
(1966) 07 BOM CK 0008

In the Bombay High Court

Case No : Miscellaneous Petition No. 99 of 1966

Prakash Rajmal Baldota

APPELLANT

Vs

University of Bombay

RESPONDENT

Date of Decision : 27-07-1966

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10(2)
Constitution of India, 1950 — Article 226, 311, 4

Citation : (1966) 2 LLJ 814 : (1967) MhLj 192

Hon'ble Judges : V.D. Tulzapurkar, J

Bench : Single Bench

Judgement

1. By this writ petition under Art. 226 of the Constitution the petitioner is challenging the order or decision contained the letter dated 24 February, 1966 whereby his services as a research assistant in the Department of Law of the respondent-university were terminated from 1 March, 1966.

2. The petitioner, who has passed his LL.M. examination of the respondent-university, applied for a post of research assistant in the Department of Law of the university in the month of July, 1961 and on 22 November, 1961 he was appointed to that post on probation for a period of one year in the first instance in the grade of Rs. 160-15-250. As a research assistant his duties were to assist in the research work of the department and to carry out such other duties as may be assigned to him by the head of the department. Soon thereafter the petitioner registered himself as a candidate for Ph.D. degree in Law on or about 6 December, 1961 and pursued the studies for the said course under Prof. Irani who was the head of the department. According to the petitioner, after the expiry of the period of one year, though the respondent-university did not issue any letter expressly confirming him to the said post of research assistant, since his services were found to be satisfactory by the respondent, he must be deemed to be confirmed, inasmuch as he continued in service for quite a long period without extension of the probationary period. It is the petitioner's case that one Prof. S. P. Sathe, lecturer in the Department of Law went abroad on a study-leave in or

about September, 1964 and on the recommendation of Prof. Irani, which was accepted by the syndicate, he was appointed to act as an officiating lecturer, in the Department of Law on 3 October, 1964 and he lectured to LL.M. students in that capacity up to 15 March, 1965. On 1 April, 1965 he was paid the salary for the entire month of March, 1965 according to the grade applicable to officiating lecturer, but on 1 May, 1965 he was called upon by the assistant accountant of the respondent-university to refund the difference of salary for the post of research assistant and the officiating lecturer for the period from 16 March, 1965 till 31 March, 1965 on the footing that he was supposed to have been reverted back to his substantive post of research assistant, inasmuch as the leave of Prof. Sathe had come to an end on 15 March, 1965. The leave vacancy, according to the petitioner, continued without any break up to 1 September, 1965 and he ought to have been allowed to officiate in the said post or deemed to have continued to officiate in the said post without any break till then. By his letter dated 25 June, 1965 the petitioner submitted to Registrar that leave of Prof. Sathe had been extended and as such that extension should ensure for his benefit and that Doctor Sethna, who was in charge of the Department of Law at that time (Prof. Irani being on leave) intended to recommend his reappointment in the continued leave vacancy in case the university took the view that the appointment of the petitioner had automatically come to an end in the said officiating post on 16 March, 1965 and that therefore, he should be paid salary of a lecturer from 16 March, 1965 onwards. The Registrar however, rejected his submissions. The petitioner's case further is that on his return from the study-cum-lecture tour on 5 July, 1965 Prof. Irani told him that he (Prof. Irani) would recommend reappointment of the petitioner to the said offsetting post provided the petitioner did not press his claim for vacation salary mentioned in his letter dated 25 June, 1965. This attitude of Prof. Irani, according to the petitioner, was unfair inasmuch as Prof. Irani tried to coerce him into giving up his claim for continuity of his services in the said officiating post. On 30 July, 1965 the petitioner, therefore, addressed a letter to the Registrar, which contained an appeal to the syndicate to reconsider his claim to lecturer's salary and allow him to officiate in the said post or that he be appointed to the said post as from 21 June, 1965 onwards. In August, 1965 at the instance of the Registrar, Prof. Irani told him that he (petitioner) would be chargesheeted and even discontinued as a student for Ph.D. degree unless the letter dated 30 July, 1965 was withdrawn by him. On 5 November, 1965 a chargesheet was received by the petitioner from the Registrar of the respondent calling upon him to show cause why his services as a research assistant should not be terminated for the grounds mentioned therein. Two charges were levelled against the petitioner, first, that the work of the petitioner as a research assistant had not been satisfactory in that he had not submitted any research work done by him during the period of his service to the university and the petitioner was, therefore, considered unsuitable for working as a research assistant and secondly that the petitioner had committed an act of gross insubordination in that in his letter dated 30 July, 1965 addressed to the Registrar he had made false and scandalous allegations against the head

