
(2011) 04 SHI CK 0279
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11200 of 2008

Dr. K.R. Bhatti

APPELLANT

Vs

Dr. Y.S. Parmar University and Another

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0279

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7(i) to (v):

7(i) That the impugned Annexure A-2, dated 23.12.92 and Annexure A-6, dated 1.4.2004 may be quashed and set aside.

(ii) That the Respondent University may be directed to permit the withdrawal of the resignation submitted by the applicant on the basis of request dated 10.1.1995.

(iii) That the Respondent University may be directed to get a new Medical board re-constituted to examine the applicant, if necessary.

(iv) That the Respondent University may be directed to release the service gratuity amounting to Rs. 3.00 lakhs and leave encashment for 250 days to the applicant alongwith interest @ 18% per annum.

(v) That the Respondent University may be directed to pay a sum of Rs. 17,308/- towards the notice period of three months alongwith interest @ 18% per annum.

2. In reply, Respondent No. 1 has taken the following stand vide para 2 of the preliminary submissions and para 6(ii), (iii) and (vii) on merits:

2. Since the applicant is medically not fit and also medically and physically incapacitated and that was the lone reason that applicant himself had tendered

his resignation on 8.9.1992 in his own handwriting (Annexure R-4) with clear instructions that his resignation be accepted and his retiral dues be settled at the earliest and when resignation was accepted by the competent authority with open mind and all the due and admissible retiral dues were released to the applicant, there is no question to re-open the said chapter at this point of time i.e. after 14 years of cause of action, if any. The Respondent University being his model employer on the representation of the applicant dated 10.5.1995 (Annexure R-10) even permitted the applicant to get himself medically examined with regard to his mental and physical suitability for teaching and other research assignments, which he is supposed to handle and used to handle, through the Director of Health Services, Shimla, so as to adjudge his suitability for the said post-Associate Professor, in order to consider his belated request for withdrawal of resignation vide order dated 17.6.1996 (Annexure R-11) but the applicant himself deliberately and also knowingly never presented himself for his medical examination before the Medical Board as constituted by the Director Health Services, Shimla vide letter dated 1.8.1996 (Annexure A-4) which clearly proves and clinches the issue that applicant was never prepared to face the said medical board. The applicant had not come with clean hands before this Hon''ble Tribunal and as such requires no consideration not even on the point of equity and relief thereof.

6(ii) The contention of the applicant that he brought to the notice of the Registrar of this University the ill treatment being meted out to him by the Respondent No. 2 is wrong. As a matter of fact the Respondent No. 2, the then Professor & Head, Department of Fruit Breeding and Genetic Resources vide his letter dated 18.7.1992 (Annexure R-1) reported some acts of disobedience and insubordination on the part of applicant and he was asked vide letter dated 6.8.1992 (Annexure R-2) to explain his position as to why an action should not be taken against him for his reported acts of disobedience and insubordination. The reply to explanation submitted by the applicant was forwarded by the Respondent No. 2 vide his letter dated 9.11.1992 (Annexure R-3) through the Dean, College of Horticulture to the Registrar of the Respondent University.

6(iii) In reply to this para, it is admitted that the applicant was discharging his duties as Associate Professor under the Professor & Head, Dept. of Fruit Breeding and Genetic Resources (Respondent No. 2). It is denied that the Respondent No. 2 had been unduly interfering in the day to day functioning of the applicant resulting in depression being caused to the applicant. As a matter of fact and as stated in sub-para (ii) above, the Respondent No. 2 during July, 1992 vide his letter dated 18.7.1992 (Annexure R-1) had reported some acts of insubordination on the part of the applicant on which his explanation was called vide letter dated 6.8.1992 (Annexure R-2). The applicant submitted an advance copy of reply to the explanation on 12.8.1992 (Annexure A-1). The reply submitted through proper channel was forwarded by the Respondent No. 2 vide (Annexure R-3). However, the applicant, by that time had tendered his resignation on 8.9.1992 (Annexure R-4) without mentioning any ground. While

the issue was being sorted out by persuading through his fellow colleagues to withdraw the resignation, Mrs. Krishna Bhatti w/o the applicant vide her letter dated 7.11.1992 (Annexure R-5) gave an ultimatum to release the payment of Contributory Provident Fund which was lying in the account of the applicant, within 2-3 days. Upon this, legal advise (Annexure R-6) from the University Counsel was sought regarding the conditional resignation tendered by the applicant, who advised that the applicant may be asked to submit his clear and unconditional resignation. But subsequently, the applicant vide his letter dated 11.12.1992 (Annexure R-7) stressed for early acceptance of his resignation and arranging payment of his CPF as well as other dues by 20.12.1992. Keeping in view the ultimatum given by the applicant, his conditional resignation was accepted w.e.f. 8.9.1992 under the compelling circumstances to avoid any untoward incident as was being apprehended from his letter dated 11.12.1992. Intimation regarding acceptance of his resignation was given to all concerned including the applicant vide letter dated 16.12.1992 (Annexure R-8).

