

**(1966) 10 AHC CK 0031**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No's. 1835 and 2373 of 1966

Dr. Vidya Niwas Misra

APPELLANT

Vs

University of Gorakhpur and Others

RESPONDENT

**Date of Decision :** 18-10-1966

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1967 All 426 : (1968) 1 LLJ 431

**Hon'ble Judges :** K.B. Asthana, J

**Bench :** Single Bench

**Advocate :** S.C. Khare and R.B. Misra, for the Appellant; S.D. Agarwal and S.N. Kacker, for the Respondent

**Final Decision :** Allowed

## Judgement

K.B. Asthana, J.—These two petitions have been consolidated and are being disposed of by a common judgment the parties being the same and the subject matter also being similar in fact Civil Misc. Writ No. 2373 of 1966 covers the subject matter of the connected Civil Misc. Writ No. 1835 of 1966.

2. In petition No. 1835 of 1966 the petitioner Dr. Vidya Niwas Misra, questioned the validity of a resolution of the Executive Council of the University of Gorakhpur refusing to confirm him in the post of Reader in the University in the Sanskrit Department passed in the meeting of the Council held on 7th May, 1966. This petition was presented in this Court on 20th May 1966 and was admitted on that date. It appears that subsequently at a meeting of the Executive Council of the University held on 9-7-1966 a resolution was passed refusing to extend the period of probation of the petitioner and terminating his services, This led to the filing of Civil Misc. Writ No. 2373 of 1966 which was presented before this Court and admitted on 15-7-1966. In this latter petition the former resolution of the Executive Council of the University dated 7th May, 1966 has also been challenged. In effect the petition (No. 1835 of 1966) filed earlier in a way, has merged into this latter petition.

3. The petitioner was appointed as an Assistant Professor in the Sanskrit Department of the University in the year 1957 and was confirmed in that post in the year 1959. Later on the post of Assistant Professor was designated as the post of Lecturer in the year 1962 and the petitioner continued on that post. In 1964 the post of Reader in the Sanskrit Department fell vacant and the University invited applications for appointment to the post of Reader by issuing advertisement. The petitioner applied in response to the advertisement and after appearing before a Section Committee was appointed on probation for two years on the Substantive post of Reader by a resolution of the Executive Council of the University dated 18-5-1964. The period of probation of the petitioner was to expire on 17-5-1966. For the meeting of the Executive Council called on 7-5-1966 the question of confirmation of the petitioner, amongst other teachers of the University, was on the agenda. The Executive Council passed the following resolution:

"The Council examined the case of Dr. V. N. Misra. Reader. Department of Sanskrit. Gorakhpur University for confirmation after the expiry of the period of probation and after careful examination, having found his work and conduct not satisfactory decided not to confirm him."

It appears that the above said resolution of the Executive Council was considered, to have left the question of the service of the petitioner in doubt on the expiry of the period of his probation, therefore, the Executive Council passed another resolution at its meeting held on 9-7-1966. The text of resolution No. 7 of the Council dated 9-7-1966 is as follows:

"The Council received the report of writ petition filed by Dr. V. N. Misra in the High Court praying that the resolution No. 5(8) of the Executive Council meeting dated 7-5-1966 be quashed.

The report of the Vice Chancellor on the writ petition of Dr. V. N. Misra was noted and the order of the Hon'ble High Court was read.

Resolved further that as Dr. V. N. Misra's period of probation as Reader expired on 17-5-1966 and in view of the fact that the Executive Council found his work and conduct during the period of probation not satisfactory it is decided not to extend his period of probation and it is further resolved that his services as Reader be and are hereby terminated."

It may be mentioned that the reference to the order of the High Court in the above quoted resolution was to an interim order passed by this Court pending the writ petition No. 1835 of 1966 from which it appeared that there was some doubt whether the petitioner's services with the University had terminated.

4. The resolution of the Executive Council dated 7-5-66 has been challenged on the ground that as no proper notice in accordance with the regulations framed by the Executive Council was given to all the members of the Council the resolution was vitiated. Its validity has also been challenged on the ground that neither any

opportunity was given to the petitioner as required by the statutes of the University to explain his conduct before the Executive Council nor was the resolution bona fide passed, it having been passed mala fide, and on extraneous considerations. The main attack on the validity of the subsequent resolution dated 9-7-1966, by which the services of the petitioner were terminated, is based on the ground that no proper or reasonable opportunity was afforded to the petitioner by the Executive Council to put up his case in order to meet the grounds on the basis of which it was considered that the petitioner's work and conduct during the period of probation was not satisfactory. This resolution has also been attacked on the ground that it was mala fide and was based on extraneous considerations.

