

(2001) 12 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 3200 of 1991

Subhash Shridhar Joshi

APPELLANT

Vs

Janata Shikshan Mandal and others

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 12 BOM CK 0039

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : Neel Helekar for B.P. Apte, for the Appellant; R.G. Ketkar for respondent Nos. 1 and 2 and A.P. Vanarse, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Bhosale, J.—The petitioner seeks to challenge the vires of Statute 200(B) (e), and (A) of the Statutes framed u/s 42(1) of the Shivaji University Act, 1974 and further seeks declaration that the directives of the University dated 8th May, 1991 and 25th June, 1991 (Exhibits C and D) are void and illegal, being wholly without jurisdiction and ultra vires the powers of respondent No. 3 University. The petitioner has also prayed for order of injunction restraining respondent No. 3 University from interfering with the working of the petitioner as lecturer in the college of respondent Nos. 1 and 2.

2. A few facts leading to this petition deserve to be noted at the outset. The petitioner was a lecturer in Geography and working in Deochand College, Arjun Nagar, Kagal, District-Kolhapur since 15th June, 1967. In 1970, he was confirmed as full time lecturer. The petitioner used to take 17 lectures per week, i.e. 4 lectures for first year B.A., 8 lectures for second year B. A. and 5 lectures for 12th class in the Junior College. The petitioner claims that he is an active social worker and a trade unionist and has been working for the upliftment of the labour class and of the downtrodden communities. In November, 1989 the

petitioner contested elections to the Karnataka State Legislative Assembly from Nipani Constituency and got elected as its member. Since the petitioner never wanted to leave the teaching profession, he continued his teaching job in Deochand College, as he was doing before his election. The petitioner has produced certificate issued by the Secretary of Karnataka State legislature stating therein that the petitioner relinquished his salary with effect from June, 1990 as a member of the legislative assembly. According to the petitioner, Karnataka Legislative Assembly holds its session for about 50 days in a year, i.e. about a week in March when budget is presented 35 days in May-June which is a major Session and 10 days in the month of November. The petitioner claims that the working of the assembly did not conflict with the working of the petitioner as a lecturer in the college. According to him, teaching in the degree college ends by the end of February and ordinarily May vacation covers the period between 20th April and 20th June each year. Vacation between two terms, according to the petitioner, is from 1st November to 1st December. In view thereof, it is averred that fortunately the period of vacation and the period when the Assembly sits in Session coincides and, therefore, the petitioner's working as a teacher never got affected by his attendance in the Assembly. The petitioner contends that whenever he was required to be away for the purpose of attending Session of Assembly, he applied for extra ordinary leave without pay and the same is sanctioned to the petitioner by the management, viz. respondent Nos. 1 and 2.

3. It is the case of the petitioner that he was entitled to extra ordinary leave under Statute No. 200(B) and accordingly he used to apply for extraordinary leave which had always been sanctioned by respondent Nos. 1 and 2. According to the petitioner, respondent No. 3 - University has absolutely no role to play with the petitioner's obtaining extraordinary leave and his functioning as a teacher in the College. Despite this, according to the petitioner, respondent No. 3 - University sought an explanation from respondent No. 2 as to why the petitioner did not obtain leave under clause (A) of Statute 200. In turn, the College sought explanation from the petitioner which he submitted, explaining therein that he did not require leave for the entire period of his membership of the Assembly and, therefore, he had not taken leave under clause (A) of Statute 200. Thereafter, the petitioner once again received letter dated 11th/13th May, 1991 from respondent No. 2, annexing therewith a copy of the letter dated 8th May, 1991 received by the College from the University. The University, by its letter dated 8th May, 1991, directed the College to ask the petitioner to go on leave as required under the relevant Statute of the University. In view thereof, the petitioner was asked by respondent No. 2 by their letter dated 13th May, 1991 to apply for such leave. The petitioner thereafter received copy of the letter dated 25th June, 1991, from respondent No. 3, requiring respondent No. 2 to take action against the petitioner if he would not go on leave under the relevant Statute. Letters dated 8th May, 1991 and 25th June, 1991 are impugned in the present petition. The petitioner, thereafter, made representation to the

respondents stating that he needs full time employment. He further states that his work as a lecturer during his membership of the Legislative Assembly was satisfactory. However, there was no response and as such he has approached this Court by way of present writ petition.

4. It is not disputed that the petitioner's conditions of service are governed by the provisions of Statutes framed by the respondents University u/s 42(1) of the Shivaji University Act, 1974 (for short, "University Act"). However, it is the case of the petitioner that he is entitled for extraordinary leave under clause B (1) of Statute 200. The relevant statute reads thus:

(a)

XXX

XXX

XXX

XXX

(b)

XXX

XXX

XXX

XXX

(c)

XXX

XXX

XXX

XXX

(d)

XXX

XXX

XXX

XXX

(B) Kinds of Leave:

(a)

XXX

XXX

XXX

XXX

(b)

XXX

XXX

XXX

XXX

(c)

XXX

XXX

XXX

XXX

(d)

XXX

XXX

XXX

XXX

(e) Extra Ordinary Leave : (A) A teacher who becomes a member of the Parliament or State Legislature, shall have to go on leave during the period during which he remains a member of that body and his lien on his original post will be kept. This leave will be without pay but he will be entitled to increments during this period. However, he may take advantage of earned leave, if any, to his credit. This period will be considered as active service for the purpose of the normal benefits except Provident Fund.

