

J. K. Chaudhuri

Vs

R. K. Datta Gupta & Others

Civil Appeal No. 321 of 1957

(A. K. Sarkar, N. H. Bhagwati, J. L. Kapur JJ)

07.04.1958

JUDGMENT

KAPUR J. -

This is an appeal by special leave brought by J. K. Chaudhuri for and on behalf of the Governing Body of Guru Charan College, Silchar (which will be referred to in this judgment as the college) against a judgment and order of the High Court of Judicature in Assam dated June 13, 1956, dismissing the appellant's petition under Art. 226. It raised the question as to the nature and extent of the jurisdiction of the Executive Council of the University of Gauhati in regard to disciplinary action taken by the Governing Body of the College against its principal, R. K. Datta Gupta, respondent No. 1.

In 1937, respondent No. 1 was appointed Professor of Mathematics in the college. He was appointed Vice-Principal in 1947 and Principal in 1950. Due to certain representations made to the Governing Body against respondent No. 1, a committee was appointed by the Governing Body to enquire into the allegations. This committee held several sittings and made a report after considering which the Governing Body held a prima facie case made out against him, placed him under suspension and called upon him to answer the charge within 15 days. This he failed to do but later on submitted an explanation which was duly considered. As fresh material was disclosed after the suspension, respondent No. 1 was called upon to give a further explanation. He then requested for the previous charges being decided before enquiry into fresh charges was made. The Governing Body held a meeting on November 1, 1953, and after considering the matter found him guilty of moral turpitude and dishonesty and also gross negligence of duty, inefficiency and insubordination and ordered his dismissal as principal and Professor of Mathematics of the college.

On November 30, 1953, respondent No. 1 filed a suit being Title Suit No. 282 of 1953, in the Court of Munsif Sadar, Silchar, challenging the legality of the proceedings of the committee appointed by the Governing Body and of the proceedings and decision taken by it and prayed for an injunction restraining the Governing Body from appointing another Principal. He also applied for a temporary injunction. This suit was transferred to the Court of the Subordinate Judge U.A.D., at Silchar and was renumbered as Title Suit No. 10 of 1954 which has not yet been decided. On November 11, 1953, respondent No. 1 made a representation to the Vice-Chancellor of the Gauhati University against his dismissal and prayed that the Governing Body be directed not to fill up the post of Principal pending the disposal of his appeal which was filed on November 30, 1953, and which was a reiteration of the allegations made by him in the plaint in the suit in the Court of Munsif Sadar. The Executive Council of the University, i.e., respondent No. 2 thereupon appointed under para. 3(h) of the Statutes framed under section 21(g) of the Gauhati University Act (Assam XVI of 1947)

(hereinafter called the Act) a committee, respondent No. 3, consisting of the Vice-Chancellor, the Director of Public Instruction and the legal Remembrancer of the State of Assam to report on the propriety of the action taken. After considering the matter and giving all opportunity to both sides respondent No. 3 on March 30, 1955, made a report to respondent No. 2 that :

"there was no reasonable ground justifying the dismissal of Shri R. K. Datta Gupta from the post of the Principal, Guru Charan College Silchar."

On April 20, 1955, this report was accepted by respondent No. 2 and it passed the following resolution :

"..... Resolved that the findings of the Committee be accepted and in view of the facts that Sri R. K. Datta Gupta was not dismissed on any reasonable grounds, the Governing Body be directed to reinstate him before 31st July, 1955.

Against this order the Governing Body of the college filed a petition under Art. 226 in the High Court of Assam but the petition was dismissed on June 13, 1956.

Although in the High Court the appellant challenged the power of the University to interfere with the decision of the Governing Body of the college removing respondent No. 1 both from Principalship and from Professorship of Mathematics, in this Court the arguments were confined to the former only. The two categories, it was submitted, were distinct and were dealt with in the Act and the Statute made thereunder separately. The principal was merely the administrative head of the College and a teacher solely engaged in imparting instructions. The Act therefore contemplates their discharging different functions. To support this contention, various provisions of the Act and the Statutes made under the Act were referred to. The words "Principal" and "Teacher" are defined in section 2 of the Act :

"2(h) 'Principal' means the head of a College, and includes where there is no Principal, the person for the time being duly appointed to act as Principal, and, in the absence of the Principal, a Vice-Principal duly appointed as such.

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2 (k) 'Teacher' includes professors, Readers, Lecturers and other person imparting instructions in the University or in any College or Hall".

The distinction finds further support from other provisions of the Act which maintain a clear distinction between a 'Principal' and a 'Teacher'. Section 9 of the Act deals with the constitution of the Court which has three classes of members : Ex-Officio members, Life Members and Other Members. Principals fall under class I and are mentioned in sub-section (vii). Teachers come under the heading 'Other Members' enumerated in class III. In sub-section (xiv) representation is given to 'Teachers' elected from their own body who are not Professors or Readers of the University. Similarly in the constitution of the Executive Council contained in section 12, a distinction is maintained between Principals who are in class I, i.e., Ex-officio members and professors of the University who are in class II, i.e., Other members. Amongst the former have to be included two principals of recognised colleges elected from their own body and in Class II representation is given to professors of the University and none to the teachers. Therefore whenever the provisions of the Act mention the word a 'Principal' or a 'Teacher' two distinct entities are indicated and one is not to be included in the other.

