
(2003) 04 JH CK 0016
In the Jharkhand High Court
Case No : L.P.A. No. 14 of 2002

Dr. Kailash Bihari

APPELLANT

Vs

Birla Institute of Technology and Others

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 226
University Grants Commission Act, 1956 — Section 3
University Grants Commission Regulations, 2010 — Regulation 12
University Grants Commission Rules, 1956 — Rule 19

Citation : (2006) 1 JCR 27

Hon'ble Judges : Gurusharan Sharma, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : M.S. Anwar and Altaf Hussain, for the Appellant; M.M. Banerjea, C.S. Singh and S. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

1. Dr. Kailash Bihari retired on 30.11.2001 from the post of Assistant Professor, Mechanical Engineering, Birla Institute of Technology, Mesra, Ranchi. While in service, he was put under suspension on 16.9.1999 in contemplation of a departmental proceeding. By order dated 8.10.1999 an Advocate was appointed as Enquiry Officer. The delinquent filed representation dated 27.11.1999 challenging appointment of an Advocate as the Enquiry Officer, but the same was not considered. Hence, he filed CWJC No. 20 of 2000 (R) in this Court challenging the jurisdiction and powers of the Vice-Chancellor, who has suspended him. According to him, such power was vested with the Board of Governors of the Institute. It was alleged that action of the Vice-Chancellor was mala fide.

2. The learned single Judge by impugned order dated 29.11.2001 disposed of the writ application holding that the Vice-Chancellor had jurisdiction to place the appellant under suspension and, therefore, his suspension order was not illegal.

3. The appellant had filed writ applications earlier for his promotion as well as for admission of his wards, which were decided against the institute and the appellant got reliefs. Learned single Judge held that those facts alone cannot constitute any mala fide of law much less mala fide on facts. Grounds of mala fide taken by the appellant was, therefore, rejected on the ratio of the decision of the Apex Court in Government of Tamil Nadu and others Vs. S. Vel Raj, . It was held that Vice-Chancellor had jurisdiction to frame charges and initiate departmental proceedings against the appellant. However, the appointment of an Advocate as Enquiry Officer was set aside and the Institute was directed to proceed further in the departmental enquiry by appointing departmental person as the Enquiry Officer. Since the appellant was under suspension for more than two years and was also to superannuate on and from 30.11.2001, his order of suspension was revoked in the interest of justice and the respondents were directed to proceed and continue the departmental proceeding, if permissible after his retirement, under the law.

4. Mr. Sohail Anwar. Senior counsel for the appellant submitted that the: Board of Governors being the appointing authority in the case of the appellant, the departmental proceeding could not have been initiated only by the Vice-Chancellor. It was further submitted that instead of revoking the order of suspension from 29.11.2001, on which date the Writ application was disposed of, it ought to have been revoked from 16.9.1999 itself, on which date it was passed by the Vice Chancellor. It was further submitted that the Vice-Chancellor's action against the appellant was mala fide.

5. We find that the learned single Judge revoked the order of suspension for the reason that the appellant was under suspension for more than two years and was also to superannuate on the next day i.e.. 30.11.2001. when the order of his suspension would have automatically been revoked. In our opinion, there was no occasion for revocation of the suspension order with retrospective effect from 16.9.1999, when it was passed.

6. Rule 19 related to the powers and functions of the Board of Governors Under Rule 19 (XXVI) the Board of Governors can delegate its powers of regulating and enforcing and imposing the penalty on the members to the Chairman, Director and other officers of the Institute. It is not in dispute that the post of Director of the Institute has been redesignated as Vice-Chancellor and, therefore, the powers relating to proper maintenance of discipline in the Institute is vested with the Vice-Chancellor. Under Regulation 12, on account of such delegated power the Vice-Chancellor is authorized to place a member of the academic staff of the Institute under suspension, where a disciplinary proceeding against him was contemplated or was pending. Hence, in our opinion, the learned single Judge rightly held that the Vice-Chancellor had jurisdiction to place a member of the academic staff, like Assistant Professor/Teacher under suspension.

7. So far as the allegation of mala fide against the Vice Chancellor in faking the aforesaid action against the appellant is concerned, in our view, such allegation,

if not denied by the person against whom it was made cannot be said to have been proved, unless on the facts alleged, in the opinion of the Court, a mala fide act was constituted. The learned single Judge in this regard observed as under :

The petitioner or his wards (son and daughter), filed one or other writ, petition for promotion or admission, wherein the Respondents contested the cases. This fact alone does not constitute any mala fide in law much less mala fide in fact. The ground of mala fide taken by the petitioner is thus, rejected

8. In such a situation, we are not inclined to go into the mala fide matter any further.

9. Now so far as the submission that the order of suspension of the appellant ought to have been revoked from the day it was passed, is concerned, we find that the learned single Judge revoked the suspension order with effect from 29.11.2001 for two reasons. One is that the writ petitioner was under suspension for more than two years and he was also going to superannuate only on the next day (30.11.2001) and as such even if order of his suspension was not revoked by this Court, after his superannuation on 30th November, 2001, the said order would have revoked automatically and, therefore, in the interest of justice, keeping in view the date of his superannuation, the order of his suspension was rightly revoked from 29.11.2001 and there was no occasion for revoking it with retrospective effect from the date it was passed.

10. A question arose in the present appeal whether the writ jurisdiction of this Court could have been invoked by the appellant-writ petitioner against the respondent-Institute in so far as the dispute relating to service matter between a teacher and the Institute is concerned. Here it is not in dispute that in the exercise of powers conferred u/s 3 of the University Grant Commission Act, 1956, the Central Government on the advice of the Commission has already declared the Birla Institute of Technology, Mesra, Ranchi to be a deemed University for the purpose of the aforesaid Act. Further on the ratio of the decision of the Apex Court in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, , we find that the appellant's writ application, under Article 226 of the Constitution of India, was maintainable. The Apex Court in the said decision held as under :

When there is an interest created by Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education, get an element of public interest in the performance of their duties. The element of public interest requires to regulate conditions of service of those employees at par with Government employees. Such employees are entitled to parity of pay scales as per executive instructions of Government. State has obligation to provide facilities and opportunities to people to avail of right to education. Private institutions cater to the needs of educational private institution is entitled to seek enforcement of orders issued by Government. When an element of public interest is created and the institution is catering to that

element, the teacher, the arm of the institution is also entitled to avail of remedy provided under Article 226: the jurisdiction part is very wide. It would be a different position if the remedy is a private law remedy. They cannot be denied the, same benefit which is available to others. It is therefore, held that writ petition is maintainable.

11. Hence, without deciding the question whether the B.I.T. Mesra, is an authority under Article 12 of the Constitution of India or not, which may be decided in an appropriate case later on, the maintainability of the writ application filed by the appellant is answered accordingly.

12. There is no reason to interfere with the impugned order, passed by the learned single Judge. There is no merit in this Appeal. It is dismissed accordingly.