

(1985) 11 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 346 of 1983

Dr. Sudhir Kumar

APPELLANT

Vs

Mohan Lal Sukhadia University or The Udaipur University

RESPONDENT

Date of Decision : 06-11-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1985) WLN 400

Hon'ble Judges : Ashok Kumar Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—The petitioner by this writ petition has prayed that the order Annexure-1 dated 23-1-1982 may be quashed and the respondents may be directed not to proceed according to order Annexure-1 by way of making any recovery from salary or provident fund of the petitioner of the amount paid in excess of subsistence allowance to the petitioner.

2. The petitioner was initially appointed as Lecturer in the Rajasthan College of Agriculture, Udaipur, in the year 1958 and on the establishment of the respondent University in the year 1962 his services were placed at the disposal of the respondent University. The petitioner was temporarily appointed as Associate Professor on 6th July, 1966. Thereafter he was appointed to the post of Geneticist on substantive basis vide order dated 6th July, 1966. The petitioner further submits that because of his active participation in the Teachers Association he came in conflict with the authorities and at the time of Dr. P.S. Lamba as Vice Chancellor a disciplinary enquiry was initiated against the petitioner. Apprehending that the petitioner is likely to be put under suspension he proceeded to file writ petition which came to be registered as S.B. Civil Writ Petition No. 2315 of 1974. This writ petition was admitted on 1st October, 1974 and the following order was passed on the stay application:

The order of suspension of the petitioner is stayed only in respect of payment of emoluments to him during the suspension period. The petitioner shall be paid his full pay and all other allowances on the condition that the petitioner shall furnish adequate security to the satisfaction of the Registrar, University of Udaipur, for the repayment of the difference between the normal emoluments payable to the petitioner and the subsistence allowance which would have been payable to him in accordance with the suspension order in case the writ petition fails. However, it is made clear that the excess amount over and above the subsistence allowance which shall thus be paid to the petitioner in pursuance of this order shall be liable to adjustment against the provident fund of the petitioner with University in case the writ petition is dismissed.

3. Thereafter when Dr. P.S. Lamba demitted office of the Vice Chancellor Shri Ranvir Singh took over, he revoked the suspension and reinstated him on 25th August, 1977. It is further submitted that Shri Ranvir Singh advised the petitioner to withdraw the writ petition, so that a congenial atmosphere may be created. On this desire by the Vice Chancellor Ranvir Singh, the petitioner withdrew the writ petition. On the application filed by the petitioner this Court passed the following order:

Mr. Mridul states that the writ petition has become infructuous as relief has already been granted to the petitioner. Accordingly, the writ petition is dismissed as not pressed. Costs made easy.

4. The Board of Control of the respondent University vide its Resolution No. 25 dated 2nd August, 1980 resolved to drop the enquiry pending against the petitioner and sent a copy to the Chancellor vide letter dated 4th August, 1980. This Resolution of the Board of Control of the respondent University was subsequently confirmed in the next meeting of the Board of Control. It was resolved in the Resolution that he was also called upon to give undertaking to the effect that he shall not take recourse to any law court for damages etc. Meanwhile the petitioner was promoted to the post of Professor and Head of Geneticist and Plant Breeding vide order dated 22nd April, 1980. Thereafter Mr. P.N. Bhandari took over as the Vice Chancellor of the University of Udaipur. The Executive Committee of the respondent University in its meeting held on 3-12-1981 resolved to stay the Resolution No. 25 of the Board of Control dated 2-8-1980 allegedly for the reasons that the:

(i) mover of the proposal in the Board of Central, Dr. H.B. Tiwari was not a regular member of the Board of Control but was attending the meeting as an invitee ;

(ii) The Chairman had no knowledge of these cases and wanted to consider the adoption of the resolution very carefully in order to avoid further complication ; and

(iii) this item was neither on regular agenda nor in the pervuew of the Board of Control.

