
(1995) 07 AHC CK 0047
In the Allahabad High Court
Case No : C.M.W.P. No. 5518 of 1985

J.N. Tripathi

APPELLANT

Vs

Vice Chancellor, Banaras Hindu University and Others

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 408, 477A

Citation : (1995) 71 FLR 1082 : (1996) 3 LLJ 801

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant; Sidheshwari Prasad, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi. J.

1. Petitioner under Article 226 of the Constitution of India prays for a writ, order or direction in the nature of certiorari quashing resolution No. 91 dated June, 20/22, 1984 of the Executive Council, hereinafter referred to as the University, arrayed as respondent No. 2 as well as for quashing the order dated December, 17, 1984 passed by the Registrar of the University, arrayed as respondent No. 3.

2. The relevant facts of the case are that the petitioner was appointed as Junior Clerk in the University on April 14, 1964. On March 1, 1973 he was promoted to the post of Senior Clerk and was confirmed on the said post on March 1, 1975. Petitioner was implicated in a criminal case under Sections 408/477A I.P.C. and was convicted and sentenced to one year Rigorous imprisonment by the Magistrate concerned vide its judgment and order dated December, 16, 1982. During the pendency of the trial of the aforesaid case, petitioner was placed: under suspension by the University vide order dated July. 20. 1976. On appeal filed by the petitioner against the judgment and order dated December. 16, 1982 (Criminal appeal No. 483 of 1982, J.N. Tripathi v. State). Petitioner was acquitted

of the charges levelled against him by II Addl. District Judge, Varanasi. The operative portion of the said appeal is quoted below:-

"Appeal is. hereby allowed. The judgment and order of the below stand set aside. The accused appellant is acquitted of the charges.

Sd/-

O.N. Asthana.

II Addl. Distt. and Sessions Judge."

Varanasi."

After his acquittal, petitioner approached the University and applied for revocation of the order of suspension and requested for his reinstatement on the post of Senior Clerk. It has been stated that instead of reinstating the petitioner on his said post vide order dated December, 17, 1984 services of the petitioner were terminated. Vide resolution No. 91 dated June, 20/22, 1985, the Executive Council also resolved to terminate the service of the petitioner. Petitioner, as stated above, has challenged the validity of the aforesaid orders dated December, 17, 1984 and resolution dated June, 20/22, 1984.

3. In the meanwhile, it would not be out of place to state that the petitioner once approached this Court and filed Civil Misc. Writ Petition No. 7966 of 1984 for a writ, order or direction in the nature of mandamus commanding the respondents to decide his representation, which was pending disposal before the University. This Court was pleased to issue interim mandamus for disposal of the representation. In compliance whereof the said representation was disposed of finally and the petitioner was dismissed from service. Petitioner attempted to get the said writ petition amended challenging the validity of the order of dismissal, but the amendment application was dismissed, ultimately writ petition was also dismissed as infructuous with liberty to the petitioner to file another writ petition challenging the validity of the order of dismissal, therefore, the present was filed by the petitioner seeking the above noted reliefs.

4. I have heard learned Counsel for the parties and also carefully gone through the record of the case.

5. On behalf of the learned Counsel for the petitioner it was contended that in view of rules contained in the Office Memorandum of the Government of India, Ministry of Home Affairs dated November, 29. 1976, it was obligatory upon the respondents to reinstate the petitioner on his post after he was acquitted by the District and Sessions Judge, of the charges levelled against him. Learned Counsel for petitioner placed reliance on Clause 3fa) and 4 of the said Rules, which are quoted below:-

3. (a). If an appeal/revision in higher Court against conviction succeeds and the Government servant is acquitted, the order imposing a penalty on him on the basis of conviction, which no longer stands becomes liable to be set aside.

4. If the facts or allegations had come to be examined by a Court of competent jurisdiction and the Court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations".

6. It has been submitted that the aforesaid Office Memorandum was applicable to the present case in terms of the Ordinance 89 of B.H.U. (Non-teaching employees) which is also quoted as under:-

"Wherever the University ordinances regarding terms and conditions of service are silent or incomplete. University employee will be: governed by rules applicable to comparable Central Government Employees, e.g. Classification and Appeal Rules, Conduct and Fundamental Rules etc."

7. It was contended that in view of the aforesaid Rules, if an appeal/revision of the employee in higher Court against the conviction succeeds, the order imposing penalty on him on the basis of conviction was liable to be set aside. It was further submitted that after judgment of the Appellate Court it was not open to the respondents to hold a departmental enquiry in respect of the charges based on the same facts and allegations, which was subject matter of the investigation by the Court of competent jurisdiction. Learned Counsel for the petitioner thus emphasized that under the facts and circumstances of the present case, petitioner was entitled to be reinstated. He has also contended that petitioner was entitled to the arrears of his salary and other consequential benefits. Learned counsel appearing for respondents on the other hand contended that the writ petition was liable to be dismissed on account of availability of alternative remedy. He has also urged that legally criminal and departmental proceedings could go on simultaneously against a delinquent employee and it was open to the University to take disciplinary action against a delinquent employee after following the procedure prescribed under law. Learned Counsel for the respondents has, however, conceded that the Rules contained in classification and Appeal Rules etc. referred to above, were applicable in the present case. Learned Counsel further submitted that the acquittal of the petitioner could not result in automatic cessation of the enquiry and did not entitle him to reinstatement.

8. I have considered the arguments made on behalf of the parties and also gone through the decisions referred to and relied upon by the parties. I am of the view that learned Counsel is right in his submission that on his acquittal from the criminal charges, petitioner was entitled to be reinstated. As it is apparent from the aforesaid Rules, which are applicable in the present case that after acquittal of the petitioner from criminal charge, it was not open to the respondents to proceed against him and to take any disciplinary action in respect of the charge, which was subject matter of the enquiry of the criminal Court. It was obligatory upon them to drop the departmental proceedings and to honour the verdict of the Court.

9. Petitioner never refused to discharge his duties. On the other hand, respondents themselves did not permit him to work. In *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, the Apex Court of the country was pleased to hold that if the workmen were always ready to work, but they were kept away therefrom on account of invalid act of the employer, there is no justification in not awarding them full back wages, which were legitimately due to them, therefore, impugned order in view of the discussions made above, were invalid and inoperative in law. Petitioner will be entitled to receive arrears of salary.

10. The contention of the learned Counsel for the respondents that the writ petition was liable to be dismissed on the ground of availability of alternative remedy, also cannot be accepted in view of the law laid down in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, . In the said case, Supreme Court was pleased to hold that where the writ petition was filed by the petitioner instead of availing the statutory alternative remedy, but High Court entertains the petition and hears the same on merit, the petition cannot be rejected on the ground that statutory alternative remedy was not availed of. Similar view was taken by Hon"ble Supreme Court in *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others*, . In this case, petition was entertained by Supreme Court which remained pending for about seven years. The Supreme Court thereafter refused to dismiss the petition on technical pleas. In view of the aforesaid decisions and in view of the facts that the petition was entertained and admitted by this Court, parties were directed to file requisite affidavits, so that the petition be decided on merit, I decline to dismiss the writ petition on the ground of availability of alternative remedy. Learned Counsel for respondents, as stated above, conceded the Rules referred to above were applicable in the present case. In view of the discussion made above, the impugned orders having been passed in contravention of the said Rules are liable to be quashed.

11. The writ petition succeeds and is allowed with costs. The impugned orders dated June 20/22, 1984 and December 17, 1984 are quashed. Respondents are directed to reinstate the petitioner on the post of Senior Clerk with all consequential benefits. They are further directed to pay the arrears of salary to the petitioner.