The Statutes made under section 21(g) of the Act also maintain this distinction in their various clauses and where the word 'principal' occurs it is used in its distinctive and restrictive sense and where the word 'teacher', or the phrase 'member of the teaching staff', or any other similar word or phrase is used the reference is to a teacher and to a principal. Clause 1 of the Statute requires the existence of a Governing Body for each college not maintained by the University. Clause 2(a) gives its constitution which includes the Principal and the vice-principal as ex-officio members and so also two representatives of the teaching staff to be elected annually showing that a Principal as such is distinct from a member of the teaching staff which must necessarily mean employees of colleges engaged in the teaching of various subjects. Clause 2(c) nominates the Principal as the Secretary of the Governing Body. Sub-cl. (a), (b), (c) and (d) of cl. 3 deal with a teacher's appointment, pay, scales of pay, probation and period of appointment. Sub-cl. (e) deals with increments. It provides :

"An increment according to the pay scale will be drawn as a matter of course.....The increment may be withheld on the ground of unsatisfactory work of an employee....."

The word 'employee' here must necessarily refer to a teacher because it provides for increments according to pay scales and the withholding of increments for unsatisfactory work of an employee dealt with in the first four sub-clauses which in terms apply to a teacher.

Sub-cl. (f) deals with the period of service. Sub-cl. (i) and (ii) are as follows :

"(i) The services of a permanent employee shall not be determined except on reasonable grounds.

(ii) The services of a permanent employee shall not be terminated in the course of an academic session except on very special grounds, such as moral turpitude, proved incapacity and inefficiency.

If the Governing Body of a college considers it advisable that the services of a permanent employee should be terminated on any of the grounds mentioned in clause (g)(ii), the matter shall be forthwith reported to the Executive Council".

The use of the phrase 'academic session' indicates that the 'Permanent employee' must be a person connected with teaching for otherwise it lacks meaning. The language of sub-cl. (g) (iii) which is as follows :

"A teacher whose services are dispensed with on grounds other than those mentioned in clause (g)(ii) shall be paid compensation equal to as many months' pay as the number of completed years of his service, subject to a maximum of twelve months' pay"

further supports this interpretation that a 'permanent employee' mentioned in sub-cl. (g)(ii) refers to a teacher and to no one else. This is further strengthened by the use of the word 'teacher' in sub-cl. (g)(iv) which provides for the procedure for an enquiry where a teacher has to be dismissed, suspended or reduced in pay. Sub-cl. (g)(v) reserves to the Executive Council of the University the power to enquire into causes of dismissal of a teacher whether on its own motion or on an appeal by the teacher. Sub-cl. (h) which is in the following words :

"All cases of dismissal, suspension, or any other serious grievance of the teaching

staff will be considered by a Committee of the following members"

uses the words "teaching staff" and this again shows that the reference is to the teacher and not to a Principal because cl. 3 taken as a whole clearly deals with the conditions of service of a teacher, compensation to be paid to him and the procedure to be followed in cases of disciplinary action taken against him. These words cannot in the context in which they appear in the Statutes or in the context of the language of the Act itself have reference to anybody other than a member of the teaching staff, i.e., teacher. It shows therefore that in cl. 3 of the Statute where the expression used is "permanent employee" or the "teacher" or "teaching staff" the reference is to members of the college who are teacher as such and it has no application to any other employee of the college such as a Principal.

Deka J. was of the opinion that as respondent No. 1 held two capacities - that of the Principal and membership of the teaching staff, respondent No. 2 could order his restoration to both the offices because the two capacities could not be separated. As shown above the two capacities are distinct with separate functions and have been separately dealt with in the Act and the Statutes under the Act and the learned judge was in error in holding otherwise. Sarjoo Parshad C.J. gave to the phrase 'permanent employee' used in the Statutes an extended meaning so as to include a Principal as well as a college teacher. This again is an interpretation which is contrary to the interpretation which stems from the analysis we have given above and is therefore erroneous. Relying on sub-cl. 3(h) of the Statutes counsel for respondent No. 2 contended that as respondent No. 1 was also a member of the teaching staff being a Professor of Mathematics his case fell within the words "or any other serious grievance of the teaching staff". These words refer to grievances which a member of the teaching staff may have in his capacity of a teacher and not in any other capacity and these words cannot be extended to include the grievances of a teacher in connection with something which is de hors the words of the clause and would not therefore include his grievances which he may have if he is also the Principal.

As has been pointed out above the relevant provisions of the Act and of the Statutes made under section 21(g) of the Act show the separate capacities of the principal and the Teacher. The jurisdiction of respondent No. 2 to interfere its the action taken by the Governing Body arises only in the case of a teacher and would not extend to a case where the same person holds these two offices, as there is no provision in the Act or the Statutes giving the university such power to interfere. Consequently so far as Respondent No. 2 interfered with the action taken by the Governing Body against respondent No. 1 in his capacity as the principal of the college it acted without jurisdiction and therefore that part of the order of respondent No. 2 and the judgment of the High Court to that extent cannot be sustained and must be set aside as respondent No. 2 there acted in excess of jurisdiction.

We would, therefore, allow this appeal, modify the order of the High Court and hold that the order of respondent No. 2 in regard to respondent No. 1 qua his office as Principal was without jurisdiction and the order of re-instatement of respondent No. 1 by the University to the post of Principal must be set aside. As the special leave was directed against the judgment of the High Court both in regard to the office of Principal and the office of teacher of the college and it was at the stage of arguments that the case was confined to the 'Principal' of the college, the proper order for costs should be that the parties do bear their own costs in this Court as well as in the High Court.

Appeal allowed.

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