

(2003) 01 JH CK 0063
In the Jharkhand High Court
Case No : L.P.A. No. 498 of 2002

Sunil Kumar Sinha

APPELLANT

Vs

Hon'ble Chancellor of Universities and Others

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Bihar State Universities Act, 1976 — Section 9(7)

Citation : (2003) 2 BLJR 1134 : (2003) 4 JCR 110

Hon'ble Judges : Vinod Kumar Gupta, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : S.B. Gadodia and Sumeet Gadodia, for the Appellant; A.K. Mehta and Krishna Shankar, J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J. and R.K. Merathia, J.—The main question involved in this appeal is as to whether Section 9 (7)(ii) of the Bihar State Universities Act, 1976 (hereinafter referred to as the "Act") can be construed/read to mean that under the powers vested in the Chancellor to issue direction to the Universities in the Administrative or Academic interest of the Universities which he considers to be necessary, such directions can be issued which may adversely or prejudicially affect or tend to adversely affect the rights or interests of third parties, and further as to whether the Universities will be bound to implement such directions?

2. The relevant facts in short are as follows :

The petitioner (appellant) filed writ petition under Article 226 of the Constitution of India being C.W. J.C. No. 822/2000 mainly for quashing the order of his termination from the post of computer operator in Ranchi University issued vide Memo No. Esst/ C/252-62 dated 10-3-2000 under the signatures of the Registrar, Ranchi University (Respondent No. 4) Relevant portion of the said notification (Annexure-1) reads as follows :

In pursuance of the Chancellor's Secretariat, Patna, contained in letter No. 733

G.S. (I) dated 22-2-2000 and Hon"ble Chancellor orders passed in the case of C.W.J.C. No. 2529/98 the Vice-Chancellor has been placed to terminate the services of the following persons with immediate effect:

1. Sri bhupendra kumar -System Analyst 2. Sri shuba Ranjan Saha -System Programmer 3. Sri sunil kumar -Computer Operator By order of the Vice-Chancellor Sd/ P.P. Verma Registrar Ranchi University, Ranchi

Memo No. ESSTT/c/252-62 Dated, the 10-3-2000

3. The petitioner's case is that the Ranchi University advertised for appointment on the post of Computer Operator and other posts on or about 23-1-1996. Pursuant to the same, the petitioner applied against the post of Computer Operator as also Programmer. An interview letter was issued to the petitioner. In the meantime, Dr. D.P. Gupta joined as Vice-Chancellor of the Ranchi University. Afresh advertisement was again published on or about 21-9-1996 in which it was made clear that the persons who have already applied against the previous advertisement need not apply again. However, the petitioner complied with certain formalities, and thereafter, an admit card was issued to the petitioner by the Registrar, Ranchi University for appearing in the written test to be held on 27-10-1996. Thereafter, personal interview, of the selected candidates was held on 21st & 22nd December, 1996. After the interview a panel was prepared in which the petitioner's name appeared as Serial No. 1 for the post of Computer Operator and accordingly the letter of appointment was issued to the petitioner vide Memo No. 1798-1804/96 dated 23-12-1996 on the said post. It was on purely temporary basis subject to approval to the State Government. The petitioner after resigning from his earlier employment as Computer Instructor of Yogada Satsang College, Ranchi gave his joining on 23-12-1996. The petitioner has made further statements to show that the said appointment was a valid and legal one. Petitioner further stated that the post of Computer Operator was lying vacant since 1988 and the same was filled up after completion of all the formalities, and prescribed rules etc. The main grievance of the petitioner is that the order of termination was passed without following principles of natural justice. Had an opportunity been given to him, he could have explained all the aforesaid and other relevant matters to the authority to show that he should not be terminated.

4. By order dated 14-2-2000 passed by the Chancellor, enclosed with Annexure-5 (communicated to the University vide letter M. 733GS (1) dated 22-2-2000), the services of the petitioner and two others were directed to be cancelled after observing the normal procedure. Then the University has issued the order of termination dated 10-3-2000. Even the said order dated 14-2-2000 was passed by the Chancellor behind the back of the petitioner. It is further stated that the petitioner was not even a party to C.W.J.C. No. 2529/1998 preferred by one Shri Bhupendra Kumar, which has been referred in the aforesaid orders.

