

(2011) 04 SHI CK 0306
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 5731 of 2008

Smt. Kurmala Devi and Others	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Limitation Act, 1963 — Section 9

Citation : (2011) 04 SHI CK 0306

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide paras 7 (1) and (2):

(1) That the termination order of the deceased employee may kindly be quashed and set aside after declaring it void ab initio and all consequential benefits be allowed to the applicants.

(2) That the arrears of pay and emoluments and other dues till the date of survival of the deceased employee may be ordered to be released to the applicants with 24 per cent interest till the date of payments.

2. In reply, Respondents No. 1 and 2 have taken the following stand vide paras 3, 5 and 6(2):

3. That the present original application is not maintainable before this Hon'ble Tribunal because of the fact that the applicant was an employee of the Private managed College and his services were also terminated by the Administrator of W.R.S. Memorial Public School, Dehri vide order dated 7.1.1983, Annexure A/1. hence the present original application against Respondent No. 1 is not maintainable and is liable to be dismissed.

5. That the present original application is not within limitation as the services of

the applicant were terminated on 7.1.1983 and he had challenged the order of termination by filing Civil Suit on 20.3.1984. Secondly the applicant had filed the present O.A. before the Hon''ble Tribunal on 20.2.1999 whereas the Hon''ble High Court has passed its order on 20.4.1998. Therefore, the period of limitation already stand expired before filing the present O.A. As is clear from Section 9 of Limitation Act, where once time has begun to run no subsequent disability or inability to institute a suit or make an application stops it. It is submitted that in the present case the limitation as per 5.20 of Administrative Tribunal Act already stand expired even in case the period of litigation before Ld. Sub Judge (d), District Judge and Hon''ble High Court is excluded.

6(2) That in reply to this para it is submitted that the services of the applicant was terminated by the Administrator of the W.R.S memorial College, Dehri on 7.1.1983, which was a privately managed College and the College and taken over by the replying Respondent in the year 1984 when he was not in the enrolment of the W.R.S Memorial College, Dehri. Hence the contention of the applicant is wrong, hence denied.

3. Respondent No. 3 has taken the following stand vide para 6(4):

That in reply to para 6(4) it is submitted that the approval to terminate the services of Sh. G.S. Pangotra, Lecturer in English was accorded by the Vice-Chancellor as per provisions of the Ordinances 38.5 B(d) Appendix "A" Rule-27, termination of services 27(iii) after having taken notice of the resolution of the Management Committee dated 13.9.1982 and recommendations of the Sr. Vice President and Acting President of the college dated 15.9.1982. therefore, the approval of termination conveyed by the University vide letter No. 1/6-3/74/HPU(Acad.) dated 6th November, 1982 is legal and in consonance with the provisions of the Ordinances. (copies are annexed as annexure R-1 to R-3).

4. In supplementary affidavit dated 21.8.2010, filed by the Registrar of the Respondent-University in compliance of order dated 6.8.2010, passed by this Court , it is stated as under:

That the approval to terminate the services of the husband of the Petitioner in the aforesaid petition i.e. Shri G.S. Pagotra was granted by the University vide its Order dated 30th October, 1982 on the recommendation and resolution of the Management Committee of the then Wazir Ram Singh Memorial Public College, Dehri based upon three-resolutions and an Inspection Committee Report which was constituted by the University and further duly approved by the Executive Council of the University. These documents are annexed herewith as Annexure R-I to R-V.