of the Department of Law of the university. By his letter dated 17 November, 1965 the petitioner submitted his explanation and made his representations against the chargesheet. He pointed out that the charges levelled against him were vague and that he was not able to make out his defence in the absence of relevant documents being made available to him, particularly the comments made by Prof. Irani on the petitioner's letter dated 30 July, 1965 to the Registrar while forwarding it to the Registrar. However, the Registrar of the respondent-university by his letter dated 24 February, 1966 informed the petitioner that the university had decided to terminate his services as a research assistant and that he was thereby discharged from the service as from 1 March, 1966 and that he will be paid one month's salary in lieu of notice. The petitioner is challenging this termination of his services as a research assistant on two grounds. In the first place, he has contended that the provisions of the Bombay Services (Conduct, Discipline and Appeal) Rules (Appendix II, Art. 4) have been violated and the order has been passed without following the principles of natural justice and rules of fairplay and that the entire inquiry has been in the nature of a farce. Secondly, he has contended that the order has been passed mala fide and not in good faith.

3. A preliminary objection as to the maintainability of the petition has been raised by Sri Porus Mehta on behalf of the respondent-university. He has urged a twofold argument. In the first place, he has contended that the respondent-university is a statutory body and the relationship between the petitioner and the respondent-university is purely that of a master and servant on the basis of contract of employment and the petitioner could not be regarded as being in civil service or holding any civil post in State service and as such cannot avail himself of Art. 311 of the Constitution. He has further urged that since the petitioner is not a civil servant, a petition for writ under Art. 226 of the Constitution would lie only if the petitioner is able to satisfy the Court that the respondent-university has committed a breach or violated any statutory obligation imposed upon it, and this case since it cannot be said that any statutory obligation imposed upon the university has been violated or committed breach of, the petition for a writ is not maintainable and if at all the petitioner has any grievance on account of breach of any terms of contract of employment by the respondent-university, he is free to take appropriate action by way of a suit against the university. Secondly, he has urged that several disputed questions of fact arise in the case especially on the plea of mala fide raised by the petitioner and therefore, this Court should not entertain the petition but refer the petitioner to a suit where all these disputed questions of fact could be gone into by a civil Court. Since these points go to the root of the matter, Sri Mehta urged upon me to decide them first without going into the merits of the petition.

4. In support of his contentions Sri Mehta relied upon two decisions, one of this Court in Ramachandran (V.) Vs. Air-India International Corporation, and the other of the Supreme Court in Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, . In the former case where an employee of

the Air-India International Corporation sought relief against an order of dismissal by way of a writ, Coyajee, J., held that the Corporation was a distinct and separate statutory entity and although certain amount of control was retained by the Central Government, the Corporation appointed its own officers, had right to dismiss its own officers and had right to impose such conditions of service as they deemed proper for the efficient rendering of air services in a business-like manner and that therefore, the employee of the Corporation could not be considered to be "a member of the civil service" or holding "a civil post" within the meaning of Art. 311 of the Constitution and that the petition under Art. 226 was not maintainable. In the latter case the order of the Deputy Custodian removing a person appointed as a manager under S. 10(2)(b) of the Custodian of Evacuee Properties Act was challenged by way of writ petition and Ramaswami, J., in Para. 5 of his judgment observed as follows :

"5. In our opinion, the order of the Deputy Custodian removing the appellant from the management of the business is not vitiated by any illegality. But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of mandamus under Art. 226 of the Constitution. The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. In the present case, the appointment of the appellant as a manager by the Custodian by virtue of his power under S. 10(2)(b) of the 1950 Act is contractual in its nature and there is no statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Art. 226 of the Constitution."

