
(2004) 05 DEL CK 0070

In the Delhi High Court

Case No : Writ Petition (C) No. 2982 of 2001

Dr. T.J. O'Brien

APPELLANT

Vs

The University of Delhi and Others

RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Citation : (2004) 74 DRJ 723

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : V.P. Chaudhary and Nitinjya Chaudhary, for the Appellant; S.K. Luthra, for respondent No. 1, Sudhir Chandra and Trideep Pal, for the Respondent

Judgement

Pradeep Nandrajog, J.—Though various reliefs have been claimed in the writ petition, during arguments challenge was restricted to the suspension order dated 16.4.2001 placing the petitioner under suspension and as a consequence thereof it was prayed that petitioner be directed to be reinstated with all consequential benefits. It was also contended that the governing body of the college has no power to dismiss the petitioner.

2. The prayer which was ultimately pressed, as noted above, pertaining to the suspension of the petitioner was argued from various facets. The same being:-

a) The Governing Body which took the decision, being not constituted in accordance with the relevant ordinance of the University, its decision was non-est and void in the eyes of law.

b) The meeting at which the decision was taken was not validly convened.

c) Neither the Governing Body nor the Vice-Chancellor had power to suspend the petitioner, only the Executive Council of the University of Delhi had the power.

d) It was only the Executive Council of the University which could have initiated action for suspension of the petitioner.

e) In any case, it was only the Executive Council which could approve suspension of the petitioner and there being no approval from the Executive Council, suspension was illegal.

f) Suspension was malafide as respondent No. 3 bore ill-will and malice qua the petitioner.

3. The factual backdrop of the case is that petitioner was appointed, on permanent basis, as Principal of Desh Bandhu College (Evening) with effect from 5.6.1998. While he was functioning as Principal of College, a fact finding committee was constituted to look into the allegations made against the petitioner by a section of the teachers.

4. There is a slight dispute on facts which is not relevant, but is noted by me for purposes of record. Petitioner alleges that a committee under the Chairmanship of Professor S.S. Chhiber investigated the charges and exonerated the petitioner. Thereafter on the same allegations another committee under the Chairmanship of Professor A.K. Sinha re-investigated the matter and absolved the petitioner. Yet another committee presided over by Mr. Justice M.L. Jain (Retd. Judge of Delhi High Court) was appointed. This committee was succeeded by Mr. Justice Satpal (Retd. Judge of the Punjab and Haryana High Court). According to the respondent college, the erstwhile enquiry committees did not take final view of the matter entrusted to them, in that, no report was submitted. Thus, according to the respondent matter never attained finality and it was the one man commission presided over by Mr. Justice Satpal which was investigating the matter.

5. During the pendency of the investigation by the fact finding committee by Mr. Justice Satpal, petitioner was directed to proceed on "administrative leave". Petitioner challenged the same alleging that there was no power vested in the governing body to direct the petitioner to go on administrative leave. This found favor with a learned Single Judge of this court. WP(C) 1529/2000 filed by the petitioner was allowed.

6. On 27.6.2000, respondent No. 3, Mr. P.K. Kaul (IAS Retd.) was appointed as Chairman of the governing body. Petitioner alleges malice against respondent No. 3.

7. Facts on which malice is pleaded are that said respondent challenged the decision of this court in WP(C) 1529/2000 by filing an appeal, which appeal, as per the petitioner was filed after petitioner had initiated contempt petition being CCP No. 432/2000 in as much as the judgment and order dated 19.8.2000 passed in WP(C) 1529/2000 was not being complied with. Since respondent No. 3 had to comply with the said judgment and order dated 19.8.2000, he was impleaded as a contemner. Petitioner alleges that due to this, respondent No. 3 turned hostile towards the petitioner. Petitioner alleges that the decision to file appeal was not the collective decision of the governing body but was the individual decision of respondent No. 3.

8. Since Justice Satpal Committee was continuing with the enquiry and it was indicated that the enquiry would be completed shortly, on 8.9.2000, the Division Bench of this court which was hearing the appeal filed against the judgment and order dated 19.8.2000, deferred hearing.

9. On 16.8.2001, petitioner was served with an order of even date issued under the signatures of respondent No. 3. The said order reads as under:-

""To

Dr.T.J.O" Brien

B-127, Swasthya Vihar,

Vikas Marg,

Delhi-110092

16th April, 2001

Sir,

The Governing Body of the Deshbandhu College at its meeting held on 9th February, 2001 had on a prima facie basis held you guilty of some acts of misconduct. The GB had also decided to place you under suspension. This proposal of the Governing Body has now been approved by the University authorities vide their letter dated 16th April, 2001.

