

(2018) 11 DEL CK 0307

In the Delhi High Court

Case No : Letter Patents Appeal No. 544 Of 2017

Dr K.S Jawatkar

APPELLANT

Vs

Chancellor Jawaharlal Nehru University & Ors

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1)(g), 21, 142, 226

Citation : (2018) 11 DEL CK 0307

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Monika Arora, Harsh Ahuja, Vibhu Tripathi, Kushal Kumar

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. This Intra-Court appeal has been filed by the appellant challenging the order / judgment dated March 03, 2017 in W.P.(C) 884/2013 whereby the learned Single Judge has dismissed the writ petition and had imposed a cost of Rs.60,000/- out of which Rs.30,000/- shall be paid to the respondent no. 4/employer/JNU and balance of Rs.30,000/- to be deposited with Friendicoes, No. 271 & 273, Defence Colony, Flyover Market, Jangpura Side, New Delhi-110024. The writ petition was filed by the petitioner with the following prayers:-

"(a) Declare 1993 amendment to Clause 6 of Academic Ordinance of JNU Act, 1966, vide Res. No.5.6/EC/4.10.1993, as illegal, null and void and ultra-vires the JNU Act, 1966, its Statutes and Ordinances and violative of the Petitioner's Fundamental Rights under Article 14, 16, 19(1)(g) and 21 of the Constitution of India;

(b) Direct the Chancellor and the respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1.1.1992 and/or alternatively Appadorai Chair as contemplated in its order dated 27.7.1984 on the benefits of emoluments as well as seniority and promotions implicit in its final judgment

dated 12.5.1989: JNU v. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: [1989] 3 SCR 273 and do complete justice under Article 142 of the Constitution;

(c) Direct the Chancellor and the respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of statutory provision of Clause 6 of Academic Ordinance vide Res.No.4(h)/EC/19.4.1976;

(d) Direct the Chancellor and the respondent-University to pay the petitioner entire arrears of salaries up to 31 August 2003 and other statutory dues with interest thereon;

(e) Direct the Chancellor and the respondent-University to grant consequential benefits of service to the petitioner, including the benefits of emoluments, designation, scale of pay, increment, provident fund, retirement benefits, pension etc. in terms of prayers (b), (c) and (d) above with interest thereon;

(f) Pass such and further order, which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case; and

(g) Award the costs to the petitioner."

2. The facts as noted from the record are that the appellant began his service in JNU in the year 1971 as Research Assistant. On November 29, 1973, he was offered a letter of appointment as Assistant Professor / Associate Fellow at JNU Centre of Post-Graduate studies at Imphal. The said transfer became a subject-matter of litigation. Suffice it to state, the appellant succeeded in the said litigation. We are not concerned with the said litigation initiated by the appellant in these proceedings.

3. The appellant attained the age of superannuation of 60 years in the year 1998. In any case, on a further extension of three years on re-employment, the appellant demitted the office at the age of 63 years on August 31, 2001. In the interregnum, the appellant filed a W.P.(C) No. 6107/2000. In the said writ petition, the appellant had inter-alia prayed for continuation of his service upto the age of 65 years and benefit of post of Professor / Appardorai Chair. The said writ petition was disposed of in terms of judgment dated November 20, 2003 by the learned Single Judge of this Court whereby the appellant was granted the benefit of continuation in his post of Assistant Professor upto the age of 63 years. However, his claim for appointment to the post of Professor / Appardorai Chair was rejected.

4. The said order / judgment dated November 20, 2003 in W.P.(C) No. 6107/2000 was taken in appeal by the appellant in LPA 68/2004 before the Coordinate Bench of this Court, which vide its judgment dated January 21, 2004, dismissed the LPA. The appellant challenged the judgment dated January 21, 2004 in an SLP being SLP(C) No. 4427/2004 in the Supreme Court. The Supreme Court dismissed the SLP in limine on November 16, 2004. Therefore, the issue with respect to the entitlement of the appellant to seek enhancement of age upto 65 years and for the appellant to be appointed as Professor / Appardorai Chair

attained finality against him.

5. The appellant, as stated by the learned Single Judge, undeterred by the dismissal of W.P.(C) No. 6107/2000 filed another W.P.(C) No. 911/2007 seeking same reliefs of retirement at 65 years and promotion to the post of Professor / Appadorai Chair. The prayers sought in the writ petition are as under:-

"(a) Direct the Chancellor and respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1-1-1992 and/or alternatively Appadorai Chair in International Relations w.e.f. 1995 as contemplated in Supreme Court order dated 27th July 1984 on the benefits of emoluments as well as seniority and promotions and its final judgment dated 12th May 1989; JNU v. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: (1989) 3 SCR 273 and do complete justice;

(b) Direct the Chancellor and respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of statutory provision of Clause 6 of Academic Ordinance relating to conditions of service of University appointed teachers as stood on the Statute Book vide Resolution No.4(h)/EC/19.4.1976;

(c) Direct the Chancellor and respondent University to pay the entire arrears of salaries up to 31st August 2003 and other statutory dues, including pension w.e.f. 1st September 2003 with interest thereon;

(d) Direct the Chancellor and respondent-University to grant consequential benefits to the petitioner, including the benefits of emoluments, designations, scale of pay, increment, provident fund, retirement benefits, pensions etc. in terms of prayers(a) to (c) with interest thereon; and

(e) Pass such and further orders, which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case."

