
(2009) 02 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 4629 of 2005

V.D. Jha (Dr.)

APPELLANT

Vs

Devi Ahilya Vishwa Vidyalaya, Indore and another

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 52(4)(V)

Citation : (2009) 3 MPLJ 204

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : S.C. Bagadiya, with D.K. Chhabra, for the Appellant; Ritu Bhargava for Respondent No. 1 and Arvind Gokhale, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

Petitioner was working on the post of Professor in the first respondent University. On attaining the age of superannuation, he was retired w.e.f. 31-1-2004. Prior to his retirement, the Executive Council of the University in its meeting dated 30-8-2003 resolved to reappoint the petitioner on the post of Professor for a period of three years. The said resolution was passed in terms of the resolution of the Co-ordination Committee passed on 10-5-2002 amending the statute No. 31 providing re-employment to the University Teacher who has reached the age of superannuation for a period not exceeding three years in case if the Executive Council is satisfied that the re-employment is in the interest of the University. The order to that effect was issued by the first respondent on 14-11-2003 (Annexure P/6).

On 5-4-2004 (Annexure P/I) the first respondent communicated the decision taken by the Vice-Chancellor of the University in exercise of powers conferred upon him u/s 52(4)(V) of the M.P. Vishwavidyalaya Adhiniyam, 1973 (for short

the Adhiniyam) not to continue the petitioners services in pursuance to the order of reappointment. It was stated in the said order dated 5-4-2004 (Annexure P/I) that on examination of the case of reappointment of the petitioner it was found by the Vice-Chancellor that the petitioners reappointment is not in the interest of the University. Feeling aggrieved, the petitioner submitted a representation to the second respondent Chancellor of the University on 10-4-2004 (Annexure P/9). As the representation remained undecided the petitioner filed a Writ Petition (S) No. 959/2004 before this Court. During the pendency of the Writ Petition, the Executive Council of the University took a decision in its meeting held on 15-12-2004 to continue the petitioners re-employment as according to the Executive Council the order of removal of the petitioner was mala fide and there was no complaint was against him. Accordingly, an order dated 1-1-2005 (Annexure P/11) was issued by the first respondent reappointing the petitioner upto 31-1-2007 till his completion of 65 years of age.

After passing of the aforesaid order dated 1-1-2005 the second respondent exercising its powers u/s 12(4) of the Adhiniyam called the Executive Council to show-cause as to why the decision taken by it in its meeting dated 15-12-2004 and the order dated 1-1-2005 reappointing the petitioner be not annulled. After receiving the reply of the Executive Council the second respondent Chancellor vide his order dated 25-7-2005 (Annexure P/13) held that the decision of the Executive Council to reappoint the petitioner was not based on the correct facts and held it to be irregular. He accordingly directed the University to cancel the order of petitioner's reappointment. Accordingly, the first respondent University vide its order dated 11-8-2005 (Annexure P/12) cancelled the order of petitioner's re-appointment. Aggrieved, the petitioner has filed this petition.

The petitioner contends that the orders Annexure P/1, Annexure P/12 and Annexure P/13 discontinuing his reappointment are passed in contravention of the principles of natural justice and also in contravention of the provisions of section 12(4) of the Adhiniyam. According to him the order Annexure P/1 is stigmatic in nature. He alleges that before passing the orders Annexure P/12 and Annexure P/13 no show-cause notice was issued to him. He submits that the impugned orders having been passed without giving any show-cause notice and opportunity of hearing to him, the same are liable to be quashed being in violation of principles of natural justice. During the course of argument it has been fairly stated by learned Senior Counsel for the petitioner that having regard to the fact that the period for which the petitioner was re-appointed has elapsed and, therefore, the petitioner cannot claim reinstatement and as the petitioner did not work he will also not be entitled for salary for the remaining period of contractual term of his re-appointment on the principle of "no work no pay". He submits that the petitioner would be satisfied if the orders Annexures P/1, P/12 and P/13 which are stigmatic in nature and violative of the principles of natural justice, are quashed, with no consequential relief.

The respondents have filed their reply. It is stated by the respondents that the

Chancellor before passing the order annexure P/13 considered the stand taken by the Executive Council justifying the order of reappointment Annexure P/11 and he found that the order of the petitioner's reappointment was issued ignoring the fact that the petitioners representation was already rejected by him. It was also noticed by the Chancellor that the Executive Council's decision to reappoint the petitioner was based upon incorrect facts and was irregular. In the circumstances, he passed the order Annexure P/13 and in compliance of the said order the University passed the order Annexure P/12.