5. It was further resolved that the Vice Chancellor should apprise the Chancellor of the Resolution of the Executive Committee of the respondent University. The Chancellor in turn proceeded to make the order holding that the Resolution No. 25 was improper and quashed the same in the exercise of powers u/s 43 of the Udaipur University Act, 1962. In this back ground the Annexure-1 was served upon the petitioner and by this order the Vice Chancellor ordered the recovery of excess amount paid during the period of suspension over and above subsistence allowances from the provident fund of the petitioner. The petitioner further submitted that along with the petitioner three more persons were chargesheeted and their case was absolutely identical with the case of the petitioner. Dr. B.P. Chakravarti, Dr. B.K.. Srivastava and Shri Noor Mohammed were also placed under suspension during the enquiry. Or. B.K. Srivastava and B.P. Chakaravarti filed writ petitions in this Hon''ble Court being S.B. Civil Writ Petition No. 8941 of 1947 of 1974 and S.B. Civil Writ Petition No. 2336 of 1974 respectively. In both the writ petitions similar orders were passed as was passed in the case of the petitioner on 3rd October, 1974. Both the writ petitions were later on dismissed as withdrawn. But in none of these cases the respondent University chose to recover any amount from the provident fund amount which was paid to them during the period of suspension as per the orders of the court. The University has also paid the whole amount to the wife of Dr. B.K. Srivasatava who had died during the service. The petitioner further pointed out that vide Annexure-4 dated 11th January, 1985 the Vice Chancellor cancelled the order relating to the recovery of salary paid to Dr.B.P. Chakaravarti during the period of suspension from 13th August, 1974 to 26th November, 1975 and he has been exempted from the recovery of salary for the aforesaid period. In this background the petitioner prayed that he may be given similar treatment as was given to Dr. B.P. Chakaravarti.

6. Mr. Parekh, appearing for the respondent University has filed reply to the petition and contended that the petitioner is guilty of making false allegations. He further submits that in terms of the undertaking given by the petitioner it is contractual matter and the writ petition is not maintainable. M. Parekh further submitted that so far as Dr. Chakarvarti is concerned the payment was waived in terms of the Resolution No. 8 of the Board of Management dated 9th November, 1984 (Exbt. R/10), wherein it has been observed that charges against Dr. B.P Chakarvarti are not grave and he was asked to submit unconditional apology and more so now he has already retired from service. In this back ground order of recovery has been waived. In pursuance of this a letter has been issued on 24th July, 1985 Exbt. R/11 and it has been stated that payment of gratuity will be considered after the disposal of enquiry.

7. Before I proceed to consider the arguments raised by Mr. Mridul I propose to deal with the preliminary objections raised by Mr. Parekh regarding making of false averment. Mr. Parekh invited my attention to para 2/6 to 2/8 which reads as under:

2/6. While this enquiry was continuing the then Vice Chancellor. Dr. P.S. Lamba, demitted office of the Vice Chancellor of the University and Shri Ranvir Singh took over as the Vice Chancellor of the University. Having perused the record of the case, he felt that the enquiry was commenced against the petitioner out of spite and presumably on that account he proceeded to make an order dated 25-1-1977 revoking suspension order thus reinstating the petitioner.

2/7. The said Shri Ranvir Singh advised the petitioner to withdraw the writ petition referred to here in above so that a congenial atmosphere may be created for deciding whether the enquiry should be continued or not.

2/8. As desired by the Vice Chancellor the Petitioner proceeded to withdraw the writ petition which at any rate, had already been rendered infructuous because of the reinstatement of the petitioner.

8. Mr. Parekh submits that the petitioner has falsely averred that the enquiry commenced against the petitioner out of spite and presumably on that account he proceeded to make an order dated 25-8-1977 revoking suspension order and reinstating the petitioner. This according to Mr. Parekh is absolutely false statement and the writ petition deserves to be dismissed on this ground. Mr. Parekh submits that in fact the petitioner was reinstated subject to the holding of the departmental enquiry as it is clear from Exbt. R/4. It is true that Exbt. R/4 while reinstating the petitioner it was said that this reinstatement is without prejudice to pending enquiry. But by this it cannot be said that the petitioner has made a deliberate false statement meriting the dismissal of the petitioner. It is a fact that the petitioner was reinstated and subject to the disposal of the enquiry. This statement of fact cannot be said to be so serious so as to reject the writ petition on this ground. Likewise the submission in para 2/7 and 2/8 Mr. Parekh submits that these averments are also false. But these averments also do not substantially affect the maintainability of the writ petition. In view of the fact that area of controversy have been confined to narrow compass, these averments do not merit the dismissal of the writ petition on the ground of falsity.

