

(1969) 02 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Revision No. 238 of 1987

Lajpat Rai Agarwal

APPELLANT

Vs

The Arya Samaj Shiksha Sabha

RESPONDENT

Date of Decision : 01-02-1969

Acts Referred:

Arbitration Act, 1940 — Section 14, 16, 17
Specific Relief Act, 1963 — Section 21
States Reorganisation Act, 1956 — Section 120, 121

Citation : (1969) WLN 177

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Judgement

Jagat Narayan, J.—This is plaintiff's revision application against an order of the Civil Judge, Ajmer, setting aside an award which was made in his favour. This order was confirmed on appeal by the learned District Judge, Ajmer.

2. The material facts are these. Shri Lajpat Rai, plaintiff, was appointed a lecturer in the D.A.V. College, Ajmer on 16-7-51. He was confirmed on 16-7-53 and on 28-9-53 agreement was entered into between the plaintiff and the defendant incorporating the terms of his employment. The defendant is the Arya Samaj Shiksha Sabha, Ajmer. It is a registered body, which runs the D.A.V. College, Ajmer. Para 9 of this agreement provides for termination of the services of the plaintiff on the grounds enumerated in Clauses (a) to (f). Para 11 of the agreement provides for arbitration in case of any dispute arising from the termination of services, by a tribunal consisting of the Vice-Chancellor for the time being of Agra University, a judicial officer not below the rank of the District Judge nominated by the Chancellor and person not connected with the D.A.V. College, Ajmer nominated by the Executive Council of the Agra University.

3. The plaintiff felt aggrieved by the order terminating his services and on his application tribunal was appointed in accordance with the agreement consisting of the Vice Chancellor of the Agra University, the District Judge of Agra as

nominee of the Chancellor and Shri R.C. Gupta, Advocate, as nominee of the Executive Council of the Agra University.

4. Before the above Tribunal held a sitting, it was discovered by the Chancellor of the Agra University that the D.A.V. College, Ajmer, had ceased to be affiliated to the Agra University. He accordingly sought legal opinion and was advised that the authorities of the Agra University had no jurisdiction to appoint a Tribunal to decide the dispute between the plaintiff and the defendant. Under the direction of the Chancellor his Secretary wrote a letter dated 26-12-57 to the Registrar of the University embodying the above opinion. The Registrar of the Agra University thereupon sent all the papers pertaining to the case to the Registrar of the Rajasthan University for taking such action as the latter University may think fit to take.

5. The Syndicate of the Rajasthan University thereupon passed a special resolution appointing a Tribunal to decide the dispute. This Tribunal consisted of the Vice Chancellor of the Rajasthan, Shri L.S. Mehta District Judge, Jaipur City as Chancellor's nominee and Shri S.S. Saxena, Director of Education, Rajasthan as the nominee of the Executive Council of the Rajasthan University.

6. Both the parties appeared before the above Tribunal and after considering the evidence produced by them and after hearing the parties it gave an award in favour of the plaintiff. It held that none of the charges brought against the plaintiff by the defendant had been substantiated and the termination of his services was wrongful. It also held that the order terminating his services was void as the defendant had failed to get approval of the Vice Chancellor of the Agra University to the order as provided u/s 25C(2) of the Agra University Act 1926. Further it held that the order was bad as the prior approval of the Education Department was not taken in accordance with the circular letter of the Director of Education, Ajmer No 3453-3562/52 dated 27-2-52 The operative part of the award runs as follows:

In the result we hold that the impugned order of the D.A.V. College management, terminating the services of Shri Agarwal, is inoperative and that Shri Agarwal, should be treated as a member of the service of the D.A.V. College, Ajmer, with effect from the date of his services had been terminated and we further hold that he is entitled to recover all the arrears of his salary.

7. The plaintiff filed an application in the Court of Civil Judge, Ajmer on 30-5-59 for getting the award filed in court & for passing a decree in accordance with it. This application was registered a suit & summons was issued for the defendant for 15-7-59 on 7-7-59 Shri D.D. Bharagava, Advocate, appeared before the Court on be-, half of the defendant and on 6-8-59 he filed an application, in which two objections were taken against the award. One was that there was an error apparent on the face of it in as much as the contract embodies in the agreement was for personal service and could not be specifically enforced in view of Section 21 of the Specific Relief Act. The other was that the Tribunal had no jurisdiction

to make the awards as it was not constituted in accordance with the agreement between the parties.

