
(1988) 08 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1988 of 1988

Kamal Rewachand Bulchandani

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 30-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (1988) MhLj 993

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : G.E. Vahanvaty with Ms. R.C. Thaker, for the Appellant; R.V. Desai for respondent No. 1, D.R. Dhanuka with A.M. Jakhadi, for the Respondent

Judgement

S.M. Daud, J.—The writ jurisdiction of this Court is invoked to re-induct petitioner as a part-time Professor in the Government Law College (GLC) and to interdict what is described as the untrammelled hire and fire right of respondents vis-a-vis these Professors.

2. The GLC at Churchgate, Bombay requires a large staff including what are known as part-time Professors. Petitioner, a practising lawyer, was so appointed for the first time with effect from 2-8-1976 "pending further orders" under appointment letter marked Ex. A. Thereafter, he was continued year after academic year under specific orders to that effect. In the second half of the year 1967, there arose discord between the petitioner and the second respondent who is the Principal of the GLC. She took objection to petitioner selling or canvassing the sale of his booklet/guide to Labour Laws. On 17-3-1988, there was a staff dinner at the Radio Glib. This occasion was utilised by the petitioner to criticise her disinclination to take action against students not attending classes and not appearing for examinations conducted by the college. Petitioner fired off a missive repeating his concern over the laxity resulting in falling standards on 22-3-1988. The Principal in reply questioned the professed concern felt by petitioner over deterioration of academic standards. She alleged that the said

concern was a cloak to hit back at her for stopping the sale of petitioner's guides in the college. In this background came the list dated 17-6-1988 proclaiming the appointment of 33 persons as part-time Professors for the academic year 1988-89. Petitioner's name did not figure in the list and that is why on the last day of June 1988 he lodged the present petition.

3. In the petition it is contended that the petitioner's exclusion from the list of appointees for the current year was vitiated by spite and ill-will and was unconstitutional and illegal. His initial appointment itself was for an indefinite period and the yearly orders were mere confirmations. The initial appointment having been made by the Government, respondent No. 2 did not have the power to terminate the same. He had been punished for raising his voice against her inefficiency and arbitrariness. The absence of rules and regulations prescribing the service conditions of part-time Professors had emboldened the Principal to act arbitrarily. Petitioner therefore sought a writ to quash the condition in the appointment order entitling the termination of part-time Professors at will and a consequential direction to re-instate him in service from 17-6-1988 with all attendant benefits. Last, he claimed a direction to the first respondent to frame rules regulating the service of part-time Professors in the GLC.

4. Respondents 1 and 2 have filed separate returns questioning the maintainability of the petition. They contend that part-time Professors were appointed from year to year and they have no right to demand an indefinite continuance. The appointment orders made it clear that the service of a part-time Professor was reducible or terminable without notice. It was not correct to say that the Principal had no power to drop petitioner from the list of appointees for the current year. In fact, she had been delegated this power when she queried the Director of Education on the subject. On facts, it was untrue to say that she had acted vindictively. Guides were not prescribed reading for the students. Petitioner was utilising his position not only to sell guides, but canvass the sale* thereof through his colleagues and inferiors in the staff. When this was brought to the notice of the Principal she had advised him to discontinue the activity. Angered at the reprimand and the loss of income, petitioner started instigating the teachers and students to annoy and defy her. He utilised various occasions to criticise her. The plea that she was lax in the matter of attendance and appearance at the college examinations did not lie in the mouth of one like, the petitioner, who had himself proclaimed the uselessness of maintaining muster rolls in law colleges. It was in this background that she decided about the inadvisability of petitioner being part of the part-time Professors. A certain number of members of the staff have filed affidavits supporting the stand taken by the Principal. As against them are affidavits tendered by some students of the college. They would have it that it was their conscience which dictated the filing of affidavits by them to place on record the excellence of petitioner as a teacher and his not indulging in any objectionable activities. At this stage the limited question before me is whether the petition should be admitted.

5. Advocate for the petitioner submits that the initial appointment of his client was made by the Government, that the yearly orders issued were mere confirmations, that the Principal being a lesser functionary than the Government could not drop him without following the prescribed procedure as set out in Article 311 of the Constitution of India and that this alone sufficed for granting of a rule in the present case. In support of this submission reliance is placed upon the decisions of the Supreme Court in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, and *Rattan Lal and Others Vs. State of Haryana and Others*, . The latter case is said to be an authority for the proposition that appointment of teachers on an ad hoc basis is violative of Articles 14 and 16 of the Constitution. Mr. Dhanuka for respondent No. 2 counters this submission by saying that having regard to the disputed questions of fact a writ Court is not the appropriate forum for a determination of the issues that arise in the petition. There is substance in what Mr. Dhanuka has to say, but it is desirable that I deal with the contentions advanced on behalf of the petitioner. The fact that the initial letter of appointment describes the appointing authority as the Government and that the appointment is "until further orders" has been pressed with great vigour to show that the petitioner was the holder of a civil post under the State of Maharashtra and that his employment could not be put an end to by respondent No. 2. For a determination of this issue it will be necessary to go into the terms and conditions under which part-time Professors in the GLC are appointed. Part-time teachers or professors are a common feature in institutions of higher learning. Within the genus of such teachers are widely differing species. In law colleges, part-time Professors come from the ranks of practising lawyers. Advocates vie for a place in the galaxy of part-time Professors, but not because of the honorarium, attached to the job. Teaching in such colleges is part of career building, giving as it does a higher profile than normally available to the common run of lawyers. Classes in the law colleges "I am not talking of full-time law colleges" are held either in the mornings or evenings. The students are mostly part-timers, in the sense that except for the class hours they attend to other vocations. This suits the advocate-teachers very well for it gives them an opportunity to teach as also attend to their offices, courts and domestic chores. The law colleges benefit in that for a small remuneration paid to the lecturers, the pupils get instructed in a complex discipline by those constantly honed by every-day experience. Part-timers in other disciplines work very differently. They have to adhere to more stringent requirements with regard to the number of periods, hours of work, restrictions upon outside work and the like. It is in this background that we have to consider the question whether they hold, firstly, a post, and next, a civil post at that ?