(B) (1) Extraordinary leave may be granted to a teacher in special circumstances, i.e.

(a) when no other leave is by rule admissible.

(b) when other leave is admissible but a teacher has applied in writing for the grant of extra-ordinary leave without pay.

(2) Extraordinary leave may be granted in combination of any other leave that is admissible.

(3) Extraordinary leave is not debited against the leave account.

(4) Except in the case of extra-ordinary leave granted to a permanent teacher as study leave, or in the case of periods of Suspension converted into leave under Statute 217(1)(b) the duration of extraordinary leave in the case of a teacher shall not ordinarily exceed three months on any one occasion."

5. Clause (B) (1) provides power to grant extra ordinary leave to a teacher in special circumstances enumerated in clauses (a) and (b). Sub clause (a) provides that when no other leave is by rule admissible, the extra ordinary leave may be granted to a teacher in special circumstances. Meaning thereby, the power to grant extra ordinary leave is conferred only if no other leave is by rule admissible. Clause (A) of Statute 200 specifically provides that a teacher who becomes a member of the Parliament or State Legislature, requires to go on leave during the period which he remains a member of that body and his lien on his original post will be kept. Leave under that clause will be without pay but he will be entitled to increments during this period. Under this clause, it is made obligatory for the concerned teacher to go on leave during the period during which he remains a member of Parliament or State Legislature. It is apparent that teacher who is a member of the Parliament or State Legislature is required to go on leave and, therefore, the question of seeking extra ordinary leave, in our opinion, would not arise. Clause (B) will not be attracted since the case of a teacher is covered under clause (A). In other words, clause (B) would come into operation only if no other leave is by rule admissible. In our opinion, plain reading of clause (B) admits only one meaning and does not require further elaboration. In view of this, we have no hesitation in rejecting the first contention of the Petitioner that his case is covered by clause (B) (1) of Statute 200 and, therefore, he was not required to go on leave during the period during which he remains a member of the Parliament or State Legislature.

6. This takes us to consider the other limb of the argument which, in fact, is an alternative argument advanced by the learned counsel for the petitioner that the Statute which compels the teacher to go on leave without pay, is wholly irrational and unreasonable and is liable to be struck down as violative or right guaranteed to the petitioner under Article 14 of the Constitution of India. In reply to this argument, Mr. Ketkar, learned counsel appearing for respondent No. 3 contended that the profession of the full time teacher is a responsible job and the teacher is supposed to devote his full time in teaching. He further contended that the petitioner, being a member of the State Legislature, will not be able to devote and do justice to the job. According to Mr. Ketkar, there is no question of compelling anyone to proceed on leave since it is provided under the Statute. The object of the relevant statute is clear, that the teaching is a noble profession and one has to accept it with conviction and rigor. He further submitted that though an MLA is required to attend Session of Legislative Assembly for a limited period in a year, he requires to do several other functions as a member of Legislative Assembly, such as nursing of his Constituency, attending meetings of several Committees, subcommittees etc and, therefore, it cannot be said that he would get sufficient time to devote himself for pious job of teaching.

7. Power to make Statute is derived from Section 42(1) of the University Act. Under this provision, the Senate gets power to make Statutes to provide matters in respect of teachers and other employees in affiliated colleges and recognized institutions other than those managed and maintained by the State Government or the University. The Senate is empowered to frame Statute in respect of conditions of service of teachers working in the affiliated colleges. Deochand College is admittedly affiliated to respondent No. 3 University and is, therefore, covered under the Statute made by the University u/s 42(1) of the University Act. Apparently we do not find any force in the argument advanced by the learned counsel for the petitioner that it is unreasonable and violative of right guaranteed to the petitioner under Article 14 of the Constitution of India. The sole object appears to be, to see that the working hours of the college and functions of the members of the State Legislature do not conflict and teacher would devote himself in teaching job. We agree with the submission of Mr. Ketkar, learned counsel for the respondent No. 3, that the member of the Legislative Assembly requires to perform several functions other than attending Assembly Session of the State Legislature. We, therefore, do not find ourselves in agreement with the argument advanced by the learned counsel for the petitioner that the working days of the State Assembly Session and the working hours of the College do not conflict and further that the Statute, which compels a teacher to go on leave without pay is wholly irrational, unreasonable and ultra vires the powers of the University. We are unable to persuade ourselves that clause (A) of the Statute 200 compels the teacher to proceed on leave without pay since in our view the restriction is imposed only on the teachers who get elected either as member of Legislative Assembly or Parliament and not on all teachers in general. The teacher who gets elected as an MLA or MP cannot be said to be a looser, as far as payment is concerned. The teaching is a noble profession and teachers are supposed to perform the pious duty of teaching with conviction and rigor. We do not find the relevant statute unreasonable and ultra vires the powers of University. Consequently, the directions of the University dated 8th May, 1991 and 25th June, 1991 (Exhibits C and D), asking the petitioner to proceed on leave, and to respondent Nos. 1 and 2 to take action against the petitioner for not proceeding on leave, cannot be said to be ultra vires of the powers of respondent No. 3 University.

8. In the result, we dismiss the petition.

Rule is discharged. No costs.

Needless to say that since the petitioner continued teaching during pendency of this petition, by virtue of the interim order passed by this Court, the salary, if paid, may not be recovered from the petitioner.