
(2021) 06 CHH CK 0143

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 4035 Of 2007, 2883 Of 2010

Kaushal Chandrakar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 28-06-2021

Acts Referred:

Citation : (2021) 06 CHH CK 0143

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Awadh Tripathi, Ravi Bhagat, Neeraj Choubey, J.A.Lohani

Final Decision : Disposed Of

Judgement

1. Since common question of law and facts are involved in these two writ petitions, they were clubbed and heard together and being disposed of by

this common order.

2. The petitioners herein calls in question legality, validity and correctness of the order dated 03.11.2006 (Annexure PÂ1) by which their services have

been terminated by respondents No.3 and 4 from the post of Assistant Professor.

3. It is the case of the petitioners that they were appointed on vacant post of Assistant Professor by respondent No.3/College after due approval of

respondent No.2ÂUniversity in accordance with Statute No.28 promulgated by Pandit Ravi Shankar Shukla University and thereafter they were

appointed on 19.9.2005. It is further case of the petitioners that since they were already working on the post of Assistant Professor, they were

exempted from undergoing period of probation vide order dated 19.9.2005 (Annexure PÂ4) and thereafter they were appointed on 19.9.2005, but they

were stopped working from December, 2005 and ultimately they filed writ

petition being Writ Petition No.291/2007 for salary and thereafter again

they were required to file amended writ petition (S) NO.4035/2007. In that writ petition, the order of termination dated 3.11.2006 was filed by the

respondents while filing the reply, then they came to know about their termination and that order has been impugned in Writ Petition (S)

No.2883/2010. Since the order of termination dated 3.11.2006 is main issue, facts narrated in Writ Petition (S) No.2883/2010 are taken for

consideration.

4. Return has been filed by respondent No.3 opposing the averments made in the writ petitions and specifically pleaded that the petitioners' work was

not found satisfactorily and they were stopped teaching work in the college and pursuant to which, they were served with the notice dated 3.9.2006

and 6.10.2006 and thereafter the Governing Body of respondent No.5 has taken a decision on 16.10.2006 and ultimately, the impugned order dated

03.11.2006 terminating the services of the petitioners has been passed, which is strictly in accordance with law.

5. Mr.Awadh Tripathi, learned counsel for the petitioners, would submit that though the petitioners were duly appointed on the post of Assistant

Professor in accordance with Rule 28 of the Statute promulgated by Pandit Ravi Shankar Shukla University, but they were not afforded reasonable

opportunity of hearing before terminating their services what has been provided in Rule 28 and 29 of the Statute No.28. Even if they are taken to be

Assistant Professor on probation, then Statute No.28 is required to be complied with and salary in lieu of notices ought to have been given to them. He

would further submit that since they have been terminated finding them guilty of misconduct and it is stigmatic / punitive, therefore, opportunity of

hearing was necessary. He would rely upon the decision of the Supreme Court in the matter of Dr.Vijaykumaran C.P.V. v. Central University of

Kerala and Ors. 2020(12) SCC 426, therefore, the impugned order deserves to be set aside.

6. On the other hand, Mr.J.A.Lohani, learned counsel for respondents No.3 to 5 would submit that the petitioners stopped teaching work in the College

and pursuant to which, they were served with two notices dated 3.9.2006 and 6.10.2006 and thereafter Governing Body considered the matter on

16.10.2006 and thereafter the impugned order dated 03.11.2006 terminating

the services of the petitioners has been passed, which is strictly in accordance with law and the writ petitions deserve to be dismissed.

