

(1971) 04 CAL CK 0023

In the Calcutta High Court

Case No : Supreme Court Appeal No. 35 of 1971 with Civil Rule No. 15 of 1970
(S.C.A.)

Sisir Kumar Ghose

APPELLANT

Vs

University of North Bengal and Others

RESPONDENT

Date of Decision : 26-04-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133(1)

Citation : AIR 1971 Cal 402

Hon'ble Judges : S.K. Mukherjea, J;B.C. Mitra, J

Bench : Division Bench

Advocate : Some Nath Chatterjee, Sudhir Kumar Bose and Harinarayan Mukherjee, for the Appellant; Noni Koomar Chakravarti and Harasit Chakraborty, (for Nos. 1, 3 and 5), P.K. Sen Gupta, Sr. Govt. Advocate and Wilson de Roze, (for No. 2), for the Respondent

Judgement

B.C. Mitra, J.—This is an application for a certificate under Article 133(1)(a), (b) and (c) of the Constitution. The petitioner had retired from the services of the State of West Bengal on May 2, 1965, and thereafter on July 16, 1965 was re-employed by the State Government as the Accounts Officer of the Bengal Engineering College. While holding this office of Accounts Officer, he applied for the post of Finance Officer in the University of North Bengal (hereinafter referred to as the University). He was selected by the selection committee for the post of Finance Officer, and was appointed to that post on a purely temporary basis at a salary of Rs. 1,000/- per month, the scale being Rs. 1000-50-1500/-. On September 5, 1966, the University approved of the selection of the petitioner. On the date of appointment, the petitioner's age was 69 years 4 months and 3 days. On July 10, 1967, the Vice-Chancellor of the University requested the Chancellor for extension of the service of the petitioner on the basis of the second proviso to Statute 20 of the University Statutes. This request was turned down by the Chancellor of the University, whose decision was communicated to

the Vice-Chancellor by a letter dated July 22, 1967. The Vice-Chancellor forwarded the letter to the petitioner with the endorsement:

"Please do the needful."

On July 31, 1967, the petitioner wrote to the Vice-Chancellor of the University, that in view of the circumstances set out in the letter of the Secretary to the Chancellor, he thought that he should be relieved with effect from August 2, 1967. A request was also made by the petitioner for grant of earned leave for 35 days with effect from August 3, 1967. The petitioner, however, appears to have changed his mind in the matter of retirement and going on leave, as on August 1, 1967, he wrote to the Secretary to the Chancellor, for reconsideration of the matter of his employment under the University. In this letter he contended that as his letter of appointment did not specify the period for which he was to hold the office of the Finance Officer, he was entitled to hold the office as long as he kept fit. Thereafter correspondence followed between the parties and ultimately the petitioner made an application under Art 226 of the Constitution and obtained a Rule Nisi. That application was disposed of by an order made on October 10, 1969, and by that order the trial court quashed the order or direction contained in the letter dated July 22, 1967, from the Secretary to the Chancellor and directed the respondents to that application not to give effect, firstly, to an order dated August 1, 1967, whereby the Inspector of Colleges was directed to take over charge of the office of the Finance Officer from the petitioner and secondly, an order dated August 2, 1967, whereby the petitioner was granted 35 days privilege leave preparatory to his retirement. The Rule was made absolute to the extent mentioned above and thereafter an appeal and cross-objection were filed against this order. This appeal was disposed of by a judgment and order dated September 14, 1970. By this order, the appeal and the cross-objection were allowed and the judgment and order of the trial court were set aside and the Rule was discharged.