5. Some undisputed facts may be noticed first. Shri G.S. Patgotra, predecessor-in-interest of the Petitioners was appointed as Lecturer in W.R.S. Memorial Public College, Dehri, Tehsil Nurpur, Distt. Kangra, a privately managed institution, on 7.7.1972. He continued as such till June, 1975, when he was confirmed against the said post. Shri Pagotra was also acting as Principal of the said college since

1975. However, later on, his services were terminated by the Administrator of the college vide order dated 7.1.1983, Annexure A-1, which reads as under:

"O R D E R

As per approval accorded by the Vice Chancellor of Himachal Pradesh University, Shimla, under ordinance 38.5 B(d) Appendix "A" Rule 27, termination of Services 27(iii), the services of Shri G.S. Pagotra, Lecturer in English (Under Suspension) are hereby terminated with effect from today, the 7th January, 1983 (Forenoon)

Dated 7th Jan, 1983

(P.K. Monga) Administrator, W.R.S. Memorial College, Dehri at Nurpur.

6. The record reveals that the aforesaid private college was managed by a committee. There was some dispute with regard to the validity/legality of the Managing Committee between the rival factions and the matter was pending in the court. However, in the meantime, the college was taken over by the State Government.

7. The Petitioner filed a suit for declaration and mandatory injunction challenging termination of his services, which was decreed by the learned Sub Judge 1st Class, Nurpur, Distt. Kangra, vide judgment Dated 31.3.1987, Annexure A-2, in the following terms:-

"Issue No. 9 -Relief.

22. In view of my above discussion and findings on issues 1 to 8 above, the suit of the Plaintiff partly succeeds and as such, a declaration to the effect that the order passed by the then administrator dated 7.1.83 terminating the services of the Plaintiff from the College is without jurisdiction, illegal, void and not binding on the Plaintiff while the prayer for the consequential relief made in the prayer "8" is refused with no order as to costs.

8. The matter was carried in appeal by Respondents No. 1 and 2, but the appeal was dismissed by the learned Addl. District Judge (2) Kangra at Dharamshala vide judgment dated 19.1.1991, Annexure A-3.

9. Respondents No. 1 and 2 preferred Regular Second Appeal to this Court, which came to be disposed of vide order dated 20.4.1998, Annexure A-4, in the following terms:

20.4.98 Present: Mr. M.S. Guleria, Dy. Advocate General for the Appellants.

Mr. Rupesh Kumar, counsel for Respondents No. 1 to 4.

During the course of hearing of the appeal, the learned Counsel for the Plaintiff-Respondents 1 to 4 have made a statement seeking leave to withdraw the suit out of which the present appeal has arisen with liberty to the Plaintiff-Respondents 1 to 4 to approach the State Administrative Tribunal, since the subject matter of the dispute between the parties pertains to service within the

meaning of Administrative Tribunal Act, 1985.

I have gone through the pleadings set out in the plaint and I am satisfied that the subject matter of the dispute between the parties is a service matter within the ambit of Administrative Tribunal Act, 1985, and, as such, the judgment and decree of the two courts are without jurisdiction. I am further satisfied that this is a fit case where the necessary permission under Order 23 Rule 1 CPC ought to be granted in favour of the Plaintiff-Respondents 1 to 4.

As a result, the present appeal is allowed. The judgments and decrees passed by the two courts below are set-aside and the suit of the Plaintiff-Respondents 1 to 4 is dismissed as having been withdrawn with requisite liberty to approach the State Administrative Tribunal, if otherwise permissible under the law. The State-Appellant shall be at liberty to raise all such pleas as may be available to it under the law before the Tribunal as and when the Plaintiff-Respondents choose to approach such Tribunal.

No orders as to costs.

April 20, 1998. Sd/-R.L. Khurana, Judge.

10. Against the above backdrop, the Petitioners moved the erstwhile H.P. State Administrative Tribunal, by way of an original application (OA), which on abolition of the said Tribunal was transferred to this Court and has been registered as CWP(T) No. 5731 of 2008.

11. I have heard the learned Counsel for the Petitioners, learned Dy. Advocate General for Respondents No. 1 and 2, learned Counsel for Respondent No. 3 University and gone through the records.