7. Mr. Neeraj Choubey, learned counsel for respondent No. 2 University, would submit that the petitioners are not sought any relief against

University, therefore, the writ petitions deserve to be dismissed. However, he would rely upon the judgment of the Supreme Court in the matter of

Marathwada Univesristy v. Sheshrao Balwantrao Chavan AIR 1989 SC 1582 and submit that where a statute provides for a thing to be done in a

particular manner, then it has to be done in that manner and no other manner. He would further rely upon the judgment of the Supreme Court in the

matter of Union of India v. Shardindu (2007) 6 SCC 276 in which it has been categorically held that if procedure for termination of appointment exists

in the statutory provisions, termination can be done only according to those provisions and none else. He would also rely upon the judgment of the

Supreme Court in the matter of V.P. Ahuja v. State of Punjab 2000(3) SCC 239 wherein it has been categorically held that a probationer like a

temporary servant is entitled to certain protection and his services cannot be terminated arbitrarily or punitively without complying with the principles

of natural justice.

8. Mr. Ravi Bhagat, learned Deputy Government Advocate for respondent No. 1/ State, would support the stand taken by learned counsel for

respondent No. 2.

9. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with

utmost circumspection.

10. Selection of the petitioners except petitioners No. 3 and 6 namely Ramnarayan Chandrakar and Ku. Renuka Sharma for appointment on the post of

Assistant Professor was approved by respondent No. 2 University on 12.5.2005 (Annexure PÂ2) and accordingly, the respondent University

appointed them on the post of Assistant Professor by order dated 19.9.2005 (Annexure PÂ3) and on 19.9.2005 (Annexure PÂ4) the respondent

College informed to the University that since the petitioners so appointed except petitioners No. 3 and 6 are already working in their College as

Assistant Professor, therefore, they are exempted from undergoing probation, but immediately thereafter on 18.1.2007 (Annexure PÂ5) the petitioners

made a complaint before the respondent University that they are not being given pay scale and not being allowed to serve the college leading to filing

of Writ Petition NO.291/2007 in respect to denial of pay scale by the respondent College, in which this Court on 19.1.2007 directed the Vice

Chancellor of the respondent University to decide the representation in accordance with law, which the petitioners made representation to the Vice

Chancellor, but non-compliance of order was subject matter of Contempt Petition No.110/2007 before this Court and thereafter, on 11.6.2007 the

Vice Chancellor of respondent No.2 University passed an order dated 11.6.2007, which has been called in question in WPS No.4035/2007.

Thereafter, services of the petitioners have been terminated by respondents No.3 and 4 by order dated 3.11.2006 (Annexure PÂ1) on the basis of

meeting of Governing Body dated 16.10.2006, which has been called in question in WPS No.2883/2010.

11. The main contention of the petitioners is that Statute No.28 of the respondent University has not been followed while terminating their services

and even order is punitive in nature, it is stigmatic, therefore, regular departmental enquiry ought to have been conducted before terminating their services.

12. It is not in dispute that selection of the petitioners except 3 & 6 was approved by the respondent University on 11.5.2005 and duly communicated

by the University to the respondent College on 12.5.2005 (Annexure PÂ2) and thereafter they were appointed on 19.9.2005 vide Annexure PÂ3 and

vide Annexure PÂ4 respondent College itself informed that these appointed Assistant Professors / petitioners are already working, therefore, they

are exempted from undergoing probation, but thereafter it appears that dispute arose between the parties leading to issuance of notice by respondents

NO.3 and 4 on 6.10.2006 (Annexure RÂ3/4Â1) and the petitioners were given 3 days time to explain as to why they are absent from their duty, failing

which, necessary action will be followed and thereafter, the Governing body submitted a note on 16.10.2006 (pageÂ12) in which certain charges were

levelled against the petitioners for act of indiscipline and acting irresponsibly, which states as under:Â?

13. The aforesaid note prepared by the Secretary of respondent No.5 would show that certain charges of indiscipline and acting negligently amounting

to misconduct and violation of Statute No.28 was levelled. Note placed before the Governing Body of respondent No.5 was considered on its meeting

dated 16.10.2006 and in that meeting, it was resolved to terminate the services of the petitioners and relying upon the decision taken in the meeting

dated 16.10.2006, the services of the petitioners have been terminated by impugned order dated 03.11.2006 passed by respondents No.3 to 5.

