Shri Vidya Ram Misra

Vs

Managing Committee, Shri Jai Narain College

Civil Appeal No. 2(N) of 1972

(K. S. Hegde, P. Jagmohan Reddy, K. K. Mathew JJ)

31.01.1972

JUDGMENT

MATHEW, J. -

1. The appellant filed a writ petition before the High Court of Allahabad, Lucknow Bench, challenging the validity of a resolution passed on November 12, 1967, by the Managing Committee of the Jai Narain College, Lucknow, formerly known as Kanyakubja Degree College, an associated college of the Lucknow University, terminating his services, and praying for issue of an appropriate writ or order quashing the resolution. A learned single judge of that court, finding that in terminating the services, the Managing Committee acted in violation of principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order. A Division Bench of the High Court found that the relationship between the College and the appellant was that of master and servant and that even if the service of the appellant has been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that in fact no principle of natural justice was violated by terminating the services of the appellant as the appellant was given an opportunity of submitting his explanation to the charges. The Bench, therefore, set aside the order of the learned single Judge and dismissed the writ petition. It is from this judgment that the appeal has been preferred by special leave.

2. The appellant joined the service of the college as Lecturer in 1946. He was promoted to the post of Head of the Department of Zoology in 1959. On the basis of certain complaints against him received by the Manager of the College, charges were framed against him and his explanation was called for. He submitted an explanation. The explanation was found not to be satisfactory and the Managing Committee passed a resolution on November 12, 1967, for removal of the appellant from service. As already stated, this was the resolution challenged by the appellant in the writ petition.

3. On behalf of the appellant, Mr. M. C. Setalvad, contended that the appellant had a statutory status, that his services were terminated in violation of the provisions of statutes passed under the Lucknow University Act, 1920 and, therefore, the High Court was wrong in its conclusions that no application for a writ or order in the nature of certiorari would lie. He further submitted that the appellant was not given a reasonable opportunity of defending himself against the charges.

4. It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that courts do not ordinarily enforce specific performance of

contracts of service (see Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi [(1970) 2 SCR 250 : AIR 1970 SC 1244 : (1970) 1 SCJ 790] and Indian Airlines Corporation v. Sukhdeo Rai [AIR 1971 SC 1828]). If the master rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated. In Ridge v. Baldwin, [(1965) 1 WLR 79] Lord Reid said in his speech :

> "The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them."

5. A teacher appointed by a University constituted under a statute was held not to be holding an office or status in Vidyodaya University v. Silva. [(1964) 3 All ER 865]. In that case the services of the respondent was brought to an end by a resolution of the University Council set up under the statute establishing the University. The resolution was admittedly passed without hearing the teacher. Under the statute, the Council was empowered to institute professorship and every appointment was to be by an agreement in writing between the University and the professor and was to be for such period and on such terms as the Council might resolve. Under Section 18(e) of the Act, the Council had the power to dismiss an officer or a teacher on grounds of incapacity or conduct which, in the opinion of not less than two-thirds of the members of the Council, rendered him unfit to be an officer or a teacher of the University. Such a resolution with the requisite majority was passed. The Act gave no right to the teacher of being heard by the Council. The Privy Council held that the mere circumstance that the University was established by the statute and was regulated by statutory enactments contained in the Act did not mean that the contracts of employment made with teachers, though subject to Section 18(e), were other than ordinary contracts of master and servant and, therefore, the procedure of being heard invoked by the respondent was not available to him and no writ could be issued against the University.

6. The decision in this case has been criticised by academic writers (see Jaffe, English and American Judges as Law Makers, p. 26; S. A. De Smith, Judicial Review of Administrative Action, pp. 214-215; G. Ganz, Public Law Principles applicable to Dismissal from Employment, Modern Law Review, Vol. 30, pp. 288-291). Recently the House of Lords considered the question in Malloch v. Aberdeen Corporation. [(1971) 1 WLR 1578]. That case concerned a teacher in Scotland who was dismissed by the Education Committee for the reason that he was not registered in terms of Paragraph 2 of Schedule 2 to the Teachers' (Education, Training and Registration) (Scotland) Regulations, 1967, made under Section 2(1) of the Education (Scotland) Act, 1962, and the amending Regulation 4(2) of the Schools (Scotland) Code, 1956. In an action against the education authority, he claimed that the purported dismissal was a nullity in that it was contrary to natural justice since he had not been given a hearing. It was held (Lord Morris and Lord Guest dissenting) that the teacher had a right to be heard before he was dismissed as according to the majority he was holding an office. In the course of his speech, Lord Wilberforce made certain observations :

> "A comparative list of situations in which persons have been held entitled or not entitled to a hearing, or to observation of rules of natural justice, according to the master and servant test, looks illogical and even bizarre. A specialist surgeon is denied protection which is given to a hospital doctor; a University professor, as a servant, has been denied the right to be heard, a dock labourer and an undergraduate have been granted it; examples can be multiplied [see Barber v. Manchester Regional Hospital Board, (1958) 1 WLR 181; Palmar v. Inverness Hospitals Board of Management, AIR 1963 SC 311; Vidyodaya University Council v. Silva, (1965) 1 WLR 77; Vine v. National Dock Labour Board, 1957 AC 488; Glymn v. Keele University, (1971) 1 WLR 487]. One may accept that if there are relationships in which all requirements of the observance or rules of natural justice are excluded (and I do not wish to assume that this is inevitably so), these must be confined to what have been called "pure master and servant cases", which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection. If any of these elements exist, then, in my opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void."

and then he said as regards the decision in Vidyodaya University Council v. Silva (supra) :

> "It would not be necessary or appropriate to disagree with the procedural or even the factual basis on which this decision rests : but I must confess that I could not follow it in this country in so far as it involves a denial of any remedy of administrative law to anologous employments. Statutory provisions similar to those on which the employment rested would tend to show, to my mind, in England or in Scotland, that it was one of a sufficiently public character, or one partaking sufficiently of the nature of an office, to attract appropriate remedies of administrative law."

