

(1985) 04 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 8000 of 1981

Dr. Satish Kumar Agarwal and Others

APPELLANT

Vs

The Principal and Chief Superintendent, S.N. Medical College
and Hospital, Agra and Others

RESPONDENT

Date of Decision : 17-04-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 326

Citation : AIR 1985 All 306

Hon'ble Judges : O.P. Mehrotra, J;K.N. Singh, J

Bench : Division Bench

Advocate : R.N. Bhalls and A.K. Sharma, for the Appellant; S.C. Verma and
Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—By means of this petition under Article 226 of the Constitution, the petitioners, who are four in number, have claimed relief for the issue of a writ of certiorari quashing the order of the Principal, S. N. Medical College, Agra, dt. 6-6-1981 expelling the petitioners from the College and debarring them from appearing in subsequent examinations and also for quashing the order dated 6-6-1981 terminating the services of petitioners Nos. 3 and 4.

2. All the four petitioners were postgraduate students of S. N. Medical College, Agra. affiliated to the University of Agra. Dr. Satish Kumar Agarwal, petitioner No. 1 completed his M.B.B.S. Examination and thereafter he was carrying on his study for Diploma Course in Tuberculosis and Chest Diseases (D.T.C.D.). Dr. Ashok Kumar petitioner No. 2, was Post-Graduate student for M.D. Dr. Pradeep Kumar Srivastava and Dr. Rakesh Garg both were students for Master of Surgery. They were also employed as Demonstrator in Anatomy and Social and Preventive Medicine Department of the College. Dr. Satish Kumar Agarwal, petitioner No. 1, was the President, while Dr. Ashok Kumar Agarwal, petitioner No. 2, was Secretary, and Dr. Pradeep Kumar Srivastava, petitioner No. 3, was Vice-

President of the Junior Doctors" Association in Sarojini Naidu Medical College and Hospital, Agra. Dr. Rakesh Garg, petitioner No. 4 was a member of the Association.

3. The petitioners have asserted that the Junior Doctors" Association made a written complaint against Dr. B. D. Sharma, Head of the Department of Surgery, S. N. Medical College, Agra, for his irregularities committed in the matter of appointment of Pool Officers. The complaint further alleged that Dr. B. D. Sharma was guilty of serious negligence and neglect of duty inasmuch as while operating a patient Sahab Singh he had left a scissors in his abdomen which was subsequently noticed and removed by the doctors at Balrampur Hospital, Lucknow. On account of this complaint, Dr. B. D. Sharma, Professor and Head of the Department of Surgery, was annoyed with the petitioners who were office bearers and members of the Junior Doctors" Association, and also with students of M.B.B.S. Class. In the Examination days (sic) a number of students were declared unsuccessful in the papers of Surgery of which Dr. Sharma was examiner. It appears that on 18-2-1981 some of the members of Junior Doctors" Association made, a demonstration against Dr. B. D. Sharma and gheraoed him. It is alleged that they entered the operation theatre room of Dr. B. D. Sharma, abused him and threatened to beat him on his coming out of the operation theatre. Dr. B. D. Sharma made a written complaint to the Principal wherein he named the petitioners and several other persons. On May 1, 1981, the Principal issued charge-sheet to each of the petitioners on identical facts. The charge contained in the notice alleged that on 18-2-1981 at about 11.30 A.M. the petitioners along with other persons had entered the operation theatre room of Dr. B. D. Sharma and there they had abused him, threatened him and obstructed him in the performance of his duty and thus they were guilty of grave misconduct and breach of discipline. The petitioners filed their reply denying their participation in the incident.

4. The Principal appointed an Enquiry Officer to hold enquiry into these charges. After obtaining the report of the Enquiry Officer the Principal passed four different orders imposing identical punishment on the petitioners by expelling them from the College for a period of four years with immediate effect. By two separate orders passed on the same date the Principal terminated the services of petitioners Nos. 3 and 4 from the post of Demonstrators. Aggrieved, the petitioners filed this petition challenging the validity of the impugned orders.