8. The first objection was upheld by the both courts below. They did not, go into the second objection.

9. So far as the first objection is concerned, the ground, on which it was upheld by the courts below, is not correct. Section 25C(2) of the Agra University Act runs as follows:

Every decision by the management of an affiliated college, other than maintained by Government, to dismiss or remove from service a teacher shall be reported forth with to the Vice Chancellor and, subject to the provisions to be made by the Statutes, shall not take effect until it has been approved by the Vice Chancellor.

10. On behalf of the defendant it was alleged that the approval of the Vice Chancellor to the removal of the plaintiff was taken on 31-1-1957. The letter, of the Vice Chancellor indicating his approval was not produced before the Tribunal. But assuming that approval was communicated on 31-1-1957, this can not be regarded as an approval of the decision of the management to terminate the services of the plaintiff. The Managing Committee took a decision to terminate the services of the plaintiff. The Managing Committee took a decision to terminate the services of plaintiff on 8-3-57. No approval of the Vice Chancellor taken before that date could bring into effect the decision of the Managing Committee under the provision of Section 25-C(2) of the Agra University Act.

11. If the D.A.V. College, Ajmer had remained affiliated to the Agra University after 8-3-57, the decision of the Managing Committee dated 8-3-57 to terminate the services of the plaintiff would not have come into effect and the Order of the Tribunal holding that the plaintiff continued in the service of the D.A.V. College, Ajmer, would have been correct. In that case the plaintiff would have been entitled to reinstatement and to the arrears of salary from the date of his reinstatement. The circular letter of the Director of Education of Ajmer dated 27-2-52 had no statutory force and non-compliance with it should not make the order terminating the services of the plaintiff void. The Director of Education; Ajmer, could only have stopped the Government aid to the institution for not complying with the direction contained in it.

12. I am, however, of the opinion that the statutory safeguard" which plaintiff had u/s 25-C(2) of Agra University Act, no longer remained available to him when the D.A.V. College, Ajmer, ceased, to remain affiliated with the Agra University. The following notification appeared in the Rajasthan Gazette dated 14-2-1957;-

EDUCATION (B) DEPARTMENT

NOTIFICATION

Jaipur, February 5, 1957

No. D. 19346/Edu/B/56- It is hereby notified that consequent on the Reorganisation of States all Degree College in the Ajmer area affiliated to the University of Agra will henceforth be affiliated to the University of Rajputana.

Steps for completion of necessary formalities with the two Universities have already been taken.

Sd./- S.P. Singh Bhandari

Secretary to the Government.

13. The D.A.V. College, Ajmer ceased to remain affiliated to the Agra University and was affiliated to the Rajasthan University before the order dated 8-3-57 was passed by the management. The Rajasthan University Act does not contain any provision similar to that contained in Section 25-C(2) of the Agra University Act.

14. The provision with regard to arbitration of any dispute between the plaintiff and the defendant contained in para 11 of the agreement was incorporated on account of mandatory direction contained in statute 6 framed under the Agra University Act which was in force when the agreement dated 28-9-53 was executed. In 1954 it was embodied in the Agra University Act by the addition of Section 25-C(1). Section 25-C(2) was added to the Agra University Act at the same time. The contention on behalf of the plaintiff is that u/s 120 and 121 of the States Reorganization Act, 1956, he continued to remain entitled to the same safeguards after the formation of Rajasthan and after the affiliation of the D.A.V. College, Ajmer to the Rajasthan University, These Sections read as follows:

120 power to adapt Laws : For the purpose of facilitating the application of any law in relation to any of the States formed or territorially altered by the provisions of Part II, the appropriate Government may before the expiration of one year from the appointed day, by order make such adaptation and modifications of the law" whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation - In this section, the expression appropriate Government means-

(a) As respect any law relating to a matter enumerated in the Union List, the Central Government, and

(b) as respects any other law-

(i) in its application to a part A State, the State Government, and

(ii) in its application to a parts C-State the Central Government.

