

(1995) 02 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3554 of 1987

Sanan Kumar Johri

APPELLANT

Vs

Aligarh Muslim University, Aligarh and Another

RESPONDENT

Date of Decision : 17-02-1995

Acts Referred:

Aligarh Muslim University Act, 1920 — Section 31

Citation : (1995) 02 AHC CK 0078

Hon'ble Judges : Palok Basu, J and R.K.Singh, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—Bereft of the distinction in the dates on which each petitioner applied for extraordinary leave etc., the primary question for consideration is confined to the applicability of the mischievous clause : "unless the appointing authority regards the explanation satisfactory, the employee concerned shall be deemed to have vacated his post, without notice, from the date of absence without leave," as contained in Regulation 5(8) framed under the Aligarh Muslim University Act, 1920 (for short, the Act).

2 The petitioner, Dr. S, K, John joined the Aligarh Muslim University (for short, AMU) in the year 1967 and was confirmed as a Reader in AMU, in the year 1968 and became and was confirmed as Professor of Radiology in the year 1974. The other facts and relevant dates regarding Dr. Johri's petition will be taken up last.

3. Petitioner Dr. (Mrs.) Nishat Iqbal Ashraf was inducted into the AMU as a Demonstrator in Pharmacology in the year 1968 and having worked in various capacities came to be a Reader in Pathology in the year 1979. Dr. (Mrs.) Nishat Iqbal Ashraf applied for extraordinary leave on 6/1/1978 for one year with effect from 7/1/1978 which was sanctioned on 19/7/1978 and she availed the E.O. leave with effect from 21/2/1978. The relevant fact to be mentioned here is that admittedly Dr. (Mrs.) Nishat Iqbal Ashraf had gone out of India to join a post in Riyadh leaving her duties at the AMU to chanco. However, she made applications for extension of E.O.L. which was sympathetically considered thrice but the last

cable sent by the AMU on 21111981 made it specifically clear that she would be taken to be on leave only till 1121981 and no further extension will be granted under any circumstances. In spite of this notice the petitioner did not join, she did not report at the AMU and only pressed by a letter that further leave may be granted to her. Under the circumstances the ViceChancellor intimated the petitioner vide letter dated 2521982 that since the petitioner has failed to resume duties she be deemed to have vacated the post and ceased to be in service of AMU with effect from 2121981.

4. Petitioner, Prof. Dr. Iqbal Ashraf joined the AMU as a Lecturer in the department of Forensic Medicine in the year 1979. It may be relevant to mention that petitioner Prof. Dr. Iqbal Ashraf and petitioner Dr. (Mrs.) Nishat Iqbal Ashraf are husband and wife and that the husband's case is no different from that of the wife except for few dates here and there. Dr. Iqbal also did not come back to join the AMU, did not report for duty and only made an application for extension of the leave even though the AMU had intimated him vide letter dated 2521982 that if he fails to join it will be deemed that his services have ceased with effect from 2121981. It may be mentioned that these two petitioners in the two writ petitions, the husband and wife, had, joined the same University in Saudi Arabia, leaving their teaching duties at AMU to the mercy of God.

5. The aforesaid facts leave no manner of doubt that both the petitioners had knowledge of fact that their leave was not sanctioned and that they were duty bound to resume the duties forthwith or in any case by the date gracefully allowed by the AMU. As noted above neither the husband nor the wife were prepared to oblige the AMU.