5. From perusal of the said, order dated 14-2-2000 it appears that the then

Chancellor by order dated 2-2-1998 directed the Vice-Chancellor, Ranchi University to cancel the appointment of Shri Bhupendra Kumar and two others including the petitioner immediately after observing the normal procedure and for recovery of the salary etc. paid to them. Pursuant to the said order dated 2-2-1998 Ranchi University served a notice dated 6-2-1998 on Shri Bhupendra Kumar asking him to show-cause as to why his appointment be not cancelled. He filed a writ petition being C.W.J.C. No. 2529/1998 challenging the aforesaid orders of the Chancellor and the University. By order dated 23-8-1999 passed in the said writ petition, Shri Kumar was directed to file his representation u/s 9 (7)(iii) of the said Act. It was observed by the High Court that the Chancellor may affirm, modify or rescind his earlier order or pass such other order as he may deem fit and proper after allowing Shri Bhupendra Kumar to be heard either personally or through his Counsel. By the said order dated 14-2-2000, the said representation filed by Shri Bhupendra Kumar was rejected and the earlier order dated 2-2-1998 passed by the then Chancellor was affirmed.

6. While rejecting the representation of Shri Bhupendra Kumar as aforesaid, the Vice-Chancellor, Ranchi University was again directed by the Chancellor to cancel the irregular appointment of Shri Bhupendra Kumar, Shri S.R. Saha and the petitioner made during the tenure of Dr. D.P. Gupta, Ex Vice-Chancellor, Ranchi University, immediately after observing the normal procedure. It was further directed that the amount of salary etc. paid to them should be worked out and intimated to the Chancellor's office for passing appropriate orders for recovery of the same under the provisions of Section 35 of the Act.

7. A counter-affidavit was filed on behalf of the Registrar, Ranchi University (Respondent No. 4) inter alia, stating that the post on which the petitioner was appointed, was temporarily provided by U.G.C. under the development project only for the plan period 1979-84. There were allegations of gross irregularities committed by Dr. D.P. Gupta the then Vice-Chancellor, Ranchi University. A retired Judge of high Court was appointed by the Chancellor to inquire into the matter who gave a confidential report holding that the appointment of Shri Bhupendra Kumar who was the son of Dr. Gupta, Mr. Subha Ranjan Saha and the petitioner was irregular. Accordingly the Vice-Chancellor was directed to cancel the appointment of the said three persons. The said Shri Bhupendra Kumar challenged the said order of cancellation of his appointment by filing writ petition in the Patna High Court being C.W.J.C. No. 2529/1998. Shri Bhupendra Kumar filed a representation before the Chancellor pursuant order dated 23-8-1999 passed in the said writ petition. While rejecting the said representation the Chancellor directed the Vice-Chancellor to cancel the irregular appointment of Shri Bhupendra Kumar as well as S.R. Saha and the petitioner, made during the tenure of Dr. D.P. Gupta. However, the aforesaid order dated 2-2-1998 passed by the Chancellor is not annexed with the counter-affidavit.

8. From the facts stated above at least this is clear and undisputed that white said Shri Bhupendra Kumar was given an opportunity of being heard, the

petitioner was not given any opportunity of being heard either by the Chancellor or by the University.

9. On the basis of the materials available on record we are not in a position to give any definite and positive finding about the rival contentions of the parties in this appeal but one thing is certain that there has been violation of the principles of natural justice so far as the petitioner is concerned.

10. Learned Counsel appearing for Ranchi University argued that u/s 9(7)(ii) the Chancellor has got wide power to issue direction and such directions are binding on the University as has been rightly held by learned Single Judge. Section 9 (7) (ii) reads as follows :

"The Chancellor.....

(7)(ii) The Chancellor shall have the power to issue direction to the Universities in the Administrative or Academic interest of the Universities which he considers to be necessary. The direction issued by the Chancellor shall be implemented by the Vice-Chancellor, Syndicate, Senate and other bodies of the Universities as the case may be."