14. Now, the question is whether the order of termination (Annexure PÂ?1) is in accordance with law ?

15. In this regard, it would be appropriate to notice clause 28 and 29 of the Statute No.28 which state as under:Â?

â??28. The service of a teacher who is appointed on probation can be terminated during or at the end of the period of probation, if his work is not

found to be satisfactory by communicating to the teacher, the intention of the Governing Body not to continue him and giving him/her one calendar

month's notice in writing or by paying him/her one month's salary in lieu of the notice. Such notice shall not include the summer vacation or any part

thereof and the teacher if he/she has been in service for more than three months during the academic session shall be entitled to salary for the ensuing

summer vacation in the same proportion as the period of service bears to the total period in the academic session. The teacher may, like wise

terminate his/her appointment before the expiry of the period of probation by giving one calendar month's notice in writing to the Governing Body or

paying a sum equal to one month's salary in lieu of the notice.

29. (1) The service of a teacher (other than one appointed on temporary or partÂtime basis or on probation) shall not be terminated after confirmation

except on the following grounds and without the approval of the Executive Council:

(i) Misconduct including wilful neglect of duty.

(ii) Breach of the terms of the contract.

(iii) Physical or mental unfitness.

(iv) Incompetence provided that the plea of incompetence shall not be used against a teacher after two years of his/her confirmation:

(v) Abolition of the post with the prior approval of the Executive Council.

Provided that termination of service on any ground following under (i) to (iv) above shall not be ordered without holding an inquiry in which the teacher

is given a statement of charges against him/her and is afforded reasonable opportunity to defend himself/herself.

Provided also that action to terminate the service of a teacher on the ground of physical or mental unfitness shall not be taken except on the basis of a report of a Medical Board to be appointed by the Governing Body.

(2) Except where the services of a teacher are terminated on the ground of misconduct including neglect of duty or breach of the terms of the

contract, neither the Governing Body nor the teacher shall terminate the agreement except by giving to the other party three calendar month's notice

or by paying to the other party a sum equal to thrice the monthly salary which the teacher concerned is then earning. The period of notice shall not

include the summer vacation or any part thereof.â??

16. In the matter of Shardinu (supra) the Supreme Court has held that if procedure for termination of appointment exists in the statutory provisions,

termination can be done only in accordance with the provisions and none else.

17. Likewise, in the matter of V.P.Ahuja (supra) the Supreme Court has held that a probationer like a temporary servant is entitled to certain

protection and his services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice.

18. Though the petitioners were appointed on 19.9.2005 (Annexure PÂ3) and on the same day vide Annexure PÂ4, the College itself has informed to

the University that they are working on regular basis and therefore, they are exempted from requirement of undergoing probation. However,

considering the petitioners to be probationer on the date of termination i.e. on 3.11.2006, the Statute No.28 as noticed hereinabove clearly provides that

The service of a teacher who is appointed on probation can be terminated during or at the end of the period of probation, if his work is not found to be

satisfactory by communicating to the teacher, the intention of the Governing Body not to continue him and giving him/her one calendar month's notice

in writing or by paying him/her one month's salary in lieu of the notice. Even if he/she is probationer, giving one calendar month's notice is absolutely

necessary and without serving one calendar month's notice, services of the teacher could not have been terminated. But in the instant case, clause 28

of Statute No.28 has not been followed while terminating the services of the petitioners except petitioners No.3 and 6 as neither one month's notice

was given nor one month's salary in lieu of notice was paid to the petitioners.

19. A careful perusal of Annexure RÂ3/4Â1 and 2 would show that serious allegations of indiscipline and acting irresponsibly were charged against

the petitioners, which is apparent from a note placed before the Governing body, which has already been noticed in paragraph 12 of this order. The

question would be whether the impugned order is termination simpliciter or it is termination punitive or exÂ?facie stigmatic.

