I. N. Subba Reddy

Vs

Andhra University and Others

Civil Appeal No. 1632 Of 1974

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

05.04.1976

JUDGMENT

JASWANT SINGH, J. –

1. This is an appeal by special leave from the judgment and order dated April 10, 1974, of the High Court of Andhra Pradesh at Hyderabad passed in Writ Petition No. 579 of 1974 upholding the resolution dated October 28, 1973, of the Syndicate of the Andhra University (conveniently referred to hereinafter as 'the Syndicate') terminating the services of the appellant by payment to him of salary and allowances for six months in lieu of notice for six calendar months under Section 24 of Chapter V of the Administration Manual of the university and Clause 10(b) of the written contract dated October 28, 1967.

2. Briefly stated, the facts leading to this appeal are : The appellant joined the Anthropology Department of the Andhra University as a Senior Lecturer in 1960. In course of time, he was promoted as Professor of Anthropology with effect from October 1, 1967, pursuant to a resolution of the Syndicate dated September 26, 1967. The conditions of service annexed to the communication of the Registrar of the University informing the appellant that the Syndicate by its aforesaid resolution dated September 26, 1967, had ordered that the appellant be appointed Professor in the department of Anthropology with effect from October 1, 1967, inter alia stated :

> Every teacher, other than those appointed temporarily for one year or less, shall enter into a written contract with the University and get it executed within one month of the date of his joining duty and no salary can be drawn unless the contract is executed. . . .
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> When a teacher is promoted from one grade to another he shall be treated as a new entrant in that grade and the appointee in the new grade shall be placed on probation for a period not exceeding 1 year and shall be required to execute a fresh contract...
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> Teachers of the University shall ordinarily be appointed in the first instance on probation for a term not exceeding two years and shall be eligible for confirmation at the end of that period, provided their work is satisfactory. In the case of those who have been teachers before or have shown exceptional merit, the Syndicate may fix a shorter period. Teachers so confirmed shall be eligible to hold their appointments until they are 60 years of age subject to the provisions of Section 7, 8, 9 and 10 of Chapter XXIX of Volume I of the University Code. . . .

The appointments are subject to the statutes, ordinances and regulations, etc. of the University authorities that are current now or may be passed from time to time in respect of University teachers.

3. On October 28, 1967, the appellant entered into an agreement with the university as required by the aforementioned conditions of service and Section 24 of Chapter V of the Administration Manual of the University. Clause 10 of the agreement which contained a reciprocal covenant ran thus :

> 10. That the party of the first part will continue in the service of the University under the terms and conditions herein contained.
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> (a) Provided always that the party of the first part may determine this agreement on any day after CONFIRMATION by giving to the University a notice in writing of his intention to that effect at least six calendar months before such day and if such notice shall be given this agreement shall terminate on that day accordingly.
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> (b) Provided further that this agreement may be determined on any day after confirmation by the Syndicate by giving the party of the first part a notice without assigning reasons in writing of its intention to that effect at least six calendar months before such a day or paying six months salary in lieu of such notice; and if such notice is given or payment made, this agreement shall terminate that day accordingly and the party of the first part shall not have the right of appeal to any other officer or authority against such termination.
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> (c) Provided further that this agreement may be determined on any day by the Syndicate if the Senate shall resolve to abolish the post held by the party of the first part.

4. The appellant was confirmed as Professor of Anthropology with effect from October 1, 1968.

5. On October 28, 1973, the Syndicate passed a resolution determining the aforesaid agreement which the appellant had entered into with the university on his promotion and appointment as Professor of Anthropology. Intimation of the determination of the agreement was communicated to the appellant by registered post which was received by him on November 3, 1973. The said communication was in these terms :

Under Section 24 of Chapter V of the Administration Manual of the Andhra University and Clause 10 of the Agreement entered into on 28-10-1967 between Dr. I. N. Subba Reddi on one part and the Andhra University on the other part the said agreement is hereby determined. A cheque bearing No. 460292 dated 28-10-1973 for Rs. 9,316/15 P. on the State Bank of India, Waltair, being the salary and dearness allowance for six months is hereby enclosed as provided for in the aforesaid Section 24 and Clause 10(b).

6. The appellant thereupon filed a suit being suit No. 910 of 1973, in the Court of District Munsiff, Visakhapatnam questioning the validity of the aforesaid resolution dated October 28, 1973 of the Syndicate. In the said suit, an ex parte temporary injuction was granted on November 5, 1973, restraining the respondents herein from implementing the resolution passed by the Syndicate. Aggrieved by this injunction, the respondents filed an appeal (C.M.A. No. 41 of 1973) which was dismissed by the Additional District Judge, Visakhapatnam by order dated November 28, 1973. The respondents thereupon filed a revision petition to the High Court which by its order dated January

25, 1974, allowed the same and vacated the injunction holding inter alia that only a suit for damages and not for declaration and continuance in service lay.

7. After the acceptance of the revision petition by the High Court, the appellant withdrew the aforesaid suit and filed a writ petition in the High Court under Article 226 of the Constitution on January 29, 1973, challenging the validity of the aforesaid resolution of the Syndicate and the vires of Section 24 of Chapter V of the Administration Manual. In that petition, it was inter alia averred by the appellant that the action of the Syndicate terminating his services was mala fide, and that it was with the ulterior object of circumventing the procedure prescribed by Sections 9 and 11 of Chapter XXIX of the University Code and to camouflage the punishment as dismissal visited on him for the legal action that he had taken earlier against the University that the Syndicate purported to act under Section 24 of the Administration Manual and clause 10(b) of the agreement. It was further asserted by the appellant that Section 24 of Chapter V of the Administration Manual was ultra vires the powers of the Syndicate and Clause 10(b) of the agreement which provided for termination of his services without assigning any reason was void being repugnant to Section 8 to 12 of Chapter XXIX of the University Code.

