

Prabhakar Ramakrishna Jodh

Vs

A. L. Pande and Another

Civil Appeal No. 137 of 1964

(K. Subha Rao, Raghuvar Dayal, R. S. Bachawat, V. Ramaswami – I JJ)

12.01.1965

JUDGMENT

RAMASWAMI J. -

This appeal is brought, by special leave, against the judgment of the High Court of Judicature of Madhya Pradesh dated February 28, 1962 dismissing the petition of the appellant for grant of writ under Art. 226 of the Constitution of India.

The appellant was appointed as a lecturer in Sanskrit in the year 1955 in the S.B.R. College (Sheobhagwan Rameswarlal Arts College), Bilaspur and he was confirmed in that post in the year 1957. The College is affiliated to the University of Saugar under the provisions of the University of Saugar Act 1946 (hereinafter called the Act) and is managed by the Governing Body established under Clause 3 of the 'College Code' which is an Ordinance made under the provisions of Act. The College is maintained out of the funds of Sheobhagwan Rameswarlal Charitable Trust, Bilaspur and is aided by the State Government. On June 2, 1960 the Principal of the College served the appellant, by post, a charge sheet consisting of three charges and the appellant was asked to submit explanation within a week's time. The charges were as follows :-

"(1) That you have deliberately based your representation dated 28-12-1959 on false facts and misstatement and have committed acts of insubordination amounting to misconduct by making counter-charges against the Governing Body.

(2) That you have not been taking active interest in the extra-curricular activities of the College and have failed to cooperate with the authorities as required by the conditions of service.

(3) That you have deliberately avoided to execute your service bond which every teacher of the institution is required to do. This non-fulfilment of the conditions of your appointment order No. FC/56-57 dated 1-7-1956 amounts to breach of the service rules of the college."

The appellant submitted explanation denying all the charges and requested the Governing Body to supply particulars on which the first charge was based. The allegation of the appellant is that he was not supplied with the required particulars and that the Governing Body terminated the services of the appellant with effect from July 1, 1960 without holding any enquiry. The appellant made a representation of the Governing Body on July 5, 1960 requesting it to reconsider the whole matter. The Governing Body rejected this representation also. The appellant thereafter moved the High

Court of Judicature of Madhya Pradesh for grant of a writ of certiorari under Art. 226 of the Constitution of India to quash the order of the Governing Body dated June 30, 1960 terminating the services of the appellant, and also for the grant of a writ of mandamus reinstating the appellant to his post as a confirmed lecturer of the College. The case of the appellant was that the Governing Body had made the order of discharge in violation of the provisions of Clause 8(vi)(a) of the 'College Code' and that the order of the Governing Body was, therefore, ultra vires and illegal. The High Court rejected the contention of the appellant on the ground that the conditions of service of the appellant were governed not by the "College Code" but by the contract made between the Governing Body and the appellant. The High Court also took the view that provisions of the "College Code" were merely conditions prescribed for affiliation of colleges and no legal rights were created by the "College Code" in favour of lecturers of the affiliated colleges as against the Governing Body. In taking this view the High Court followed its previous decision in *Vedraj Bhawanidas Dua v. Damoh Arts College* (1991 M.P. L.J. 239.) in which it was held that the "College Code" being merely conditions prescribed for affiliating Colleges, the University may at its option enforce or relax those conditions and the only sanction for fulfilment of those conditions is disaffiliation. The High Court accordingly did not go into the question whether the Governing Body had violated the procedure prescribed in Clause 8(vi)(a) but dismissed the application of the appellant for the grant of writ on the ground that it was only breach of contract and the proper recourse of the petitioner was to bring a suit in the Civil Court for damages for wrongful breach of contract and the appellant cannot avail himself of the extraordinary remedy under Art. 226 of the Constitution.

The main question presented for determination in this case is whether the High Court was right in taking the view that the "College Code" merely prescribed conditions for affiliation of colleges and no legal rights were created by the "College Code" with regard to teachers of affiliated colleges.

Section 2(a) of the Act defines a "College" to mean "an institution maintained by or admitted to the privileges of the University, by or under the provisions of this Act." Section 6 of the Act refers to the powers of the University and section 6(6) provides that the University shall have the power "to admit colleges to the privileges of the University and to recognise hostels under conditions which may be prescribed in the Statutes or Ordinances." Section 32 deals with Ordinances and is to the following effect :

"32. Subject to the provisions of this Act and the States 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."