20. The Supreme Court in the matter of Dr. Vijaykumaran (supra) has clearly held that material which amounts to stigma need not be contained in the

order of termination of the probationer, but might be contained in â??any document referred to in the termination orderâ?. It was further held that

such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex facie stigmatic order of

termination relying upon in its earlier judgments i.e. Indra Pal Gupta v. Model Inter College (1984) 3 SCC 384, Dipti Prakash Banerjee v. Satyendra

Nath Bose National Centre for Basic Sciences (1999) 3 SCC 60 and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences (2002)

1 SCC 520 their Lordships laid down the test to determine whether the order of termination is simpliciter or punitive and held as under:Â?

â??10. In Pavanendra Narayan Sharma v. Sanjay Gandhi PGI of Medical Science (supra), the Court observed thus: SCC p. 528, para 21)

â??21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the

termination there was (a) a fullÂ?scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of

guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any

one of the three factors is missing, the termination has been upheld.

11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is ex facie stigmatic and punitive.

Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal

Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken

belief that in terms of Clause 7 of the contract, it was open to the Executive

Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.â??

21. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in Pavanendra Narayan Sharma (supra) followed in Dr.Vijaykumaran C.P.V. (supra), it is quite vivid that though a note alleging certain acts of indiscipline and irresponsible act of the petitioners amounting to misconduct was placed before respondent No.5 by the Secretary of the Society on 16.10.2006 and thereafter the impugned order dated 03.11.2006 terminating the services of the petitioners came to be passed, but nothing has been brought on record to demonstrate that whether prior to termination of the petitioners except petitioners No.3 and 6, a fullÂ?scale formal enquiry into allegations involving misconduct as mentioned in agenda dated 16.10.2006 was conducted which culminated in a finding of guilt of the petitioners. The petitioners have failed to bring material on record that pursuant to note dated 16.10.2006 prepared by Secretary of respondent No.5 or before placing a note before Governing Body any fullÂ?scale formal enquiry into allegations involving misconduct was conducted, which resulted into guilt of the petitioners.

22. In the matter of Pavanendra Narayan Sharma (supra), their Lordships have clearly held that if any of the three factors is missing, order of termination cannot be held to be punitive or stigmatic as in the instant case, it has not been shown that any fullÂ?scale formal enquiry was conducted into allegations as contained in note dated 16.10.2006 and it resulted in guilt of the petitioners, as such, all three ingredients are missing for holding the impugned order of termination to be punitive or stigmatic. Merely because a note has been prepared and placed by Secretary of respondent No.5 before the Governing Body alleging certain act of misconduct upon the petitioners and eventually the petitioners are placed under termination, therefore, it cannot be concluded that order is punitive or stigmatic, as such,

argument that order is stigmatic deserves to be rejected.

23. As a fallout and consequence of the above stated discussion, the order of termination dated 03.11.2006 is held to be not stigmatic or punitive, but

it is a termination simpliciter, but it is violative of clause 28 of the Statute No.28 of Pandit Ravi Shankar Shukla University as neither one month's

notice was given nor in lieu of notice one month's salary was given. Since the order of termination was termination simpliciter, though in violation of

clause 28 of the Statute No.28, as such, the order of termination cannot be said to be vitiated on account of non compliance of clause 28 as clause 28

does not require show cause notice to be issued before dispensing with services of probation along with reasons. Therefore, the order of termination

dated 03.11.2006 is held to be termination simpliciter without any stigma. However, the petitioners except petitioner No.3 Ramnarayan Chandrakar

and petitioner No.6 Ku. Renuka Sharma will be entitled for one month's salary in lieu of notice along with 9% interest from the date of entitlement till

the date of payment. The petitioners are at liberty to make a representation within 30 days for payment of their salary as claimed in Writ Petition (S)

No.4035 of 2017, which will be considered and decided by respondents No.3 to 5 within next 45 days.

24. Accordingly, both the writ petitions are disposed of. No order as to cost(s).