6. When the matter was listed on November 19, 2008, the learned Single Judge, with regard to prayers (b), (c) and (d), rejected the writ petition, being barred by principles of res-judicata. The appellant challenged the order dated November 19, 2008 of the learned Single Judge by filing an appeal before the Division Bench of this Court in LPA No. 01/2009. The said appeal was dismissed by the Division Bench of this Court vide order dated January 06, 2009. The appellant challenged the order of the Division Bench dated January 06, 2009 by filing an SLP No. 10313/2009, which was also dismissed by the Supreme Court.

7. As regards prayer (a) in W.P.(C) No. 911/2007 of the appellant for his appointment to the post of Professor / Appadorai Chair, the learned Single Judge dismissed the claim as barred by res-judicata vide its order dated September 16, 2011. Again, the appellant challenged the order of the learned Single Judge dated September 16, 2011 by filing an intra court appeal, LPA No. 93/20125. This LPA was dismissed by the Division Bench of this Court, vide its judgment dated July 13, 2012. The appellant challenged the said judgment dated July 13,

2012 by filing an SLP No. 26924/2012, which was also dismissed by the Supreme Court. It is noted from the impugned judgment that the appellant had again challenged the judgment of the Coordinate Bench of this Court dated July 13, 2012 in another SLP(Civil) No. 34653/2012. The said SLP was also dismissed by the Supreme Court vide its judgment dated January 02, 2013. By the same order, W.P.(C) No. 499/2012, which was filed directly by the appellant before the Supreme Court seeking the same reliefs, as stated in this writ petition was also dismissed but the Supreme Court observed that the appellant, if so advised may approach the High Court under Article 226 of the Constitution of India and that the High Court shall decide the petition when filed in accordance with law. It is pursuant thereto, the writ petition, wherein the impugned order dated March 03, 2017 was passed, was filed before the learned Single Judge.

8. In the impugned order, the learned Single Judge has held that the prayer (a) of the writ petition is barred by res-judicata and also doctrine of delay and laches. He independently examined the prayer (a) of the writ petition, which was predicated on the ground that the amendment, which is made to Clause 6 of the Academic Ordinance, results in terms of service being adversely taken against the appellant. In other words, the conditions of service of the appellant cannot be degraded. Even on the prayer for appointment to the post of Professor / Appadorai Chair, the learned Single Judge was of the view that this issue has also been decided against the appellant in two earlier writ petitions. In paras 23 to 25, the learned Single Judge concluded as under:-

"23. A reading of paras 32 to 35 of the writ petition show that petitioner except indulging in semantics is doing nothing else. By amending Clause 6 of Academic Ordinance in 1993 it is not as if the service conditions have been amended to the detriment of the petitioner. Even as per the unamended Clause 6 the age of retirement was 60 years and as per the amended Clause 6 the age of retirement remained at 60 years. As per unamended Clause 6 there was an entitlement of re-employment of three years and which entitlement is continued in terms of Clause 6.2 of the amended Clause 6 of the Academic Ordinance. As per the unamended Clause 6 the entitlement of a teacher to continue was till the maximum period of 65 years and which also continues by virtue of Clause 6.3 of the amended Clause 6 of the Academic Ordinance. Bar some language changes in reality there is almost no substantial change in the consequences of the unamended Clause 6 and the amended Clause 6 of the Academic Ordinance of the respondent no. 4/employer/Jawaharlal Nehru University. The fact that petitioner himself admits that there is no substantial and effective change in the unamended and the amended Clause 6 becomes clear from para 34 of the writ petition, which has been reproduced above, and which para only seeks to make out a mountain of a mole hill out of minor changes in the language of unamended Clause 6 and amended Clause 6, but which language changes have no bearing and effect to the main three aspects of ordinary age of retirement of 60 years, re-employment being granted for a period not exceeding three years in the first instance and that finally the maximum age for re-employment shall not

be beyond 65 years of age. Petitioner therefore by pleadings contained in paras 32 to 35 of the writ petition is only seeking to plead an imaginary cause of action, and which really does not exist.

