
(2011) 05 AHC CK 0052
In the Allahabad High Court
Case No : Writ Petition No. 996 (S/B) of 2011

Dr. Munish Kohli

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 30

Uttar Pradesh State Universities Act, 1973 — Section 35, 35(2), 35(3), 35(4)

Citation : (2011) 6 ADJ 6367

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh and S.C. Chaurasia, JJ.—Heard Dr. R. S. Pande learned counsel for the petitioner. Sri Sanjay Bhasin learned counsel for the respondent No. 2. Sri S. C. Kashis learned counsel for the respondent Nos. 4 and 5 and perused the record.

2. With the consent of the parties, we proceed to decide the writ petition at the admission stage.

3. The submission of the learned counsel for the petitioner is that initially the petitioner was appointed on the post of Director on 28th July. 2005 at Saraswati Medical and Dental College, Lucknow on which post he resumed duty on 30th July, 2005. On 16th Feb. 2006. the Committee of Management appointed the petitioner on the post of Principal which fell vacant due to retirement of one Dr. R. M. Mathur. It has been submitted by the petitioner's counsel that the petitioner being the Principal of the Dental College contested election for Membership of Dental Council of India reserved for the category of Principal and he was elected as a Member of Dental Council of India on 11th Dec, 2008, which was duly notified on 19.12.2008. It is further submitted by the learned counsel for the petitioner that services of the petitioner on the post of Principal was extended for the period of 5 years by order dated 28th July, 2008 by the

respondent Committee of Management. Submission of the learned counsel for the petitioner is that the services of the petitioner was terminated by the impugned order dated 13.5.2011 which is highly arbitrary and violative of circular issued by the Dental Council of India dated 2nd Dec. 2010 (A copy of the circular has been filed as Annexure-7 to the writ petition).

4. According to the circular, 90 days prior notice is to be given before passing an order of termination. Further, submission of Dr. R. S. Pandey, learned counsel for the petitioner is that the decision of the Committee of Management of such colleges should be with prior concurrence of Vice-Chancellor of the University to which the Medical College is affiliated. In the present case, admittedly, it has been admitted at Bar that the respondent college is affiliated with the Avadh University, Faizabad. For convenience Section 35 of the U. P. State Universities Act is reproduced as under :

35. Conditions of service of teachers of affiliated or associated colleges other than those maintained by Government or local authority.--(1) Every teacher in an affiliated or associated college (other than a college maintained exclusively by the State Government) shall be appointed under a written contract which shall contain such terms and conditions as may be prescribed. The contract shall be lodged with the University and a copy thereof shall be given to the teacher concerned, and another copy thereof shall be retained by the college concerned.

(2) Every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated to him, be reported to the Vice-Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor :

Provided that in the case of colleges established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India, the decision of the management dismissing removing or reducing in rank or punishing in any other manner any teacher shall not require the approval of the Vice-Chancellor, but, shall be reported to him and unless he is satisfied that the procedure prescribed in this behalf has been followed, the decision shall not be given effect to.

(3) The provisions of subsection (2) shall also apply to any decision to terminate the services of a teacher, whether by way of punishment or otherwise but shall not apply to any termination of service on the expiry of the period for which the teacher was appointed :

Provided that in the case of colleges established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India, the decision of the Management terminating the service of any teacher shall not require the approval of the Vice-Chancellor, but shall be reported to him and unless he is satisfied that the procedure prescribed in this behalf has been followed, the decision shall not be given effect to.

(4) Nothing in sub-section (2) shall be deemed to apply to an order of suspension pending inquiry, but any such order may be stayed, revoked or modified by the Vice-Chancellor :

Provided that in the case of colleges established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India, such order may be stayed, revoked or modified by the Vice-Chancellor only if the conditions prescribed for such suspension are not satisfied.

(5) Other conditions of service of teachers of such colleges shall be such as may be prescribed.

5. A plain reading of Section 35 of the Act shows that a teacher in an affiliated or associated colleges can be appointed under a written contract which shall contain such terms and conditions as may be specified. The copy of the contract shall be possessed with the University and a copy thereof shall be given to the teacher concerned and a copy shall also be retained by the college concerned. A copy of the contract entered into between the parties with respect to present contract has been filed as Annexure-2 to the writ petition.

6. Sub-section (2) of Section 35 of the Act provides that every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated, be reported to Vice-Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor.

