
(1972) 07 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 315 of 1968

Jug Mander Das Jain

APPELLANT

Vs

University of Jodhpur and Others

RESPONDENT

Date of Decision : 03-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1972) WLN 460

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.N. Singhal, J.—As this writ petition under Article 226 of the Constitution must succeed on a short point, it is not necessary to state all the facts.

2. The petitioner joined the service of the Rajasthan State as Lecturer in Chemistry, in Jaswant College, Jodhpur, in 1957. He was transferred as Lecturer in MBM Engineering College, Jodhpur, in May 1958. The State Government passed order Ex 2 dated February 9, 1960, conveying the Governor's sanction to the grant of a special pay of Rs. 50/- per month to Lecturers (non-technical) on appointment or pasting in the M.B M. Engineering College in addition to their grade, pay, with effect from the date of issue of the order. It was stated that the special pay had been sanctioned in consideration of the specially arduous nature of the duties attached to the post. The grant of such special pay to persons from the Rajasthan Service, to which the petitioner admittedly belonged at the period of time, was recognised under the Rajasthan Civil Services (Revised Pay) Amendment Rules, 1963, a copy of which has been placed on the record as Ex 3. The petitioner went over to serve under the University of Jodhpur with effect from July 1, 1963. He continued to draw the aforesaid special pay of Rs. 50/- up to June 30, 1967. It was however discontinued with effect from July 1, 1967 by order Ex 4 dated July 10, 1967. That order, it may be stated, was passed in pursuance of resolution No. 24 of the Syndicate of the University dated April

15/16, 1967. The petitioner felt aggrieved against that order and made a representation. He sent a last reminder on January 5, 1968, for the early disposal of his representation, and ultimately filed the present writ petition, when nothing came out of it, on March 28, 1968.

3. The petitioner has challenged order Ex. 4 dated July 10, 1967 on several grounds, the main ground being that the Syndicate had no authority to pass the order otherwise than after a consideration of the recommendation of the Academic Council as required by the proviso to Statute 5(2)(i) of the University of Jodhpur.

4. A joint reply has been filed by the Vice Chancellor and the Registrar of the University. They have taken the plea that the Syndicate was fully competent to deal with the matter and that it was not necessary to refer it to the Academic Council. The other respondents have not filed any reply.

5. It is thus not in dispute between the parties that the impugned order Ex. 4 dated July 10, 1967 was passed in pursuance of resolution No. 24 of the Syndicate dated April 15/16, 1967 and that in passing the resolution the Syndicate did not have before it any recommendation of the Academic Council. The validity of the impugned order has therefore to be examined with reference to the requirement of the relevant statute of the University. The order reads as follows:

Office Order

In pursuance of Syndicate Resolution No. 24 dated the 15th/16th April, 1967 it is notified for general information that the hard duty allowance or special pay which was hitherto paid to the members of the non-technical teaching staff in the Faculty of Engineering, has been discontinued from 1st July, 1967.

Sd/.Registrar.

The question is whether it was within competence of the Syndicate to pass any such resolution affecting the emoluments of a teacher without reference to the Academic Council.

6. Statute 5(2)(i) of the University of Jodhpur, which admittedly governs the present controversy, reads as follows:

St. 5(1)...

(2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Syndicate shall, in addition to all other powers vested in it, have the following powers, namely:

(i) to appoint, from time to time the Registrar, Librarian, Principals of Colleges and Heads of Institutions established by the University and such Professors, Readers, Lecturers and other members of the teaching staff as may be necessary on the recommendations of the Selection Committee constituted for the purpose:

Provided that no action shall ordinarily be taken by the Syndicate in respect of the number, and qualifications, and the emoluments of teachers otherwise than after consideration of the recommendation of the Academic Council;

I am concerned with the proviso, for it is directly in point.

7. Under the proviso, it is not "ordinarily" permissible for the Syndicate to taken any action in respect, inter alia, of the emoluments of teachers "otherwise than after consideration of the recommendations of the Academic Council". It is not in dispute that the petitioner was a teacher of the University for the expression "teachers" has been defined in Section 2(f) of the Jodhpur University Act, 1962 to include lecturers. It is also not in controversy that he special pay which was admissible to the petitioner was a part of his pay ass defined in Rule 7(24) of the Rajasthan Service Rules which, it is admitted by the learned Counsel for the respondents, have been adopted by the University for the time being. It is therefore quite clear that the impugned order (Ex 4) concerned the petitioner in his capacity as a teacher of the University and related to his emoluments in that capacity.

8. It remains to consider whether any action could be taken by the Syndicate in respect of those emoluments without considering, the recommendation of the Academic Council. It will be recalled that it is the case in the reply of the two of the respondents that the Syndicate was competent to deal with the matter without reference to the Academic Council. It has also to be appreciated that it is not their case that action in regard to the emoluments of the petitioner was taken under the impugned resolution of the Syndicate of the University for any extraordinary reason. The proviso to Statute 5(2)(i) of the University was therefore fully attracted to his case. The contention of the respondents that the Syndicate was fully competent to deal with the matter without the recommendation of the Academic Council cannot be upheld as it runs counter to the clear requirement of the pioviso which categorically requires that "ordinarily" no action in regard, inter alia, to the emoluments of the teachers shall be taken by the Syndicate "otherwise than after consideration of the recommendations of the Academic Council". In other words, the Syndicate was ordinarily entitled to take an action in the matter only after it had been considered by the Academic Council and that Council's recommendation was made available to the Syndicate. In the scheme of the Jodhpur University Act the Academic Council is the Chief Academic Body of the University and, according to Statute 7(ii)(c) of the Statutes of the University, it is one of the powers of that Council to lay down the emoluments of the teachers of the University. The scheme of the law therefore assigns an important role to the Academic Council in the matter of the emoluments of the teachers, and if that role is denied to it, and the Syndicate passes a resolution, in the ordinary course, without giving the Academic Council the opportunity to formulate its recommendation, that resolution cannot said to have been made or adopted in accordance with the law.

9. As in the present case the Academic Council did not deal with the question of

emoluments of the Lecturers of the category to which the petitioner belonged, even though it was its legitimate function, in the ordinary course, to formulate its recommendation in that regard, the aforesaid resolution of the Syndicate was contrary to the law and could not therefore be validly implemented in the form of order Ex. 4 dated July 10, 1967 which has been challenged by the petitioner.

10. The writ Petition is therefore allowed and the impugned order Ex. 4 dated July 10, 1(SIC)67 is quashed. As the petitioner's learned Counsel is quite satisfied with this pronouncement, it is not necessary to consider the other points which have been raised in support of the writ petition. The petitioner will be entitled to Rs. 100/- by way of costs from respondent No. 1.