2. It is against this order of the appellate Bench that the petitioner now seeks a certificate for appeal to the Supreme Court. The judgment is one of reversal and, therefore, the petitioner must satisfy either that the valuation required by Article 133(1)(a) or (b) are satisfied or that it is a fit case under Article 133(1)(c). Mr. Somenath Chatterjee, counsel for the petitioner, contended that the case came under Article 133(1)(b) inasmuch as it involved, directly or indirectly some claim or question respecting property, the value of which is over Rs. 20,000. He referred to paragraph 40 of the petition in which it was stated that the petitioner was receiving a total remuneration of Rs. 1190 per month and that the yearly emoluments of the petitioner came to Rs. 14,280 and on that basis the present dues of the petitioner from the University would be Rs. 46,400 approximately. Mr. Chatterjee argued that the judgment and order involved indirectly at any rate, a claim regarding this amount and, therefore, the valuation test required by Article 133(1)(b) was satisfied. In support of this contention, reliance was placed by Mr. Chatterjee on the decisions in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The*

Century Spinning and Manufacturing Co., Ltd., , Rajan Singh and Others Vs. State and Another, , Monohar Das Mohanta Vs. Charu Chandra Pal and Others, , Jugalkishore Saraf V. M/s. Raw Cotton Co. Ltd. AIR 1955 SC 376. We are, however, unable to accept the contention of Mr. Chatterjee with regard to the applicability of Article 133(1)(b). It is to be remembered that what the petitioner was complaining against was termination of his service and he had applied for appropriate writs so that he may be reinstated in the office he was holding. On this point, reference may be made to a decision reported in State of Bihar and Another Vs. D.N. Ganguly and Others, . In that case, it was held that for the purpose of an application of Article 133(1)(b) the judgment of the High Court must involve directly or indirectly some claim or question respecting property of more than Rs. 20,000/-. But where the claim of the workers before the tribunal was a claim for reinstatement in service with or without compensation, the claim could not be said to be one respecting property and Article 133(1)(b) is not applicable. A reference may also be made to another decision reported in Mohammed Ghouse Vs. State of Andhra Pradesh, . In that case, it was held that where the High Court in the exercise of its jurisdiction under Article 226 refused to quash an order of dismissal of a Civil Servant, leave to appeal to Supreme Court against that order could not be granted under Article 133(1)(b) because even assuming that the petitioner ultimately succeeded in his appeal to the Supreme Court, that did not vest any right in him to claim any amount of the value of Rs. 20,000/-. In this case, even assuming that the petitioner's claim mentioned in paragraph 40 of the petition is a valid one, it can by no means be said that the judgment and order involved even indirectly a claim or question respecting property of the like amount. The petitioner prayed for various writs relating to the order granting him leave and appointing an officer to take charge of the office of the Finance Officer. There was no prayer in the writ petition for any relief with regard to the petitioner's claim for salary or allowances, although we are told that in the body of the writ petition there was a mention of his salary. The judgment and order of the trial court did not direct the Chancellor or the University or the Vice-Chancellor to pay any money to the petitioner, nor was a claim for salary or allowances remotely connected with the writ petition. Even if the appeal was dismissed, and the judgment and order of the trial court was upheld, the petitioner would not have been entitled to claim payment of the amount mentioned in paragraph 40 of the petition on the strength of the judgment of the trial court or of the appellate court. If the appeal was dismissed, it is true that the petitioner would have been entitled to claim reinstatement in the office of the Finance Officer of the University, but it cannot for that reason be said that the order of the appellate court directly or indirectly involved some claim respecting property, the value of which was over Rs. 20,000/-. We cannot, therefore, hold that the valuation test required by Article 133(1)(b) of the Constitution is satisfied.

3. The next question is if it can be said that the case is a fit one for appeal to the Supreme Court under Article 133(1)(c) of the Constitution. Mr. Chatterjee