5. Sri Mehta also referred to another judgment of the Supreme Court in the case of S.R. Tewari Vs. District Board Agra and Another, . Relying upon these decisions, Sri Mehta urged that since the petitioner is not a civil servant a petition for a writ under Art. 226 would lie only if the respondent-university could be shown to have committed a breach of any statutory obligation imposed upon it and since in this case no statutory obligation has been violated by the respondent-university, the remedy by way of a writ is not maintainable and that the relations between the respondent-university and the petitioner being purely of a master and servant based on a contract of employment, the petitioner will have to pursue the ordinary remedy of a civil suit against the university if he feels that any terms of the contract of employment have been broken by the university.

6. The petitioner, who argued the matter in person, fairly conceded that he was

in the employ of the respondent-university, which is a statutory body incorporated under the Bombay University Act, 1853, and that he was not a member of the civil service of the State, nor did he hold a civil post under the State. But he relied upon certain resolution dated 21 August, 1936 passed by the syndicate of the respondent-university after approving the report of the committee appointed by it to frame rules governing leave, pension, etc., of the staff in the university departments and university officers. The resolution runs as follows :

"Resolved that the report of the committee be approved, and adopted, and that in accordance with the recommendations of the committee, the Civil Service Regulations be applied as far as possible to the members of the university staff other than those who serve under special contracts or whose terms of appointment are regulated by "statutes"."

7. The question is what is the effect of this resolution whereby the Bombay Services (Conduct, Discipline and Appeal) Rules have been made applicable to the members of the staff of the respondent-university.

8. Before I consider the effect of the above resolution, it would be desirable to see how the appointment of the petitioner as a research assistant came to be made. It cannot be disputed that the respondent-university being a distinct and separate entity incorporated under the Bombay University Act, 1953, appoints its own officers, the members of the teaching staff and servants and has a right to dismiss its own officers, members of the teaching staff and servants and it can prescribe its own conditions of service applicable to such staff as it deems proper. Further, under S. 25(xx) of the Act it is the syndicate of the respondent-university that has power to make appointments of officers, teachers and servants of the university and by implication, it has the power to terminate the services of or dismiss such officers, servants and teachers so appointed. Under S. 25(xxvii) the syndicate can delegate any of its powers to the Vice-Chancellor, the Rector, the Registrar or such other officers of the university or committee appointed by it as it may deem fit. It is undisputed that it was in pursuance of such powers conferred on the syndicate to make appointments of officers, teachers and servants that the respondent-university through its syndicate invited applications for a post of research assistant in the Department of Law in the month of July, 1961 and pursuant to that invitation the petitioner made an application for that post and it is further not disputed that in pursuance of delegated authority the Rector of the respondent-university appointed the petitioner to that post in the Department of Law with effect from 20 November, 1961 on a probation for a period of one year in the first instance in the grade of Rs. 150-15-250. A copy of the letter of appointment dated 22 November, 1961 whereby the petitioner was appointed to that post of research assistant in the Department of Law has been annexed as Ex. A to the petition. In the circumstances, it is obvious that by virtue of the power conferred upon the syndicate under S. 25(xx) of the Act-which power was delegated to the Rector of

