
(1983) 01 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 181 of 1982

Dr. Sudhir Kumar

APPELLANT

Vs

University of Udaipur

RESPONDENT

Date of Decision : 03-01-1983

Acts Referred:

Udaipur University Act, 1962 — Section 43

Citation : (1983) WLN 4

Hon'ble Judges : D.L. Mehta, J

Bench : Single Bench

Judgement

D.L. Mehta, J.—Mr. Parekh raised the preliminary objection and submitted that the writ petition is not maintainable on the following grounds:

(1) Petitioner has concealed and suppressed the material facts and on this ground alone the writ petition should be rejected.

(2) Mr. Parekh has submitted that Section 43 of the Udaipur University Act of 1962 provides that the decision of the Board on all such matters shall, subject to the revision by the Chancellor, be final and shall not be liable to be challenged in any court or tribunal. His submission is that the revisional power vests in the Chancellor and the petitioner has not availed an alternative remedy and as such the writ petition is not maintainable, and the petitioner should be directed, if he so chooses to avail the alternative remedy.

(3) That there is misjoinder of cause of actions. Exs. 6,8 and 9, Ex. R1/8 are not in any way connected with each other and each of them gives fresh independent cause of action, and the writ petition should fail, on account of misjoinder of cause of actions.

2. Mr. Parekh has submitted that the petitioner is guilty of making unfounded and baseless allegations against the former Vice Chancellor, Dr. P. S. Lamba. He has submitted that Dr. P.S. Lamba has been ousted from office of the Vice Chancellor is wholly unfounded and false. It will be clear that Dr. P. S. Lamba had tendered

his resignation from the post of the Vice Chancellor, University of Udaipur, and the Chancellor had accepted his resignation, and he has produced a copy of Ex. R3 to substantiate the fact of resignation. He has further submitted that the petitioner has alleged that the stay order had been passed in S. B. Civil Writ Petition No. 2315 of 1974 filed by him to the effect that the petitioner will continue to be paid his emoluments without any deduction whatsoever during the period of his suspension, and he has concealed very important part of it. His submission is that the petitioner has wholly distorted the order dated 3.10.74 passed by this Court vide Ex. R 1. He has invited my attention to show that the order is conditional and the petitioner has not referred at all about the conditions which have been imposed in the order. The condition precedent was that the excess amount over and above the subsistence allowance, which shall be paid to the petitioner in pursuance of the order Ex. R 1, shall be recovered from the provident fund of the petitioner in the University, in case the writ petition is dismissed.

3. Mr. Parekh's submission is that this fact has been deliberately concealed and omitted which was essential part of the order in order to mislead this Hon'ble Court. The other condition which was also in Ex. R 1 relating to the security has also not been mentioned in the writ petition. Mr. Parekh has submitted further that intentionally the petitioner has not produced the order dated 3.10.74 passed by this Court in S.B. Civil Writ Petition No. 2315/74.

4. Mr. Parekh has also submitted that the petitioner has also distorted that the enquiry which was commenced against the petitioner out of spite and as such the then Vice Chancellor Ranveer Singh reinstated the petitioner vide his order dated 25.8.77. The petitioner has concealed the fact that the re-instatement of the petitioner was not unconditional but in fact there was a condition that the reinstatement of the petitioner is without prejudice to such a disciplinary action which might become necessary as a result of finding of the enquiry being conducted by Mr. V.D. Sharma, Enquiry Officer, and has produced Ex. R 1/2 to substantiate the submission made by him.

5. Mr. Parekh has submitted that this Court has passed the stay order dated 9.2.82 on the basis of the distorted facts of the petitioner and the petitioner is guilty of distorting the facts. His contention is that the petitioner intentionally failed to bring to the notice of the Hon'ble Court Ex. R/1, the order dated October 3, 1974. His further submission is that in this very order Ex. R1/1 two conditions have been laid down. There was a condition that the petitioner shall repay the amount paid under the order of the Court, and shall also furnish the security for the same.