6(vii) In reply to this para, it is stated that the contents of this para are wrong, hence denied. In pursuance of the decision of the Board of Management, the Director of Health Services, H.P., Shimla, was requested vide this office letter dated 17.6.1996 (Annexure R-11) followed by reminder dated 12.7.1996 (Annexure R-12) to constitute a Medical Board. The Director of Health Services, H.P. vide his letter dated 1.8.1996 (Annexure A-4) directed the Chief Medical Officer, Ripon Hospital Shimla to constitute a Medical Board and to examine the applicant on 9.8.1996. The applicant was accordingly informed vide this office letter dated 8.8.1996 (Annexure A-3) to appear before the Medical Board at Ripon Hospital, Shimla on 9.8.1996 at 10.00 A.M. Thereafter, the Chief Medical Officer, Ripon Hospital, Shimla was requested vide letter dated 22.10.1996 (Annexure R-13) to send the report regarding medical examination of the applicant who was also simultaneously requested to intimate as to whether or not he had appeared before the Medical Board on 9.8.1996. The applicant was subsequently asked vide letter dated 14.1.1997 (Annexure R-14) followed by reminder dated 14.5.1997 (Annexure R-15) to intimate the Respondent University as to whether or not he had appeared before the Medical Board at Ripon Hospital, Shimla on 9.8.1996 but no response was received in this regard from the applicant as well as from the Chief medical Officer, Ripon Hospital, Shimla. Smt. Krishna Devi w/o the applicant vide her letter dated 1.11.2003 (Annexure A-5) has stated that her husband and she visited Ripon Hospital, Shimla for the medical examination but the date was not given despite number of visits. Her belated statement seems to be incorrect in view of the fact that no response was given by the applicant in this regard despite repeated requests made by the Respondent University.

3. Respondent No. 2 has not filed any reply.

4. The Petitioner was working as Associate Professor in the Respondent-University. The record reveals that vide communication dated 18.7.1992,

Annexure R-1, Respondent No. 2 made a report to the Registrar of the Respondent-University alleging insubordination on the part of the Petitioner. Consequently, show cause notice dated 8th August, 1992, Annexure R-2, was served upon the Petitioner. He submitted reply thereto, dated 12.08.1992, Annexure A-1, and refuted the allegations.

5. Against the above backdrop, it appears that out of sheer disgust and frustration the Petitioner submitted resignation dated 08.09.1992, Annexure R-4, addressed to the Vice Chancellor of the Respondent-University, which was accepted vide Office Order dated 23rd December, 1992, Annexure A-2. However, later on, the Petitioner submitted representation dated 10.01.1995/10.05.1995, Annexure R-10, to the Vice Chancellor of the Respondent-University with the following prayer:

Sir, I had been compelled by the circumstances to keep silent as I saw no help from any corner to rescue me to negotiate the issue with the University authority and today I want personally to redress my grievance to you for favourable action and allowing me to join my duties being a regular and confirmed employee. As I was also not keeping fit and it took considerable time to recover, it is kindly requested that the period of absence may kindly be regularised by grant of leave of kind due and extra-ordinary leave.

I hope that your kind honour will personally hear to me and will give natural justice to a affected teacher who rendered 28 years of continuous service till 1992 as a regular confirmed employee of the University.

6. Acting upon the above prayer of the Petitioner, the Board of Management of the Respondent-University decided to subject the Petitioner to medical test by a medical board vide letter dated 8th August, 1996, Annexure A-3, and the Petitioner was directed to appear before the medical board at Ripon Hospital, Shimla, on 09.08.1996 at 10 a.m. According to the Petitioner, on the appointed day he alongwith his wife reached Ripon Hospital, Shimla, for medical examination, but neither he was examined nor any fresh date was given for his examination. However, the stand of the Respondent-University in this regard is that despite various communications having been sent to the Petitioner as also to the Chief Medical Officer Ripon Hospital, Shimla, to know about the outcome of the medical examination of the Petitioner, no response was received from either of the two.

7. In view of the above, it is manifest that the Board of Management of the Respondent-University in its collective wisdom had decided to reconsider the entire matter connected with the resignation of the Petitioner and for that purpose had decided to subject him to a medical test by a medical board. Apparently, it was done with a view to ascertain the mental state of the Petitioner in which he was compelled to put his papers and bring to a naught his entire service career of about 28 years. However, the Petitioner could not be subjected to such medical test and again it is not discernible as to who is at fault for the

same.

8. It appears that the Petitioner has already crossed the age of retirement. It being so, he is no more eligible for being taken back in the employment of the Respondent-University.

9. In the facts and circumstances of the case and on an overall view of the matter, the petition is disposed of with a direction to the Respondents that subject to the Petitioner through his wife, who holds general power of attorney on his behalf, making a detailed representation supported by documents alongwith copy of this judgment to Respondent No. 1 within one month from today, the same shall be considered and decided by the said Respondent in accordance with law particularly the law laid down by the Hon'ble Supreme Court in Union of India (UOI) and Others Vs. Binod Bihari Behera, AIR 1997 565 (SC) and Dr. Prabha Atri Vs. The State of U.P. and Others, , within next three months by taking into consideration the mental state of health of the Petitioner in which he had tendered resignation from the service of the Respondent-University and to explore the feasibility of converting the resignation into voluntary/compulsory retirement, after affording an opportunity of being heard to the Petitioner through his wife-cum-general power of attorney, if so desired. Needless to say that consequential benefits, if any, would flow from the decision on the representation and shall be payable to the Petitioner through his wife-cum-general power of attorney within next six months.

10. The petition stands disposed of in the above terms, so also pending CMP(s), if any