This letter Therefore is to inform you that in terms of the approval given by the University to the recommendation made by the Governing Body, you are hereby placed under suspension with effect from 16th April, 2001.

Further that from this date you will cease to be on administrative leave. The emoluments will be as per applicable rules and regulations of the University. You have already vide letter dated 3rd April, 2001, been asked to offer your Explanation on the Prima facie view taken by the Governing Body on the acts of misconduct allegedly committed by you. Your response has been requested dated by 21st April, 2001. The Governing Body will take a final view in this matter after receiving and studying your Explanation, if any. A copy of the Resolution of the Governing Body and a copy of the report of Justice Satpal is already with you,

Yours faithfully,

(P.K. KAUL)

Chairman

For and on behalf of the Governing Body of Deshbandhu College, Kalkaji, New Delhi-110019.""

10. It is the said order which has been challenged on the grounds noted above.

11.If contention of the petitioner that only the Executive Council of the University

had the power to suspend him is accepted, I need not deal with the other contention, as admittedly, the Executive Council has neither taken nor approved the decision to suspend the petitioner. This requires a look at the provisions of the Delhi University Act 1922, the Statutes Ordinances and Regulations framed there under.

12. University of Delhi stands established under the Delhi University Act 1922. Statutes, Ordinances and Regulations are the ones made under the Act. u/s 4 of the Act, the University has, amongst others, following power:-

""4. The University shall have the following powers, namely :

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9) to maintain Colleges and Halls, to admit to its privileges Colleges not maintained by the University and to withdraw all or any of those privileges, and to recognise Halls, not maintained by the University and to withdraw any such recognition.""

13. Section 8 of the Act lists the officers of the University. Same reads as under:-

""8. The following shall be the officers of the University :

(i) the Chancellor,

(ii) the Pro-Chancellor,

(iii) the Vice-Chancellor,

(iv) the Pro-Vice-Chancellor, if any,

(v) the Treasurer,

(vi) the Registrar,

(vii) the Deans of the Faculties, and

(viii) such other persons in the service of the University as may be declared by the Statutes to be officers of the University.""

14. Section 17 of the Act lists the Authorities of the University. Same reads as

under:-

""The following shall be the Authorities of the University :

- (i) The Court,
- (ii) The Executive Council,
- (iii) The Academic Council,
- (iii-a) The Finance Committee,
- (iv) The Faculties and
- (v) such other authorities as may be declared by the Statutes to be authorities of the University.""

15. Section 21 of the Act stipulates that:

""21. The Executive Council shall be the executive body of the University, and its Constitution and the terms of office of its members, other than ex-officio members, shall be prescribed by the Statutes.""

16. Section 28 of the Act is the statutory source of the power for the "Statutes" of the University. Inter alia, the said section provides:

""28. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:

(a) The Constitution, powers and duties of the Court, the Executive Council, the Academic Council, the Finance Committee and such other bodies as may be deemed necessary to constitute from time to time.""

17. Section 29 provides :

""29. (1) On the commencement of the Delhi University (Amendment) Act, 1943, Statutes of the University shall be those set out in the Schedule.

(2) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes.""

18. Section 30 provides:

""30. Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely :

- (a)
- (b)
- (c)
- (d)
- (e)

(f)

(g)

(h)

(i)

(j)

(k)

(l) the management of Colleges and other Institutions founded or maintained by the University.'"

19. Section 32 provides :-

"32. (1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances:

(a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations; and

(c) providing for all other matters solely concerning such authorities or committees appointed by them and not provided for by this Act, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings and for the keeping of record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this Section or the annulment of any Regulation made under Sub-section (1) :

Provided that any authority or Board of the University which is dissatisfied with any such direction may appeal to the Court, whose decision in the matter shall be final.'"

20. Statute 11-G stipulates the powers of the Vice-Chancellor. It reads as under:-

"11-G(1) The Vice-Chancellor shall be the Principal Executive and Academic Officer of the University and shall take rank in the University next to the Pro-Chancellor. He shall be the ex-officio Chairman of the Executive Council, the Academic Council and the Finance Committee, and shall, in the absence of the Chancellor and the Pro-Chancellor, preside at the Convocation to confer degrees. In the absence of the Chancellor and the Pro-Chancellor, he shall also preside at the meetings of the Court. He is all be entitled to be present at and to address

any meeting of any authority or other body of the University but shall not be entitled to vote thereat unless he is a member of such authority or body.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all powers necessary for that purpose.