5. Learned Standing Counsel raised a preliminary objection to the maintainability of petition on the ground that the four petitioners have filed this petition jointly although separate charge-sheets were issued to each of them and separate orders were passed by the Principal against each of the petitioners. There was no common cause of action and the petitioners cannot maintain in a single petition. While it is true that different charge-sheets were issued to the petitioners and different orders were passed against them, but the charge-sheets and the orders are identical in nature which related to one single incident which is alleged to

have taken place I on 18-2-1981. In the circumstances, a petition j by the four petitioners is maintainable. It is not necessary to delve further in this question as the petitioners have paid court-fee on four counts and as such the petition is maintainable.

6. The writ petition came up for admission before a Division Bench on 15-7-1981. On behalf of the petitioners it was urged before the Bench that the petitioners were remorseful for the incident that occurred and they were prepared to tender unqualified apology to the Court. The Standing Counsel admitted before the Bench that in almost identical circumstances Sri S. S. Misra, Principal of the College, had accepted apology and recalled the order of expulsion in the case of another student. The Standing Counsel suggested before the Bench that the petitioners should tender apology to the Principal, and not to this Court. The Bench thereupon directed the petitioners to tender apology in the terms the Principal may require on 22nd July, 1981. This order was passed in the presence of Dr. S. S. Misra, the Principal who was represented by the Standing Counsel. In pursuance of the direction of this Court the petitioners approached the Principal and tendered their apology but the same was not accepted on the ground that it was not bona fide and genuine.

7. The case again came up before the Bench on 27-7-1984. On behalf of the petitioners it was pointed out before the Bench on that date that the petitioners had tendered apology on 22nd July, 1981, but the Standing Counsel contested the genuineness of the apology; he made a statement before the Bench that Dr. S. S. Misra was prepared to appoint a Committee before which apology should be tendered by the petitioners. Sri S. S. Bhatnagar, learned counsel appearing for the petitioners, contended before the Bench that the petitioners were remorseful for anything which might have injured the feelings of Dr. S. S. Mishra. He further stated that although on 22nd July, 1981, the petitioners had tendered unqualified apology to the Principal, but they were again ready and willing to submit further unqualified apology to the Principal. The Bench admitted the writ petition and granted an interim order suspending the operation of the impugned orders of the Principal issued on 6-6-1981. As a result of the interim orders passed by this Court the petitioners were permitted to complete their course and studies which they have completed. They are no more students of the College and they are carrying on their private practice.

8. In pursuance of the orders of this Court dt. 27-7-1981 the petitioners appeared before the Principal, Dr. S. S. Misra, and tendered their unqualified apology but the same was not accepted. When the case came up before the Court for hearing it was urged on behalf of the Principal that the petitioner had not appeared before the Principal to tender apology. Since there was dispute on this question we directed the petitioners and the Principal to appear before the Court so that the petitioners could tender apology to the Principal. This was done in order to obviate the controversy which was being raised on behalf of the Principal that the petitioners were not tendering apology.

9. After several adjournments, Dr. S. S. Misra appeared before the Court on 8-4-1985 and the petitioners in our presence tendered unqualified apology to him. We also observed that since another student had already been exonerated by the Principal on his tendering unqualified apology, the same treatment should be meted out to the petitioners also. The petitioners gave an undertaking that they will not join the college for any further course and they were ready to tender apology in any manner the Principal liked but in spite of our request and the petitioners' persuasions, Dr. S. S. Misra refused to accept the apology. He stated that he will have no objection if the result of the examination at which the petitioners had appeared may be declared but he insisted that the order of expulsion should be allowed to continue. The petitioners urged that if the order of expulsion is allowed to continue the same will attach permanent stigma to them and they would be ineligible for any Government or public employment. Since the Principal took a rigid stand, we have no choice but to hear the petition on merits.

