

(2003) 08 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No's. 8703 of 1997 and 1272 of 1998, Civil Appeal No. 6339 of 2003 Arising out of S.L.P. (C) No. 22833 of 1997 and Civil Appeal No. 6338 of 2003 Arising out of S.L.P. (C) No. 21612 of 1997

G. Varandani

APPELLANT

Vs

Kurukshetra University and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Guru Jambheshwar University of Science and Technology Hisar Act, 1995 — Section 35
Kurukshetra University Act, 1986 — Section 4

Citation : AIR 2003 SC 3870 : (2003) AIRSCW 4448 : (2003) 7 JT 513 : (2003) 6 SCALE 308 : (2003) 10 SCC 14 : (2004) SCC(L&S) 524 : (2003) 2 SCR 416
Supp : (2003) 6 Supreme 135 : (2003) 3 UPLBEC 2615

Hon'ble Judges : S. Rajendra Babu, J; Doraiswamy Rajuu Raju, J

Bench : Division Bench

Advocate : M.N. Krishnamani, Krishan Mahajan, R. Ayyam Perumal, Baldev Atreya, Rakesh K. Sharma, Tribhuvan Dahiya, Uma Dutta, Nidesh Gupta, Naveen Singh, Minakshi Vij, K.S. Chauhan, Chand Kiran, K.P.S. Dalal, S. K. Jain, A.P. Dhamija and A.K. Sanghi, for the Appellant;

Final Decision : Allowed

Judgement

Rajendra Babu, J.—Special leave granted in S.L.P.(C) Nos. 22833 and 21612 of 1997.

2. The above appeals have been filed by one or the other of the parties before the High Court against the decision rendered in this group of cases. So far as C.A. No. 8703/1997 is concerned, it is against the decision in CWP No. 15256/96, which came to be disposed of on 5.8.1997 by an order, "For order, see C.W.P. No. 18312 of 1996". While dealing with the case in CWP No. 18312/96, the Division Bench made the observation even at the threshold that the said judgment shall dispose of Civil Writ Petition Nos. 14263, 16256, 16005 and 18312 of 1996 as the question of law canvassed is identical and the facts alone are taken from CWP No. 18312/96 filed by one Sunil Deshta.

C.A.No. 8703/97 : This is against the order in CWP No. 15256/96.

3. As on 21.1.1994 the appellant in this appeal was serving as a confirmed Reader in the Faculty of Law of Kurukshetra University, when he applied for selection to the post of Professor at the Kurukshetra University Post Graduate Regional center, Sirsa, in terms of advertisement issued inviting applications therefore on 27.7.1994, this appellant was said to have been selected as a Professor for the Law Faculty center at Sirsa and was placed incharge of the center, by their regular appointment letter dated 15.8.1994 placing on probation for a period of one year with effect from the date of joining. The pay scale offered and the allowances admissible as per the University Rules for Post Graduate Regional center Sirsa/Hissar, etc., were also indicated therein. While so, on 29.12.1995 the appellant came to be appointed as Dean, Faculty of Law, at the said center for a term of three years w.e.f. 1.1.1996 to 31.12.1998. On 2.7.1996, it appears that the appellant's conformation as Professor in charge of Law at Sirsa was postponed and the appellant was allowed to keep his lien on the substantive post of Reader in the Faculty of Law at Kurukshetra. On 16.8.1996, the Government of Haryana, in exercise of powers u/s 4 of the Kurukshetra University Act, 1986, excluded the Sirsa center from its jurisdiction and on 19.8.1996, the Kurukshetra University issued a Notification that in terms of the Haryana Government Notification, the Sirsa center stood transferred to the Guru Jambheshwar University, Hissar, w.e.f. 26.7.1996. There is no dispute over the fact that the posts of the Sirsa center were also transferred to the jurisdiction of the new University at Hissar by the operation of Section 35 of the G.J. University Act, 1995. This appellant seems to have made representations on 19.8.1996 and again on 17.8.1996 to the authorities of the Kurukshetra University about his status and claim that he continued to be an employee of Kurukshetra University and, therefore, ought to be taken back as Professor in the main Faculty of Law of which he claimed to be an integral part under the Kurukshetra University Act and Statutes made therein. When the appellant was informed that he should first get himself relieved of his charge at Sirsa center from the G.J. University to enable him to join as a Reader in the Faculty of Law, Kurukshetra University at Kurukshetra. It is at this stage the Writ Petition No. 15256/96 seems to have been filed not only to quash the relevant proceedings, but also for a direction to the Kurukshetra University to take back the appellant as Professor, Department of Law, with continuity of service with all consequential benefits.

