settled that when an order of termination is attached with a stigma, an opportunity of hearing is required to be given to the delinquent irrespective of the fact that such delinquent may be on probation. Admittedly, no opportunity of hearing has been given to the petitioner to meet the allegations. As a matter of fact, the petitioner was kept in dark about such allegations and the allegations were disclosed only in the counter affidavit filed by the University in the earlier writ application. Since admittedly the petitioner was not given an opportunity of hearing and his termination is attached with a stigma, we are of the view that such order of termination cannot be sustained in law.

8. We, accordingly, set aside the order in Annexure-24 terminating the services of the petitioner and direct the University to give reasonable opportunity of hearing to the petitioner to meet the allegations made against him and proceed in accordance with law.

The writ application is disposed of.

I. Mahanty, J.

9. I agree.