

(1999) 04 DEL CK 0047
In the Delhi High Court
Case No : CW.No.4926 of 1998

K.K. Mishra (Dr.)		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 690

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. M.N. Krishnamani, with Mr. A.K. Sinha, Mr. R.K. Singh and Mr. P.R. Rajhans, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner was working in the second respondent organisation on deputation. On the 15th of September, 1998, an order was passed by the first respondent in the following terms.

"In terms of proviso to para. (3) Sub-clause (iv) of the Agreement dated 15 June, 1994 between Dr.K.K.Mishra on the one part and the President of India on the other part, specifying the terms and conditions of appointment of Dr.K.K.Mishra as Director, Rashtriya Sanskrit Sansthan, the Government of India, hereby, terminates the services of Dr.K.K.Mishra, holding the post of Director, Rashtriya Sanskrit Sansthan with immediate effect.

2. A cheque No.351972 dated 14.9.98 drawn on Canara Bank, Parliament Street, New Delhi for Rs.50,760 (Rupees fifty thousand seven hundred sixty only) representing the pay for three months, in lieu of notice for the period of three months, as provided in proviso to para. (3) Sub-clause (iv) of the Agreement dated 15th June, 1994, is enclosed.

3. Receipt of this order and the cheque No.351972 dated 14.9.1998 may be acknowledged and in token thereof, the attached copy of the ordered be signed.

4. Dr.K.K.Mishra is, hereby, directed to hand over the charge of the office of

Director, Rashtriya Sanskrit Sansthan, to Prof.Vachaspati Upadhyaya, Vice-Chancellor, Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeetha, New Delhi."

2. On the 19th of September, 1998, the petitioner had filed CW.4926/98 challenging the order dated 15.9.1998. On the 25th of September, 1998 an ad interim order was passed by this Court in the following terms:-

"CW.4926/98

Rule.

CM.9866/98

Notice for the 2nd of November, 1998.

Mr. Jayant Bhushan accepts notice on behalf of the Union of India.

Counter shall be filed within four weeks.

The operation of the order dated 15.9.1998 is stayed as I am satisfied, prima facie, that the order cannot be sustained. The respondents are hereby restrained from interfering with the right of the petitioner to work as Director of the second respondent organisation, until further orders."

3. There was an appeal against this order, and the order passed by this Court was stayed by the Division Bench on the ground that the petitioner has leveled allegations against the Hon"ble Minister who has not been made a party. On the 24th of November, 1998, the first respondent passed the order of suspension, which is in the following terms:-

"Whereas a disciplinary proceeding against Dr.K.K.Mishra, Director, Rashtriya Sanskrit Sansthan, New Delhi is contemplated.

2. Now, Therefore, in terms of para 13 of the agreement dated 15.6.94 between Dr.K.K.Mishra on the one part and the President of India on the other specifying the terms and conditions of appointment of Dr.K.K.Mishra as Director, Rashtriya Sanskrit Sansthan, the Govt. of India in exercise of powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby place the said Dr.K.K.Mishra under suspension with immediate effect.

3. It is further ordered that during the period that this order shall remain in force the Headquarters of Dr.K.K.Mishra would be New Delhi and the said Dr.K.K.Mishra shall not leave the Headquarters without obtaining the previous permission of the undersigned."

4. On the 12th of February, 1999, the first respondent passed the order of repatriation and the same is as under:-

"In terms of Article 21(i) of the Rules of Rashtriya Sanskrit Sansthan, New Delhi, the Government of India is pleased to repatriate Dr.K.K.Mishra, Director, (under

suspension), Rashtriya Sanskrit Sansthan w.e.f.15.2.1999 (F.N.) after completion of the tenure of the contract in Rashtriya Sanskrit Sansthan to NCERT, Sri Aurobindo Marg, New Delhi."

5. The petitioner has filed the CM.No.1520/99 seeking impleading the Hon"ble Minister in his individual capacity and also seeking to amend the writ petition. In the CM following reliefs have been prayed for:-

"In the above circumstances, it is most respectfully prayed that this Hon"ble Court may be pleased to:-

(a) Issue appropriate directions permitting the petitioner herein to implead: Shri Murli Manohar Joshi, who is at present Minister for Human Resources Development, Union of India, as 3rd respondent in the above writ petition.

(b) Issue appropriate directions permitting the petitioner herein to amend the above writ petition by adding sub paragraphs I to VI in para 4 supra as paragraphs to in the above writ petition.

(c) Issue appropriate directions permitting the petitioner herein to effect the amendment of the cause title and to file amended petition as per prayers (a) and (b) above.

