
(2003) 07 AHC CK 0017
In the Allahabad High Court
Case No : C.M.W.P. No. 13379 of 2003

Prof. Abu Baker Khan

APPELLANT

Vs

Vice-Chancellor, Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 6 AWC 5431

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : M.D. Singh "Shekhar, ", for the Appellant; Dilip Gupta and Sunita Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 4.3.2003 (Annexure-15), by which the Respondent No. 4 had been appointed Dean, Faculty of Unani Medicine for a period of two years with effect from 5.3.2003 vice Professor Afzal Ahmad.

2. Facts and circumstances giving rise to this case are that the Petitioner is a Professor in the regular cadre in the Department of Unani Medicine and had been Dean of the Faculty from 8.7.1993 to 7.7.1995. Petitioner was again appointed as Dean, Faculty of Unani Medicine with effect from 8.7.1997 by rotation. However, disciplinary proceedings were initiated against him and suspension order has been passed, he could not function as a Dean. Inquiry stood concluded and he was exonerated vide order dated 6.2.2002. The post of Dean became vacant on 4th March, 2003 and the Respondent No. 4 had been appointed on the said post. Hence, the present petition.

3. Heard Shri M.D. Singh "Shekhar", learned Counsel for the Petitioner, Shri Dilip Gupta for the University and Smt. Sunita Agrawal for Respondent No. 4, and also perused the record.

4. Shri M.D. Singh "Shekhar" has submitted that though the Petitioner had been appointed as a Dean in 1997 but because of the suspension, he could not function as a Dean. On 4th March, 2003, he was the senior-most Professor in the Department and Respondent No. 4 had been promoted on probation and appointed as a Dean on mala fides, which is not permissible in law. More so, Petitioner had met a hostile discrimination as of similar circumstances, where for one reason or the other, the duly appointed Dean could not complete his tenure, he was given further time to work as a Dean. The Petitioner remained under suspension for more than a year and he could not function as a Dean, he could ought to have been given that much time. He had legitimate expectation for extension of time as in other case it was done, and therefore, the order impugned is liable to be quashed.

5. On the contrary, it has been submitted by learned Counsel for the Respondents that Dean is to be appointed by rotation in pursuance of the Statute No. 7.1, which provides that the Dean of a Faculty shall be appointed by the Executive Counsel from amongst the Professors in the faculty by rotation according to seniority for a period of two years. The Professors, as referred to in Clause (1) of Statute 7, includes the Professors appointed in the regular cadre as well as promoted under Personal Promotion Scheme or Career Advancement Scheme. The Petitioner had earlier worked as a Dean from 1993 to 1995. A legal controversy as to whether the Professors promoted under Personal Promotion Scheme or Career Advancement Scheme could be appointed as a Dean and the Division Bench of this Court in Civil Misc. Writ Petition No. 17731 of 1996 *Ms. Shireen Moosvi v. Aligarh Muslim University, Aligarh and Ors.* vide judgment and order dated 4.4.1997 has held that Professors other than appointed in regular cadre are not entitled to be appointed as Dean. It is because of this controversy as by virtue of the judgment and order of this Court, the Professors promoted under Personal Promotion Scheme or Career Advancement Scheme became out of zone of consideration. The Petitioner had been again appointed as a Dean vide order dated 7.7.1997. He could not function as a Dean because of his suspension, and the judgment of this Court, above referred to, was reversed by the Hon'ble Apex Court in *S.A. Siddiqui v. Professor M. Wajid Khan and Ors.* JT 1999 (1) SC 1, and it was held that a combined seniority list of Professors, irrespective of the feeding cadre, whether they had been selected in a regular cadre or under Personal Promotion Scheme or Career Advancement Scheme, be prepared. Hence, as the Petitioner had earlier been appointed in 1997, in view of the Division Bench decision of this Court and when the post of Dean became vacant on 4th March, 2003, Respondent No. 4 had also been appointed as a Professor and was being in the queue, she had rightly been appointed as a Dean and the petition is devoid of any merit and is liable to be dismissed.