6. The petitioner in the fourth petition namely, Dr. (Mrs.) R. Rizvi joined the J. N. Medical College of AMU as Registrar in the year 1965, became a Lecturer in 1967 and a Reader in the department of Obstetrics and Gynaecology in 1973. She made an application on 811983 for extraordinary leave for three years. On 1631983 the ViceChancellor rejected the said prayer. However, on that very date i.e. 1631983 the petitioner Dr. (Mrs.) R. Rizvi wrote to the ViceChancellor of her own accord, that she was proceeding for EOL with effect from 1731983. This letter was forwarded by the Chairman of the department to the Vice Chancellor. It was pointed out that the petitioner had left without leaving mailing address. On 20/2151983 the AMU issued a notice to the petitioner that she has voluntarily absented herself knowing that her leave application has not been sanctioned and therefore, she shall be deemed to have ceased from service of AMU with effect from 1731983. The petitioner had admittedly sent an explanation on 1761983. It is however, notable that the petitioner did not come back, she did not join and she did not report for resuming duties. The explanation sent by the petitioner's letter dated 1761983 was rejected and the Executive Council by its resolution has approved the said decision. It is true that the said resolution came to be passed in February, 1984 but the fact remains that the petitioner had not reported for duties at the AMU even though she came to know that her

application for EOL stands already rejected.

7. At this stage it may be relevant to mention here that AMU conducts its business in accordance with the provisions of the Act, Section 31 of which provides as under :

"(1) The authorities of the University may make regulations consistent with this Act, the Statutes and the Ordinances

(a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum,

(b) providing for all matters which by this Act, the Statutes or the Ordinances, are to be prescribed by Regulations, and

(c) providing for all other matters solely concerning such authorities or committees appointed by them not provided for by this Act, the Statutes and the Ordinances.

(2) Every authority of the University shall making regulations providing for the giving of notice to the members of such authority, of the dates of meeting and of the business to be considered at the meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section other than any Regulation made by the Court or the annulment of any such Regulation,"

8. In view of those provisions contained in Section 31 of the Act, Statute 29 has been framed subclause (1) of which reads as under :

"All the teachers of the University or any of its Institutions shall, in the absence of any agreement to the contrary, be governed by the terms and conditions of service as specified in the Statutes, Ordinances and Regulations of the University :

Provided that no alteration in the salary, the rate of contribution to the Provident Fund and the age of superannuation of a teacher in the service of the University shall be made to his disadvantage except with the previous approval of the visitor."

9. It therefore, follows that the aforesaid provisions contained in Statute 29 enables framing of Regulations and this is how Regulations known as "Leave Regulations applicable to the teaching, nonteaching and subordinate staff of the University" have been framed. Regulation 5(8) is relevant for decision in these cases which for ready reference is quoted below :

"If an employee absents himself from duty without having previously obtained leave or fails to return to his duties on the expiry of leave without having previously obtained further leave, the Head of the Department/Office concerned in cases where is the appointing authority, after waiting for three days, shall

communicate with the person concerned, asking for an explanation and shall consider the same. In cases where the Head of the Department, Office is not the Appointing Authority, he shall, after waiting for three days from the date of unauthorised absence without leave or extension of leave, inform the Registrar/ Finance Officer, and the Registrar (Finance Officer in the case of staff born on the Accounts Cadre) shall communicate with the person concerned asking for an explanation which shall be submitted to the ViceChancellor/ Executive Council.

Unless the Appointing Authority regards the explanation satisfactory, the employee concerned shall be deemed to have vacated his post, without notice, from the date of absence without leave."

10. Sri U. N. Sharma, Advocate, assisted by Sri Ravi Shankar Pratap has been heard at length in support of the aforesaid four writ petitions. Sri B. D. Agarwal, Senior Advocate assisted by Sri Dilip Gupta Advocate has been heard on behalf of AMU. All the learned counsel for the parties have been heard at extensive length and all the documents have been minutely examined.

11. Sri Sharma has laid emphasis and advanced one argument that the provisions contained in the Leave Regulation 5(8) are ultra vires Section 31 of the Act and in any case the mischievous deeming clause noted above must be struck down as being arbitrary as it enables the AMU to act without any guideline. In this connection he placed reliance on five decisions of the Supreme Court reported in AIR 1976 SC 492, AIR 1982 SC 854, AIR 1971 SC 140, AIR 1961 SC 619 and lastly AIR 1976 SC 37.