(d) Issue appropriate directions staying the operation of the order dated 12.2.99 pending disposal of the above writ petition."

6. On the 5th of April, 1999, the first respondent wrote to the petitioner in the following terms:-

"I am directed to refer to your letter dated 30.3.1999 and to say that the Govt. of India, being the appointing authority for the post of Director in Rashtriya Sanskrit Sansthan, had suspended you from the post of Director, Rashtriya Sanskrit Sansthan vide its order dated 24.11.1998. Since your contract tenure had ended on 15.2.1999, your services in Rashtriya Sanskrit Sansthan were terminated and you were repatriated to NCERT i.e. your parent organisation. The suspension of your services from the post of Director in Rashtriya Sanskrit Sansthan does not prejudice your joining the NCERT. It is for the appointing authority in the Council to examine the matter further and take a decision on whether to continue to place you under suspension or not after you have joined there.

In view of the above, all obligation for payment/deduction of Income Tax would rest with you."

7. According to the petitioner, he has not been able to join the NCERT. The NCERT in reply to the application of the petitioner stated:

Sub: Forwarding of application of Dr.K.K.Mishra for the post of Director, Rashtriya Sanskrit Sansthan, New Delhi.

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With reference to his letter dated 1.2.1999 on the subject cited above Dr.K.K.Mishra is hereby informed that his application for the post of Director, Rashtriya Sanskrit Sansthan cannot be forwarded to the concerned authority as the disciplinary proceedings are pending against him. Further it may be stated that Dr.Mishra is facing the disciplinary proceeding under the authority to whom his application is to be forwarded.

In view of the above his application along with its enclosures are returned herewith in original."

8. The matter came up before this Court and the counsel made submissions and the matter was further adjourned. On the 15th of April, 1999, the first respondent sought to clarify the order dated 12.2.1999 and also the letter dated 5.4.1999 wrote to the petitioner in the following terms:-

"I am directed to invite your attention to the order No.26-16/84-Sk-I dated 12.2.1999 and to say that the words "Director (under suspension)" in the repatriation order No.26-16/84-Sk-I dated 12.2.1999 only described your then status in the Rashtriya Sanskrit Sansthan at the time of your repatriation.

Further, it is clarified that in letter No.26-16/84-Sk-I dated 5.4.1999 the line "It is for the appointing authority in the council to examine the matter further and take a decision on whether to continue to place you under suspension or not after you have joined there" may be treated as deleted."

9. The learned senior counsel for the petitioner, Mr.M.N.Krishnamani, submitted that once the respondent had passed the order of repatriation, there can be no order of suspension against the petitioner and the order of suspension should have been revoked. According to the learned senior counsel, Mr.M.N.Krishnamani, the order of suspension would amount to stigma attached to the petitioner and the NCERT is not permitting the petitioner to join his original post.

10. The learned counsel for the respondents, Mr.Jayant Bhushan, submitted that the order of repatriation had been issued on administrative exigencies and there is no impediment on the part of the petitioner to join NCERT and there is absolutely nothing in the way of the petitioner in joining the NCERT. Regarding the order of suspension, the learned counsel for the respondents, submitted that the first respondent had issued clarification on the 15th of April, 1999, which is already extracted, and the portion deleted in the letter dated 5.4.1999 would be sufficient and no prejudice would be caused to the petitioner.

11. In my view, having regard to the conspectus of the events, the order of repatriation has been issued on administrative reasons and the petitioner cannot challenge the same.

12. With reference to the order of suspension issued by the first respondent once the jural relationship had come to an end by virtue of order issued by the first respondent repatriating the petitioner to his parent organisation, the jurisdiction

of the employer to pass order of suspension would come to an end and the order of suspension automatically ceased to have any force in law. Therefore, the order of suspension dated 24.11.1998 has become a brutum fulmen and no longer enforceable in law. The same stands quashed. It is hereby declared that this will not in any way affect the career of the petitioner in NCERT.

13. This would take me to the question of petitioner joining his parent organisation.

14. The petitioner had been repatriated to his parent organisation and the order of suspension dated 24.11.1998 ceased to have any force in law. Therefore, there is absolutely no impediment of petitioner joining the NCERT. The NCERT shall immediately take the petitioner back in service and pay him all dues payable to him in accordance with law. The arrear of pay & allowances to the petitioner shall be paid by the second respondent till the date of repatriation and from 13.2.1999 onwards shall be paid by NCERT.

15. Both the writ petitions stand disposed of in above terms.

16. There shall be no order as to costs.

17. Copy of order be given dusty to both the parties.