(3) He shall have the power of convening meetings of the Court, the Executive Council and the Academic Council and shall perform all such acts, as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

(4) If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided further if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council.""

21. Chapter 7 of the Ordinances of the University consisting of Ordinance XVII to XX deals with Colleges and Halls.

22. From a perusal of the provisions noted above, it is apparent that the Act, Statutes, Ordinances and Regulations of the University of Delhi have a Statutory character. The Vice-Chancellor of the University is an officer of the University. The Executive Council is one of the authorities of the University. The powers, duties and functions of the Vice-Chancellor and other officers of the University, the Executive Council and other authorities of the University are limited by the Statutes, Ordinances and Regulations of the University.

23. The Statutes, Ordinances and Regulations, amongst others, provide for the management of colleges and other institutions founded or maintained by the University of Delhi.

24. The Vice-Chancellor of the University of Delhi, vide Statute 11-G is the Principle Executive and Academic Officer of the University. He is charged with the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed. He is to convene the meeting of the Executive Council.

25. Under Clause (iv) of Statute 11-G, emergency power is vested in the Vice-Chancellor to take such action as he deems necessary. However, if the Vice-Chancellor exercises his emergency power under Clause (iv) of Statute 11-G, he

is obliged to report the same for confirmation at the next meeting of the authority which, in the ordinary course would have dealt with the matter.

26. As noted above, Chapter 7 of the Ordinances consisting of Ordinances XVII to XX deals with colleges and halls. For the purposes of the present writ petition, we are concerned with Ordinance XX-B. The said Ordinance deals specifically with Deshbandhu College.

27. Clause (2) of Ordinance XX-B stipulates as under:-

""2. The Executive Council shall constitute for the College, a Governing Body to administer affairs of the College, constituted as follows:

(i) A person appointed by the Vice-Chancellor-Chairman

(ii) Treasurer (Ex-officio)

(iii) The Principal of the College (Ex officio) - Member-Secretary

(iv) Not less than five and not more than eight members appointed by the Executive Council, not necessarily from among themselves.

(v) Two members of the teaching staff from among the teachers of the Day Classes and two members of the teaching staff from among the teachers of the Evening Classes by rotation according to seniority for a term of one year. One of the teachers' representatives from the Day Classes and one of the teachers' representatives from the Evening Classes shall be from among those with more than 10 years' service, and one of the teachers' representatives from the Day Classes and one of the teachers' representatives from the Evening Classes shall be from among those with less than 10 years' service. If, however, eligible candidates are not available in one of those categories, both the representatives may be taken from the other:

Provided that a teacher who has become member of the Governing Body of the College under the category of teachers with less than ten years' service and completes his ten years' service during the term of his membership as such, will nevertheless continue to be a member of the Governing Body for the full term of one year.""

28. Clause (4) of Ordinance XX-B reads as under:-

""4. Subject to the general control and supervision of the Executive Council, the Governing Body shall exercise the following powers and functions:

(a) to organise the teaching in the College and to determine teaching requirements of the College;

(b) to admit students to the various courses as per rules laid down by the Academic Council from time to time, resident and non-resident, and to prescribe the fees to be paid by them;

(c) to submit to the Executive Council an estimate of the income and expenditure of the College and to incur expenditure within the limits fixed in the budget approved by the Executive Council;

(d) to consider the Annual Accounts Along with the Audit Report and after approval to submit the same to the Executive Council for information Along with its comments.

(e) to create, appoint, suspend or terminate the services of the administrative and other non-academic staff and to determine their emoluments and conditions of service;

Provided that the qualifications for appointment, emoluments and conditions of service of such persons shall be in accordance with those laid down by the Executive Council for similar posts in the University;

(f) to appoint the Principal and the teaching staff on the recommendations of the Selection Committee appointed for the purpose, subject to the approval of the appointment of the Principal and the recognition of the teaching staff by the Executive Council;

(g) to grant leave to teachers and other staff according to the rules framed for the purpose;

(h) to define the duties and responsibilities of the Principal, teaching staff and administrative staff of the College; and

(i) to do such other acts as may be necessary for the exercise of the above functions."''