12. Undisputably, the Petitioner was a confirmed Lecturer in the aforesaid private college, which at the relevant time was being administered by an Administrator, as a dispute was going on between the rival Management Committees and the matter was in the Court. The record reveals that services of the Petitioner were terminated only on the basis of a report submitted by the Inspection Committee appointed by the Respondent-University without holding any enquiry against him. The report which though bears no date and is at page 68-70 of the paper book, records visit of the Inspection Committee to the college on 21.6.1981, is re produced below:

In pursuance of Resolution No. 56 of the meeting of the Executive Council held on 16, 18 and 20th April, 1981, the Inspection Committee constituting of Dr. Som P Ranchan, Dean, Faculty of Arts; Dr. R.L. Balokhra, Dean, Faculty of Science and Shri A.R. Chauhan, Registrar visited W.R.S.M.P. College, Dehri on 21.6.1981 to investigate on the spot the problems arising from the claims and counter claims of two different managing committees of the College. In this connection the Committee gave a general hearing to a large assembly of members of both the committees, Village Pardhan, local M.L.A. and Ex-M.L.A. The dialogue and discussions went on from 10-00 a.m to 2-00 p.m. In the

afternoon the Committee met select batches of staff members, employees, students groups and the respective office holders of the two contending committees. On the basis of the discussions, hearings and on the basis of the record available in the office, the committee has arrived at the following conclusions:

1. The term of the Committee headed by Shri Sampuran Singh after the President Shri R.S. Guleria passed away, expired on 15.9.1979. they held a number of meetings of the General House regarding the fresh election of the body according to the Ordinances but they could not have proper quorum till Nov./Dec., 1979. However, the record shows that they held elections on 6th Jan., 1980 and this very committee appointed a Principal in Oct./Nov., 1980. However, in November, 1980 the present committee which appears to be in de-facto control of the institution held elections in Nov., 1980.

The Inspection Committee is of the considered opinion that the election of the present committee is questionable because the proper procedure was not followed and also because they enrolled new life members to the general body to come to power. This committee furnished the University with the list of its new members. This list was sent in Urdu which was referred back to the President of the Committee for translation into English or Hindi. This letter reached the Acting Principal Shri G.S. Pagrota, W.R.S.M.P. College, Dehri. The Acting Principal sent the list of names supposed to be a translated script of proceedings in Urdu and the same list was placed by the office of the University before the Executive Council for approval. Before the Executive Council could accord approval Shri Sujan Singh, M.L.A, brought it to the notice of the University that the list supplied by Shri Pagrotra , Acting Principal is not true translation of the letter in Urdu but the names have been forged therein. The Sampuran Singh Committee then represented t o the University that the new committee is irregular, illegal and has no locus standi at all and further brought to the notice of the University that the translated letter is not the true translation of the proceedings sent in Urdu. So the Sampuran Singh Committee sent a list of its committee members with Sampuran Singh as President. The election of this committee was held on 6th Jan., 1980 as referred to Paragraph No. 2. On the basis of our discussions with the Sampuran Singh Committee and Karam Singh Committee we find that both the committees are emotionally invested in the welfare of the institution. However, their perspectives cannot be reconciled. In the light of the letter of the Sub-Divisional Magistrate, Nurgpur No. 331/CEX/SDM dated 14th July, 1981 neither of the two committees is acceptable. The Inspection Committee is also of the view that because of the election both the committees are invalid. It was from this point of view the University had directed the 1976 Committee to continue which decision the Inspection Committee reiterates. However, for the smooth running of the college and in the interest of the public at large the Inspection Committee recommends that fresh elections be held for electing the new Management Committee preferably in the presence of the University observer at an early date.

13. The record further reveals that Shri Pagrotra was placed under suspension vide order dated 12.9.1982, which is at page 61 of the paper book and reads as under:

ORDER

In view of the findings of the Inspection Committee appointed by the Executive Council of the Himachal Pradesh University vide item No. 56 of its Agenda and approved by it vide item No. 103 in its meeting held on 12/13-8-1981 vide which your activities were condemned as Acting Principal and the judgment dated 6-9-1982 of the District Judge, Kangra at Dharamshala issued in the Civil Misc. Appeal No. 34 of 1992, I, Sampuran Singh, Senior Vice President , Acting President , Managing Committee (1976) WRSMP College, Dehri, Tehsil Nurpur District Kangra suspend you Shri Gian Singh Pagrotra, Lecturer in English, WRSMP College, Dehri with effect from to-day fore-noon. You are relieved of the duties fo the Lecturer in English. You will be paid subsistence allowance during the period of suspension as per ordinances of the University.