7. Whether the decision in Vidyodaya University Council v. Silva (supra) is correct or not, in this case, we think there was no element of public employment, nothing in the nature of an office or status which is capable of protection.

8. In S. R. Tewari v. District Board, Agra, [(1964) 3 SCR 55 : AIR 1964 SC 1680 : (1964) 2 SCJ 300] this Court formulated the exceptions to the general rule that when there is a termination of a contract of service, a declaration that the contract of service still subsisted would not be made, by saying :

> "But this rule is subject to certain well recognised exceptions. It is open to the courts, in an appropriate case, to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognised. The courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act, the body has acted in breach of a mandatory obligation imposed by the statute, even if by making the declaration the body is compelled to do something which it does not desire do."

9. Mr. Setalvad contended that since the college in question is affiliated to a statutory body, namely, the University of Lucknow, and is governed by the relevant statutes and ordinances framed under the provisions of Lucknow University Act, 1920, any violation of the statute or the ordinance in the matter of terminating the services of a teacher would attract the jurisdiction of the High Court under Article 226 of the Constitution as statutes and ordinances have the force of law. In support of this, counsel relied upon the decision of this Court in Prabhakar Ramakrishna Jodh v. A. L. Pande and Another. [(1965) 2 SCR 713]. The appellant before this Court in that case was a teacher in a collage affiliated to the University of Saugar and managed by the Governing Body established under the provisions of the relevant ordinance made under the University of Saugar Act. Certain charges were framed against the appellant by the Principal of the College and he was asked to submit his explanation. The appellant in his explanation denied all the charges and requested for particulars on which one of the charges was based. The particulars were not supplied and the Governing Body terminated his services without holding any enquiry. The appellant moved the High Court under Article 226 of the Constitution for a writ quashing the order of the Governing Body and for his reinstatement. He contended that the Governing Body had made the order in violation of the provisions of Ordinance 20, otherwise called the 'College Code', framed under Section 32 of the University of Saugar Act read with Section 6(6) of that Act. Clauses 8(vi)(a) of the College Code provided that the Governing Body of the college shall not terminate the services of a confirmed teacher without holding an enquiry and without giving him an opportunity of defending himself. The High Court held 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 under Clause 7 of the College Code - which stated that all teachers of the college shall be appointed under a written contract in the form prescribed, that the provisions of the 'College Code' were merely conditions prescribed for affiliation of colleges and that no legal rights were created by the 'College Code' in favour of the teachers of the affiliated colleges as against the Governing Body. The High Court, therefore, dismissed the petition. In appeal to this Court it was held that the 'College Code' had the force of law and that it not merely regulated the legal relationship between the affiliated colleges and the University but also conferred legal rights on the teachers of affiliated colleges. The Court further said :

> "It is true that Clause 7 of the Ordinance provides that all teachers of affiliated college 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....."

When once this Court came to the conclusion that the 'College Code' had the force of law and conferred rights on the teachers of affiliated colleges, the right to challenge the order terminating the services of the appellant, passed in violation of Clause 3(vi)(a) of the College Code in a proceeding under Article 226 followed 'as the night the day' and the fact that the appellant had entered into a contract was considered as immaterial.

10. In the case in hand, the position is entirely different. The relevant statutes governing this case are Statutes 151, 152 and 153, framed under the provisions of the Lucknow University Act, 1920. Statute 151 provides that teachers of an Associated College including the principal shall be appointed on written contract and that the contract shall inter alia provide the conditions mentioned therein in addition to such other conditions not inconsistent with the Act and the Statutes as an Associated College may include in its own form of agreement. Then the conditions as regards

salary, age of retirement, etc., are enumerated. The statute then goes on to specify the grounds on which a teacher's services can be terminated. Statute 152 states that the form of agreement to be adopted by each college shall be approved by the Executive Council before it is put in force. Statute 153 provides for a form of agreement which shall serve as a model. It may be noted that Statute 151 does not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract lay down any particular procedure for that purpose. The appellant had entered into an agreement when he was employed in the college. Clause 5 of the agreement provided that :

> "the period of probation shall be one year unless extended by the Managing Committee and the College may at any time during the said period of probation put an end to this engagement, or if service shall continue beyond the said term, at any time thereafter, dispense with the services of the said Lecturer without notice, if the Managing Committee of the said College is satisfied that it is necessary to remove the said Lecturer for misconduct, insubordination or habitual neglect of duty on the part of the said Lecturer or in case any of the conditions herein specified have been broken by the said Lecturer provided that an opportunity is given to him by the said Managing Committee to give his explanation before a decision is arrived at."

11. On a plain reading of Statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Statute 151 have proprio vigore no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights.

12. Whereas is the case of Prabhakar Ramakrishna Jodh v. A. L. Pande and Another (supra), the terms and conditions of service embodied in Clause 8(vi)(a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract; So, Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.

13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in S. R. Tewari v. District Board, Agra (supra), might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub-silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in Prabhakar Ramakrishna Jodh v. A. L. Pande and Another (supra), and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court.

14. In this view of the matter, it is quite unnecessary to go into the question whether the appellant was given sufficient opportunity to meet the charges against him.

15. We hold that the High Court was right in its view that the writ petition was incompetent. We, therefore, dismiss the appeal but, in the circumstances, we make no order as to costs.

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