10. Sri S. S. Bhatnagar, counsel for the petitioners, urged that in passing the impugned order the Principal Sri S. S. Misra practiced discrimination against the petitioners and his orders are violative of Articles 14 and 16 of the Constitution. He urged that the charges framed against the petitioners were the same as framed against Dr. M. P. Misra and he and the petitioners constitute the same class but the apology tendered by Dr. M. P. Misra was accepted and no action was taken against him, while the apology tendered by the petitioners has not been accepted by the Principal and a different treatment has been meted out to them. In Paragraphs 43 and 44 of the petition it has been asserted on behalf of the petitioners that on 30th May, 1981, during the course of enquiry Dr. S. S. Misra, Principal, told M. P. Misra, against whom similar charge as framed against the petitioners, had been framed and who was also facing enquiry, that in case he submits his apology no action will be taken against him. On the assurance given by Dr. S. S. Misra, Dr. M. P. Misra tendered his apology, whereupon, he was let off and no order of punishment was passed against him. In paragraph 44 of the petition the petitioners have further stated that their case was identical to that of Dr. M. P. Misra and yet Dr. S. S. Misra, Principal of the College, refused to accept the apology tendered by the petitioners, and he has acted in an arbitrary and discriminatory manner. Dr. S. S. Misra, the Principal, has himself filed counter-affidavit, but he has for reasons best known to him, not given any reply to the averments contained in paragraphs 43 and 44 of the petition. In the absence of any version contrary to that given by the petitioners, it must be held that the charge against Dr. M. P. Misra was the same as framed against the petitioners, as such both constituted the same class. There is further no dispute that Dr. Misra had accepted apology tendered by Dr. M. P. Misra, but he refused to accept the apology tendered by the petitioners for reasons best known to him. These facts clearly show that Dr. S. S. Misra chose to let off Dr. M. P. Misra by taking a favourable view on the basis of the apology tendered by him, while he has chosen to take a different view in the case of the petitioners for which there

appears to be no reasonable basis. Dr. Misra in our opinion has practised discrimination against the petitioners in refusing to grant them the same treatment as he had given to Dr. M. P. Misra.

11. Learned Standing Counsel urged that in the matter of acceptance of apology Articles 14 and 16 cannot be applied and the question of practising discrimination does not arise, as the acceptance of apology was discretionary and the petitioners have no right to get their apology accepted by Dr. S. S. Misra. The doctrine of equality embodied in Article 14 strikes at arbitrariness in State actions and it ensures fairness and equality of treatment. It requires that the State action should not be arbitrary but must be based on some rational and relevant principle which is not discriminatory. The Principal of a Government College is a functionary of the State and he is, like the State, bound to act in a reasonable and fair manner by giving equal treatment to the students who may be placed alike. Even in discretionary matter, or in grant of privilege or largess the State or a public functionary cannot act arbitrarily or practise discrimination. The doctrine of equality as embodied in Article 14 would strike the State's action or the action of the public functionary if it is discriminatory even in granting largess by the State. The discretion of the Government or a public authority is not unlimited inasmuch as the Government or the public authority or public functionary cannot grant largess in discriminatory manner or at its sweet-will. Even in grant of largess or in exercising discretion the State is bound by the rule of equality as enshrined in Article 14 of the Constitution. See *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*,

12. In *Sengara Singh and Others Vs. State of Punjab and Others*, , the State of Punjab had initiated disciplinary action and dismissed about 1100 members of the police force on the ground that they had participated in agitation which was not permissible under the rules governing the discipline in the police force and a number of criminal prosecutions were also filed against the participants. Later on, the State Government constituted a Committee to review the cases of dismissed agitators and following the recommendations of the Committee the Government reinstated about 1000 of the dismissed members of the police force, and the rest were left to fend for themselves. Those who were not reinstated filed writ petition in the High Court. The writ petition was dismissed. They took the matter in appeal before the Supreme Court; on behalf of the appellants before the Supreme Court, plea of discrimination was raised and it was urged that there was no difference in their cases with those who were reinstated in service and the Government practised discrimination in refusing to reinstate them while others were reinstated, although both kind of persons constituted the same class, The State Government failed to point out any criteria or guideline or yardstick adopted with reference to those agitators who were reinstated and the distinguishing features in others. The Supreme Court held that the State Government cannot practice discrimination even in the grant of largess. The appeal was allowed and the State Government was directed to reinstate the appellants in service. It is manifestly clear that the State cannot pick and choose

or distribute its largess in arbitrary manner according to the whim and sweet-will of the public officers by granting favours to one and denying the same to the others. The Courts have full power to strike down arbitrary and discriminatory orders even if those orders relate to distribution of largess or grant of favours.