contended that substantial questions of law were involved in this case inasmuch as interpretation of Sections 4 (15), 7 (2), 20 (1), 23 (3), 23 (5) (d) and Statutes 20, 39, 46, 100 and 107 were involved. It was argued that by reason of interpretation of the various sections of the Act and the Statutes framed thereunder, substantial questions of law were involved and for that amongst other reasons it should be held to be a fit case for appeal under Article 133(1)(c) of the Constitution, We have no doubt that the questions raised in the appeal involved interpretation of various sections of the North Bengal University Act, 1961, and the Statutes framed thereunder relating to the officers of the University and such interpretation of the various sections of the Act and the Statutes justified the contention that substantial questions of law were involved in the appeal. But we cannot, at the same time, overlook that we came to the conclusion that the petitioner was not entitled to relief in the writ jurisdiction of this Court, because he had voluntarily relinquished the office of the Finance Officer and having done so he could not turn round and claim relief in the discretionary jurisdiction of this Court on the ground that his service had been wrongfully and illegally terminated. But in order to get a certificate that a case is a fit one for appeal to the Supreme Court under Article 133(1)(c), it is not enough that substantial questions of law should be involved. The requirement that substantial questions of law should be involved in the case of a judgment of affirmance in which valuation test is satisfied is not enough for the grant of a certificate under Article 133(1)(c) of the Constitution. Among other things which are required under Article 133(1)(c) is that the question involved must be one of great public or private importance. If it could be shown that the decision of the case would affect the interest of a large number of people or that the controversy is likely to arise again, undoubtedly the petitioner would have been entitled to a certificate on the ground that it is a fit case. But such is not the case here. The question involved at best relates to the appointment and retirement of some of the officers of a particular University, namely, the Finance Officer, the Registrar and such other persons in the service of the University as have been declared to be officers of the University. It cannot even be said that the decision affects all Finance Officers, Registrars and other officers of all Universities of India. It cannot be overlooked that the provisions in the Act relate to a particular University in West Bengal and the dispute relates to the question of retirement of the Finance Officer of the University, The provisions in the Act and the Statutes framed thereunder admittedly have no application to all the employees of the University and the dispute which is the subject-matter of decision might, at best, affect the question of retirement of the Registrar and the Finance Officer of the University and such other persons as might be declared to be officers of the University. Counsel for the petitioner argued that the question involved might arise again in future, but that possibility, in our view, is so remote that it cannot be said that the mere existence of such a possibility would make it a case of great private importance.

4. Mr. P. K. Sen Gupta appearing for the respondent No. 2 submitted that it can

by no means be said, in the facts of this case, that it is a fit case for appeal to the Supreme Court. In support of this contention, he relied on several decisions of the Supreme Court, namely, *Nar Singh and Another Vs. The State of Uttar Pradesh*, *Sunder Singh Vs. State of Uttar Pradesh*, and *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, .

5. Mr. N.C. Chakravarti appearing for respondents Nos. 1, 3 and 5 contended that whether the case is a fit case for appeal to the Supreme Court is a matter entirely within the discretion of this Court and in support of this contention he relied on a decision of the Judicial Committee in *Banarsi Parshad v. Kashi Krishan Narain*, (1901) 28 Ind App 11 (PC), in which it was held dealing with the question of fitness for appeal to the Judicial Committee that the requirement of a certificate as to fitness was clearly intended to meet special cases, such as those in which the point in dispute was not measurable by money, though it might be of great public or private importance. Reliance was also placed by Mr. Chakravarti on another decision of the Supreme Court in *Om Prakash and Others Vs. Union of India (UOI) and Others*, . We do not, however, see the relevance of that decision with regard to the question that arises in this application.

6. In our view, it cannot be said having regard to the questions raised and the decision of this Bench on those questions that the case is a fit one for appeal under Article 133(1)(b) of the Constitution. The principles on which a decision can be said to be a fit one for appeal to the Supreme Court are not involved in this case.

7. For the reasons mentioned above, this application fails and is dismissed.

8. There will be no order as to costs.

C. R. 15 of 1970 (S.C.A.)

This is an application for stay of operation of the order of the appellate court dated September 14, 1970. A Rule was issued with regard to this application. Upon hearing the learned Advocates for the parties, we direct that there should be a stay of operation of the order for a fortnight from date.

This Rule is disposed of accordingly.

There will be no order as to costs.

S.K. Mukheejree, J.

9. I agree.