121. Power to construe laws:- Notwithstanding that no provisions or insufficient provision has been made u/s 120 for the adaption of a law before the appointed any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to any State formed or

territorially altered by the provisions of Part II, construe the law in such manner, without affecting the substance, as may be necessary or proper in regards to the matter before the Court tribunal or authority.

15. In my opinion the above Sections have no application to the present case. The D.A.V. College, Ajmer, could have continued to remain affiliated to the Agra University Act was not a law applying to the erstwhile State of Ajmer It only applied to such colleges as were affiliated to the Agra University. The Rajasthan University Act also does not apply to the colleges situated in Rajasthan. It is only applicable to such Colleges as are affiliated to the Rajasthan University.

16. It is not worthy that Section 25-C(2) was added to the Agra University Act in 1954 after the plaintiff and the defendant entered into the agreement dated 28-9-53. The provision contained in the Sub-section becomes applicable when it was enacted and ceased to apply when the D. A V. College, Ajmer, ceased to remain affiliated to the Agra University.

17. I accordingly hold that the order of removal passed against the plaintiff by the management on 8-3-57 was not merely wrongful as held by Tribunal. There was an error apparent on the face of the award in as much as it was held it that the plaintiff continued in service. But on the finding that the removal of the plaintiff from service was wrongful he would be entitled to damages for wrongful termination of his services. The courts below erred in dismissing the application of the plaintiff u/s 14 and 17 of the Arbitration Act. The award should have been remitted to the Tribunal for determining what damages for wrongful dismissal be awarded to the plaintiff.

18. The defendant filed D.B. Civil Writ No. 213 of 1959 against the plaintiff, the members of the Tribunal and the University of Rajasthan in which both the parties filed a number of documents. By the consent of the parties, those documents were read in evidence In this case. At Page 31 of this file is a copy of a letter from the Secretary to the Government of Rajasthan in the Education Department to the Registrar of the Rajasthan University dated 29-1-1957 which runs as follows-

I am directed to inform you that consequent on the integration of Ajmer Merwara in Rajasthan it will be in the fitness of things that the following four colleges of Ajmer Merwara are affiliated to the University of Rajputana with immediate effect. The terms and conditions on which these colleges have enjoyed recognition from the Agra University can be safely as the basis of recognition:

1. Govt. College, Ajmer
2. D.A.V. College, Ajmer
3. Savitri Girls College, Ajmer
4. Govt. College, Beawar

Early steps may kindly be taken to do this so that the staff of these four colleges

in Ajmer Merwara may enjoy the advantages of the new elections that are likely to take place in the University of Rajputana for the various University Bodies.

The question of examinations of 1957 and 1958 is left to the University of Rajputana to arrange and negotiate with the University of Agra, so far as the Govt. is concerned, these colleges now are affiliated to the University of Rajputana.

19. On behalf of the plaintiff it was contended that under the above order the provisions of the Agra University Act and statutes continued to apply to the D.A.V. College, Ajmer. In my opinion there is no such order contained in this letter. Only suggestion had been made by the Government that the terms and conditions on which the colleges named in the letter had enjoyed recognition from the Agra University may be taken as the basis of recognition.

20. On behalf of the defendant it was contended that the parties agreed to the arbitration of the dispute by a Tribunal consisting of the Vice Chancellor of the Agra University, a judicial officer nominated by the Chancellor of Agra University, a nominee of the Executive Council of the Agra University and the Tribunal which adjudicate the dispute consisting of the Vice Chancellor of the Rajasthan University, Judicial Officer nominated by the Chancellor of the Rajasthan University and a nominee of the Syndicate (Executive Council) of the Rajasthan University, had no jurisdiction to decide the dispute. The reply on behalf of the plaintiff to this contention is that the defendant is estopped from raising this objection now, as the defendant appeared before the Tribunal and contested the claim of the plaintiff before it without disputing its jurisdiction.

21. The factual position is this. The plaintiff filed his written claim before the Registrar of the Rajasthan University. The Registrar sent a copy of this claim to the defendant and asked for a reply. This reply was sent to the Registrar with the following covering letter, which is at page 105 of the file of the writ petition:

589/11/59 5th Nov. 1958 To,

The Registrar,

University of Rajasthan,

Jaipur.