4. The first respondent-Kurukshetra University contested the claim contending that the post advertised was specifically for the Post Graduate Regional center at Sirsa, to which the appellant was recruited and was not meant for the Department of Law at the University Campus, Kurukshetra; that the appellant was not confirmed in the said post and having regard to the sanctioned strength of Professors in the Department of Law at Kurukshetra, the appellant could not be taken back as Professor and as informed on 28.8.1996 he was at liberty to join his substantive post of Reader, which he held. It was also pointed out when one of the posts of Professors fell vacant and the appellant applied for the same

and interviews were held for the purpose, he was found not fit to be even included in the panel of four persons prepared then and one Dr. V.K. Aggarwal, who was number one in the merit panel, was appointed on 12.8.1994. It was also contended that the law classes held at Sirsa would not show that the said center was part of the Department of Law at Kurukshetra. In the light of the Guru Jambheshwar University Act, 1995 and transfer of the Post Graduate Regional center at Sirsa to the said University located at Hissar, the claim of the appellant was untenable, as noticed earlier. Applying the principles laid down in other common judgment, this Writ Petition came to be dismissed. Hence, the said appeal.

C.A. No. 1272/98 : This appeal filed by the Kurukshetra University against the order passed in CWP No. 7457 of 1997 on 3.10.1997.

5. The respondent was appointed by a letter dated 7.9.1994 as a Lecturer in Law for the K.U. Post Graduates Regional center at Sirsa/Hissar, subject to the terms and conditions specified therein. Applications also were invited separately for the posts at Kurukshetra and the P.G. centers at Sirsa/Hissar. Though it appears that simultaneously selections were held for the post of Lecturer in the Department of Law at Kurukshetra as well as the Post Graduate Regional center at Sirsa/Hissar, this respondent applied only for the post at P.G. center not for the Department of Law in the Campus of Law in the Kurukshetra University and his claims were considered and selected for the P.G. center only. On the passing of the Guru Jambheshwar University Act, 1995 and notified on 22.9.1995 the said University came into being and Section 35 of the said Act provided for the transfer of the Regional center at Hissar and Sirsa and the courses run thereunder and the posts created and filled therefore with the properties, etc. relating thereto at the commencement of this Act to vest in the new University and thereby not only the Hissar center came within the scope and jurisdiction of the Guru Jambheshwar University Act, 1995, but he had also been paid salary only from the Guru Jambheshwar University from November, 1995 onwards. The respondent herein on 7.4.1997 submitted a representation to the appellant-University that he be adjusted/absorbed in the Department of Law of Kurukshetra University, at Kurukshetra, and when it was rejected on 5.5.1997 he filed C.W.P. No 7457/97 to quash the same and absorb him in the appellant-University. The Division Bench (different from the one which rendered the earlier decision) which heard the Writ Petition separately on 3.10.1997, while adverting to the decision dated 5.8.1997 of the earlier Division Bench in CWP No. 18312/96, summarily seem to have allowed the Writ Petition in the same terms as in the above-said decision without even considering which portion of the said judgment applied to this case. Hence, the respondents before the High Court have come on appeal.

C.A. No..../2003 [Arising out of SLP (C) No. 21612/97] : This appeal has been filed by the Writ Petitioner in CWP No. 14263/96 before the High Court, which came to be decided against him by the order dated 5.8.1997.

6. The appellant in this appeal has been working as Lecturer in Law in the

Kurukshetra University at Kurukshetra. In 1993, the Post Graduate Regional centers were created at Hissar and Sirsa and one post of Reader in Law and two posts of Lecturers in Law were created for the Post Graduate Regional centers at Hissar and Sirsa on 21.1.1994 and pursuant to the advertisement and application of this appellant for the post of Reader in the P.G. center, this appellant was appointed by a letter dated 31.12.1994 as the Reader in Law for K.U. Post Graduate Regional center, Sirsa/Hissar, subject to the terms and conditions specified therein and was placed on probation for a period of one year indicating therein that if the work is not found satisfactory, he will be reverted to the substantive post of Lecturer, Department of Law, and also directing to give an Undertaking in the form of An Affidavit that he will serve at the P.G. Regional center, Hissar/Sirsa. As in the other cases, with the formation of the new Guru Jambheshwar University and the transfer of the P.G. Regional centers to the new University by the operation of the statutory provisions contained in Section 35 of the Act and the exclusion of the center at Sirsa by the Kurukshetra University from its territorial jurisdiction, this appellant has prayed that he may be allowed to continue his services with Kurukshetra University. This appellant was informed that if he gets relieved from the new University, he might join as Lecturer in law in the substantive post held by him prior to the selection as Reader in Law at the P.G. center. This resulted in the appellant filing the above noticed Writ Petition and the same was contested by the University as in the other cases, raising identical grounds. This Writ Petition came to be dismissed by the common order noticed above. Hence, this appeal.