Section 24(i) provides that the Executive Council shall admit colleges to the privileges of the University subject to the provisions of this Act and such conditions as may be prescribed in the Statutes. The "College Code" is an Ordinance made under the provisions of section 32 of the Act read with section 6(6) of the Act and Clause 8 of the Ordinance deals with conditions of service of teachers of affiliated colleges. Clause 8(vi) of the "College Code" reads as follows :

"8. (vi) The Governing Body of the College shall not terminate the service or reduce the pay of any teacher confirmed in the service of the college :-

(a) Without holding a full enquiry into the matter, the teacher concerned shall be given in writing a statement of charges against him and afforded every possible opportunity of defending himself. His previous service and character shall also be taken into consideration;

(b) No decision for such termination of service, or reduction of pay shall have any effect unless passed by a majority of two-thirds of the members of the Governing Body;

(c) At the request of the teacher concerned any difference or dispute either arising out of the contract, or, otherwise, shall be referred to a Tribunal of Arbitration consisting of the Vice-Chancellor, and two other persons appointed by the Executive Council of the University, one of whom shall possess a status not lower than that of a District Judge. The decision of this Tribunal shall be final and binding on both the parties."

Clause 7 of the "College Code" states that all teachers of the colleges shall be appointed on a written contract in the form prescribed in Schedule A except in the case of teachers appointed temporarily for a period of one year or less. Para 9 of this agreement mentioned in Sch. A provides as follows :-

"9. After confirmation, the services of the party of the first part can be terminated only on the following grounds :-

- a. Wilful and persistent neglect of duty,
- b. Misconduct,
- c. Breach of any of the terms of contract,
- d. Physical or mental unfitness,

e. Incompetence,

f. Abolition of the posts :

Provided firstly, that the plea of incompetence shall not be used against the party of the first part after he has served the party of the second part for five years or more :

Provided, secondly, the services of the party of the first part shall not be terminated under clause (c) or (f) without the previous approval of Saugar University."

It is not disputed on behalf of the respondents that the "College Code" has been made by the University in exercise of statutory power conferred by section 32 and under section 6(6) of the Act. It is also conceded on behalf of the respondents that the "College Code" is intra vires of the powers of the University contained in section 32 read with section 6(6) of the Act. In our opinion, the provisions of Ordinance 20, otherwise called the "College Code" have the force of law. It confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the "College Code merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court that the provisions of the "College Code" constitute power of management. On the contrary we are of the view that the provisions of the "College Code" relating to the pay scale of teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University under the Act. It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Sch. A but that does not mean that teachers have merely a contractual remedy against the Governing Body of the College. On the other hand, we are of opinion that the provisions of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teachers' service conditions and, as we have already pointed out, the provisions of the "College Code" in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and effect of law. It follows, therefore, that the "College Code" creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous.

It was urged on behalf of the appellant in the next place that there was violation of the procedure prescribed in Clause 8(vi)(a) of the "College Code" and the order of the Governing Body dated June 30, 1960 terminating the appellant's services was illegal and ultra vires and must be quashed by grant of writ in the nature of certiorari. Counsel for the respondents contended that there was no violation of the procedure prescribed under Clause 8(vi)(a) of the "College Code" and that the order of the Governing Body, dated June 30, 1960 was not defective in law. Since the question has not been investigated by the High Court we consider that it is necessary that this case should go back on remand to the High Court for deciding the question whether there was a violation of the procedure prescribed under Clause 8(vi)(a) of the "College Code" and whether the order of the Governing Body, dated June 30, 1960 is consequently illegal and ultra vires and whether the appellant is entitled to the grant of a writ under Art. 226 of the Constitution.

We should like to add that Counsel for the respondent raised two preliminary objections in the course of argument. The argument was stressed in the first place that the appellant had an alternative remedy under Clause 8(vi)(c) of the "College Code" which provides that the aggrieved teacher may request for a reference of the dispute to a Tribunal of Arbitration consisting of the Vice-Chancellor and two other persons appointed by the Executive Council of the University. It was contended on behalf of the respondents in the second place that the Governing Body of the College was not a

statutory body performing public duties and no writ in the nature of mandamus may, therefore, be issued to the Governing Body of the College. On behalf of the respondents it was conceded that these objections were not pressed before the High Court. We are, therefore, unable to entertain these preliminary arguments at this stage and they must be over-ruled.

For the reasons already expressed, we allow this appeal, set aside the judgment of the High Court, dated February 28, 1962 and order that the case should be remanded to the High Court for investigating the question whether there was a violation of the procedure contained in Clause 8(vi)(a) of the "College Code" and for final determination of the case in accordance with law. Parties will bear their own costs in this Court as well as in the High Court up to the stage.

Appeal allowed.

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