Subject : Tribunal appointed to consider the petition of Shri L.R. Agarwal

Dear Sir,

Please refer to your letter No. Ar/849/41868 dated the 5th September, 1958 along with copy of the written statement submitted by Shri Lajpat Rai Agarwal in regard to the termination of his services by this College. Enclosing please find a reply (5 copies) to the petitioner's statement along with following enclosures:

1. Appendix I and II.

2. Charge Sheet.
3. Shri L.R. Agarwal's reply.
4. 47 copies of correspondence etc.

I may, however, add that since the University while appointing the Tribunal has also raised the question of the legality of the matter, this reply is without prejudice to any right of the management to question the legal basis of University's reference of the case to the Tribunal of its decision.

Yours Faithfully,

Sd/- Tara Chand,

Secretary

Dayanand (A.V.) College

AJMER.

The argument on behalf of the defendant is that in the beginning the Registrar carried on the correspondence on behalf of the Tribunal and so the recital contained in the last para of the above letter to the effect that the reply was without prejudice to any right of the management to question the legal basis of the University reference of the case of the Tribunal, should be taken to be an objection raised before the Tribunal. I am unable to accept this contention. There is no materia from which it can be inferred that this letter was ever brought to the notices of the Tribunal or to the notice of the plaintiff or that it formed a part of the record of the Tribunal. Further no objection was taken even in this letter that the Tribunal appointed by the Rajasthan University was not competent to adjudicate upon the dispute between the parties. What was mentioned was that the reply was being filed without prejudice to any objection which the defendant might raise in future regarding (1) the legal basis of the reference of the case by the Rajasthan University to the Tribunal and (2) the decision which right ultimately be given by the Tribunal. This did not amount to taking an objection that the tribunal was not competent to decide the dispute. It is not disputed that no such objection was taken by the defendant in the presence of the Tribunal when it heard the case. I am firmly of the opinion that the defendant having taken a chance of getting a favourable decision from the Tribunal could not turn round and challenge its jurisdiction when the award went against it.

22. This Tribunal could have adjudicated upon the dispute with the consent of the parties. The defendant by his conduct intimated that he had no objection to the dispute being decided by it although it could not do so lawfully. There by he induced the plaintiff to prosecute his case before the Tribunal which he might not have done if an objection had been taken. The defendant is therefore estopped from challenging the jurisdiction of the Tribunal.

23. This view is supported by both Indian and English authorities. I may refer to

the following cases:

Abdul Shakur and Hafiz Chhedda Shah Vs. Muhammad Yusuf, Jagmohan v. Suraj Narain AIR 1935 Oudh. 499, Arbn. Jupiter General Insp. Co. Ltd. v. Corporation of Calcutta AIR 1256 Cal. 470 Union of India V.K.P. Mandal AIR 1258 Cal. 415 , Pioneer Engineering Works Vs. Union of India (UOI), New India Assurance Co. Ltd. Vs. Dalmia Iron and Steel Ltd., , Chowdhari Muratza Hussein v. Mussumat Bidi Bechunissa IA 209. Donald Compbell and Co. v. Jeshraj Girdhari Lal AIR 1920 P.C. 123. and Macaura v. Northern Assurance Co. Limited and Ors. (1925) AC 619.

24. In the Union of India v. K.P. Mandal AIR 1258 Cal. 415. (Supra) the arbitration Clause in a contract for execution of certain work by A with the Government of India provided that except where otherwise provided in the contract, all questions and disputes arising out of or relating to the contract would be referred to the arbitration of the Superintending Engineer, Eastern Aviation Circle II. Disputes arise between the parties and the Government appointed on as an arbitration to adjudicate on the made by it against A and informed A about the appointment. Both the parties knew that M was not competent to act as arbitrator according to qualification laid down by the arbitration clause. A not only submitted to the arbitration of M on the Government's claim but also put forward a counter-claim against the Government for adjudication by the same arbitrator. He took part in the proceedings from beginning to end. He agreed to extensions of time for filing the award and when the award went against him sought to set aside the award to the ground that M. was not competent to act as arbitrator. It was held that the rule of estoppel binds A and prevents him from contending that M was not qualified under the terms of the agreement of arbitrate in the dispute. It was observed in this case:

A Representation in order to attract the rule of estoppel need not always be a representation of a physical, but may as well be the representation of an attitude or a state of mind, inasmuch as, the state of Man's mind is as much a matter of act as the State of his digestion.