5. Having heard Sri S. C. Khare for the petitioner and Sri S. N. Kacker on behalf of the University. I have come to the conclusion that both the above said resolutions of the Executive Council of the University are vitiated, they being in violation of the well settled principles of natural justice inasmuch as no opportunity was afforded to the petitioner by the Executive Council to explain the grounds on the basis of which it was considered that the work and conduct of the petitioner during the period of probation were not satisfactory. It is, therefore, not necessary to examine the other grounds of attack on the validity of said resolutions. However, it may be observed that the other grounds indicated above have some amount of plausibility.

6. I shall now indicate briefly my reasons for holding that the action of the Executive Council of the University in terminating the services of the petitioner as Reader is vitiated because the petitioner was not afforded any opportunity of explanation or meeting the case against him.

7. Before examining the relevant provisions of the Gorakhpur University Act, 1956 (U. P. Act No. XX of 1956) and the First Statutes of Gorakhpur University, I think it proper to dispose of an objection raised by Sri S. N. Kacker, on behalf of the University, which may be said to be of a preliminary nature. Learned counsel submitted that a probationer has no right to the post as such, therefore, he is not entitled to maintain the petition under Article 226 of the Constitution for obtaining any direction or relief as he has no substantive right to protect. Reliance was placed in this connection by the learned counsel on certain observations of Chief Justice S. R. Das of the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), In that case the Supreme Court was considering the question as to what amounts to punishment within the meaning of Article 311 of the Constitution so as to attract the provisions of Sub-article (2) of that Article. It was observed that a probationer on any civil post or in service of the Government having no right to the post, the termination of his services in accordance with the rules would not per se be punishment or would leave any stigma on him as he had no right to the post.

I do not think in Parshotam Lal Dhingra Vs. Union of India (UOI), the Supreme Court laid down the law that a probationer has absolutely no right in the juridical

sense and he is mere volunteer and has no remedy in law if the employer acts against the terms and conditions regulating the employment either by law applying to that kind of employment or by contract entered into between the employer and the employee. I had occasion to consider a question of similar nature in Civil Misc. Writ No. 3476 of 1966 Dr. L. R. Singh v. The Chancellor, Allahabad University decided on 13-10-1966 and I have held that a probationer teacher of the University is entitled to approach this Court under Article 226 of the Constitution if in terminating his services the Executive Council of the University had not complied with the provisions of the Act or the Statutes. It would be seen that in Parshotam Lal Dhingra Vs. Union of India (UOI), the Supreme Court while adverting to the question as to when termination amounts to punishment under Article 311 of the Constitution had drawn a distinction between the status of a Government servant holding a temporary appointment, a Government servant on probation on one side and a Government servant holding a substantive post or being in permanent service on the other side.

In the case of a person holding a substantive post or being in permanent Government service, the Supreme Court held that the termination of his service per se amounted to punishment and would attract the provisions of Article 311(2) of the Constitution, in the case of a probationer or temporary Government servant the Supreme Court held that termination of his services in accordance with the terms and conditions of service or of contract would not per se be punishment for a probationer has no right to continue in the post and he could not claim that he was entitled to the post.

It could not be denied by Sri S. N. Kacker that there was rural relationship between the University and a teacher on probation as master and servant or that a probationer teacher was a teacher of the University as defined under the Gorakhpur University Act, 1956. It had to be conceded by learned counsel that the petitioner having been appointed to the substantive post of Reader in the University in the first instance on probation for two years had a right to continue on the post during that period and the Executive Council of the University as an Authority of the University being bound by the provisions of the Act, the statutes, the Ordinances and the Regulations and its powers in regard to probationers having been defined under those provisions it was incumbent on it to exercise those powers in accordance with those provisions. There is no doubt that, if the employer otherwise does not by agreement impose limitations on his power or any provisions of law applying to the employment do not impose any limitation on his power, he can always dispense with the services of his employee. But if conditions are imposed and the otherwise absolute power of the employer is limited by the law or the agreement, as the case may be, or by both, then the termination of service of the employee in violation of the law or the terms of agreement will give rise to a valid cause of action to the employee.

It is in this light that the material provisions of the Gorakhpur University Act, 1956, the Statutes and the Ordinances have to be examined. I think it is open to

the petitioner to approach this Court under Article 226 of the Constitution and show before the Court that in terminating his services the Executive Council of the University violated the material provisions of the Act, the Statutes, the Ordinances and the Regulations and it acted in excess of its power.