6. Mr. Mridul appearing on behalf of the petitioner has vehemently submitted that it is not a case of concealment or suppression of the facts at all and he has tried to impress the court that the facts have been stated by him. As far the order dated October 3, 1974 is concerned, he has invited my attention to some paras of the writ petition, in which a reference has been made about the stay order

granted on October 3, 1974. In any of these paragraphs, no reference has been made about the conditions imposed therein He has mentioned about the fact of recovery of the excess amount paid during the period of suspension over and above the subsistence allowance from the provident fund of the petitioner.

7. He has also drawn my attention to Annexure 8, in which a reference has been made about the order dated 3.10.74 In that Annexure there is a reference about the fact of the condition of the order dated 3.10.74. In Ex.6, there are minutes of meeting of the Executive Committee held on December 3, 1981. The Executive Committee took the decision referred to on page 31 that accepting the undertakings by the seven persons and withdrawing the charge sheets served upon them for the reasons of Resolution No. 25 dated 2.8. 80 of the Board of Control be stayed for following reasons. Vide Ex. 5. pursuant to Resolution No. 25 of the Board of Control dated 2.8.80 the Vice Chancellor has been pleased to accept the undertakings given by the seven persons to withdraw the charge sheet served on them, including the petitioner. In these minutes it was considered proper that the matter may be referred to the Chancellor for final orders and it seems that vide Ex. R1/8, Chancellor was pleased to order that the Resolution No. 25 is improper and against the interest of the University, and the resolution, therefore, was quashed in exercise of the powers conferred on him u/s 43 of the Udaipur University Act, 1962. He had further held that the working of all farms should be subjected to a careful examination in order to find out if the default and irregularities have been committed at farms and if so, all such persons who are found to have been involved in these irregularities should be brought to book through disciplinary enquiry and other appropriate actions. The petitioner has prayed in the writ petition that the University may be forbidden from commencing the re-enquiry against the petitioner since closed by the resolution of the Board of Control dated 2.8 80 and not to effect his suspension on account of such an enquiry being recommended, He has further prayed that if any order in this behalf is found to have been made by the Chancellor, the same may be declared to be illegal and may be quashed.

8. Section 43 of the University Act provides that the Board shall have the authority to deal with any matter pertaining to the University and not specifically dealt with in this Act. The decision of the Board on all such matters shall, subject to revision by the Chancellor, be final and shall not be liable to be challenged in any court or tribunal. It was submitted that as far as Ex. 8 order dated January 23, 1982 is concerned, it has been passed by the Registrar by the order of Vice Chancellor. Similarly, Ex. 9 has been passed by the Registrar. It was submitted that it cannot be said that petitioner had an alternative remedy u/s 43 of the Act of 1962.

9. Learned Counsel for the petitioner has also pointed out that Ex. 6 is the minutes of the Executive Committee and not the Board of Control. However, Mr. Parekh has invited my attention to the provisions of Rule 10 cl.(iii-a) and has submitted that the Executive is having the powers of the "Board of Control and

as such the resolution passed by the Executive can be revised by the Chancellor u/s 43 of the Act of 1962.

10. Mr. Mridul, on the other hand, submitted that Section 43 itself does not apply as the section is applicable in residuary matters, and not in the matters which have been specifically provided in the Act. Mr. Mridul has also pointed out that apart from others he has challenged the re-enquiry proceedings and has prayed that the order dated 2.8.1980 of Board of Control should be maintained and if the Chancellor has made any order superseding the resolution dated 2.8.80, then the order may be declared as illegal. It is clear that Ex. R1/8 is the order, which has been passed by the Chancellor superseding the resolution No. 25, dated 8.2.80, then it may be declared illegal. Mr. Mridul has submitted that in such circumstances, it was neither practicable nor desirable to approach the Chancellor even u/s 43.

