
(1995) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 581 of 1995

Dr. K. Subramanyam Reddy

APPELLANT

Vs

Sri Venkateswara University and Another

RESPONDENT

Date of Decision : 19-07-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 21
Limitation Act, 1963 — Article 113

Citation : (1995) 3 ALT 386 : (1995) 2 APLJ 432

Hon'ble Judges : Prabha Shankar Mishra, C.J.;C.V.N. Sastri, J

Bench : Division Bench

Advocate : C. Jayashree Sarathy, for the Appellant; K. Harinath, for the Respondent

Judgement

Prabha Shankar Mishra, C.J.—Petitioner in the application under Article 226 of the Constitution of India has invoked the letters patent power of this Court and appealed against the Judgment of a learned Single Judge of this Court by which the Court has declined to set aside the Order No. E.11-1/92 dated 9-12-1992 of the 2nd respondent, the Vice-Chancellor of Sri Venkateswara University, Tirupathi and to issue directions to the respondents to permit the petitioner-appellant to rejoin in the post of lecturer in Chemistry in Sri Venkateswara University College of Arts and Sciences.

2. Facts relevant for the issues involved in the appeal are that with his qualifications in Physical Chemistry and teaching experience the petitioner was appointed as lecturer by the order dated 31-1-1982 of the first respondent and was placed on probation for a period of two years in which post he was later confirmed. He got, according to him, Post-doctoral position in the department of Chemistry, EPEL, CH-1015, Lausaane, Switzerland, and applied for study leave. The Executive Council of the University granted the study leave to the appellant and released him to take up his post-doctoral studies in Switzerland on 16-8-1989. While in Switzerland the appellant sought extension and the

Executive Council of the University extended the appellant's leave for one more year from 17-8-1990. The appellant sought one more extension and he got another extension for ten more months from 7-8-1991 to 30-6-1992. According to the appellant, his research work was still continuing and it was in final stages and he requested the University by letter dated 10-1-1992 to extend the study leave for one year after June, 1992 i.e. from July, 1992 to June, 1993. It seems and there is no dispute to the fact that the Vice-Chancellor (2nd respondent) turned down the appellant's request and the University wrote to him accordingly to re-join duty on 1-7-1992. The appellant, however, who was still busy in the project wrote a letter to the Vice-Chancellor of the University on 23-3-1992 requesting him to reconsider his request for sanctioning the study leave for some more time. The first respondent, however, communicated to the appellant the proceedings of the second respondent (Vice Chancellor) dated 9-12-1992; the communication is as follows:

"ORDER:

1. Dr.K.Subramanayam Reddy, Lecturer in Chemistry (on leave) is hereby informed that he was granted study leave for one year w.e.f. 16-8-89 A.N. in the proceedings first cited to take up the post-doctoral fellowship in the Department of Chemistry, Lausanne, Switzerland, and the same was periodically extended up to 30-6-92.

2. His request for grant of extension of study leave for one more year w.e.f. 1-7-92 was not approved and he was directed to report for duty on 1-7-92 failing which his services would be terminated, vide reference fifth cited.

3. But, he has not rejoined duty even after the expiry of the study leave granted to him and also five months thereafter have already been lapsed.

4. As such, the services of Dr.K.Subramanayam Reddy, are terminated and he is deemed to have been relieved of his duties from this University service with effect from 16-8-1989 A.N."

3. The appellant continued his efforts to communicate to the University that he was likely to complete his work or, in any case, was willing to join his duty, but received no response from the respondents on his return to India and finding that he no longer had any appointment with the University, he moved this Court. The Court's judgment, however, has gone against the appellant on grounds of delay in moving the Court saying.