6. Undoubtedly, provisions of Clause (1) of Statute 7 provide that any appointment of a Dean from amongst the Professors in the Faculty by rotation according to the seniority will be for a period of two years. Petitioner had worked as a Dean from 1993 to 1995. By rotation, he could not have been appointed in

1997 had the judgment of this Court passed in Ms. Moosi (supra) been not in operation. Had the Professors promoted in other categories been considered, the Petitioner could not have been offered the post of Dean in the said Department. When the post of Dean became vacant on 4th March, 2003, the Respondent No. 4 was a duly appointed Dean in the Department and stood in the queue for being appointed as a Dean in a cyclic order of seniority. Thus, we do not find any fault with her appointment as a Dean.

7. Admittedly earlier, where Deans appointed for a period could not complete their tenure by one reason or the other, their period had been extended to facilitate them to complete the tenure of Dean for a period of two years. But in the instant case, there is distinctive feature that Petitioner stood appointed as a Dean in view of the decision of this Court, which was subsequently reversed by the Hon''ble Apex Court. The Court does not make the law, it pronounces the law interpreting the provisions of the Statute, In effect, the judgment of the Court provides an interpretation of a particular statutory provision from the date of its inception. A judgment does not have a perspective or retrospective effect unless so clarified by the Court because it is merely an interpretation which the provisions was carrying from the date of its initial inception. Prospective effect is given to protect the right accrued already and it is found that the same may not be disturbed. In case, the Professors duly promoted under Personal Promotion Scheme or Career Advancement Scheme were eligible to be considered for appointment of a Dean of the Department but they could not be considered because of the judgment of this Court. The Petitioner was appointed as a Dean in 1997 was itself in contravention of the law and, therefore, he cannot make a claim that he should have been given a further time to complete his tenure of two years.

8. In K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , the Hon''ble Supreme Court applied the rule of contemporanea expositio as the Apex Court found it a well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. However, the Apex Court added the words of caution that such a rule must give way where the language of the statute is plain and unambiguous. Similarly, in Collector of Central Excise, Bombay and Anr. v. Parley Export (P.) Ltd. AIR 1980 SC 644 , the Hon''ble Supreme Court observed that the words used in the provision should be understood in the same way in which they have been understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In Indian Metals and Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise, Bhubaneshwar, ,the Hon''ble Supreme Court has applied the same rule of interpretation by holding that contemporanea expositio by the administrative authority is a very useful and relevant guide to the interpretation of the expression used in a statutory instrument. Same view has been taken by the Hon''ble Supreme Court in State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, ; and Y.P. Chawla and others Vs. M.P. Tiwari and another, . In N. Suresh Nathan and another Vs. Union of India and others, ; and

M.B. Joshi and Others Vs. Satish Kumar Pandey and Others, ,the Apex Court observed that construction in consonance with long-standing practice prevailing in the concerned department is to be preferred.

9. In J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI) and Ors, , it has been held that the maxim is applicable in construing ancient statute but not to interpret Acts which are comparatively modern and an interpretation should be given to the words used in context of the new facts and situation, if the words are capable of comprehending them. Similar view had been taken by the Apex Court in The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others, .

10. In Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd., , the Apex Court observed that the principle of *contemporanea expositio*, i.e., interpreting a document by reference to the exposition it has received from competent authority can be invoked though the same will not always be decisive of the question of construction. The administrative construction, i.e., the contemporaneous construction placed by administrative or executive officers responsible for execution of the Act/Rules, etc. generally should be clearly wrong before it is over-turned; such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight and is highly persuasive, However, it may be disregarded for cogent reasons. In a clear case of error, the Court should, without hesitation refuse to follow such construction for the reason that "wrong practice does not make the law".(Vide *Municipal Corporation for City of Pune and another Vs. Bharat Forge Co. Ltd. and others*, .In *D. Stephen Joseph Vs. Union of India and others*, , the Hon"ble Supreme Court has held that "past practice should not be upset provided such practice conforms to the rules" but must be ignored if it is found to be *de hors* the rules.

