

(2011) 05 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29618 of 1990

Sayed Gulam Zilani

APPELLANT

Vs

Vice-Chancellor Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Citation : (2011) 5 ADJ 761

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—Petitioner before this Court was employed as Section Officer in Aligarh Muslim University. Under a letter issued by the Head of Department dated 31.3.1982, the Petitioner was informed that he has been dismissed from service. Not being satisfied with the order so passed, the Petitioner filed an appeal, which was also dismissed on 13.7.1992. This culminated in original suit being filed by the Petitioner, being Original Suit No. 348 of 1982. In the original suit a written statement was filed by the Aligarh Muslim University and it was stated that the Petitioner has only been placed under suspension and he is being proceeded departmentally.

2. Departmental proceedings were held. The enquiry officer found Petitioner guilty of one charge, namely Charge No. 6 and submitted its report to the Vice-Chancellor. The Vice-Chancellor issued second show-cause notice to the Petitioner calling upon him to explain as to why punishment, as proposed, be not inflicted.

3. At this stage of the proceedings, the Petitioner approached this Court by means of the present writ petition.

4. According to the Petitioner the departmental proceedings itself were bad and consequently the second show-cause notice was liable to be quashed. No interim order was granted, therefore the Vice-Chancellor proceeded in the matter and by

means of the order dated 22.10.1990 held that the charge No. 6 against the Petitioner was established from the enquiry report. Explanation submitted by the Petitioner was not satisfactory and accordingly the punishment of dismissal from service was inflicted. This order has been challenged by means of the amendment application, which has been allowed.

In order to keep the record straight, it may be recorded that in between Petitioner had retired from service and under orders of the Division Bench of this Court in Special Appeal No. 948 of 2004 he has also handed over possession of the official quarter, which was allotted to him while he was in service of the University.

5. Challenging the order of the Vice-Chancellor, counsel for the Petitioner Sri M.A. Qadeer raised a short ground, namely that the order of the Vice Chancellor contains absolutely no reasons for the conclusion arrived at, namely that the Petitioner's reply was not satisfactory and the charge against him stood proved. Counsel for the Petitioner submits that the reasons are the heartbeat of every conclusion and without the same, it becomes lifeless. Reference- Raj Kishore Jha Vs. State of Bihar and Others, which has since been followed in by the Apex Court in the case of State of Uttaranchal v. Sunil Kumar Negi; 2008 (4) ALJ 226. It is, therefore, contended that the impugned order cannot be legally sustained.

Counsel for the University Mrs. Sunita Agrawal submits that the Vice-Chancellor has agreed with the findings recorded by the enquiry officer and since explanation of the Petitioner to the second show cause notice was not satisfactory, he has proceeded to inflict the punishment after holding the Petitioner guilty of the charge. It is further submitted that against the order impugned the Petitioner has remedy of approaching the Executive Council. Lastly it is submitted that the Petitioner has been working as an Advocate even prior to 1990. Even if the order of the Vice-Chancellor is set aside for sufficient reasons being not recorded, there cannot be a direction for reinstatement of the Petitioner or for payment of back wages in the facts of the case.

6. I have heard learned Counsel for the parties and have gone through the records of the writ petition.

7. This Court may first examine the plea of exhaustion of alternative remedy available to the Petitioner. It is apparent that the present writ petition is pending before this Court since 1990 and the order passed by the Vice Chancellor was subjected to challenge by means of the amendment application, which was granted in the year 1990 itself. Even otherwise the Hon'ble Supreme Court of India in the judgment in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , has specifically held that in absence of reasons having been recorded in the order impugned, filing of an appeal would be an empty formality.

8. In view of the aforesaid this Court has no hesitation to record that asking the Petitioner to seek alternative remedy at such a belated stage would not be fair

and just.

9. Now on merits Petitioner appears to be justified in contending that the Vice-Chancellor should have considered the explanation furnished by the Petitioner to the second show cause notice and should have recorded independent reasons for coming to a conclusion as to whether the charge stood proved or not. Even otherwise he shall have examined as to whether in the facts of the case the punishment of dismissal from service was commensurate to the charge found proved.

10. The Hon'ble Supreme Court of India in the case of S.N. Mukherjee Vs. Union of India, has held that reasons are necessary links between the facts and the findings recorded in the administrative orders, which visit a party with evil civil consequences. In absence of reasons such an order cannot be permitted to stand.

11. From a simple reading of the order passed by the Vice-Chancellor, this Court finds that except for recording that after receipt of the enquiry report a second notice was issued to the Petitioner and further that Petitioner has submitted his explanation thereto, absolutely no reasons have been recorded for disagreeing with the explanation furnished by the Petitioner or for coming to a conclusion that the charge stood proved, and for the order of dismissal from service being passed.

12. In the totality of the circumstances on record, the order impugned passed by the Vice-Chancellor cannot be legally sustained and is hereby quashed.

The issue does arise as to what relief in the facts of the case the Petitioner be granted after setting aside the order of the Vice Chancellor. It is admitted position that the Petitioner is practicing as an Advocate even since prior to 1990. It is not the case of the Petitioner that at any point of time he had surrendered his licence to practice as an Advocate. Further the Petitioner has already attained the age of superannuation. This Court records that there cannot be an order of reinstatement or for payment of back wages to the Petitioner on the principle of "No Work No Pay" in the said factual background. However, the issue as to whether the Petitioner would be entitled to any relief for the period of suspension or till passing of the order of termination as impugned in the present writ petition, can be examined by the Vice-Chancellor himself only after he adjudicate upon the explanation furnished by the Petitioner afresh and take a decision supported by reasons in the matter of disciplinary proceedings taken against the Petitioner. All issues in that regard are left open.

13. Accordingly, the writ petition is allowed. The order of the Vice-Chancellor is hereby quashed. Let the Vice-Chancellor take a fresh decision in the matter on the basis of the records available, supported by cogent reasons, preferably within three months from the date a certified copy of this order is filed before him.