8. The Gorakhpur University has been established and incorporated under the Gorakhpur University Act, 1956. One of the Authorities of the University constituted under the Act is the Executive Council. Section 28 of the Act empowers the Executive Council to appoint teachers of the University on the advice of the Selection Committee concerned. That section further provides that in the first instance every teacher appointed will be on probation for such period as may be prescribed and he shall not be confirmed except by the order of the Executive Council after considering the reports of the Vice Chancellor and the Head of the Department and the Dean concerned. Chapter XIII of the Statutes deal with the appointment of teachers of the University. Statute 1 of the Chapter lays down that subject to the provisions of the Act the teachers of the University shall be appointed by the Executive Council on the recommendations of the relevant Selection Committee. I am not concerned with the Statutes relating to the Constitution and the meetings of the Selection Committee. Statute 9 of Chapter XIII fixes the period of probation as two years but leaves a power with the Executive Council to extend that period by one year or in exceptional circumstances, after completion of one year's probation, to reduce the period by a resolution supported by at least 2/3rd of the members present subject to the approval of the Chancellor.

In the present case the Executive Council neither extended the period of probation nor reduced it. therefore, (sic) on this part of the statute. Statute 10 is material for the purposes of this case. It runs as follows:

"The Executive Council shall, within six months of date on which the probationary period of a teacher expires, examine his case, and if the work and conduct are found satisfactory confirm him or otherwise pass such orders as it deems (sic).

It is clear from the above said statute that within six months of the date on which the probationary period of a teacher expires the Executive Council has to examine the case of that teacher and if it reaches a finding that his work and conduct were satisfactory the teacher has to be confirmed, but if it finds otherwise then it may pass such orders as it deems fit. It would be recalled that Section 28 of the Act casts a duty on "the Executive Council to consider the reports of the Vice Chancellor and the Head of the Department and the Dean concerned when considering whether a teacher is to be confirmed after the prescribed period of probation has expired in the case of Civil Misc. Writ No. 3476 of 1965 (All) referred to above, I have held on a consideration of the material provisions of Section 29 of the Allahabad University Act and statute 141 of that University that the Executive Council of the University is bound to give an opportunity to a teacher, before terminating his services on the finding that his work or efficiency was not satisfactory during the period of his probation, to meet

the case against him

I think the language of statute 10 of Chapter XIII of the Gorakhpur University Act quoted! above is more strongly in favour of the petitioner. That statute casts a duty on the Executive Council to examine the case of the teacher. The words used are "examine his case." To my mind the clear import of these words is to examine his side of the case. There is thus a clear indication that a teacher whose probation is to expire has to be called upon to submit his case and it is only after examining that case and after considering the reports of the Vice Chancellor and the Head of the Department and the Dean concerned that a finding has to be arrived at by the Executive Council. That the Executive Council has to arrive at a finding on a consideration of the reports and the teacher's case show that it has to base its decision on objective material before it thus, it has to act quasi judicially. This again shows that the well established principles of natural justice will be attracted and the power cannot be exercised prejudicially to the interest of the teacher unless he has been afforded an opportunity to put his case or to meet the case against him.

I do not consider it necessary to examine the case law. which was cited before me by the learned counsel for the respective parties as I think the phraseology of the material provisions of the Act and the Statute noticed above leaves no doubt that the Executive Council functions as quasi judicial authority and has to arrive at a, finding after considering the reports of certain officers of the University and after examining the case of the teacher. In Civil Misc. Writ No. 3476 of 1965 D/- 13-10-1965 (All) referred to above, I have dilated upon as to in what sense the word "report" has been used in Section 29 of the Allahabad University Act which is in pari materia with Section 28 of the Gorakhpur University Act I have held that the "report" does not connote mere conclusion or opinion but it connotes a documented factual statement and conclusions thereon of the officers concerned. The members constituting the Executive Council will not be in a position to examine the case of a teacher unless they afford him an opportunity to represent his side of the case against the material contained in such reports, if adverse to him. I have no doubt in my mind that the Executive Council of the University exercised its powers in terminating the services of the petitioner in violation of the established rules of procedure and its decisions contained in the impugned resolution are invalid for that reason.

9. Some other arguments or minor points were also raised in support of the petition as for example whether the Executive Council at all could act under statute 10 of Chapter XIII after the period of probation had expired, but I do not think I should express any opinion on such minor points.

10. For the reasons given above I allow these petitions and quash the impugned resolutions of the Executive Council dated 7-5-1966 and 9-7-1966. The petitioner would be entitled to his costs from the opposite parties which I assess at Rs. 200 for both the petitions.