9. Mr. Parekh further submits that in view of the fact that the petitioner has withdrawn the writ petition with the undertaking that he will not file a fresh writ petition or he will not claim any damages, these are all contractual matters and no writ petition lies to enforce such contractual agreement. In this connection Mr. Parekh cited the cases of State of Haryana and Ors. v. Jage Ram and Ors. AIR 1980 SC 2018 ; Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and Sham Lal and Others Vs. State of Punjab, . Present is not the case of enforcement of the contractual agreement. Mr. Mridul has only confined to his argument to a limited extent that the persons similarly situated are sought to be dis-similarly treated, as such he has sought a writ of mandamus seeking a similar treatment being given to the petitioner. In this light the objection of Mr. Parekh has no relevance specially in view of peculiar feature of this case that the order was passed by the High Court on the stay application of the petitioner and thereafter on reinstatement of the petitioner the writ petition was withdrawn, all

these questions have a special bearing on this writ petition therefore this writ petition cannot be dismissed on simple ground that the petitioner wants to enforce the contractual agreement. Thus the objection of Mr. Parekh is overruled. So far as the cases cited by Mr. Parekh are concerned, the general proposition of law that the contractual agreements are not normally enforced by the writ petition is not disputed, but in view of the fact stated above, the cases cited by the learned counsel for the respondent University does not afford any assistance to the contention raised in this writ petition.

10. Now I propose to consider the contentions raised by Mr. Mridul. Mr. Mridul has raised number of arguments, that the earlier dismissal of the writ petition being withdrawn by the petitioner does not amount to dismissal of the writ petition on merit. Secondly he submitted that once the order of suspension has been revoked then it cannot be reviewed back as it is against the principle of equitable estoppel. Thirdly he has submitted that order dated 25th August, 1979 (Annexure-R/4) whereby the petitioner's order of suspension was revoked was unconditional. Lastly the learned counsel has submitted that the order is discriminatory because Mr. Chokrabarti who was similarly placed as petitioner was but in his case the recovery has been waived whereas in the case of petitioner the same treatment has not been given. I need not consider first three arguments of the learned counsel for the petitioner, because I think the matter can be disposed of conveniently on the basis of last submission made by the learned counsel for the petitioner.

11. The contention of Mr. Mridul that the petitioner has not been given similar treatment as was given in the case of Mr. Chokarbarti appears to be correct and deserves to be accepted. From the narration of fact mentioned above, it is clear that the petitioner and Dr. B.P. Chokarbarti and Dr B. K. Srivastava and Noor Mohammed were all placed under suspension pending enquiry. Petitioner, Dr. B.P. Chokarbarti and Dr. B.K. Srivastava filed writ petition and similar orders were passed as has been passed in the case of petitioner. Thereafter the writ petition of petitioner and that of Dr. B.P. Chokarbarti and Dr. B.K. Srivasatava were withdrawn and similar orders of reinstatement were passed in case of all these persons and that so far as Dr. B.K. Srivasatava is concerned, he died during service and all his dues were cleared and paid to his wife. So far as Dr. B.P. Chokarbarti is concerned the University vide Exbt. 4, which is reproduced as under, has paid him the suspension amount from 30-8-1974 to 2-11-1975 and he was exempted from recovery of salary of the aforesaid period:

Pursuant to Resolution No. 8 of the Board of Management dated 9-11-1984, the Vice Chancellor is pleased to cancel the order relating to the recovery of the salary paid to Dr. B.P. Chokarbarti Ex-Professor of Plant Pathology, Rajasthan College of Agriculture Udaipur during the period of his suspension i.e. from 13-8-1974 to 26-11-1975 and exempt him from the recovery of the salary for the aforesaid period.

12. A perusal of this order, it is clear that Shri Chokarbarti was exempted from

recovery of salary paid to him during the period of suspension. While same treatment has not been given to the petitioner. Letter Annexure-4 dated 11th January, 1985 of the University was not placed on record, which was filed by the counsel for the petitioner. When Mr. Parekh was confronted that what he has to say specially regarding this order, Mr. Parekh filed a small rejoinder on 21st September, 1985 and tried to explain the treatment given to Shri Chokarbarti in this connection he filed the resolution of the Board of Management No. 8 dated 9-11-1984. From this resolution it was pointed out that the gravity of the charge against Dr. Chokarbarti was not serious and that he has already superannuated therefore the recovery of the amount of suspension period has been waived. Mr. Parekh has further submitted that vide Exbt. R/I 1 his gratuity has been withheld pending the completion of the enquiry. It is not disputed that so far as the case of the petitioner is concerned he is similarly situated. It is not pointed out that the gravity of the charge relating to Dr. Chokarbarti was less grave than that of the petitioner. Once two persons were similarly situated then they cannot be treated dissimilarly, in the present case when both Dr. Chokarbarti and the petitioner have been treated similarly in the matter of suspension and in the matter of payment of subsistence allowances and in the matter of reinstatement and payment of the wages during suspension period and now in order to justify the action of the University in giving a favourable treatment that he superannuated and the gravity of the charge against him is lesser than that of the petitioner is only after thought. There is no justification to justify the case of petitioner being distinguishable to that of Dr. Chokarbarti. In this connection Mr. Mridul has invited my attention to Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others, In that case their Lordships have taken the view that in spite of the fact that some of the persons are illegally operating the buses on the nationalized route whereas others were not permitted. Their Lordships have observed that similar treatment should be given to the petitioners also, it was observed thus:

Where while cancelling and/or curtailing permits of petitioners permit holders for routes, parts of which overlapped with the notified routes other permit holders in the same class having stage carriage permits for certain routes parts of which were overlapping with the notified route were treated favourably by neither curtailing nor cancelling their permits and were permitted to ply their stage carriage by passing over a portion of the notified route, the Supreme Court directed that the order/conditions in permits curtailing the permits of the petitioners prohibiting them from passing over the overlapping portion of their routes with the notified route be quashed and declared to be of no consequence till all the operators including those excluded and similarly situated were similarly treated, when the Court did not find any willingness on the part of the State authorities to rectify the error either in the High Court or before the Supreme Court. Discrimination under Article 14 is conscious discrimination and not accidental discrimination that arises from over-sight which the State is ready to rectify.

13. Similarly their Lordships of the Supreme Court in the case of Virendra Singh Vs. State of Maharashtra, , held, that the large number of railway employees who were having two years services were promoted to the post of chargemen grade-II, their Lordships have held that the persons similarly situated should also be promoted after completing period of two years. Their Lordships held as under:

Constitution of India, Articles 16, 14--Matters relating to employment & Promotion Large number of persons who have completed only two years of service, promoted to post of Chargeman Grade-II--Other persons similarly situated should be similarly promoted after completing same period of service--Government cannot insist that they cannot be considered for promotion unless they complete 3 years service--No justification for such differential treatment.

14. In the case of Virendra Kumar and Others Vs. Union of India (UOI), the large number of police employee who were dismissed from service for participation in the agitation, number of persons were reinstated, their Lordships observed that the other persons left out cannot be denied similar treatment. Their Lordships have held as under:

If the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, there was no justification in treating the petitioners differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. On that conclusion the treatment meted to the petitioner suffered from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14.

Similar view has been taken in the case of Harmindar Singh v. Sate of Punjab and Ors. 1984 LIC 444.

15. In this view of the matter I failed to see that why similar treatment should not be given to the petitioner. As I have already stated above that the distinction which is sought to be made out to distinguish the case of petitioner qua Dr. Chokrobarti is not so substantially so as to place him a class apart. I do not think a similar treatment can be denied to the petitioner. When the petitioner specially filed writ petition in the year 1974 and order was passed after hearing both the parties and in terms of that order the petitioner was allowed full salary and pay allowance and it was said that the petitioner should furnish adequate security to the satisfaction of the Registrar for repayment of the difference between the normal emolument payable to the petitioner and subsistence allowance which would have been payable to him in accordance with the suspension order in case the writ petition fails. This writ petition was withdrawn and it was not dismissed on merit. Moreover the petitioner is still in service and in case in the departmental enquiry petitioner is found guilty then it is open for the authorities to determine the amount payable during the period of suspension. More over in

the case of Mr. Chokarbarti, the University has already withheld the gratuity but they have completely exempted the recovery amount paid to him during the period of suspension.

16. Since the petitioner is in service therefore, if the payment for the suspension period is paid to him subject to the decision of the disciplinary enquiry then the University's interest can be safeguarded.

17. In the result I allow this writ petition and quash the order of the University dated 23-1-1982 and direct that the University shall return this amount back to the petitioner. However the petitioner shall furnish adequate security to the satisfaction of the Registrar University of Udaipur for repayment of difference between the normal emoluments payable to petitioner and subsistence allowance which would have been payable to petitioner in accordance with the suspension order, subject to the decision of the departmental enquiry. In case after the termination of departmental enquiry if the authorities want to decide to pay him only subsistence allowances during the suspension period then the difference of the amount may be adjusted against the petitioner's provident fund or gratuity as the case may be. The parties are directed to bear their own costs.