
(1998) 03 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Writ Petition No. 78 of 1995

Jafarullah

APPELLANT

Vs

Kota Open University and Others

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 RLW 1349 : (1998) 3 WLC 269 : (1998) 1 WLN 272

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed for quashing the order dated 16.12.1994 contained in Annexure. 10 to the petition, by which the promotion given to the petitioner had been withdrawn by the respondent university.

2. Petitioner was appointed as Computer Programmer cum Operator in the respondent university vide order dated 5/6th April, 1989. Vide order dated 9.1.1990, the Vice Chancellor of the respondent university sanctioned the pay scales under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 to the employees of the university. As the Rules of 1989 were made applicable with effect from 1.9.1988, the pay scale for the post of Computer Programmer cum Operator was prescribed as Rs. 2000-3200/- as is evident from Annexure. 3 to the petition. Petitioner made various representation to grant the said revised pay scale but the same was not considered. Being aggrieved and dissatisfied, petitioner approached this Court by filing S.B. Civil Writ Petition No. 3409 of 1991 and this Court, vide order dated 25.7.1991, passed an interim order to fix the pay scale of petitioner as provided under the order dated 9.1.1990 contained in Annexure. 2. To ensure compliance of the order passed by this Court, the respondent university, vide order dated 8.8.1991, granted the pay scale of Rs. 2000-3200/- to the petitioner with effect from 17.4.1989. Petitioner

subsequently, for the reasons best known to him, withdrew the said writ petition No. 3409/1991 on 8.11.1994. As a consequence of dismissal of the writ petition as withdrawn, the respondent university passed the order dated 16.12.1994 putting the petitioner on the original pay scale. Being aggrieved and dissatisfied, the petitioner has approached this Court again.

3. Heard Mr. Vijay Mehta, learned Counsel for the petitioner and Mr. U.C.S. Singhvi learned Additional Government Advocate for the respondents.

4. Mr. Mehta has vehemently argued that once the petitioner has got the relief from the respondent university as per the interim order of this Court, the writ petition filed by him had become infructuous and passing the impugned order amounts to not only abuse of the power but also the contempt of the Court. Once the relief has been granted, there was no occasion for the respondent university to withdraw the same. On the other hand, it has been contended by the respondents that the instant writ petition is not maintainable at all and, therefore, this Court cannot entertain any plea made by the petitioner.

5. The plain and simple effect of withdrawal of the writ petition is that the interim order passed in earlier petition stood merged in the final order and the order of giving higher pay scale to the petitioner in pursuance of earlier orders of this Court stood nullified. (Vide *Sheo Shanker and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr.* 1995 Suppl (2) SCC 726 ; and *M/s. Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board and other*,

6. However, against the judgment and order of Allahabad High Court, in *Kannauria Chemicals and Industries Ltd. (supra)*, the petitioner therein had gone in appeal before the Hon"ble Supreme Court, but the judgment of Allahabad High Court has been affirmed in *Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others*, . The Apex Court has heavily relied upon its earlier judgment in *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, wherein the Hon"ble Apex Court observed as under:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of the operation of an order does not, however, lead to such a result; it only means that the order which has been stayed, would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence.

7. Thus, it is not permissible to the petitioner to say that his writ petition, had become infructuous merely by passing the order by the respondents under the interim order of this Court and the submissions made by Mr. Mehta are preponderous.

8. There is another aspect of the ease. The present writ petition is nothing but an abuse of process of the Court as the petitioner claims now the consequential benefits which he had obtained under the interim order of this Court in the earlier writ petition which already stood nullified because of the withdrawal of the earlier writ petition. In fact, this is successive writ petition for the same relief.

9. In *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, and *Ashok Kumar and Others Vs. Delhi Development Authority*, , the Apex Court has held that filing the successive petition before a Court amounts to sheer abuse of process of the Court and is against the public policy. In *Khacher Singh Vs. State of Uttar Pradesh and others*, the Division Bench of Allahabad High Court after placing reliance on its earlier judgments in *L.S. Tripathi v. Banaras Hindu University* 1993 (1) UPLBEC 448; and *Saheb Lal v. Assistant Registrar, B.H.U.* 1995 (1) UPLBEC 37, held that successive writ petition was not maintainable.

10. Similarly, in *Avinash Nagra v. Navodaya Vidhyalaya Samiti and Ors.* 1997 (1) SCC 534, the Hon"ble Supreme Court has taken the same view and held that the second writ petition was not maintainable as the principle of constructive res judicata would apply. Therein, also the writ petition filed in the first instance was withdrawn with permission of the Court without liberty to file the second writ petition.

11. Therefore, the subsequent writ petition was not maintainable by application of correct principle of law. This aspect was, also, considered by the Division Bench of this Court in *D.B. Civil Special Appeal No. 1270/ 1997; Smt. Aqeela v. State of Rajasthan and Ors.* decided on 17.1.1998, wherein this Court has observed as under:

There can be no quarrel to the legal proposition that no party can suffer by the action of the Court and when the High Court in exercising its powers under Article 226 of the Constitution of India, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised.... No litigant can derive any benefit from mere pendency of the case in a Court of law as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs.... The maxim of "Actus Curie Neminem Gravabit" is applicable in such a case which means that the act of the Court shall prejudice no one. Thus, institution of a litigation or interim order of the Court cannot confer any advantage on a suitor.

12. There is no force in the argument of Mr. Mehta that the order contained in Annexure. 9 to the petition has been passed by the university independently and not it pursuance to the interim order passed by this Court, as in the bottom of the said order it has been mentioned that a copy of the order has been forwarded to the Registrar of this Court and, thus, the submission that the

present writ petition is out of fresh cause of action, is preposterous.

13. Thus, in view of the above, I am of the considered opinion that this writ petition is not maintainable and no order can be passed in favour of the petitioner.

14. Even on merit, it has been contended by Mr. U.C. S Singhvi, learned Counsel for the respondents that the post of Computer Programmer cum Operator has not been sanctioned by the State of Rajasthan and he State has not been impleaded as a party in this case by the petitioner. Mr. Mehta submits that while issuing the appointment letter dated 5/6th April, 1989 contained in Annexure. 1, the respondent University did not state that the post had not yet been sanctioned. Moreover, the contents of the orders dated 9.1.1990 contained in Annexure. 2 did not support the case of the respondents. Mr. Singhvi has placed reliance on the minutes of the meeting of the Board of Management of the University held on 7.6.1988 contained in Annexure. Rule 1, which clearly provided that the four posts of Upper Division Clerks were re-allocated to the Computer Programmers. Therefore, on the basis of the said minutes of the meeting, it cannot be held that the post of Computer Programmers had been sanctioned. In fact the posts of the U.D.Cs. stood transferred and re-designated as Computer Programmers. Thus, the petitioner cannot claim that he is entitled for the salary of the Computer Programmer merely because the post of U.D.C. has been re-allocated to the post of Computer Programmer.

15. In view of the above, the conduct of the petitioner is censured. The practice of filing subsequent writ petition is depreciated. The petition is not maintainable and even otherwise devoid of any merit and hence dismissed accordingly.