
(2018) 09 CHH CK 0226
In the Chhattisgarh High Court
Case No : Writ Petition No. 605, 6148 Of 2006

Ku. Afsha Ansari And Ors

APPELLANT

Vs

Guru Ghasidas University And Ors

RESPONDENT

Date of Decision : 13-09-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2018) 09 CHH CK 0226

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Saleem Kazi, Neeraj Choubey

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. Since the issue involved in both these writ petitions are identical in nature and the facts and grounds, so also the contentions of the petitioners all

being similar, this court proceeds to decide both these petitions by this common order.

2. The substantial challenge in both the these petitions is to the order dated 03.04.2006 passed by the respondents in the light of the resolution of the

respondent dated 30.03.2006 whereby the earlier regularization of the petitioner has been cancelled and the status of the petitioner have been brought

back as contractual Assistant Librarian and salary also has been substantially reduced and brought back on the fixed salary of Rs.8000/- per month.

3. The brief facts which led to filing of these petitions is that the respondent No.1- University way back in the year 1997 issued a notice for recruitment

for filling up of various posts. One such post that being of Assistant Librarian. Since the petitioners had all the requisite qualifications prescribed under

the rules, they applied for the said post of Assistant Librarian. Later, after scrutiny of records the petitioners were called for interview. The name of the petitioner was placed in the panel of selected wait list. However, later on looking to the need of the hour and administrative exigency the executive council of the University resolved that additional one post of Librarian and four posts of Assistant Librarian for the Institute of Technology and Institute of Pharmacy be created. As the petitioner's name stood in the panel of wait list candidates and since there was need, the respondents finding the petitioner to be well qualified and dully selected, appointed them as Assistant Librarian on contract basis at a fixed salary vide order dated 28.11.1999. Thereafter the petitioners had been continuously working on the post of Assistant Librarian.

4. After sometime, on 03.03.2004 (Annexure P/9) the executive council of the respondent-University met and resolved to regularize the services of the petitioner and on regularizing the services of the petitioner, they were fixed in the pay scale of Rs.8000-13500/- w.e.f. 01.04.2004. The petitioner continued on the said regular post of Assistant Librarian till the impugned order dated 03.04.2006 (Annexure P/11) had been passed whereby the earlier order of regularization dated 21.05.2004 was revoked by the respondents and reverted back the petitioner on contract basis on a fixed salary of Rs.8000/- per month. The impugned order dated 03.04.2006 has been passed in the light of the resolution of the executive council that met on 30.03.2006 (Annexure P/12). It is this action which let to the filing of the present petitions.

5. According to the counsel for the petitioner, the impugned order is bad in law for the reason that the order of appointment and the order of regularization both have been passed in the case of the petitioner on a date when the university was under the control of the Guru Ghasidas University. The impugned order also is in blatant violation of principles of natural justice. Before issuance of the order dated 30.03.2006 the respondents have neither granted any opportunity of hearing to the petitioners nor were they taken into confidence. It was also the contention of the petitioner that before issuance of the impugned order no notice whatsoever or an explanation or show cause was issued.

6. An opportunity of hearing was all the more required for the reason that substantial right had already accrued in favour of the petitioners on

21.05.2004. It was the further contention of petitioners that the decision of regularization was taken when the petitioner's services were under the control of Guru Ghasidas University and was in accordance to the Rules and Regulations then prevailing.

7. It was also the contention of the petitioner that the regularization of the petitioners cannot be said to be bad for the reason that the initial appointment of the petitioners itself was after undergoing due selection process and the recruitment was conducted against sanctioned vacant post.

Another contention which the petitioners have raised is the fact that if at all if the respondents found some irregularity in the regularization of the petitioners, the respondents should have, as a model employer, reconsidered the decision and only should have verified whether the petitioners do not fulfill any of the requisite qualifications for the post against which they were working for long and the respondents could have still taken a decision regularizing the services of the petitioners.

8. The petitioners lastly contended that once when the petitioners have been regularized on the resolution and decision of the executive council, the subsequent executive council does not have the power to withdraw the earlier decision particularly adverse to the benefits which have been provided to an employee. The regulation governing the respondent's establishment do not provide for review of the decision of the executive council earlier taken.

9. The respondents while opposing the petitions submitted that the order of regularization of the petitioners was contrary to the regulations and the Act governing the service conditions. According to the respondents, the power of appointment of an employee is vested only with the executive council.

The petitioners have been given a back door appointment in the garb of regularization which otherwise cannot be done. Once when the petitioners were found ineligible for the said post after the first instance when they had applied for the same by way of direct recruitment, they could not have been subsequently reconsidered for the same post by way of regularization.

10. It was the further contention of the respondents that earlier decision by which the petitioners have been granted the benefits i.e. order dated

21.05.2004, the same was issued without proper approval of the executive council and therefore the said decision taken on 21.05.2004 was found to

be an irregular order. Since it was an irregular decision, the entire matter was once again placed before the executive council on 30.03.2006 and after

much deliberation the executive council passed a resolution for rectification of the mistake and as a consequence the impugned order dated 03.04.2006

was passed.

11. According to the respondents, there is no illegality or ambiguity so far as the impugned order is concerned and also in reaching to the conclusion

that the earlier decision dated 21.05.2004 was not in accordance with the provisions of law. The respondents have also denied the contention of the

petitioners that they were found eligible and suitable and their names also appeared in the list of candidates recommended for the post of Assistant

Librarian. The initial appointment of the petitioners itself was on contract basis and that too on a fixed salary. The post of Assistant Librarian under

the respondents could be filled up only by way of a direct recruitment and that too after due publication of the advertisement in accordance with rules.