the respondent-university by the syndicate under S. 25(xxvii) of the Act - the contract of employment to the post of research assistant with the petitioner was entered into by the respondent-university. In other words, the appointment of the petitioner as a research assistant in the Department of Law was obviously contractual and not any statutory appointment. The relationship between the respondent-university on the one hand and the petitioner on the other was purely that of a master and servant based upon such contract of service. Then comes the resolution on which reliance has been placed by the petitioner. In that behalf it may be stated that under S. 25(xx) of the Act the syndicate has not only the power to make appointments of officers, teachers and servants of the university but also the power "to define their duties and the conditions of their service" and even this latter power could be delegated and was in fact delegated under S. 25(xxvii) of the Act. It appears that a committee was appointed by the syndicate to frame rules governing leave, pension, etc., of the staff in the university departments and university offices and that committee made certain recommendations and one of the recommendations of the committee was that the Civil Service Regulations should be applied as far as possible to the members of the university staff and that recommendation was approved by the syndicate by passing the resolution in that behalf on 21 August, 1936. It will thus appear clear that instead of framing their own rules governing leave, pension and such other matters of the members of the staff in the university departments and university offices, by the resolution dated 21 August, 1936, the syndicate resolved that the Civil Service Regulations should be made applicable to such members of the staff. Furthermore, the resolution clearly states that the Civil Service Regulations are to be applied to the members of the university staff "as far as possible." In view of this it cannot be suggested that the Civil Service Regulations, which have been thus made applicable as far as possible too the members of the university staff, become any statutory regulations. In my view, the effect of passing this resolution is nothing more than incorporating the Civil Service Regulations to the extent to which they would be applicable, into the contract of service as part of the contract between the university on the one hand and its employees on the other. The resolution cannot have the effect of converting the appointment of the petitioner, which was initially contractual into any statutory appointment. In my view, the Civil Service Regulations, which have been resolved to be made applicable as far as possible, become the several terms of the contract by which the officers, teachers and servants are employed by the university and for the breach of such terms of contract the employee, if aggrieved, will have his remedy by way of suit. The petitioner's main grievance against the order dated 24 February, 1966 has been that no proper opportunity was given to him to defend the charges that were levelled against him, inasmuch as the charges that were framed against him were vague, that the relevant documents, particularly the comments made by Professor Irani on his representation dated 30 July, 1965, were not made available to him and that the inquiry was a farce and principles of natural justice had not been followed and that even the provisions of the Civil Service Regulations had been violated and

therefore, the impugned order is liable to be quashed or set aside. The entire grievance of the petitioner could be summed up as constituting a breach of the contract and the several terms thereof on the part of the respondent-university and the relationship between the respondent-university and the petitioner being purely that of master and servant, his proper remedy would be by way of a suit for the breach of contract. Since the petitioner was not a member of the civil service of the State, nor did he hold a civil post under the State, he cannot avail himself of the safeguards contained under Art. 311 of the Constitution and the remedy by way of a writ petition cannot be availed of by him.

9. The only other manner in which the petitioner could approach this Court by way of a writ petition is by pointing out that the respondent-university has failed to perform any statutory duty or statutory obligation imposed upon it by the statute, for according to the judgment of the Supreme Court in *S.R. Tewari Vs. District Board Agra and Another*, the courts have power to declare invalid the act of a statutory body-even if the act relates to determination of the employment of a servant - if by doing that act the body has acted in breach of any mandatory obligation imposed on it by a statute. But, in the present case, it is difficult to hold that while terminating the services of the petitioner, the respondent-university has committed a breach of any statutory obligation imposed upon it. The petitioner referred me to S. 25(xx) of the Act and urged that the said provision imposed a statutory duty or obligation upon the syndicate - and by virtue of delegation upon the Vice-Chancellor and/or the Rector - to afford a reasonable opportunity to the petitioner to put forward his say against the charges that were framed against him before his services were terminated and further imposed a statutory obligation to follow the principles of natural justice during the course of the inquiry that was purported to be held against the petitioner, and since no proper opportunity was given to him to defend himself against the charges framed and since the principles of natural justice were not followed, the respondent-university could be said to have failed to perform its statutory duty and committed a breach of the statutory obligation imposed upon it by the statute. It is difficult to accept this contention of the petitioner. In my view, S. 25(xx) merely confers a power upon the syndicate to make appointments of officers, teachers and servants and also confers a power upon the syndicate to define their duties and conditions of their service and it is in exercise of such power that the contracts of employment are entered into by the university with the officers, teachers and servants so appointed, but all the same, the officers, teachers and servants who are so appointed hold their office not by reason of the provisions of S. 25(xx) but by reason of the contract of service so entered into by the university with them. Further it is in exercise of the power conferred by S. 25(xx) upon the syndicate that the syndicate, after appointing a committee in that behalf, accepted the committee's recommendations and resolved that the Civil Service Regulations should be made applicable to the members of the staff of the university in the various departments so far as they are applicable. The Civil Service Regulations, which