12. It may be stated here at the outset that in considering the argument noted above the aforesaid authorities do not help the learned counsel; for the petitioner, as they are distinguishable having been pronounced on the provisions contained under Article 311 of the Constitution of India. The principles governing conditions of service by other employees in terms of statutory rules and regulations are altogether different. The Leave Regulation? which have been framed in accordance with the provisions noted above contained in the Act, become part of service conditions. Those Regulations can undoubtedly be classified as subordinate legislation. It is not disputed by the learned counsel for the petitioner nor is there any such pleading in the writ petition that the AMU has applied these Regulations arbitrarily and has discriminated the petitioner from some other similarly placed. Any one joining the AMU shall be governed by those Regulations.

13. Apart from the aforesaid fallacies in the argument of the petitioners' counsel, it may be stated here that there is enough safeguard in the relevant Regulation which has been noted above in extenso. There is a provision whereby explanation of the employee concerned is to be called mandatory and it is only in the event of regarding that explanation unsatisfactory that the deeming clause of "having vacated his post" would be applicable. In other words principles of natural justice have already been incorporated in the said Regulation and there is

nothing which may be taken to violate those principles. On the controversies involved the principle of audi alteram partem have been applied by the Regulations themselves and therefore, the argument that the Regulation is against the principle of natural justice is rejected.

14 Having held so the maximum that has to be examined by the Court is as to whether on the given facts, the said procedure has been correctly applied or not. If it is found that the Appointing Authority, AMU has disregarded those provisions or has rejected the explanation without any legal basis of factual inaccuracy, it will be open to this Court in exercise of powers under Article 226 of the Constitution of India to enforce the correct legal principle and if necessary quash the order rejecting explanation and direct benefits to be extended to which the employee concerned may be found entitled after judicial scrutiny.

15. The facts noted above leave no room for doubt that petitioner Dr. (Mrs.) Nishat Iqbal Ashraf (WP No. 5347) and petitioner Dr. Iqbal Ashraf (WP No. 5349) and petitioner Dr. (Mrs.) R. Rizvi (WP No. 9396) have by their very conduct noted above have failed to make out any case for interference with the decision of AMU applying the aforesaid Regulation for holding that those three petitioners should be deemed to have vacated their posts. These three petitioners had scant regard for their employer, appeared to have chased financial benefits totally disregarding their legal and moral duty towards? AMU, their employer, and knowingly took the step of deserting the AMU knowing it well that their action was bound to adversely affect the academic interest of the students.

16. It is true that their explanations were formally rejected by the Vice-Chancellor whose decision was ratified by the Executive Council of AMU. The Regulation was, therefore, rightly applied and their explanations were rightly rejected by the AMU. No case for interference with regard to the actions taken by the AMU concerning these three petitioners is called for and their writ petitions must fail.

17. The writ petition of Dr. S. K. Johri (WP No. 6154) stands on entirely different footing though Sri B. D. Agarwal, Senior Advocate on behalf of AMU made valiant effort to convince the Court that his case was similar to other three. But for the reasons discussed hereinafter it has to be held that Dr. S. K. Johri's case calls for interference inasmuch as decision of AMU to apply those Regulations to him also suffers from error apparent on the face of the record and the said decision of AMU must be reversed in order to do justice.

18. It is true that Dr. Johri left for the job outside India when his application for extraordinary leave was pending and no decision had been taken by the AMU to grant the same. It was emphasised on behalf of AMU that Dr. Johri, therefore, should be held to have deserted AMU and proceeded abroad without prior sanction of extraordinary leave. This argument is factually incorrect. Dr. Johri was fully conscious that his application for extraordinary leave was pending. He had only hoped that the said application may be favourably decided. Therefore, he applied for and obtained earned leave on 7101980, this factual position is