29. Ordinance XX generally deals with the Colleges and Institutions maintained by the University. Ordinance XX sets out the provisions dealing with Miranda House, Vallabh Bhai Patel Chest Institute, School of Correspondence Courses and Continuing Education on, College of Vocational Studies, Dr. B.R. Ambedkar Centre for Bio-Medical Research and WUS University Hostel for PG Women Researchers/ Teachers of the University and Visiting Teachers. It is to be noted that pertaining to School of Correspondence Courses and Continuing Education, a specific power is vested in the governing body of the said college to suspend or terminate the services of the academic staff, subject to the approval of the Executive Council but no such power is vested in the governing body under Ordinance XX-B dealing with Deshbandhu College or pertaining to the other colleges with which Ordinance XX concerns itself with. Pertaining to the School of Correspondence Courses and Continuing Education there is a clause in the relevant part of the Ordinance which stipulates as under:-

`To suspend or terminate the services of the academic staff of the school, subject to the approval of the Executive Council".

30. It is also important to note that under clause 4 of Ordinance XX B, power to appoint, suspend and terminate services of non academic staff of the college is

vested in the governing body, but relating to the principal and teaching staff, only power to appoint is vested and that too after the prior approval of the Executive Council.

31. A perusal of the statutory provisions of the Delhi University Act, Statutes Ordinances and Regulations noted above would bring out that as per sub-section 9 of Section 4 of the Act, the University of Delhi has the power to maintain colleges. The Vice Chancellor of the University, as per Section 8, is one of the officers of the University and the Executive Council is one of the authorities of the University, vide Section 17 of the Act. Vide Section 21 of the Act, the Executive Council is the executive body of the University. Section 28 of the Act is the statutory source of powers for the Statutes of the University. It stipulates that the Statutes which would be framed would provide for the powers and duties of the Executive Council. Vide Section 30 of the Act, the Statutes and Ordinances may provide for the management of the colleges founded or maintained by the University. Vide Section 32, the authorities of the University are empowered to make regulations providing for matters to be dealt with by the Committees appointed by the authorities of the University.

32. Ordinance XX-B provides that the Executive Council shall constitute a governing body of Desh Bandhu College. The said ordinance empowers the governing body to exercise the powers and functions with which it is vested under Clause 4 of Ordinance XXII- B. It is further to be noted that this exercise of power by the governing body is subject to the general control and supervision of the Executive Council.

33. Therefore, the legal position would be that the governing body of Desh Bandhu College, being a Committee appointed as per Ordinance XXII-B, which Ordinance gets statutory flavour from Section 32 of the Act, empowers the governing body of the College to exercise such powers which are vested in it.

34. Ordinance XXII-B would reveal that in respect of administrative and other non-academic staff, subject to the general control and supervision of the Executive Council, the governing body is empowered to create, appoint, suspend or terminate the services of the said category of staff. Pertaining to the Principal or teaching staff of Desh Bandhu College, the only power vested in the governing body is the power to appoint the principal and teachers. There is no power of suspension or termination vested in the governing body of Desh Bandhu College to suspend or terminate the principal or the teaching staff. It may be relevant to note that Ordinance XX generally deals with colleges and institutions maintained by the University. Only in respect of the School of Correspondence Courses and Continuing Education, the governing body of the said school has been empowered to suspend or terminate the services of the academic staff of the school after obtaining the approval of the Executive Council. Further under clause 4 of Ordinance XX B power to suspend or terminate is vested in the governing body of Deshbandhu College only qua non academic staff.

35. The intention of the makers of the Ordinance is clear. Governing body of Desh Bandhu College has not been conferred any power to suspend or terminate the services of the principal of the College.

36. Respondents contended that power to appoint would include the power to suspend and terminate.

37. Dealing with the issue of power of suspension, the Supreme Court in its decision reported as *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, held:-

The first question Therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, Therefore the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed there under, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These principles of the ordinary law of master and servant are well settled and have not been disputed before us by either party. Reference in the connection may be made to *Hanley v. Pease and Partners, Ltd.* 1915 1 KB 698, *Wallwork V. Fielding* 1922 2 KB 66 , *Secretary of State Vs. Surendra Nath Goswami*, and *Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore*, ""

38. The Division Bench of this Court in the judgment reported as 1981 (1) SLR 84, *Prabhu Dayal and Others vs. MCD*, in para 14, held:-

""We need hardly recall that it is settled law that an employer has no inherent right to suspend the contract of service of an employee and that such a right must be found either in contract or in statute.""