Heard Learned Counsel for the parties.

In order to decide the question involved in this petition, it would be appropriate to quote relevant provision of the amended Statute No. 31 as also the relevant provisions of the Adhiniyam. Statute No. 31(4)(3) as amended by the respondent University reads thus:

The age of retirement of the University teachers and Class Four University Employees shall be 62 years and for that of the other Employees of the University shall be 60 years.

Provided that the Executive Council in special case may grant to a University teacher who has reached the age of superannuation a reemployment for a period not exceeding three years if the council is satisfied that this is in the interest of the University.

Section 12(4) of the Adhiniyam reads thus:

1. The Kuladhipati may, by an order in writing, annul --

(a) any proceedings (xxx) of any officer, authority Committee or body of the University, constituted by or under this Act, which is not in conformity with this Act, the Statutes, Ordinances or the Regulations, or

(b) any proceedings of any authority, Committee or other body which has been referred to him by the Kulpati under sub-section (7) of section 15, if he is satisfied that such proceedings are prejudicial to the interests of the University:

Provided that before making such order he shall call upon the officer, authority committee or body concerned to show cause why such an order should not be made and if any cause is shown within the time specified by him in this behalf he shall consider the same.

On a close scrutiny of the aforesaid provisions, it is revealed that Statute No. 31(4)(3) provides that the Executive Council in special case may grant to a University teacher who has reached the age of superannuation, re-employment for a period not exceeding three years if the Council is satisfied that this is in the interest of University. Section 12(4) of the Adhiniyam empowers Kuladhipati (Chancellor) to annul by an order in writing any proceedings of any Officer, Authority or Body of the University if the said proceedings are not in conformity with the Adhiniyam, the Statutes, Ordinances or Regulations. It also empowers

the Kuladhipati to annul any proceedings of any Authority, Committee or other Body referred to him by the Kulpati u/s 15(7) of the Adhiniyam if he is satisfied that such proceedings are prejudicial to the interest of the University. Proviso to sub-section (4) of section 12 makes it clear that before any order of annulment in writing is passed by the Kuladhipati he is required to call upon the Officer, Authority or Committee or Body concerned to show-cause why such an order of annulment should not be passed.

Having gone through the impugned order Annexure P/1 it is revealed that the same has been passed on the ground that the continuation of the petitioner's services are not in the interest of University. However, in the reply nothing has been said and no document has been filed to justify as to for what reason the continuation of the petitioner's services were held to be not in the interest of the University. Moreover, before passing the order Annexure P/1 the petitioner was not given any show-cause notice. Similarly on going through the order dated 25-7-2005 (Annexure P/13) passed by the second respondent, I find that the second respondent had issued the show-cause notice only to the Executive Council of the University but no show-cause notice was ever issued to the petitioner. Thus, it is clear, that orders prejudicial to the interest of the petitioner have been passed without issuing him a show-cause notice. In the circumstances, the impugned orders dated 5-4-2004 (Annexure P/1) the order dated 25-7-2005 (Annexure P/13) and the consequential order dated 11-8-2005 (Annexure P/12) of cancelling of the petitioners re-appointment are not sustainable.

Learned Counsel for the respondents have placed reliance on the order dated 15-2-2006 passed by a learned Single Judge of this Court in Writ Petition No. 926/2006 (s). I have gone through the said order dated 15-2-2006 and I find that the same is an order dismissing the petition of one K.P. Joshi filed against the present respondent-University, summarily. As it is clear from the said order dated 15-2-2006 the amended provisions of the Statute No. 31(4)(3) and section 12(4) of the Adhiniyam were not pressed into service and no argument on that basis were advanced by the petitioner of the said writ petition. In the circumstances, the learned Single Judge has rightly held that re-appointment/extension cannot be claimed as a matter of right after attaining the age of superannuation and that the order of extension is contractual and the petition is neither proper remedy nor appropriate. However, as aforesaid, in the present petition, the petitioner has placed reliance on the amended provision of the Statute on the basis of which he got reappointment and has also alleged that the impugned orders have been passed in contravention of Proviso to section 12(4) of the Adhiniyam and that the orders being stigmatic the same could not have been passed without issuing a notice to show-cause to him. Thus, in my considered view, the order by which the writ petition of K.P. Joshi was dismissed, summarily, will not come in the way of the present petitioner.

In view of the aforesaid discussion, the petition is allowed. The impugned orders

Annexures P/1, P/12 and P/13 are, hereby, quashed. No orders as to consequential relief as also about cost.