
(1960) 08 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 250 of 1959

Vedraj Bhawanidas Dua	Vs	APPELLANT
Damoh Arts College and Others		RESPONDENT

Date of Decision : 31-08-1960

Acts Referred:

Saugor University Act, 1946 — Section 32

Citation : (1961) J LJ 120 : (1961) MPLJ 239

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : G.P. Singh, for the Appellant; A.P. Sen for Respondent Nos. 1, 2 and 4 and B.L. Seth, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Pandey, J.

This petition under Articles 226 and 227 of the Constitution is directed against a notice dated 10th December 1958, by which the Governing Body (respondent No. 2) of the Damoh Arts College (respondent No. 1) conveyed to the petitioner its decision to terminate his services with effect from 21st January 1959. A resolution of the Governing Body dated 10th September 1959 declining to reinstate the petitioner has also been challenged.

The facts of the case giving rise to the present controversy may be briefly stated. In 1951, the Shiksha Prasar Samiti, Damoh (respondent No. 4), which is a society registered under the Societies Registration Act, 1860, established the Damoh Arts College (hereinafter called the College). The affairs of the College are managed by the Governing Body constituted under the rules of the society. The College has been admitted to the privileges of the University of Saugor (respondent No. 3). u/s 32 of the University of Saugor Act, 1946, the University has framed Ordinance No. 20, briefly called the College Code, which applies to colleges admitted to the privileges of the University.

By a letter dated 25th October 1953, the Secretary of the College requested the petitioner, who had taken in 1952 a degree of Master of Arts in Political Science in III Class, to dedicate his services to the College. In pursuance of that letter but without any order of appointment, the petitioner started working as a Lecturer of the College from 1st November 1953.

By a communication dated 27th June 1952, the Under Secretary to the State Government in the Education Department intimated to the Principal of the College that the petitioner took a keen and Active interest in the activities of the Rashtriya Swayam Sewak Sangh and that the State Government did not, therefore, favour his retention as a Lecturer of the College. The Principal was also requested to remove the petitioner from service urgently and to intimate the fact that it was so done. In view of that communication, the petitioner was asked to clarify his position. In his reply dated 3rd August 1958, he denied that he took any part in the activities of any political party or organisation and also undertook to refrain from doing so. He, however, stated that the Rashtriya Swayam Sewak Sangh was not a political party or organisation. Even so, he continued to be the district organiser of the Rashtriya Swayam Sewak Sangh and issued in that capacity invitations dated 12th October 1958 for its public function to be held on 18th October 1958.

On 13th December 1958, the President of the Governing Body sent to the petitioner a notice detailing the following three charges and calling upon him to show cause within three days why his services should not be terminated:

- (i) During the 1957-58 session, he absented from duty without permission and without reasonable cause.
- (ii) He did not devote the whole of his time to the duties appertaining to his office and, without the sanction of the Governing Body, he engaged himself in his agricultural work which interfered with the aforesaid duties.
- (iii) He was an active worker of the Rashtriya Swayam Sewak Sangh and, in spite of his undertaking dated 10th August 1958, he continued his activities in that organisation in an accentuated manner.

In his reply dated 18th December 1958, the petitioner denied the charges, invited an enquiry and claimed, without attempting to controvert his association with, and activities in, the Rashtriya Swayam Sewak Sangh, that they could not be a valid ground for terminating his services. Thereupon the Governing Body issued the impugned notice dated 19th December 1958 terminating his services with effect from 21st January 1959.

On 23rd December 1958, the petitioner applied to the Vice-Chancellor of the University of Saugor to enquire into the correctness and propriety of the order terminating the petitioner's services. The Vice-Chancellor appointed a committee of enquiry consisting of Professor N.D. Bajpai and Professor M.P. Sharma. That committee visited the College, held an enquiry and submitted its

recommendations. Thereupon, by its resolution dated 12th July 1959, the Executive Council of the University accepted the recommendations of the committee to the effect that the first two charges were not proved. In regard to the third charge, the Executive Council could not reach any conclusion for want of evidence required to substantiate it. It appears that the opinion of the Executive Council, expressed in its resolution dated 12th July 1959, was communicated to the Governing Body which however refused, by the impugned resolution dated 10th September 1959, to re-instate the petitioner.

