

(2016) 10 P&H CK 0191
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11752 of 1998 (O&M).

**Dr. Prabal Jyoti - Petitioner @HASH The Maharshi Dayanand University
and another**

Date of Decision : 21-10-2016

Acts Referred:

Citation : (2017) 2 PLR 719 : (2016) 4 RSJ 403 : (2017) 1 SCT 246

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : R.K. Malik, Sr. Advocate with Bhupinder Malik, Advocates, for the Petitioner; Anurag Goyal, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. (Oral)—There can be no doubt that the petitioner was wronged by a termination order issued by the Registrar of the respondent-University completely misunderstanding the instructions of the Vice Chancellor not to foreclose the employment but desist from assigning a particular type of duty to the petitioner as explained hereafter. The Vice Chancellor admits that he had never meant that the services of the petitioner should be terminated, but due to grave communication gap, the services of the petitioner were brought to an end by a stigmatic order. The University is also agreed that the Vice chancellor had no power to terminate the services of Lecturers, like the petitioner, as the power to do so was posited elsewhere, that is, in the Executive Council taking final decision.

2. The foundation of the action taken as it turned out was a mistake committed by the petitioner in paper-setting for a University examination. As an internal paper-setter, she repeated the same question in both sets while she was required to set two different question papers. The petitioner apologized for her mistake and undertook she would never repeat it. This is how the Vice Chancellor, somewhat irked, had ordered that she should not be made a papersetter. But that did not mean that her services should be terminated. These are the sequence of events which this Court accepts as correct as are forthcoming from

the paper-book.

3. However, the other side of the coin is that the petitioner was appointed against a leave vacancy in place of one Professor Dr. Pawan Budhwar, and therefore, the appointment was not of the regular kind, although the mode of selection was through fair and proper procedure adopted. Professor Dr. Pawan Budhwar did not return from leave.

4. Learned senior counsel Mr. Malik submits that there are instances in the University where in such a situation of appointments against leave vacancies, services of incumbents have been regularised in the past. That may be true but how would it help to bring relief of reinstatement after 18 years. It is far too late for this Court to do much in aid of the petitioner to return her to employment of the University. It is reasonable to believe she must have made a career elsewhere of whatever kind, good, bad or indifferent. Two decades is enough to lose skills of teaching and past academic milestones can never be retraced. It would neither be fair to her, the University and its students to be foisted a rusted mind. This is the inevitable consequence of passing time.

5. Be that as it may, it appears almost impossible if not hopeless to consider granting relief of reinstatement to the petitioner by setting aside the termination order, even though the order deserves to be set aside and the stigma removed from its face so that it does not hound the petitioner in future employment. But then, she has willy nilly lived with the dilemma for many irreversible years.

6. While keeping alive to all this, this Court is constrained with passage of 18 years, to disallow the claim and therefore this court is not inclined to interfere by ordering reinstatement or appointment of the petitioner to the post in public interest. Even if such an order was passed that would not confer permanency on the petitioner as it would put her back to the original position. Besides, after 18 years, and to repeat, the petitioner may have lost her skills altogether in teaching at University level having lost touch with her subject. The order of termination is neither legal nor valid. If the order is set aside, reinstatement is automatic in service law unlike under the Industrial Disputes Act, 1947 where workman can be granted compensation in lieu of reinstatement. In the present case, the reinstatement is not found tenable. Does that mean the University is not accountable for its actions? Can it go Scott-free? What should it pay in terms of compensation for harm done?

7. For all these reasons, I would issue the following directions while dismissing this petition after hearing the respective counsel at length; holding that:-

(i) The termination order was illegal, not because of a court declaration in the present proceedings, but because of the recorded statement of the Vice Chancellor admitting graciously that he never meant to harm the petitioner beyond not being assigned duties as an internal paper-setter for University examinations.

(ii) The impugned order is rendered illegal also because the Vice Chancellor had no power, authority or jurisdiction to terminate the service of Lecturers.

(iii) The order is apparently stigmatic in character and will follow the petitioner to her next job as any reasonable employer might refuse to employ her when she would have to disclose when asked whether her services have ever been terminated, she would have to say yes and be asked many embarrassing questions. Therefore, the stigma of the order is removed by expunging the offensive part of the order retrospectively.

8. The question remaining is whether the petitioner is entitled to no relief whatsoever from this Court in the present proceedings? I do not think so. If she goes empty handed she may think the Court failed her by the fiat accompli of passing time. The petitioner will, in my opinion, be eminently entitled to relief of damages for the wrongful act of the respondent-University in passing prima facie an illegal order on the given materials on record. The respondent University can be compelled by mandamus to compensate her in terms of money for the terrible wrong committed by it in such a casual manner and for the wrong reason with the Vice Chancellor retracting from the order, that he never meant it. But unfortunately his command was grossly misinterpreted by the Registrar who promptly dished out the order terminating her services as a Lecturer. This must obviously have completely destroyed her career and, therefore, this Court in order to enforce amends, directs the respondent-University ex debito justitiae to pay a compensation of Rs. 5.00 lacs to the petitioner in lieu of reinstatement. The amount must be paid to her within six weeks from the date of receipt of a certified copy of this order, failing which it will earn interest at the rate of 12% per annum till the payment is made.

9. The petition is allowed to the above extent.