have been thus made applicable, as I have already held above, constitutions of service as a part of their contract of employment. If, therefore, any breach of such conditions of service, which are deemed to be part of the contract of service is complained of, it cannot be regarded as the breach of any statutory obligation or statutory duty imposed upon the respondent-university by the statute, but the breach would be a breach of contract of employment and the aggrieved employee will have his ordinary remedy by a civil suit in a civil Court. In this context, it would be pertinent to note the last portion of the resolution dated 21 August, 1936 whereby the Civil Service Regulations are expressly made inapplicable to such members of the university staff "who serve under special contracts or whose terms of appointment are regulated by states." This last portion clearly indicates that the university contemplated cases of certain appointments which would be governed by either special contracts or regulated by statutes and in the latter category would come the appointments of the Vice-Chancellor and the Rector. In respect of such appointments which are regulated by statutes, if there be any breach of statutory obligation committed by the university a remedy by way of a writ petition might lie. But this is not the case here. As I have said above, the petitioner's appointment is purely a contractual appointment and the Civil Service Regulations, which have been made applicable to him as far as possible, also form part of his contract of employment, for a breach of which the petitioner, in my view, cannot approach this Court by way of writ petition.

10. The petitioner also referred me to the provisions of Sub-section (5) of S. 11 of the Act, which runs as follows :

"(5) The Vice-Chancellor shall give effect to the decisions or orders of the syndicate regarding the appointment, dismissal, suspension and punishment of the persons in the service of the university or teachers of the university or regarding the recognition, withdrawal or of the recognition of any such teacher and shall exercise general control over the affairs of the university. He shall be responsible for the proper administration of the affairs of the university in accordance with this Act, the statute and Ordinances."

11. Sub-section (5), in my view, has no bearing on the question that is involved in the case. All that Sub-section (5) says is that the Vice-Chancellor shall give effect to the decisions or orders of the syndicate regarding the appointment, dismissal, suspension and punishment of the persons in the service of the university, that is to say, before the Vice-Chancellor can give effect to the decisions or orders of the syndicate, the syndicate must first decide or pass orders in the matter of appointment, dismissal, suspension or punishment of the persons in the service of the university, to which effect is required to be given by the Vice-Chancellor under Sub-section (5) and the decisions or orders of the syndicate in the matter of appointment, dismissal, suspension or punishment of the persons in service of the university would be taken in accordance with the conditions of service that might be prescribed by the syndicate in exercise of its

own power conferred upon it by S. 25(xx) of the University Act. This provision of the statute, therefore, has no relevance to the point at issue.

12. The petitioner during the course of his arguments relied upon two judgments of the Patna High Court, one in Ram Kripalu Mishra Vs. University of Bihar and Others, and the other in Bhutkun Jha and Another Vs. Vice-Chancellor and Others, . These two decisions seem to support the petitioner's contention that before terminating his services as a research assistant in the university, principles of natural justice ought to be followed.