The first question for our consideration is whether the petitioner is entitled to avail of and enforce the provisions of the College Code against the Governing Body. This raises the question of the scope and effect of the provisions of the College Code. The University of Saugor is, as the preamble to the University of Saugor Act, 1946 (hereinafter called the Act) shows, a teaching and residential University besides being an affiliating University. The only provisions of the Act having a bearing on the question of affiliation are sections 6(6), 24(1) and 32. By clause (6) of section 6, the University is empowered to admit colleges to the privileges of the University under conditions which may be prescribed in the Statutes and Ordinances. Clause (i) of section 24(1) authorises the Executive Council to admit colleges to the privileges of the University subject to the provisions of the Act and such conditions as may be prescribed in the Statutes. Section 32 of the Act dealing with Ordinances generally reads as under:

Subject to the provisions of this Act and the Statutes and in addition to all matters which by this Act or the Statutes, are to be provided for by the Ordinances, the Ordinances may provide for all or any of the following matters, namely:-

- (a) the admission of students to the University;
- (b) the courses of study to be laid down for all degrees and diplomas of the University;
- (c) the conditions under which students shall be admitted to the degree or diploma courses and to the examinations of the University and shall be eligible for degrees and diplomas;
- (d) the levying of fees for residence in hostels maintained by the University;
- (e) the fees to be charged for the enrolment of students, for attending courses of teaching in the University, for admission to the examinations, degrees and diplomas of the University and for the registration of graduates;
- (f) the conditions subject to which persons may be recognised as qualified to give instruction in the University and colleges;
- (g) the conduct of examinations;
- (h) the term of office, duties and conditions of service of officers and teachers of the University in so far as these are, by or under this Act, subject to the

Executive Council.

In our opinion, the conditions under which a college may be admitted to the privileges of the University are matters which are required by section 6(6) *ibid*, to be provided for by Ordinances and are, therefore, covered by the first part of section 32 although they are not expressly specified in the matters enumerated thereunder. That being so, the College Code cannot be assailed as being outside the scope of section 32 in so far as it prescribes the conditions on which a college may be admitted to the privileges of the University.

In view of the provisions of the Act referred to in the last paragraph, it appears to us that statute No. 19 of the First Statutes and Ordinances Nos. 20 and 21 made under the Act have to be regarded only as conditions prescribed for admitting colleges to the privileges of the University and the withdrawal of such privileges. The opening words of Ordinance No. 21 read as follows:-

An educational institution, applying for admission to the privileges of the University of Saugor, shall satisfy the Executive Council that it complies with the provisions of Statute 19 and the College Code and fulfils the following conditions:-.....

Further, the last part of clause (1) of Statute 19 is as under:

The application shall further contain an assurance that, after the educational institution has been admitted to the privileges of the University, any transference of management and all changes in the teaching staff shall be forthwith reported to the Academic Council and that the institution shall faithfully observe the provisions of the Statutes, Ordinances and Regulations of the University as made from time to time.

Clause (8) of the Statute lays down the procedure for disaffiliation. Being merely conditions prescribed for affiliating colleges, the University may, at its option, enforce or relax those conditions. Thus, in the present case, the College has been affiliated although it has not implemented the College Code [Paragraph 3(ix) of the Return]. An affiliated College may also disregard the conditions and take the risk of disaffiliation. The point is that the only sanction for fulfilment of the prescribed conditions is disaffiliation.

The College Code itself contains provisions indicating that the relations between the Governing Body and the college teachers would be regulated by contracts made with them. Clause 7(i) of the College Code requires that all teachers, other than those appointed temporarily for a period of one year or less, shall be appointed on a written contract in the form prescribed in Schedule A. Similarly, clause 8(xi) relating to the Principal and teachers appointed before 1st July 1954 enjoins that the Governing Body shall enter into written contracts with them not later than 31st March 1955. The form of contract, Schedule A, provides for engagement of a teacher on probation for one year, his confirmation at the end of the period of probation, termination of the services of a confirmed teacher on

specified grounds and, in the case of any dispute or difference arising out of the agreement, reference to a Tribunal of Arbitration constituted under clause 8(vi) (c) of the College Code. If, independently of contract, the provisions of the College Code could be availed of by a college teacher, there would be no need of any written contract.