C.A.No. /2003 {Arising out of SLP (C) No. 22833/97]: This is against the order in CWP No. 16005/96.

7. This appeal has been filed against the common order made on 5.8.1997 dismissing the Writ Petition filed by the appellant claiming relief against the Kurukshetra University, to quash the order allowing to join back in the University as Lecturer and for a direction to take him back as Reader in the Law Department of the University at Kurukshetra. This appellant joined the Kurukshetra University on 2.1.1979 as Research Assistant in Law in the Law Department, that on 1.10.1984 he joined as a Lecturer in the Law Department, Kurukshetra University, Kurukshetra, and was working as such till 1994. When pursuant to the advertisement issued, as in the other cases, he applied and was selected and appointed by a letter dated 12.8.1994 as Reader at the P.G. Regional center, Sirsa/Hissar, subject to the terms and conditions specified therein. As in the other cases with the constitution of the new Guru Jambheshwar University and by the operation of the statutory provisions, the PG Regional centers with the respective posts and properties attached thereto, stood transferred to the new University and when the appellant wanted to join the Kurukshetra University and continue therein he was informed that if he gets relieved from the other University, he could join and that too only as Lecturer which was the substantive post he held and not as Reader. On this, the appellant filed a Writ Petition seeking similar relief as in the other cases, which was

seriously contested on the same liens by the University and the Writ Petition filed by the appellant came to be ultimately dismissed. Hence, this appeal.

8. Heard the learned counsel appearing on the either side. It is necessary to place on record that C.A. No. 8702 of 1997 filed in this Court by the Kurukshetra University against the decision in CWP No. 18312 of 1996 - the decision in which the claims in all those CWP's dealt with by the Division Bench of the High Court came to be considered in the light of the fact situation in that case relating to one Sunil Deshta, came to be dismissed as having become infructuous on account of the Writ Petitioner/respondent in this Court leaving the employment of the appellant and having joined Shimla University.

9. Whereas the learned counsel for the Kurukshetra University challenged the judgments insofar as it went against it, the contesting private respondents, who were petitioners before the High Court, reiterated their stand before the High Court, by contending that inasmuch as they were selected and appointed at the PG centers only by the Kurukshetra University, their employee is only the said University and they cannot, therefore, against their will and without their consent, be transplanted into the new GJ University, be it by the provisions contained in the enactment which constituted the said University and provided for the transfer of the PG centers at Sirsa/Hissar with the employees for the time being, the properties etc., attached thereto. Strong reliance is placed upon the very decision in Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, , which was relied upon by the Division Bench of the High Court to grant relief in favour of the petitioners in CWP No. 18312 of 1996 and also deny relief for the others. Before us benefit of it was claimed on behalf of the appellant in C.A.No. 1272 of 1998, as well. The learned counsel for the Kurukshetra University sought to distinguish the earlier decision of this Court in Jawaharlal Nehru University case (supra) as not applicable to the cases on hand and also urged that in view of the very observations contained in Para 8 of the said decision and the offer made by the Kurukshetra University in these cases, no relief could have been accorded to the petitioners in CWP Nos. 18312/96 and 7457/97 as well and those Writ Petitions also ought to have been dismissed by the High Court.

10. We have carefully considered the submissions of the learned counsel on either side. On going through the decision in Jawaharlal Nehru University case (supra), it could be seen that the case therein related to the claims of a person and his service - on being appointed as Assistant Professor on regular basis and whose services were said to have been confirmed also, as such w.e.f. 29.8.1979 but the decision to transfer to another University in that case was taken on 31.3.1981. Even in such a case, it has been held as follows:

"Inasmuch as the transfer of the center at Post-Graduate Studies from the appellant University to the Manipur University could not result in a transfer of the employment of the respondent from the one to the other, it must be concluded that the respondent continues in the employment of the appellant University. The transfer of the center of Post-Graduate Studies to the Manipur University may be

regarded as resulting in the abolition of the post held by the respondent in the appellant University. In that event, if the post held by the respondent is regarded as one of a number of posts in a group, the principle "last come, first go" will apply, and someone junior to the respondent must go. If the post held by him constitutes a class by itself, it is possible to say that he is surplus to the requirements of the appellant University and is liable to be retrenched. But it appears that the respondent has been adjusted against a suitable post in the appellant University and has been working there without break during the pendency of this litigation, and we cannot, therefore, permit the appellant University to retrench him."