"As seen from the impugned proceedings and the series of facts narrated in the affidavit filed by the petitioner, the petitioner was granted study leave for some time and the same was extended from time to time and the total study leave period was more than two years and ten months. The petitioner cannot compel the respondent University to go on extending his study leave to suit his interests. It is known fact that this country does not lack brilliant persons who could render better services than the petitioner to the student community. The order of

removal is dated 9-12-92. The petitioner files the writ petition nearly two and half years thereafter and assails the order of removal. Therefore, when a person is not vigilant to safeguard his own rights, this Court cannot assist such person who is in deep slumber for a period of two and half years and assails the order of removal thereafter.

Though the learned counsel for the petitioner tried to assail the legality of the impugned proceedings on various grounds, I am afraid, I may not go into those aspects for the reason that the petitioner himself has failed to act promptly in assailing the order of removal within a reasonable period. A well read person like petitioner who is aware of his rights cannot be compared with a common man or an illiterate man hailing from rural area, so that Court could come to his assistance."

4. Whether the order passed by the Vice-Chancellor is in true sense an order of termination of service or not, if it is an order of termination of service whether it is a valid order of termination of service or not, whether the Vice-Chancellor of the University is the competent authority to remove a lecturer from service or not, however, are questions which were not looked into or adverted to at all before the learned Single Judge and what prevailed, as we have seen, in refusing to interfere with the order of the second respondent is the delay, according to the respondents, of two and a half years in moving this Court against the order of termination.

5. Courts do not ordinarily order for enforcement of a contract of personal service and the ordinary rule is that in case there is a breach of contract, the employee can seek damages against the employer. Exception to the above, however, is the challenge to the action of the employer where any law intervenes such as the Industrial Disputes Act etc., or any constitutional right is violated. Even though it is reiterating some of the preliminaries of the principles and the laws which prevail in India, yet, with all constraints, we are required to say that relationship of employer and employee is no longer one of a contract of service only. It is a relationship of a status between the employer and the employee which is determined not merely by the terms of the contract of service but by the guarantees under Articles 14, 16, 21 and 23 of the Constitution of India and the common law rights and principles which are accepted and acknowledged to have a wide and pervasive presence in actions of the employers which affect the service conditions of the employees. The respondent-University is a creature of a statute and is a "State" under Article 12 of the Constitution of India. It is obliged to treat in all respects the service conditions of its employees including teachers as preserved and guaranteed under Articles 14, 16(1) and 21 of the Constitution of India. If a suit at all, in such a situation, the appellant is asked to file, he can do so within a period of three years under Article 113 of the Limitation Act of 1963. He has moved the writ Court within a period of two and a half years, but for the learned Single Judge the delay is such that he cannot avoid the University's order. In *Dr. Jagannath Mishra Vs. State of Bihar and Others*, ., a

Full Bench of the Patna High Court, of which one of us was a member, has discussed how delay should be viewed and noted from the judgment of the Supreme Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, .-

".....this rule of laches or delay is not a rigid rule which can be cast in a straight jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner."

and from Narayan Devi Khaitan v. State of Bihar, 1964 SC (Notes) 259. C.A.No.140 of 1964 decided by the Supreme Court on 22-9-1964 -

"No hard and fast Rule can be laid down as to when High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches."

The Full Bench has also noted the rule in this respect which the Courts have always kept in mind and which is stated in P.B. Roy Vs. Union of India (UOI), . that the "delay in filing the petition under Article 226 may be overlooked on the ground that.....the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is "positively good."