13. Sri Mehta after pointing out certain features of those decisions to me, urged that in view of the later Supreme Court decision in Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, I should not entertain the present petition. In the first place, in the Patna decisions relied upon by the petitioner the aspect as to whether the appointment of the university professor or teacher was a contractual one or not does not appear to have been considered. Secondly, Sri Mehta has pointed out that the aforesaid decisions and particularly the decision in Ram Kripalu Mishra Vs. University of Bihar and Others, appear to have been given without considering the question as to whether the impugned order passed by the Chancellor was an administrative order or a quasi-judicial order, for if the impugned order was purely an administrative order, there would be no question of quashing the order on the ground of violation of any principles of natural justice. He has further pointed out that the several English decisions on which reliance was placed by the Patna High Court in Ram Kripalu Mishra Vs. University of Bihar and Others, while construing S. 4 of the Bihar State University Act relate to cases where right to property was involved. Apart from anything else, I prefer to follow the decision of the Supreme Court in Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , where it has been clearly laid down that unless the act complained of constitutes a breach of a statutory obligation, writ jurisdiction of the High Court cannot be invoked. Sri Mehta also relied upon the decision of the Privy Council in the case of Vidyodaya University of Ceylon and others v. Silva (1964) 3 All E.L.R. 865. That case related to a summary dismissal of a university professor or a teacher and when that professor applied for a writ of certiorari, the Privy Council held that although the university was established and regulated by statute, that did not involve that contracts of employment made with teachers and subject to S. 18(3) were other than ordinary contracts between master and servant; and that, in the instant case, the professor was not shown to have any other status then that of a servant, and, since procedure by certiorari was not available where a master summarily terminated a servant's employment, certiorari has been wrongly granted by the lower Court. In view of these authorities and in view of my conclusion stated above that the relationship between the respondent-university and the petitioner was purely that of a master and servant, I feel that the petitioner cannot approach this Court by way of a writ petition in the matter of the termination of his services.

14. The petitioner has next contended that he has alleged mala fide on the part of the respondent-university in the matter of termination of his services, and therefore, he urged that even if the order of the respondent-university were regarded as purely administrative, if mala fides were attributed to the respondent-university in arriving at its said administrative decision, the Court should interfere in exercise of its writ jurisdiction but it is here that the second contention urged by Sri Mehta assumes importance in this context. It must be stated that in order to support his plea of mala fides the petitioner has alleged several facts in his petition, which have been categorically denied and disputed by the respondent-university in their reply. According to the petitioner, the whole trouble arose because he claimed that he should be paid the salary of a lecturer as from 16 March, 1965 and further that he should be continued in the leave vacancy of Professor Sathe and that in the matter of his said claims he made a representation to the university by his letter dated 30 July, 1965. His case further is that because he pressed his aforesaid claim and did not withdraw his representation contained in his letter dated 30 July, 1965, Professor Irani took an unfair attitude towards him and first suppressed his representation dated 30 July, 1965 for some time and thereafter forwarded the same to the authorities concerned along with his own letter containing his comments on the said representation. He has further alleged that Professor Irani harassed him and threatened him and that at one stage even suggested that he could recommend him (petitioner) for being reappointed to the post of officiating lecturer only if he withdrew his aforesaid claims and representation, but because he insisted upon the representation being forwarded to the university. Professor Irani took the unusual step of discontinuing him as a student for Ph.D. and before he was so discontinued Professor Irani sought to justify the said action on the false ground that the petitioner had not carried out the suggestions which Professor Irani had made to suitably alter or amend the thesis which he had submitted. All these allegations of fact which have been preferred by the petitioner - allegations pertaining to coercion, threats, suppression of his representation on the part of Professor Irani, etc. - have been categorically disputed and denied in the reply. It is, therefore, clear that unless these rival versions on questions of fact are fully gone into, it would not be possible for any Court to arrive at its conclusion one way or the other on the plea of mala fides raised by the petitioner in his petition. I, therefore, feel that the plea of mala fides put forward by the petitioner as his alternative ground for his prayer for issuance of a writ quashing the impugned order raises hotly disputed questions of fact and I do not think that it would be proper to enter into these disputed questions of fact in exercise of writ jurisdiction.

15. In the result, I feel that the preliminary objections urged by Sri Pours Mehta are well-founded and the petition is liable to be dismissed on those points. The petitioner of course will be at liberty to take such other action as he deems proper if he feels aggrieved by the order dated 24 February, 1966.

16. The rule is, therefore, discharged and the petition is dismissed with costs.