Charge sheet alongwith list of imputations will soon follow.

14. Thereafter a charge-sheet detailing as many as 12 charges as per statement of imputations as under, was served upon Shri Pagrotra by the Acting President of Managing Committee of the College, vide letter dated 14.9.1982, Annexure R-III:

Statement of imputations.

While being posted as acting Principal of the W R S M P College, you, Shri Gian Singh Pagrota lecturer in English now under-suspension committed the following mis-conduct and irregularities:

1. You mis-appropriated the sale proceeds of the paper "Jazbat" entrusted to you for distribution against a nominal amount of Rupee one per copy as subscription but sold them for Rs. 4 each which fact was admitted by you before the enquiry committee constituted for the purpose.
2. You fraudulently managed four Donation Receipt Books from the management and misappropriated their proceeds.
3. On 19.4.79 you issued a bogus receipt for a sum of Rs. 100/-received as donation from Shri Baldev Singh of village Sujjal under the signatures of Shri Rattan Singh Guleria who had died in 1978 and mis-appropriated the amount collected by you.
4. You issued such 18/19 more receipts but their proceeds were not deposited by you till 20.12.80 and thus mis-appropriated the amount collected by you.
5. You fabricated the records of the Committee, enrolled bogus members and connived to constitute a bogus managing committee of 19.11.80 to your personal benefit.

6. You hatched a criminal conspiracy to oust the legally constituted committee on 6.1.80 exploited the ignorant, innocent and illiterate members of the general body and brought into power bogus managing committee of 19.11.80.

7. You excited the teachers and students of the college against the managing committee (1976) duly allowed to function by the Himachal Pradesh University and District & Session Court, Kangra.

8. You removed with malafide intentions the records of the college and the Society to destroy or manipulate it to your advantage.

9. You intercepted a letter from the Himachal Pradesh University addressed to the managing committee wherein it was desired to supply Hindi or English version of the Resolution dated 6.1.80 (original in Urdu) and substituted it with the one with a totaling different version and names of the members of the managing committee who were never elected and thus you cheated the University and the management.

10. You committed gross dis-obedience by not handing over the charge to Sh. M.S. Saini, Principal of the college duly selected and approved by the Himachal Pradesh University.

11. Your activities as acting principal have been condemned by the Enquiry Committee of the University and the Executive Council of the University vide its resolution No. 103 and the order dated 6.9.1982 of the learned District Judge, Kangra at Dharamshala.

12. You intentionally and malafide did not deposit the share of the management of college students " dues despite clear orders dated 21.6.81 of the Enquiry Committee that 1976 Managing Committee would function and have thus misappropriated management funds.

You have thus rendered yourself liable to penal action under the provisions of the ordinances of the Himachal Pradesh University which includes termination/dismissal from service.

15. It appears that Shri Pagrotra did not file any reply to the charge-sheet and consequently he was "dismissed from service" vide memo dated 8.11.1982 (at page 66 of the paper book), which is to the following effect:

Memo:

You, Sh. G.S. Pagrotra Lect. In English (Under Suspension) were served with a charge sheet vide letter No. MC/WRS/3037 SPL Dated 14.9.1982 under postal certificate. Copy of which was also pasted on the notice-Board. Since no explanation was received within the stipulated period of thirty days. You were afforded opportunity vide letter No. MC/WRS/304/Spl. Dated 19.10.1982 to send your explanation by 5.11.1982, but, you did not comply. Your willful, intentional and malafidee defiance of the orders, And, further, you have nothing to say in your defence. Under these circumstances, the managing committee (1976) of

W.R.S.M.P. College, Dehri has vice its resolution No. 1 of Dated 7.11.1982, dismissed you from service of college with effect t from 7.11.1982 on charges of misappropriation of college funds, embezzlement, disobedience of University Orders, misconduct, elimination of college records and anti-college and anti-students activities in compliance with the University approval received vide letter No. 1-6/74-HPU (ACD) Shimla-5 Copy of this order has also been pasted on the college notice board and released to the press.