In *Ramani Kanta v. Gauhati University* AIR 1951 Assa 163, it was urged that since the only power given by the Gauhati University Act was to recognise colleges and to withdraw such recognitions, it was not competent to the Executive Council of the Gauhati University to give directions for the reorganisation of the Governing Body of affiliated colleges. Their Lordships of the Assam High Court observed:

The question would not have been so easy to decide if there had been no other provision in the Act bearing on the question before us. Section 21 of the Act, however, to which no reference was made by either of the counsel, supplies the answer to the question in no uncertain terms. It provides that, subject to the provisions of this Act, the Statutes (of the University) may provide for among other matters described in the section,

The condition for the recognition by the Executive Council of Colleges and Halls not maintained by the University and for the withdrawal of such recognition and the management of such Colleges and Halls.....

.....

Clause (g) of section 21 does recognise the power of the University to provide for the management of Colleges and Halls not maintained by it and unless it is argued (which has not been done) that this clause is ultra vires of the Legislature, it will have to be conceded that it is not outside the powers of the University to make provisions for the management of the Colleges falling in the category of Bholanath College.

In *J.K. Chaudhuri Vs. R.K. Datta Gupta and Others*, , their Lordships of the Supreme Court were considering whether the Gauhati University could interfere with the order of the Governing Body of Guru Charan College dismissing the Principal of that College. It was held that the Statutes made u/s 21(g) of the relevant Act did not permit such interference and the order of the Executive Council of the University directing re-instatement of the Principal was set aside as without jurisdiction. The principle underlying the two decisions is that a University cannot interfere with the affairs of an affiliated college except to the extent permitted by the Act which constituted it and the Statutes and Ordinances made in pursuance of the provisions of the Act. Unlike the one made in the Gauhati University Act, there is in the Act no enactment which authorises the University to provide for management of the affiliated Colleges. That being so, the provisions of the College Code must be regarded merely as conditions prescribed for the continued extension of the privileges of the University to affiliated colleges and cannot be availed of or enforced by the teachers of any

affiliated college against its Governing Body.

We have next to consider the position of the petitioner. On his own showing, there is no order of the Governing Body appointing him as a teacher of the College and he started working as such teacher only in pursuance of a letter received from the Secretary of the College requesting him to dedicate his services to the institution. We do not accept his contention that since he was not appointed temporarily or on probation, he must be deemed to have been appointed as a permanent teacher of the College. He cannot also derive any support from the fact that in a report called at the instance of the University Grants Commission for considering the question of making grants to colleges for upgrading the salaries of their teachers, the petitioner was shown as a permanent teacher. At best, it is only an admission, which like all other admissions, may be shown to be incorrect. In the instant case, there is admittedly no valid order of appointment in favour of the petitioner and he is in the same unfortunate position in which, in *In re Rasul* AIR 1915 Cal. 91, a teacher of the Calcutta University found himself after working for nearly two years. In our opinion, the petition must fail on this short ground.

Even if the petitioner could be regarded as a teacher of the College, he is not in any event a confirmed teacher and he cannot, for that reason also, take advantage of sub-clauses (vi) and (vii) of clause 8 of the College Code, assuming that those provisions could be availed of by confirmed teachers of affiliated colleges. We have only to add that, pursuant to sub-clause (vii) *ibid* the Executive Council has not issued any instruction to the Governing Body with the consequence that that sub-clause is not in terms attracted. This is quite apart from the fact that in this case the Executive Council had not caused any enquiry to be made as required by that sub-clause.

Even on merits, the petitioner does not appear to be on firm ground because, in view of his admission that he continued to participate in the activities of the Rashtriya Swayam Sewak Sangh, there could be no question of any enquiry to ascertain that fact.

In view of the foregoing consideration, this petition fails and is dismissed. The petitioner shall bear his own costs and pay out of the security amount the costs of the respondents. There will be one set of costs for the respondents Nos. 1, 2 and 4 and another for the respondent No. 3. Counsel's fee Rs. 75. The outstanding amount of security, if any, shall be refunded.