13. In the instant case, we have stated earlier that the case of Dr. M. P. Misra was similar and identical to that of the petitioners. He had also been charged for the same kind of misbehaviour and indiscipline in the operation theatre room of Dr. B. D. Sharma on 18-2-1981. At the suggestion Dr. S. S. Misra, the Principal, Dr. M. P. Misra tendered apology which was accepted and no action was taken against him while the unqualified apology tendered by the petitioners was not accepted by Dr. S. S. Misra. There is no whisper in the counter-affidavit filed by Dr. S. S. Misra as to what yardstick was applied by Mm in accepting the apology of Dr. M. P. Misra and rejecting that of the petitioners. He could not point out any distinctive feature in the case of the present petitioners from that of Dr. M. P. Misra even before us when he was present in Court on 8-4-1985. There is no suggestion in the counter-affidavit nor any such suggestion was made during the arguments on behalf of the respondents that the present petitioners had indulged into more violent activities or they had made any assault on Dr. B. D. Sharma or that they had taken any such steps in the incident which made their case distinguishable with that of Dr. M. P. Misra. On the material on record there is not an iota of evidence which would distinguish the case of the present petitioners from that of Dr. M. P. Misra, who was the beneficiary of Dr. S. S. Misra's favour.

The discrimination is writ large and it is difficult for us to overlook the same. Dr. Misra was not acting in his private capacity either while accepting the apology of Dr. M. P. Misra or in rejecting the petitioners' apology. In both the cases he was acting as a public authority and instrumentality of the State. He could not act according to his whims or sweet-will in accepting apology of Dr. M.P. Misra and deny the same benefit to the petitioners by refusing to accept the apology tendered by them. We are therefore, of the opinion that the plea raised by the petitioners against Dr. S. S. Misra for picking and choosing in granting favour is fully established. The petitioners are entitled to the same treatment which was granted to Dr. M.P, Misra. As discrimination has been practised against the petitioners, the impugned orders dt. 6-6-1982 are hit by Article 14 of the Constitution and those orders are liable to be quashed.

14. The Standing Counsel, as usual, raised the bogey of discipline in the educational institutions. He urged that the petitioners were guilty of gross indiscipline and this Court's interference would encourage indiscipline in the College. The Court is conscious that discipline must be maintained in educational institutions and for that reason we generally refuse to interfere with the disciplinary matters of educational institutions, but students are also protected by the rule of law as enshrined in the Constitution. A student like any other citizen is also entitled to the benefit and protection of Article 14 of the

Constitution. If discriminatory treatment is made to a student the Court is duty bound to strike the order and to grant relief. If in genuine cases the Courts refuse to interfere even if the law is in favour of the student, a situation may arise where indiscipline may be encouraged as the Court's failure to strike down illegal action of the authorities would encourage violence and disorder. Moreover, if by accepting apology of Dr. M. P. Misra, discipline was not affected adversely, we fail to understand how discipline would be affected adversely in giving out the same treatment to the petitioners. Dr. S. S. Misra himself divided the students against whom similar charge of indiscipline was framed into two classes, favourites and non-favourites. Dr. Misra accepted apology of Dr. M. P. Misra and thus made him favourite, while he refused to accept the unconditional apology tendered by the petitioners rendering them non- favourites. In such a situation the Court is duty bound to strike the order.

15. In the result, we allow the petition and quash the impugned orders of the Principal of S. N. Medical College, Agra, dt. 6-6-1982 and direct the respondents to declare the petitioners' result forthwith. There will be no order as to costs.