The alleged recruitment in which the petitioners had participated was in the year 1997 and at time the post of Assistant Librarian in the institute of

Technology or department of Pharmacy was not even created, and therefore, the petitioners would not have any claim for regularization on the said

post which stood created subsequent.

12. It was also the contention of the respondents that the respondents infact had already issued an advertisement for filling up of the post of Assistant

Librarian in the institute of Technology and department of Pharmacy and the selection process of which was pending when the case of the petitioners

were examined for regularization by the then executive council in its meeting dated 03.03.2004 and finally the order dated 21.05.2004 was passed.

This order dated 21.05.2004 was without subsequent approval of the executive council. This irregular decision of the respondent dated 21.05.2004 was

detected in the year, 2006 and thereafter the executive council by way of fresh resolution dated 30.03.2006 decided to withdraw the benefits of

regularization provided to the petitioners and as a consequence the impugned order dated 03.04.2006 was passed by the answering respondents in full

confirmation with the Act and statute governing the University and therefore prayed for dismissal of the writ petition.

13. After hearing the submissions put forth on either side and on perusal of

records and pleadings what stands undisputed is that the services of the petitioners were initially engaged as Assistant Librarian on contract basis. The initial engagement of the petitioners was 28.11.1999. Since 1999 they were uninterruptedly performing the duties of Assistant Librarian on contract basis against the sanctioned post which were created by the University in the year, 1998. After a considerable period of time of about four years the executive council of the University vide Ex. P/9 in its executive council meeting dated 03.03.2004 passed a resolution approving regularization of the petitioners and authorizing the competent authority for a suitable order in this regard. Thereafter, on 21.05.2004 (Annexure P/10), the Registrar, an IAS Officer, issued an order regularizing the services of the petitioners in the pay scale of Rs.8000-275-13500.

14. The petitioners started getting benefits attached to the post of regular Assistant Librarian since 01.04.2004 as per Annexure P/10. Thereafter, abruptly after a period of two years time the impugned order 03.04.2006 (Annexure P/11) was passed. By implication of the impugned order, the regularization order dated 21.05.2004 regularizing the services of the petitioners w.e.f. 01.04.2004 was cancelled. Further, the consequence of the impugned order was that the status of the petitioners from regular Assistant Librarian was ordered to be rolled back as Assistant Librarian on contract basis. Thus, there was a substantial adverse consequence by the impugned order.

15. What is also not in dispute from the pleadings and the records attached to the writ petition is that, before passing of the impugned order, the petitioners were not taken into confidence in as much as they were not issued with any show cause notice nor were they provided an opportunity of hearing. This admitted position of the petitioners not being provided with any opportunity of hearing by itself would mean that the same has been passed in violation of the basic principles of natural justice.

16. It does not need much deliberation or discussion as it is by now well settled position of law that before issuance of any order, the implication of which has adverse civil consequence, the least that is required is an opportunity of hearing to the concerned person. The Supreme Court as well as this court in a catena of decisions have reiterated the requirement of law for providing opportunity of hearing before issuing any order which has adverse civil consequence.

17. The Supreme Court in Rajasthan State Road Transport Corporation & Anr. Vs. Bal Mukund Bairwa (2), 2009(4)SCC 299, observed as under :

35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R.

Antulay (supra), this Court held:

55. ""No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So

also the violation of the principles of natural justice renders the act a nullity.

47. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement

of fair play in action. {See Sawai Singh vs. State of Rajasthan and Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors.)"".

18. The Supreme Court in the matter of Prakash Ratan Sinha v. State of Bihar and others, 2009(14) SCC 690, has held as under:-

9. The respondent is an instrumentality of the State, and therefore, all its administrative decisions would be subject to the doctrine of equality and fair

play, as incorporated in Articles 14 and 21 of the Constitution of India. If any of its actions or administrative decisions result in civil consequences, the

principles of natural justice. This principle of law has been laid down by this Court in a catena of cases.

13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there

is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule

of natural justice operates in areas not covered by any law validly made.

19. In the matter of Canara Bank v. Debasis Das, 2003 (4)SCC 557, the Supreme Court has categorically held that an administrative order which

involves Civil consequence must be consistent with the principles of natural justice by observing as under:- ""19.....Even an administrative order

which involves civil consequence must be consistent with the rules of natural justice.

The Supreme Court has elaborated the expression ""civil consequence"" by observing that (Debasis Das case supra) it ""encompasses infraction of not

merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.

The Court has further stated, that ""in its wide umbrella comes everything that affects a citizen in his civil life.

20. In the present case what cannot be brushed aside is the fact that by virtue of the order dated 21.05.2004 the petitioners have been enjoying the

fruits of a regular Assistant Librarian for a period of about two years and as such a substantial right had been created in their favour. Before

withdrawing the said benefits, or in other words, before cancelling the order which was passed in their favour two years back, the minimum that was

expected from the respondents was to call upon the petitioners seeking their explanation on the proposed decision to be taken by the respondents that

of cancellation of the order of regularization.

21. Once when this court has reached to the conclusion that the impugned order has been passed in violation of the principles of natural justice, in the

opinion of this court, it need not go into the other aspects. The writ petitions therefore deserve to be and accordingly stand allowed. The impugned

resolution dated 30.03.2006 (Annexure P/12) and the consequent impugned order dated 03.04.2006 (Annexure P/11) both stand set aside/quashed.

22. Both the writ petitions stand allowed.