If a man, either by words or by conduct, has intimated that he consent to an act which has been done, and that he will offer no opposition to it, although it would not have been lawfully done without his consent, and he thereby induces other to do that from which they otherwise might have abstained, he can not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

Generally speaking, if a party has an interest to prevent an act being done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their given credit to his sincerity he has no more right to challenge

The act to their prejudice that he would have, had if it had been done by his

previous licence.

25. On behalf of the defendant it was sought to distinguish the above case on the ground that a counter claim was put forward there by the party subsequently raising an objection and it had asked the arbitrator to adjudicate upon it. That in my opinion make no difference. The principle underlying the decision is that the court will not permit any of the parties, to lie by act in an indecisive manner as to obtain the benefit of the award if it is in his favour and endeavour to have it set aside if it is not. This principle is fully applicable to the present case, the act which are similar to the fact of the case in *Union of India v. V.K.P. Mandal* AIR 1258 Cal. 415. (Supra). There the arbitration was, done by another Superintending Engineer named in the arbitration agreement. In the present case the Tribunal was constituted of corresponding authorities of the University of Rajasthan instead of those of the University of Agra, which was provided for in the agreement.

26. The defendant was unable to cite any authority in which a different view might have been taken. The facts of *Khardah Co. Ltd. v. Rayman and Co. (India) Private Ltd.* AIR 1962 SC 1810 are distinguishable. In that case the contract was void as it was prohibited by the Forward contracts (Regulation) Act 1952.

27. I would like to make it clear that the principle enunciated above is only applicable to the case of an arbitration tribunal where parties have agreed to refer their dispute to arbitration under a private agreement. This principle is not applicable to a Statutory or judicial tribunal. For the parties can by their consent confer jurisdiction on an arbitrator not named in the agreement. But by such consent they can not confer jurisdiction on a statutory or judicial tribunal.

28. Section 16(1) of the Arbitration Act runs as follows:

16(1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit

(a) whether the award has left undetermined any of the matter referred to arbitration, or where it determines any matter not referred to arbitration and such matter can not be separated the matters referred; or

(b) Where the award is so indeterminate as to be incapable of execution; or

(c) Where an objection to the legality of the award is apparent upon the face of it.

29. The above provision empowers the court to remit any matter referred to arbitration to the arbitrators for reconsideration. The decision of the Tribunal that the termination of the service of the plaintiff was wrongful, does not suffer from any error apparent upon the face of the record. But its decision that the plaintiff continued in service and is entitled to recover all the arrears of his salary with effect from the date from which services were terminated to the date of his reinstatement is erroneous in law on the face of it. The written statement of

claim filed before the Tribunal by the plaintiff is at page 132 to 135 of the writ petition. In this he has claimed damages for wrongful dismissal. This was one of the matters referred to the Tribunal for decision. The Tribunal can be asked to reconsider the limited question as to what damages the plaintiff is entitled.

30. On behalf of the defendant it was contended that para 11 did not authorise the Tribunal to determine the damages to which the plaintiff is entitled for the wrongful termination of his service. I am unable to accept this contention. Under Para 11 any dispute arising in connection with Clause 9 of the contracts was to be referred to arbitration. These words are sufficiently wide so as entitled to Tribunal determine what damages for wrongful termination of services should be awarded to the plaintiff.

31. Accordingly I allow the revision application in part as indicated above, quash the order of the appellate court setting aside the award, and remit the award to the Tribunal for reconsideration in the light of the observations made in in this judgment The Tribunal shall only determine the damages which should be awarded to the plaintiff for the wrongful termination of his services.

32. I am informed that all the members of constituting the Tribunal namely Shri G.C. Chatterji the then Vice Chancellor, Shri S. Saxena, nominee of the Syndicate and Shri (now justice) Lehar Singh Mehta, are available. The Civil Judge, Ajmer shall serve notices on them enquiring whether they are willing to act if any of the members is not willing to act, he shall call upon the parties to nominate a substitute and in case of their failure to do so, appoint a substitute. He shall then fix a time within which the Tribunal shall reconsider the award in the light of the above judgment and file it in court with the necessary modification.

33. In the circumstances of the case I leave the parties to bear own cost of this revision application.