
(2017) 04 UK CK 0001
In the Uttarakhand High Court
Case No : 2336 of 2015

Jitendra Kumar Singh

APPELLANT

Vs

G.B. Pant University & others

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

Citation : (2017) 04 UK CK 0001

Hon'ble Judges : Rajiv Sharma

Bench : Single Bench

Advocate : Manoj Tiwari, ?Alok Mehra, ?Rajendra Dobhal, ?Paresh Tripathi

Final Decision : Disposed

Judgement

1. Petitioner was appointed as a Pump Operator in the respondents-University w.e.f. 03.08.1992. His services were regularized on 22/23.11.2013 on the basis of Regularization Rules notified on 21.11.2011.
2. An FIR was registered against the petitioner and other co-accused in the year 2008. Petitioner was convicted by the Court concerned on 08.12.2010. Petitioner filed an appeal against the judgment dated 08.12.2010. The appeal was dismissed by learned Sessions Judge on 16.05.2011. Petitioner then approached this Court by way of filing CRLR No.102 of 2011.
3. Petitioner was enlarged on bail by this Court vide order dated 19.05.2011.
4. Petitioner was served with a show-cause notice on 18.09.2014 to the effect that he has concealed/suppressed about the fact of his detention. Petitioner filed a detailed reply to the show-cause notice on 25.09.2014.
5. Thereafter, the respondents extended the probation of the petitioner. Petitioner then appeared before the Vice Chancellor of the University, as it appears from Annexure No.17 to the petition. The Vice Chancellor vide his Comments dated 18.08.2015 observed that since the petitioner had already been warned, the second punishment would not be advisable. The Vice Chancellor has

made a further observation that in view of pendency of criminal revision, the probation period be extended subject to the outcome of the criminal revision. However, surprisingly, the Establishment Officer of the University terminated the services of the petitioner vide impugned order dated 05.02.2016.

6. What is to be seen in this matter is whether the petitioner has concealed the fact of his detention from 16.05.2011 to 21.05.2011 and his conviction by the Trial Court, affirmed by the Sessions Judge and pendency of criminal revision before this Court.

7. Attention of the Court was drawn to the order dated 07.11.2011 (Annexure No.3 to the petition). The Assistant Director, Labour Welfare Officer, as per the contents of this letter, knew about the pendency of Criminal Appeal No.196 of 2010. Petitioner was regularized on 22/23.11.2013. The employer knew that the Criminal Appeal No.196 of 2010 was pending. Thus, it cannot be said that the petitioner had concealed the material facts from the employer in his Attestation Form (Annexure No.CA1). Petitioner has left blank the Column No.12 of the Form. The petitioner has explained before the Vice Chancellor that he did not know English and thus, he has left the said column blank.

8. The fact of the matter is that it cannot be held that the petitioner has intentionally withheld any information about his detention and pendency of criminal case against him. The employer knew about the pendency of criminal case, as is evident from a perusal of Annexure No.03 dated 07.11.2011.

9. The Vice Chancellor has taken a sympathetic view and has decided to permit the petitioner to remain in service by extending his probation. However, surprisingly, the Establishment Officer of the University has terminated the services of the petitioner without taking into consideration the comments of Vice Chancellor as per Annexure No.16 dated

18.08.2015. The Establishment Officer was duty bound to obey the orders passed by the Vice Chancellor. In case, there was any doubt, he should have referred the matter back to the Vice Chancellor instead of straightaway terminating the services of the petitioner.

10. Petitioner had been regularized. Thus, he had acquired certain status. The services of the petitioner, after his regularization, could not be terminated merely on the basis of issuing a show-cause notice. The order passed by the Establishment Officer is stigmatic and penal in nature. There should have been a regular inquiry against the petitioner as per the University Act and the statutes, framed thereunder. Thus, there is violation of principles of natural justice also.

11. The reply filed by the petitioner, to the show-cause notice, was also not taken into consideration by the Establishment Officer before passing the impugned termination order. The purpose of issuance of notice is to enable an incumbent to explain his position. The very purpose of issuing notice would be defeated, if the reply submitted by the delinquent is not taken into consideration.

12. Accordingly, the writ petition is allowed. Impugned termination order dated 05.02.2016 (Annexure No.14) passed by respondent no.2 is quashed and set-aside with all consequences.

13. Pending application, if any, stands disposed of.