
(2003) 02 AHC CK 0150
In the Allahabad High Court
Case No : C.M.W.P. No. 14686 of 2002

Dr. B.N. Asthana	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh State Universities Act, 1973 — Section 12

Citation : (2003) 5 AWC 3783

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare and A.K. Singh, for the Appellant; V.S. Tripathi and U.N. Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 31.10.2001 and communication dated 6.3.1992, Annexure-8 to the writ petition. The Petitioner has prayed for a mandamus directing the Respondents to sanction to the Petitioner salary for three months on account of unavailed earned leave for the period during which the Petitioner has functioned as Vice Chancellor of Kanpur University and to disburse the same with interest.

2. In this case on 12.4.2002 Respondents were granted 3 weeks to file counter-affidavit but no counter-affidavit has been filed so far. Hence, we are treating the allegations made in the writ petition to be correct.

3. The Petitioner was initially appointed as lecturer in Allahabad University and he retired as Professor on 3.8.1984. In view of the University Statutes, he remained in service as Professor till 30.6.1985. Thereafter on 28.7.1987, the Chancellor exercising power u/s 12 of the U.P. State Universities Act, 1973, appointed the Petitioner as Vice Chancellor of Kanpur University for 3 years with effect from the date of his taking over charge. True copy of the order of the Chancellor is Annexure-1. The Petitioner assumed charge as Vice Chancellor on

30.7.1987 and continued for 3 years, i.e., till 29.7.1990.

4. In para 5 it is stated that the State Government has issued a Government order dated 18.2.1975 under which persons appointed as Vice Chancellor are entitled to sanction of leave for a period of three months during their terms. The Petitioner made an application dated 4.3.1990 to the Chancellor for sanction of leave of 3 months from 1.5.1990. True copy of the application is Annexure-2. However, the Chancellor did not sanction the leave prayed for and instead by order of the Chancellor Secretariat dated 24.9.1990, the Petitioner was directed to continue to function as Vice Chancellor till appointment of another Vice Chancellor in his place. True copy of the letter dated 25.4.1990 is Annexure-3. The Petitioner again applied to the Chancellor for sanction of leave vide application dated 18.4.1990 Annexure-4 to the writ petition. On 24.7.1990, the Chancellor appointed one Dr. K. C. Banshal to function as Vice Chancellor from 30.7.1990 vide Annexure-5. Thus the Petitioner stood relieved of the office of Vice Chancellor of Kanpur University from 30.7.1990. On 10.8.1990 the Petitioner moved an application before the Chancellor pointing out the circumstances in which leave had been declined and praying for sanction of salary for a period of three months in lieu of the three months period for which the Petitioner was entitled to earned leave during his tenure as the Vice Chancellor. Thereafter the Chancellor Secretariat sent a communication dated 24.9.1990 to the State Government praying for sanction of three months salary to the Petitioner. True copy of the communication dated 24.9.1990 is Annexure-7. The Vice Chancellor sent a letter dated 6.3.1992 to the Petitioner to the effect that the State Government had declined to sanction the salary for three months period to the Petitioner. True copy of the letter dated 6.3.1992 is Annexure-8. The Petitioner represented before the State Government as also the Chancellor against this communication. Thereafter letter dated 31.10.2001 was issued by the Chancellor to the Petitioner intimating him that there was no provision for encashment of leave period in case such leave had not been availed of. True copy of communication dated 31.10.2001 is Annexure-9. In para 22 of the petition, it is alleged that there exists specific provision under office order dated 26.4.1978 and 30.5.1979 for encashment of leave by Government servants and hence there is no justification to decline the same benefit to the Petitioner.

5. In our opinion there is no merit in this writ petition. Since there is no provision for encashment of leave to the Vice Chancellor as stated in Annexure-9 to the petition, this Court cannot grant the prayer of the Petitioner. The rules relating to Government servants are not necessarily applicable to the Vice Chancellor, as he is not a Government servant. Hence, Article 14 of the Constitution has no application here. Petition dismissed.