16. The termination of services of Shri Pagrotra was approved by the Vice Chancellor of the Respondent-University vide letter dated 6.11.1982, Annexure R-3/1, which is as under:

As required under Ordinance 38.5 B(d) Appendix "A" - Rule -27, Termination of Services 27(iii) the Vice-Chancellor has been pleased to accord approval to the recommendations of the Managing Committee of the college under reference regarding the termination of Services of Shri G.S. Pangrotra, Lecturer in English (under suspension).

Necessary action as required under the rules may please be taken by you under intimation to this University.

17. On the basis of the above approval the services of the Petitioner were terminated vide order dated 7.1.1983, Annexure A-1.

18. A perusal of the record reveals that Shri Pagrotra was placed under suspension vide order dated 12.9.1982 (at page 61 of the paper book) and a copy of the same was forwarded to the Vice Chancellor of Respondent-University seeking approval for termination of his services. The endorsement to this effect is to the following effect:

No. 3053 dated 15-9-1982.

A copy is forwarded to the Vice Chancellor, Himachal Pradesh University, Shimla for information in continuation of letter dated 7-9-82 from the Secretary Managing Committee (1976) to his address. He is requested to kindly accord necessary approval for the termination of the services of Sh. G.A. Pagrotra Lecturer in English, WRSMP, College, Dehri in view of the findings of the Inspection Committee and judgment dated 6-9-82 issued by the District Judge, Kanga at Dharamsala.

2. Sh. G.S. Pathania, Convener, for information with the request that necessary steps may please be taken to appoint substitute of Shri G.S. Pagrotra.

(Sampuran Singh) S.V.P. Acting President.

19. Thus, it is manifest from the record that the Petitioner was placed under suspension on 12.9.1982. He was charge-sheeted on 14.9.1982. A copy of the order of suspension was forwarded to the Vice Chancellor of the Respondent-University on 15.9.1982, with a request to accord necessary approval for termination of the services of Shri Pagrota. In such circumstances, when the

management had already made up its mind to terminate the services of the petitioner, serving of charge-sheet upon him was a mere eye wash.

20. Even otherwise, since penalty of removal from service was imposed upon the Petitioner in terms of Rule 34 (5) of the Rules relating to the Teachers of Non-Government Affiliated Colleges, Appendix "A" [Chapter XXXVIII Paragraph 38.5 B(d)], it could not have been done except in accordance with Rule 36 of the Rules *ibid*, which provides that "removal of a teacher shall require two-thirds majority of the members of the Management of the college, present and voting."

21. Furthermore, since no enquiry was held against Shri Pagrotra and he was visited with major penalty of removal from service, all canons of natural justice were thrown to wind by the concerned authorities.

22. In such circumstances, the impugned order Annexure A-1, dated 7.1.1983, cannot be sustained and is accordingly quashed. As a result, all the consequential benefits for the period between the date of termination, that is, 7.1.1983 and date of death of Shri Pagrotra, i.e 7.7.1989 or till the date of his retirement on attaining the age of superannuation in accordance with the service Rules applicable to him at the relevant time had he not died, whichever is earlier, shall be payable to the Petitioners along with interest @ 6% per annum in equal shares, within three months from the date of production of copy of this judgment by the Petitioners, failing which, higher interest @ 9% per annum shall be payable.

23. The petition, as also pending CMP(s), if any, stand disposed of in the above terms.