24. In view of the aforesaid discussion, it is seen that the writ petition, with all its prayer clauses, is barred by the principles of res-judicata, inasmuch as, the same issues have been decided not once but twice earlier. Petition is also barred by delay and laches. Petitioner, therefore, cannot seek retirement at the age of 65 years. Petitioner also cannot claim appointment to the post of Professor/Appadorai Chair as prayed in this writ petition and which issue has been decided against him in two earlier writ petitions being W.P. (C) Nos. 6107/2000 and 911/2007. The petitioner has made a very lame attempt to plead a new cause of action in paras 32 to 35 of this writ petition but such pleadings show no different or fresh cause of action for seeking the relief of petitioner being retired only at the age of 65 years and not earlier. In any case, the doctrine of constructive res judicata also stares the petitioner in his face.

25. Since the petitioner is found to be indulging in and is habitual of unnecessary repeated litigations, although the issues argued and urged have achieved finality, the only way to stop the petitioner from indulging in repeated litigations is to impose costs upon the petitioner. Although, the facts of the present case require that in view of wastage of valuable judicial time of this Court, and unnecessary expenditure to the employer/JNU, the writ petition must be dismissed with costs of at least Rs. 2,00,000/- with Rs.1,00,000/- being payable to the Prime Minister's National Relief Fund and Rs.1,00,000/- to the employer/JNU, however, considering that the petitioner was a teacher in JNU, this writ petition is dismissed with costs of only Rs.60,000/-, out of which Rs.30,000/- shall be paid to the respondent no.4/employer/JNU and costs of Rs.30,000/- being deposited with Friendicoes, No. 271 & 273, Defence Colony, Flyover Market, Jangpura Side, New Delhi-110024. Costs be paid in six weeks failing which the same can be recovered as per law."

9. The appellant, who appeared in person has filed a brief note of submissions. The first submission, he has made is that in view of Gazette Notification dated November 17, 1995, issued by this Court on the administrative side pertaining to the jurisdiction of Single Judge and all Benches of this Court, petitions where vires of an Act is challenged, should be decided by a Bench of two Judges and the writ petition having been decided by the learned Single Judge, the impugned judgment is a nullity. In this regard, he has referred to the judgment of the Supreme Court in the case reported as AIR 1988 SC 1531 A.R. Antulay v. R.s. Nayak to contend that a Court cannot confer a jurisdiction on itself, which was not provided by Constitution or statutory law.

10. His other submission is that Clause 6 of the Academic Ordinance of the JNU was amended on October 04, 1993 but under the JNU Act, no change shall be made in the terms and conditions of service of a Teacher after his / her appointment, so as to adversely affect her / him. In this regard, he has placed

reliance on Clause 7, which reads as under:-

"7. Variations in terms and conditions of service:

Every teacher of the University shall be bound by the Statutes, Ordinances and Regulations for the time being in force in the University:

Provided that no change in the terms and conditions of service of a teacher shall be made after his / her appointment in regard to designation, scale of pay, increment, provident fund, retirement benefits, age of retirement, probation, confirmation, leave, leave salary and removal from service so as to adversely affect him."

11. Having heard the appellant and perused the records of the case, insofar as the first submission of the appellant that in view of the Gazette Notification dated November 17, 1995, the learned Single Judge had no jurisdiction to hear the petition, as it pertains to the vires of the Act is concerned, suffice it to state that the Notification refers to "petitions where vires of the Acts are challenged". Further, a perusal of the relief clause, as reproduced above, it is clear that the relief of the appellant was a challenge to the vires of Clause 6 of the Academic Ordinance of the JNU and not to any provisions of JNU Act, 1966. If that be so, there was no bar on the learned Single Judge to hear and decide the petition. Suffice it to state, that the learned Single Judge was within his right to hear and decide the writ petition.

12. Insofar as the other submission of the appellant is concerned, the learned Single Judge has noted that the appellant had in successive writ petitions sought reliefs for being continued in service till the age of 65 years. The said relief was considered twice by this Court but not granted and the issue has attained finality till the Supreme Court.

13. The appellant in the earlier two writ petitions, instead of challenging Clause 6, had sought the benefit under Clause 6. Whereas, in this petition he has challenged the vires of Clause 6 which is clearly impermissible, as, the petitioner could have sought such a prayer in the earlier two writ petitions. But he chose not to seek such a relief. Hence the prayer now shall be hit by principles of res judicata or constructive res judicata. In any case, the relief, for being continued till the age of 65 years has been rejected in the earlier writ petitions. That apart, the appellant having retired in the year 2003 at the age of 63 years, could not have agitated the issue in the year 2013, after a period of 10 years for being continued in service till 65 years. The petition was also hit by delay and laches. We are of the view that the learned Single Judge was right in his conclusion in paras 23 to 25, which we have already reproduced above.

14. Even though, the appellant has referred to various other judgments in his note, we are of the view that in view of our conclusion above, the same need not be referred to. We do not see any merit in the appeal. The same is dismissed. No costs.