11. No doubt the Chancellor has got wide power u/s 9 (7)(ii) of the Act to issue direction to the Universities in the Administrative or Academic interest of the Universities which he considers to be necessary but if any order is passed under exercise of such power which affects or tends to affect the rights of third party prejudicially and adversely, the principles of natural justice must be followed,

12. Justice is the goal of jurisprudence and natural justice is in the foundation of the justice delivery system be it judicial, quasi judicial or administrative, if the directions/orders affects/intends to affect adversely and prejudicially the rights and interests of third parties.

13. Section 9 (7)(ii) of the Universities Act, even though does vest in the Chancellor of the Universities power to issue directions to the Universities in the administrative or academic interests of the Universities and also contains a stipulation that the Universities shall implement such directions, such power of the Chancellor to issue directions and such obligation of the Universities to implement these directions cannot extend to such areas or cases where the directions of the Chancellor may affect or tend to affect adversely or prejudicially the rights or interests of a third party. The legislative intent behind vesting of such powers in the Chacenllor in the aforesaid provision of law clearly was to empower the Chancellor to issue directions in the academic or administrative interests of the Universities. In the legislative intent, we cannot read the power of the Chancellor to issue directions which may adversely or prejudicially affect the rights or interests of third parties.

14. If third parties such as employees of the Universities or the Officials of the Universities or the Teachers of the Universities have vested interests, constitutional, statutory, legal, contractual or other rights which also, therefore,

created in them protections and safeguards, the aforesaid powers of the Chancellor to issue directions cannot be construed to take away, curtail or abridge the aforesaid rights vested in third parties. Our reading of the aforesaid Section, therefore, is that the power of the Chancellor to issue directions can be exercised so long as it does not affect the rights or interests of third parties, adverse or prejudice to them. In other words, this power can be exercised in the academic or administrative interests as long as it is unconnected with or not linked with the interests or rights of a third party. For example, the Chancellor can issue directions to the Universities to improve the academic or administrative set up, to expand or improve the infrastructure, to improve the library or laboratories, to create more posts, to provide infrastructure facilities, to create conducive conditions for the teachers, to create supporting facilities to the students, to improve the conditions in the hostels, in the class rooms, to extend the scope of lecturers, to improve the examination systems and so on so forth. The list is endless. The power to issue directions cannot, therefore, include the power to affect the service conditions of employees or take away the rights vested in them. If despite the aforesaid, the Chancellor wittingly or unwittingly, by inadvertence or otherwise, or even deliberately or purposely or intentionally issues any direction which affects or tends to affect prejudicially or adversely the interests of third parties or their rights, such directions being without jurisdiction, the University is not bound to implement or follow them. At best, these can be termed as "suggestion" from the Chancellor and it could be up to the University to take note of the suggestions or not to take note of the suggestions, but even if the suggestions are taken note of, the consequential action has to be taken in accordance with law.

15. The service of an employee cannot be terminated except by following the procedure prescribed under law. The minimum that was required to be done was to have issued notice to the appellant.

16. We do not at all agree with the observation or views of the learned Single Judge, therefore, that the University was bound to follow the direction of the Chancellor. In the light of what we have said above, the Chancellor did not have the jurisdiction to issue such a direction and even if he did issue it, the University was not bound to follow it. University could at best treat it as a "suggestion".

17. Suppose in a given case, the Chancellor by observing that an employee of the University has committed theft or has assaulted the teachers, and directs the University to terminate his service, can the University without following the procedure prescribed in this behalf, merely on the direction of the Chancellor issued u/s 9 (7)(ii) terminate the service of such an employee without so much as to issue him a notice or affording him an opportunity of hearing, despite the fact that termination of service or dismissal from service would be a major penalty in the relevant Service Rules and Regulations and the Rules and Regulations provide that a major penalty cannot be imposed without serving upon an employee charge-sheet and holding an enquiry departmentally?

18. Considering all the fact and circumstances of this case we are of the considered view that the order passed by the Respondents, terminating the service of the petitioner Shri Sunil Kumar is bad in law and as such the same is set aside so far the petitioner is concerned.

19. However, as this appeal is being allowed on the ground of violation of principles of natural justice, the respondents are at liberty if so advised, to take suitable steps against the petitioner but strictly in accordance with the procedure prescribed by law.

In the result, the appeal is allowed. There will be no order as to costs.