6-7. In *Kanak Chandra (supra)* the question was whether a Mauzadar in Assam Valley was the holder of a civil post under the State. Their Lordships after examining the different factors observed :

"The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working

under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of the Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the excising system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

Earlier it has been observed that "a post is an employment, but every employment is not a post". The judgment gave the instance of a casual labourer being in an employment but not being the holder of a post. It is not possible to hold that there is any similarity between the position of a Mauzadar and a part-time Professor. The office of the Mauzadar is governed by the Assam Land-Revenue Manual, whereas a part-time Professor is appointed because of exigency. The exigency is to impart legal education at a nominal cost to students through an institution which engages a lecturer for the purpose of giving a grounding in law to its many students. The conditions governing the service of a part-time Professor are set out in the affidavit of Section Officer Mr. Pradhan. The important conditions are : (i) appointment to be for an academic year, (ii) the person appointed to deliver six lectures of 50 minutes each per week, these lectures being schedulable during court working hours also, (iii) service being terminated or reduced without notice and (iv) remuneration described as an honorarium. The appointed person cannot be asked to give more than the prescribed lectures or lecture for more than the prescribed 50 minutes per lecture. Of course, the appointment order speaks of the lectures being schedulable during court hours. But this is an empty threat for the law colleges would find it difficult to get students to attend such lectures, leave alone lecturers to deliver them. The honorarium which a part-time Professor receives is Rs. 700/- per month. The lowest functionary in the different classes of State employees receives more than this sum paid to qualified professionals. The task entrusted to them is not onerous. In fact after the passage of some time it is doubtful if many of them can resist ennui. Of course there can be post with light duties and a small remuneration. But the holder of a post is subjected to some degree of subservience to the master. In the case of part-time Professors of the GLC, except for the condition that they deliver six lectures per week each lecture running into 50 minutes, the Professor is very much on his own. No blame attaches to him for the poor performance of the examinees. Credit rarely goes to him for the excellent performance of any student. One of the terms of the appointment letter is that the part-time Professors may be subject to conditions formulated by the Government or University "in this behalf. This shows that even

if the Government or University wants to frame additional conditions, it will have to do so specially for the part-time Professors in law colleges. In other words they cannot be lumped with other part-time teachers., The year to year appointments are another indication of there being no relationship of a master and servant. Petitioner has seized upon the initial appointment being "until further orders" as proof that the subsequent orders were mere confirmations of the initial order. Nothing depends upon the words used. What is of importance is that fresh orders were issued every year and that in these orders the duration of the appointment was spoken of as being limited to the academic year concerned. Ratanlal's case upon which reliance is placed is no authority applicable to the instant case. There, the teachers in question were appointed on an ad hoc basis at the commencement of the academic year and their services terminated before the summer vacation. The teachers were performing full-time duties. It was in this background that the Supreme Court described the practice as violative of Articles 14 and 16 of the Constitution. Full-time teachers regularly appointed would have been entitled to the benefits of summer vacation along with salary and allowances payable and various other privileges such as casual leave, medical leave, maternity leave etc. available to all Government servants. Here, the part-time Professors are not entitled to the dearness allowance or other allowances payable to Government servants, including teachers in educational establishments run by the Government. They are not entitled to casual leave or medical leave etc. Their conditions of employment show them to be contractual servants. Their employment is regulated by contract. These put them outside the ambit of Article 311 of the Constitution. The contention that respondent No. 2 had no authority to determine petitioner's employment as he was a Government appointee, has no merit. That appointment came to an end long ago when year to year continuations were issued under the signature of the Principal. " Having functioned as an appointee of the Principal, petitioner cannot question her power to put an end to the employment, and that, by not including his name in the 1988-89 appointees. Apart from this, and assuming, that he is entitled to the protection of Article 311 of the Constitution, there are a number of disputed questions of fact. Unless these are resolved, it will not be possible to decide the petition one way or the other. These questions impinge on the factual realm. Presently we have no more than affidavits pitted against affidavits. The writ Court does not go into disputed questions of fact and therefore the objection raised by Mr. Dhanuka has to be sustained.

8. Petitioner has prayed for a direction to respondent No. 1 to frame rules and regulations to govern the service conditions of part-time Professors. This, it is said is necessary to curb the arbitrariness of persons occupying the post of a GLC Principal. I do not see why rules are necessary. The matter has to be left to the good sense and fairness of the Principal. If there be any excesses there is always the appeal to respondent No. 1 or recourse to judicial forums. The part-time Professors should themselves clear the way for the infusion of new blood. Indefinite continuance of persons to this employment leads to the institutional

equivalent of hardened arteries. Monopolisation, whether by design or accident, is bad for institutions, in particular, law colleges dependent on part-time teachers. Acceding to this prayer will not therefore be in the public interest.

9. The petition, not disclosing a cause remediable by exercising the writ jurisdiction, fails. It is hereby rejected with parties being left to bear their own costs.