39. Assuming for the sake of argument that by virtue of Section 16 of the General Clauses Act 1897, since power to appoint the Principal of Desh Bandhu College is vested in its governing body, power of suspension would be included as an adjunct to the power to appoint. Assuming further that the Ordinance of the University would be a regulation within the meaning of Clause 50 of Section 3 of the General Clauses Act, the governing body would still have no power to suspend the principal of Desh Bandhu College. The reason being that u/s (f) of Clause 4 of Ordinance XXII-B, power to appoint the principal of Desh Bandhu College vested in the governing body of the college is not an unqualified power of

appointment. It is subject to the approval of the Executive Council. Therefore, power to suspend would also be subject to the prior approval of the Executive Council. Admittedly, no approval has been accorded by the Executive Council.

40. To get over this problem, counsel for the respondent contended that the Vice Chancellor of the University has accorded approval to the decision of the governing body to suspend the principal. It is contended that Ordinance XII is attracted and "Form Of Agreement Of Service For College Teachers" which is an annexure to the said Ordinance XII would be attracted. It was submitted that Clause 7 of the Annexure being the Form Of Agreement Of Service For College Teachers is the source of power for suspension of the petitioner. The said Clause 7 of the Form Of Agreement Of Service For College Teachers appended to Ordinance XII reads as under:-

""7. The question of termination of the services of the Principal/Teacher or his suspension, shall not to be decided by the College/Institution without the prior approval of the Vice Chancellor.""

40. Ordinance XII reads as under:-

""Ordinance XII. College Appointed Teachers.

(1) In this Ordinance, unless the context otherwise requires, a teacher includes a Principal of a College.

(2) No whole-time teacher shall be engaged by any college as a member of its staff except on an agreement of service in the form annexed hereto or an agreement substantially to like effect and every teachers shall sign the agreement before he enters upon his duties.""

41. The Form Of Agreement Of Service For College Teachers is the form annexed to the said Ordinance. Said form contains Clause 7 as noted above.

42. The aforesaid submission of the respondent and reliance on Ordinance XII and Clause 7 of the form of agreement of service for college teachers is wholly misplaced.

Ordinance XVIII-B of the Ordinances reads as under:-

""Ordinance XVIII-B.

""The provisions of Clause 2(a) and 2(b) of Ordinance XII and Clause 7(4),(c), (b) of Ordinance xviii will apply mutates mutants to colleges and institutions managed by the University under Ordinances XX(1), XX(4), XX(5), XX B, XX(C), XX(E) and XX(F).

43. As noted above, Desh Bandhu College is covered by Ordinance XX-B. Therefore, by virtue of Ordinance XVIII-B, in so far as Ordinance XII is concerned, only Clause 2a and 2b of Ordinance XII have been made applicable, mutates mutants, to Desh Bandhu College. Therefore, Clause 2 of Ordinance XII is not applicable to Desh Bandhu College. As a consequence the form of

agreement of service for college teachers which contains Clause 7 is not applicable to Desh Bandhu College.

44. To summarize the issue, governing body of Desh Bandhu College, being constituted by the Executive Committee as per Clause 2 of Ordinance XX-B is not empowered under the said Ordinance to suspend or terminate the principal of Desh Bandhu College. The governing body has the power to appoint the principal subject to the approval of the Executive Council. Clause 2 of Ordinance XII not being attracted, principal of Desh Bandhu College can be suspended by the Executive Council alone. In any case, assuming that the power to appoint includes the power to suspend, then again, since the power to appoint the principal of Desh Bandhu College, vested in the governing body of the college, is subject to the prior approval of the Executive Council, power to suspend would also be subject to the approval of the Executive Council. Clause 2 of the Ordinance XII not being attracted, the form of agreement referred to in Clause 2 of Ordinance XII is wholly inapplicable. The Vice Chancellor cannot take recourse to Clause 7 of the said form of agreement of service for college teachers. Further if power to appoint includes power to terminate, since the governing body of the college can appoint the principal with the approval of the Executive Council, power to terminate has to be hedged with same condition.

45. In view of my decision aforesaid, since it is held that the governing body of Desh Bandhu College has no power to suspend or terminate the services of the principal of Desh Bandhu College or in any case, without prior approval of the Executive Council, the governing body cannot suspend or terminate the principal of Desh Bandhu College and admittedly there being no decision nor prior approval of the Executive Council to suspend the petitioner, I need not decide the other issues which were raised.

46. The writ petition succeeds. The suspension order dated 16.4.2001 is quashed. Petitioner would be entitled to full wages for the period he remained suspended. Petitioner would be entitled to costs in the sum of Rs.10,000/- to be borne by respondent No. 2.