11. In *Laxminarayan R. Bhiattod and Ors. v. State of Maharashtra* 2003 AIR SCW 2020, the Apex Court held that "the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter".

12. This principle has also been applied in judicial decisions as it has consistently been held that a long standing settled practice of the Court should not normally be disturbed unless it is found to be manifestly wrong, "unfair". (Vide *Attorney-General of Ontario and Ors. v. Canada Temperance Federation and Ors.* AIR 1946 PC 88 ; *Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others*, ; *Assistant District Registrar, Co-operative Housing Society Ltd. vs. Vikrambahai Ratialaal Dalal and others*; *Ajitsinh C. Gaekwad and Ors Vs. Dileepsinh D. Gaekwad and Ors*, ; *Collector of Central Excise, Madras Vs. Standard Motor Products and Others*, ; *Kattite Valappil Pathumma and others Vs. Taluk Land Board and others*, ;and *Ganga Ram Moolchandani and Others Vs. State of Rajashthan and Others*, .

13. Thus, in view of the above, one may reach inescapable conclusion that the rule of administrative interpretation, even if is not of binding nature, has great persuasive value but the practice should be in conformity with law.

14. A person can have a legitimate expectation only in consonance with the statute and the rules framed thereunder and not in contravention of the same. This doctrine cannot be invoked for doing something contrary to law. (Vide A. Mahudeswaran and Others Vs. Govt. of T.N. and Others, ; Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, ; National Buildings Construction Corporation Vs. S. Raghunathan and Others, ; Punjab Communications Ltd. v. Union of India and Ors. (1999) 4 SCC 277; State of West Bengal and Ors. v. Niranjan Singha 2001 (1) AWC 429 : (2001) 2 SCC 326 State of Bihar Vs. S.A. Hassan and Another, Dr. Chanchal Goyal v. State of Rajasthan 2003 (2) SCCD 864>:(2003) 3 SCC 485 and Union of India and Ors. v. International Trading Co.2003 AIR SCW 2828.

15. The doctrine of legitimate expectation has a meaning that the statements of policy or intention of the Government or its Department in administering its affairs should be without abuse or discretion. The policy statement could not be disregarded unfairly or applied selectively for the reason that unfairness in the form of unreasonableness is akin of violation of natural justice. It means that said actions have to be in conformity of Article 14 of the Constitution, of which non-arbitrariness is a second facet. Public Authority cannot claim to have unfettered discretion in public law as the authority is conferred with power only to use them for public good. Generally, legitimate expectation has essentially procedural in character as it gives assurance of fair play in administrative action but it may, in a given case be enforced as a substantive right. But a person claiming it has to satisfy the Court that his rights had been altered by enforcing a right in private law or he has been deprived of some benefit or advantage which he was having in the past and which he could legitimately expect to be permitted to continue unless it is withdrawn on some rational ground or he has received assurance from the decision-making authority which is not fulfilled, i.e., the kind of promissory estoppel.

16. Change of policy should not violate the substantive legitimate expectation and if it does so, it must be as the change of policy which is necessary and such a change is not irrational or perverse.

17. This doctrine being an aspect of Article 14 of the Constitution by itself does not give rise to enforceable right but it provides a reasonable test to determine as to whether action taken by the Government or authority is arbitrary or otherwise, rational and in accordance with law.

18. Petitioner's contention that as the Respondent No. 4 has been wrongly appointed as Professor on probation, she could not have been appointed as a Dean, is preposterous and totally misconceived for the reason that Clause (1) of Statute 7 does not make any distinction as to whether a Professor is on

probation or stood confirmed. Appointment of Respondent No. 4 as Professor has not been challenged though certain facts have been averred in the petition.

19. In view of the above, we do not find any force in the petition. The same is accordingly dismissed.