[Emphasis supplied]

11. So far as the cases of the appellants in C.A.Nos. 8703/97 and the other private appellants other than University are concerned - the Division Bench itself chose to deny the relief that was granted to the writ petitions in CWP No. 18312 of 1996 for the reason, apparently that they applied and got appointments to the posts specially created for the PG centers at Sirsa/Hissar, though for higher positions but those persons not only remained probationers in such posts but also retained their lien in and over the posts of which they were permanent incumbents in the Department of Law at the University Campus at Kurukshetra and could not be either regularized or made permanent in the posts held by them at the PG centers by the time the GJ University came to be constituted and by operation of Section 35 of the said enactment relating to the said University, the PG centers at Sirsa/Hissar stood transferred to the new University with all properties and personnel including those Writ Petitioners w.e.f. 26.7.1996. This change could not be said to have been brought about with any ulterior or sinister motive and the result and abolition of such posts so far as Kurukshetra University was not bona fide or illegal. The appeal by the University in C.A.No. 8702/97 in respect of one person, who was granted relief (petitioner in CWP No. 18312 of 1996), has been rendered infructuous and it became unnecessary to consider the correctness of the decision relating to the grant of relief therein. Yet another person, to whom relief was granted by another Division Bench merely following the decision in the other case without even any proper or objective consideration as to which class or category the claimant therein belonged, is the respondent in C.A. No. 1272 of 1998 and it becomes necessary to consider the correctness of the same.

12. There can be no controversy over the position that the posts, which were advertised, to which the applications were made and got appointed by all those who were before court, were for the PG centers at Sirsa/Hissar only, though those centers were under the control of the Kurukshetra University at the relevant point of time. Indisputably, those centers by the creation of a new University and by the operation of the statutory provisions stood transferred to the newly created University, in their entirety and they went even outside the territorial limits and jurisdiction of the Kurukshetra University. The Division Bench

judgment in C.W.P. No. 18312 of 1996 itself noticed the distinguishing features between the case of Sunil Deshta on the one side and the rest of them on the other hand, while rejecting the claims of others by observing as follows:-

"After examining the matter from all conceivable angles, we are of the view that the stand taken by the Kurukshetra University is apt in the given circumstances. Each one of the aforesaid petitioners applied to the post/posts advertised for Post Graduate Regional center at Sirsa/Hissar. Even in their appointment letters, it was mentioned that each one of them will have to serve at these centers. Since the centers have now been transferred to the Guru Jambheshwar University, even the purpose for which these centers have been set up has ceased on account of ambit of activities of the Guru Jambheshwar University. In such a circumstances, the petitioner at best could lay a claim to the post which he was holding before he applied for any post at Post Graduate center. Thus, we do not find any merit in any of these writ petitions."

13. The said principle, which has our approval, squarely applies and governs the appeals in favour of the Kurukshetra University and against the private party appellants. Even the principles laid down in Jawaharlal Nehru University case (supra) does not help the private party appellants and respondent in C.A. No. 1272/98 to be granted any relief in their favour. It cannot be stated, nor is it the claim, in these appeals any of the juniors of the appellants and of the respondent in C.A. No. 1272/98 are retained in service in violation of the 'last come, first go' principle, which has been held to apply to cases of the nature in these appeals, by this Court even in Jawaharlal Nehru University case (supra). The High Court could not have granted any relief to any of these class of persons against the Kurukshetra University and relief granted by a summary order without any application of mind the respondent in C.A. No.1272 of 1998 cannot be sustained, at all.

14. For all the reasons stated above, C.A. No. 1272/98 shall stand allowed and the remaining appeals shall stand dismissed. In cases where the Kurukshetra University allowed those persons to join on the basis of their lien, the University may consider whether any pay protection or to what extent such protection may be extended, as per the rules in force. We say nothing on it but leave it to the University Authorities. No costs.