11. Mr. Parekh has pointed that prayers "A" & "B" relate to the re-enquiry His submission is that in pursuance of the resolution passed by the Executive Committee vide Ex. 6, the matter was referred to the Chancellor to reconsider the resolution No. 25 dated 2.8.80, and the Chancellor has passed the order vide Ex. R1/8 dated January 29, 1982 that the resolution No. 25 was quashed. Thus, Ex.6 has merged in Ex. R1/8, the order dated January 29, 1982 and even Ex. R6 was intermediary in their nature, as there is a specific mentioning of the fact that the reference be made to the Chancellor. Mr. Parekh has submitted that though the petitioner had not made any specific plea for setting aside the order Ex. R1/8. Even if it is assumed that the prayer "B" viz "if any order in this behalf is found to have been made by the Chancellor the same may be declared to be illegal and may be quashed" relates to Ex. R1/8, even then the cause of action is an independent cause of action and has no connection whatsoever with Ex. 8 and Ex.9, and for this reason also the writ petition does not lie. Mr. Parekh has also submitted that Ex.3 is the order passed by the Registrar on the direction of the Vice Chancellor, and he has passed this order only to implement the directions given by this court on 3-10-74, Hon'ble Justice D.P. Gupta vide Ex R1 passed the order that "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 the University in case the writ petition is dismissed." The writ petition was withdrawn by the petitioner and as such it was dismissed as withdrawn. Mr. Parekh submitted that amount which has been paid in excess and subsistence allowance has been paid on account of the order Ex.R1/1 and recoveries which are going to be effected vide Annexure 8, is of the amount paid in excess because of the order Ex. R1/1. and the recoveries are

being effected according to the terms and conditions laid down in the stay order Ex RI/I. Thus, Ex.8 is not at all in any manner connected with any of the submissions made by the petitioner and is based on independent cause of action and it has no relevancy what so ever with the proceedings of re-enquiry started in pursuance of the order Ex. R1/8.

12. Mr. Parekh has also submitted that Annexure 9 is altogether different order as the petitioner was holding the post in an ad hoc capacity as Senior Breeder (Cotton), A1CRP on Cotton Improvement, Agricultural Research Station, Sri Ganganagar. The term of his ad hoc posting ended on 31-12-1981, because of the afflux of time and no further extension order was passed. Mr. Parekh has submitted that Annexure 9 is an order having no relationship what so ever with any of orders referred to above. He has further pointed out that post has not been kept alive.

13. I feel that it is not necessary for me to decide the point of concealment and suppression of facts as well as the question of alternative remedy As I am of the view that the writ petition suffers from the misjoinder of cause of action and one writ petition cannot lie in respect of all the prayers made. Mr. Mriful has pointed out that all the actions taken by the University vide Exs. 6, 8 and 9 and consequently, the order Ex. RI/8 have been passed because of malice and thus every order is interlinked and there is a common cause of action because of malice. He has pointed out that he has taken the plea that he withdrew the writ petition because of the assurances given by the Vice Chancellor and thereafter, the Resolution No. 25 dated 2-8-80 was passed and the enquiry proceedings charge-sheets were withdrawn. The subsequent act of the Executive, which is not hiving the powers of the Board of Control in the strict sense as the delegated powers can be review-by the Board of Control The Executive Committee referred to the Chancellor and in pursuance thereof the resolution No. 25 dated 2-8-80 was quashed by the Vice Chancellor. The order of recovery is based on the withdrawal of the report and the writ petition has been withdrawn because of the assurances of the Vice Chancellor given to him and thus he submits that there is a link between the recovery and the proceedings for re-enquiry initiated. He has further tried to show that Ex 9 order has also been passed because of malice and it is nothing but the continuation of the whole proceedings initiated on account of malice. Mr Parekh has further submitted that the post which the petitioner was holding is no more in existence as such, no extension has been granted to Dr. Sudhir Kumar on the said post.

14. I have persued the orders Ex.8, Ex. 9 and Ex. RI/8. Ordinarily relief which has not been prayed for in the main writ petition cannot be allowed by the submissions made by the petitioner in the rejoinder. However, there are some exceptions to this rule. Even if we consider the prayer made in ground "A" and "B" together with Ex. RI/8, ever, then, the relief which the petitioner seeks by way of getting the order Ex. R1/3 set aside cannot be given in one writ petition. The causes of action of Ex. 6, Ex. 8, Ex 9 and Ex R/8 are altogether different and

one writ petition does not lie in all the matters jointly.

15. The writ petition is dismissed with the observation that the petitioner will be at liberty to file the writ petitions separately for each cause of action, if he so chooses.