admitted to AMU (see SCA 1 page 10), The ViceChancellor sanctioned the earned leave plus detention leave for 62 days from 1121980 or from the date of availing. This sanction order is dated 24111980 (see SCA 2 page 13). On 11121980 the application of the petitioner seeking two years extraordinary leave was (ejected by AMU and admittedly the petitioner's letter addressed to the ViceChancellor was received by AMU on 2411981 (see SCA 4 page 20). Not only this the Executive Council of AMU in its meeting held on 22/23/2461981 expressed displeasure regarding the manner in which petitioner Dr. Johri had gone abroad but at the same time took a decision that Dr. Johri be given time upto 3171981 to resume duties failing which it will be deemed that he has vacated his post. Again admittedly the time for resuming the duties was extended till 3091981 But the petitioner on receiving a cable from the AMU sent a letter on 8111981 and also a telex message acknowledging receipt of the AMU's decision The petitioner rushed back to India and reported for joining duties at AMU on 20121981. It appears that the petitioner was not permitted to join which forced him to make two other representations to the ViceChancellor and ultimately file this writ petition on 2051982 as he had failed to get a positive response from the AMU.

19. One additional fact may be mentioned here that in many of the paragraphs the petitioner had cited examples where professors of AMU had left for assignment abroad and post facto permission was granted and extraleft India. These facts ordinary leave was sanctioned much after they have not been denied in the counter affidavit.

20. On the aforesaid circumstances it cannot be said that Dr. Johri was in any way negligent towards his duties or that Dr. Johri failed to comply with the direction of AMU in resuming his duties. It is true that he was late by about two months 10 coming back to India and report for duties. There is nothing on the record to indicate that Dr. Johri was negligent or did not care for the decision of his employer, the AMU or that he had left the University without any lawful excuse which admittedly was for joining an assignment in a foreign University. The AMU was thus clearly in error in not permitting the petitioner to resume his duties at the AMU.. In fact the petitioner could neither have the cake nor eat it. He admittedly left his job in Saudi Arabia and came back at the earliest only to find that he has lost his job at the AMU only because of applying the deeming clause. There is no doubt in the mind of the Court that injustice has been extended to Dr. Johri by the illegal action of AMU.

21. The attempt on the part of the learned counsel for the AMU to equate the case of Johri with the case of other three petitioners must fail and is hereby rejected. The case of Dr. Johri stands on a different footing and it has to be held that he has honoured the decision of AMU in not sanctioning his extraordinary leave, he came back to India at the earliest and reported for resuming his duties as early as he could command. The AMU authorities wrongly applied the deeming clause of the Regulation against Dr. Johri and on a judicial scrutiny the relief claimed by Dr. John must be extended to him.

22. Before parting it may be mentioned that Sri B. D. Agarwal has relied upon the following decisions : AIR 1993 SC 492 ; 1989(3) SC 448; AIR 1993 SC 1196 and AIR 1994 (2) SC 723. It may be stated here that 00 the facts noted above these rulings have no application nor the principle laid down therein can be applied in so far the case of Dr. Johri is concerned. In this connection reliance was also placed on the decision of the Supreme Court 1984 SC page 320 and AIR 1990 SC page 2095 to argue that ail back wages may not be directed to be paid to Dr, Johri in case his writ petition meets success, It is impossible to uphold this argument. When the decision of AMU to apply the Regulation was itself illegal, there would be no legal or moral basis on which Dr. Johri can be denied the full benefits of his employment. It has to be ensured, therefore, that Dr. Johri must get all benefits and he is treated by AMU as regularly continuing in employment from 20121981 till the date he may have attained the age of superannuation after treating the period of absence as any leave one or else extraordinary leave.

23. In view of the aforesaid discussioners the petitions have failed to make out any case of interference in so far as Writ Petition No. 5347 of 1983 (by Dr. (Smt) Nishat Iqbal Ashraf), WP No. 5349 of 1983 (by Prof. Dr. Iqbal Ashraf) and W.P. No. 9396 of 1983 (by Dr. (Mrs.) R. Rizvi) and those petitions are dismissed,

24. The W.P. No. 6154 of 1982 filed by Dr. S. K. Johri is allowed. The petitioner shall be deemed to have been in employment and the decision of the ViceChancellor or any other authority of AMU treating him as deemed to have vacated his post is set aside. Ail consequential benefits to which petitioner Dr. S. K. Johri is entitled under the law shall be made available to him within six months from the date a representation is made by the petitioner before the AMU. All the parties will bear their own costs,