
(2018) 07 CAL CK 0125
In the Calcutta High Court
Case No : WP 14552 (W) of 2017

Dr. Satyadeo Prasad & Anr.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Presidency University Act, 2010 — Section 29(2)(2)(3)(4)
Customs Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service), Rules 1987 — Rule 9(2)

Citation : (2018) 07 CAL CK 0125

Hon'ble Judges : ARINDAM SINHA, J

Bench : Single Bench

Advocate : Amarendra Chakraborty, Arunabha Maitra, Partha Sarathi Sengupta, Soumya Majumder, Joydip Kar, Aparajita Rao, P. Gandhi, Tapan Kumar Mukherjee, Debasish Basu, Anil Kr. Gupta

Judgement

Mr. Sengupta, learned senior advocate appears on behalf of the University. He submits, section 29 of Presidency University Act, 2010 has to be

read as a whole. Second proviso to sub-section (4) cannot be read in isolation. The sub-sections in the section proceed as first providing for

appointment under sub-section (1). Sub-section (2) provides for period of probation and its extension. Sub-section (3) gives authority to the University

to discharge probationer if performance is not considered satisfactory. It is thereafter that subsection (4) provides for completion of period of

probation and its consequences. First proviso under sub-section (4) is regarding deemed confirmation and second, extension of period of probation as

desired by a teacher or an officer or an employee. He submits in elaboration, there are instances where a teacher on probation is on lien. Such

probationer might desire extension of probation to consider incumbent's

position regarding position lien. Such a probationer would desire extension of period of probation rather than completion of it and confirmation.

He then deals with submissions of law made on behalf of petitioner. Referring to Dr. M/s. Sumati P. Shere (supra) he relies on paragraphs 3, 5 and

6 with special emphasis on paragraph 5. He submits, declaration of law is that in relationship of master and servant there is moral obligation to act

fairly. An informal, if not, formal give and take, on the assessment of work of the employee should be there. He submits, interaction between

members of faculty in the University is informal rather than exchanging letters between themselves. He also relies on judgment of Supreme Court in

Pradip Kumar versus Union of India reported in (2012) 13 SCC 182. This is a judgment included in compilation handed up on behalf of petitioner. He

relies on paragraphs 4, 7, 8, 12 and 13. He submits, controversy in that proceeding was limited to interpretation of rules 8 and 9 (2) of Customs

Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service), Rules 1987. He points out from the judgment,

respondent had been given annual increments and Supreme Court found order of termination was prompted by a complaint made by members of

the Bar and not regarding assessment of his performance.

He next relies on judgment of learned Single Judge of Punjab and Haryana High Court in Satish Kumar Jind Cooperative Sugar Mills Ltd. reported in

1994 (1) S.L.R. 406, to paragraph 6. Case being dealt with was found to be distinguishable on facts against application of Dr. M/s. Sumati P. Shere

(supra). Learned Judge found petitioner had worked for about six months. No annual confidential report regarding his performance could have been

recorded. In such a situation occasion for conveying any adverse remarks etc. could not have arisen. Those were the distinguishing features.

His next case for reliance is Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences reported in (2001) 8 Supreme 409 also

reported in (2002) 1 SCC 520 wherein Supreme Court in dealing with Shamsher Singh (supra) said, in order to amount to a stigma, the order must be

in a language which imputes something over and above mere unsuitability for the job. He places reliance on paragraph 21 in the judgment to

submit, even if there is an inquiry, any one of the stages mentioned in the paragraph, if not present, Supreme Court declared, termination following

would be upheld.

He relies on another judgment of Supreme Court in *Municipal Committee, Sirsa vs. Munshi Ram* reported in 2005 (1) Supreme 818 also reported in

(2005) 2 SCC 382. In paragraph 17 of the judgment Supreme Court declared, assuming there was an incident of misconduct or incompetency prior to

discharge from service, same cannot be ipso facto be termed as misconduct requiring an inquiry. It may be a ground for employer's assessment

of workman's efficiency and efficacy to retain him in service. He submits, correspondence disclosed at pages 48 and 51 of the writ petition even

if points to allegation of misconduct on part of petitioner no.2, the University was not obliged to launch inquiry but use it was a factor for assessing

suitability of petitioners. He then relies on *Registrar, High Court of Gujarat & Anr. vs. C.G. Sharma* reported in 2005 (1) LLN 1 also reported in

(2005) 1 SCC 132. He relies on paragraphs 34 to 39. Apart from facts considered by Supreme Court he relies on opinion given in paragraph 39

regarding scope of judicial review being to ensure that delinquent receives fair treatment and not to ensure that the conclusion which the authority

reaches is necessarily correct in the view of the Court or the Tribunal. When the conclusion reached by authority is based on evidence, Tribunal is

devoid of power to re-appreciate the evidence and come to its own conclusion on proving of the charge. Lastly, he relies on *Radhey Shyam Gupta*

vs. U.P. State Agro Industries Corporation Ltd. & Anr. reported in (1999) 2 SCC 21, to paragraph 33 in which Supreme Court declared that

termination of service of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not

satisfactory, will not be punitive inasmuch as the above facts are merely motive and not foundation.

On facts Mr. Sengupta refers to affidavit-in- opposition of respondent no. 2. He demonstrates from pages 30, 31 and 33, evaluation of answer scripts

by petitioner no. 2 struck Departmental Examination Committee as something which needed to be looked into. An external examiner was

appointed. Results awarded by petitioner no. 2 and external examiner are respectively at pages 31 and 33. While petitioner no. 2 gave A to

and A+ to all examinees in Hindi paper 301, results given by external examiner to them varied between A to D, only one

examinee being awarded ???A???.Â He submits, as has been held in Dr. M/s. Sumati P. Shere (supra), interaction between head of the department

and probationer such as petitioners would be informal. Still, some correspondence and documents regarding examination and evaluation are there.Â

These are facts on which assessment was based.

There is no stigma. There should be no interference.Â He submits, he would make a brief submission on adjourned date, if necessary.

List on 23rd July, 2018.