6. Since the learned Single Judge has not adverted to any of the issues on merits of the controversy between the parties, the appropriate order in ordinary circumstances, in our view, would have been to set aside the order of the learned Single Judge and remit the case for a fresh hearing after affording necessary opportunity to the parties of being heard in accordance with law. For the gross violation of the statutes of the University and of the Rule, which must in every case of termination of service on grounds of misconduct, should be attracted, we thought it proper to give to the University an opportunity to file a counter affidavit to the allegations of fact in the writ petition. The University has filed a counter-affidavit. The learned Counsel for the University has given us full assistance and produced, as called for by us, the records relevant to the issues in the instant case. There is no denying of the fact that the competent authority granted to the appellant study leave and he availed of the study leave and stayed in Switzerland. He asked for extensions and the University continued obliging him by granting, at least, two extensions. Trouble started, however, when he asked for the third extension for one year and the Vice-Chancellor of the University thought the purpose for which the appellant had been granted leave, permitted study leave for two years only and not more than that. While the above decision was taken, the appellant was abroad. The respondents sent the communication about the rejection of his request for extension of leave as well as of the order of the Vice-Chancellor that his services stood terminated to the Switzerland address of the appellant. The respondents have written full of information about the appellant and how he secured a job in Switzerland but availed study leave as if he was doing some post-doctoral research and that the appellant did not, in any

manner, deserve either study leave or extension of the leave for continuing his stay in Switzerland. The appellant has seriously disputed, however, all such allegations on behalf of the respondents. There is, in our view, however, no need in the instant proceeding to deal with controversial facts or such aspects of the controversy between the appellant and the respondents on which, in the event of enquiry into the truth or otherwise of the allegations, a decision can be taken in a proper proceeding. It is conceded and it is obvious that the University communicated to the appellant by a letter dated 10-4-1992 that he must rejoin his duty on 1-7-1992 failing which his service would be terminated and communicated thereafter the order of the Vice-Chancellor vide proceedings dated 9-12-1992.

7. The question that has assumed importance in this case is, can the University i.e. the employee (sic) to its employee i.e. the appellant, "come and join on a particular date, and if you do not do so, your service is automatically terminated." ? The learned counsel for the University has shown to us a provision in the regulations of the University which says that in case a teacher or employee-workman is absent without sanction of leave for more than a period of five years, his service would stand automatically terminated. In case of the appellant, the automatic termination rule has been applied only for his absence for a period of about three and a half years. It is difficult to acknowledge the presence of a rule of automatic termination in the public law field. Provisions, which are not in consonance with principles of natural justice and mandates of Articles 14, 16 and 21 of the Constitution cannot be used as weapons by the employers to terminate the services of the employees. Law in this behalf has been candidly stated in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., wherein it has been pointed out that if there is an allegation of unauthorised absence, that amounts to an allegation of misconduct and if there is an allegation Of misconduct, termination of service without complying with the principles of natural justice would not be justified. The Court has pointed out,

"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

9. It is a fundamental Rule of Law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the Rules of" Natural Justice.....

11. The law must there fore be now taken to be well-settled that procedure

prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory Rule or Rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a Rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.....

14. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice."

8. We have no manner of doubt that the respondents have acted arbitrarily. The Vice-Chancellor's command that the appellant must report by a particular date on duty, to say the least, was not one which cared for the decency of the academic life of the University. A person, who had gone abroad and had some achievements at his disposal, was asked to terminate all that he was doing midway and return. If the appellant was doing anything wrong in Switzerland and was not doing the job for which he was granted study leave, the Vice-Chancellor should have said so clearly and placed before the competent authority of the University to see how the appellant had conducted himself and what he did was justifiable or not. In any case, no action to terminate the services of the

appellant could be taken without affording him adequate opportunity to present his case and justify his stay in Switzerland or prove his entitlement for leave. We are satisfied on the facts of this case that the order of the Vice-Chancellor of the University is fit to be set aside. Accordingly the proceeding No.E.II-1/92 dated 9-12-92 of the 2nd respondent is quashed, and a consequential direction is accordingly issued to treat the appellant in continuous service as if his services have not been affected by the order of the Vice-Chancellor in proceeding No.E.II-1/92 dated 9-12-1992. The appellant shall accordingly be entitled to all consequential benefits.

9. It shall, however, be open to the respondents to initiate proceeding, if any, in accordance with law against the appellant.

10. Let a writ in the nature of certiorari and a consequential mandam us issue as ordered above. No costs.