7. Thus, by fiction of law the order of termination shall not come into effect unless it is approved by the Vice-Chancellor. Meaning thereby the impugned order shall not take into effect unless it is duly approved by the Vice-Chancellor.

8. While assailing the impugned order, learned counsel for the petitioner further submits that it is violative of principle of natural justice, apart from statutory provisions contained in sub-section (2) of Section 35 of the Act (supra) and the guidelines of the Dental Council of India.

9. It is an admitted fact that the Saraswati Dental Medical and Dental College. 233 Tiwariganj. Faizabad Road, P.O. Juggour (via Chinhath), Lucknow is registered under the Societies Registration Act. Accordingly, writ petition, against the order passed by the Dental College or its authority is not maintainable in view of law settled by the Division Bench of this Court in Writ Petition No. 1452 (S/B) of 2010. Dr. S. N. Tripathi v. State of U. P. and others, in which one of us (Hon"ble Devi Prasad Singh. J.) was a Member. However, writ petition is maintainable to issue a writ in the nature of mandamus in case statutory right of an employee is violated and there is violation of statutory duty on the part of the authority to take a decision. In the present case the statutory right conferred to the petitioner u/s 35 of the Act prima facie seems to have been violated and it is the statutory duty of the Vice-Chancellor to take a decision. In case the respondent Dental College has not obtained approval from the Vice-Chancellor then from the plain

reading of provision contained in subsection (2) of Section 35 of the Act, the order shall not take effect. The Legislature to their wisdom categorically by using the word "shall not take effect unless it has been approved by the Vice-Chancellor" provided that the order passed by the Management with regard to termination of service shall not take effect unless there is concurrence or approval of the Vice-Chancellor of the University to which a college is affiliated.

10. One of the argument advanced by Sri Manik Sinha, learned counsel for the respondent University is that the provision contained in Section 35 of the Act, covers only regular and permanent appointee selected by Higher Education Service Commission.

11. Arguments advanced by Sri Manik Sinha seems to be not correct and is misconceived, sub-section (2) of Section 35 provides that every decision of the Management or college with regard to dismissal or removal of the teacher or reduction in rank shall not take effect unless it has been approved by the Vice-Chancellor. The Legislature to their wisdom has used the word "every decision" means the decision taken for all categories of employees who are working on the post of teacher. Teacher includes the Principal. Accordingly, whether it is contractual appointment or regular appointment through Commission, both are covered by Section 35 of the U. P. State Universities Act, 1973.

12. In the present case, the provisions contained in Section 35 of the Act are quite clear and not suffered from any ambiguity. Accordingly, every appointment on the post of teacher shall be covered by the conditions provided in Section 35 of the Act. Sub-section (3) of Section 35 of the Act makes the things more clear providing therein that sub-section (2) of Section 35 shall apply to any decision to terminate the services of the teacher whether by way of punishment or otherwise but shall not apply to terminate the services of the teacher on the expiry of the period for which the teacher was appointed.

13. Admittedly, in the present case, the petitioner was appointed on the post of Principal for the period of 5 years. Before the expiry of 5 years, in case the respondent Committee of Management/Medical College intends to terminate the services then for that it shall be necessary to seek approval or concurrence from the Vice-Chancellor of the Dr. Ram Manohar Lohiya Awadh University, Faizabad to which the Institution Is affiliated.

14. In the absence of approval of the Vice-Chancellor, as observed (supra), the decision taken with regard to termination cannot be given effect.

15. The Vice-Chancellor has ample power under sub-section (4) of Section 35 of the Act whereby it has been provided that the orders passed in contravention of sub-section (2) of Section 35 of the Act may be stayed, removed or modified by the Vice-Chancellor. Thus. Vice-Chancellor has got ample power to pass an interim order while entertaining application against the order of termination passed by the Committee of Management till disposal of controversy.

16. In view of above, we dispose of the writ petition finally with liberty to the petitioner to represent his grievance with the Vice-Chancellor of Dr. Ram Manohar Lohiya University, Faizabad within two weeks. In case such representation is submitted, the Vice-Chancellor shall consider the petitioner's application. The application for interim relief shall be considered within a week thereafter and may also pass ex parte order in case the respondent does not cooperate. Thereafter, Vice-Chancellor shall decide the controversy in accordance with law expeditiously say within a period of four months after providing opportunity of hearing to parties.

17. The writ petition is decided accordingly.

18. Certified copy within three days.