8. The petition was vigorously contested by the respondent. While emphatically denying that the impugned action was mala fide or that it had been taken as a measure of punishment, they averred that the relationship between the appellant and the university which was one of the master and servant and was regulated by the contract of service entered into between the appellant and the university had been validly determined in accordance with the provisions of Section 24 of Chapter V of the Administration Manual and Clause 10(b) of the aforesaid contract of service which were perfectly legal and valid.

9. In view of the importance of the questions involved in the writ petition viz. whether the university could take recourse to the aforesaid contract entered into between it and the appellant for terminating the services of the latter without regard to the provisions of Section 8 to 12 of Chapter XXIX of the University Code and whether Section 24 of Chapter V of the Administration Manual was intra vires the powers of the Syndicate, a learned Single Judge of the High Court before whom the petition was placed for hearing referred the same for decision to a Division Bench. Following some decisions of this Court, the Division Bench of the High Court dismissed the writ petition holding that the impugned action had neither been taken as a measure of punishment for any misconduct on the part of the appellant nor did it involve a breach of any mandatory statutory obligation or any principal of natural justice; that in view of the fact that the impugned resolution communicated to the appellant was cumulatively based upon Section 24 of Chapter V of the Administration Manual which was intra vires and Clause 10 of the agreement which was valid and binding, the appellant could not have any legal grievance which could be redressed by a court of law and that no writ lay to quash the order terminating the contract of service.

10. Mr. Garg, Counsel for the appellant, has assailed the aforesaid resolution of the Syndicate terminating the services of the appellant on three grounds, viz. (1) that Section 24 of Chapter V of the Administration Manual is ultra vires the powers conferred on the Syndicate (2) that the said Section 24 and Clause 10(b) of the aforesaid agreement between the appellant and the university being inconsistent with Sections 7 to 12 of Chapter XXIX of the University Code were void and ineffectual and (3) that the services of the appellant could not be terminated except on the grounds mentioned in Section 7 to 10 of the University Code.

11. We shall deal with these contentions seriatim. For a proper consideration of the first contention

it is necessary to notice Section 24 of Chapter V of the Administration Manual, clauses (c)(iii) and (d) of Section 19, Section 39(f), Section 34 and Section 42 of the Andhra University Act (thereinafter referred to as 'the Act').

12. Section 24 of Chapter V of the Administration Manual runs as follows :

> 24. The Syndicate may determine the services of a teacher after confirmation on any day by giving him a notice WITHOUT assigning any reasons in writing of its intention to that effect at least six calendar months before such a day or paying him six months salary in lieu of such notice. It shall be sufficient service of a notice by the Syndicate, if the notice be signed by the Registrar or such other person as may be authorised in this behalf by the Syndicate and be delivered at or sent by registered post to the address of the teacher with acknowledgement due.

13. Clause (d) of Section 19 of the Act confers power on the Syndicate to suspend or dismiss a teacher of the university (subject to such ordinances as may be made in this behalf) which obviously implies a power to take action for misconduct. Clause (c)(iii) of Section 19 of the Act empowers the Syndicate to fix the emoluments of the teachers of the university and to define their duties and conditions of service subject to such statutes as may be prescribed in this behalf under Section 39(f). As explained by this Court in State of Madhya Pradesh v. Shardul Singh [(1970) 3 SCR 302 : (1970) 1 SCC 108] the expression 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc. Section 39(f) of the Act lays down that subject to the provisions of the Act, the statutes (which can be framed by the Senate which is the Supreme governing body of the university) may provide for the classification and the mode of appointment of the teachers of the university. It does not say that statutes can be made laying down the terms and conditions of service of the teachers nor does it put any fetter on the power of the Syndicate to define the terms and conditions of service of the teachers including the condition relating to termination of their services otherwise than by way of dismissal or removal. It follows, therefore, that the power conferred by clause (c)(iii) of Section 19 of the Act is a power quite distinct and apart from the power to suspend or dismiss a teacher for misconduct and includes within its ambit power to lay down a condition relating to early termination of service of a teacher without casting any aspersion on him by giving him a notice for a specified period or on payment to him of salary and allowances in lieu of the notice although he may be eligible to continue in service upto a specified age. Section 34 of the Act lays down that every salaried officer and teacher of the University shall be appointed under a written contract. Section 42 of the Act inter alia empowers the Syndicate to make ordinances in consultation with the Academic Council with regards to all matters which by the Act or by the statutes may be provided for by the ordinances.

14. The analysis of the aforesaid provisions of the Act makes it clear that the Syndicate is invested with untrammelled power to define the terms and conditions of service of the teachers of the university. Now Section 24 of Chapter V of the Administration Manual being undoubtedly a condition of service of the university teachers, we are unable to understand how it is ultra vires the powers of the Syndicate. The first contention raised on behalf of the appellant is, therefore, repelled.

15. Let us now see if the above quoted Section 24 of Chapter V of the Administration Manual and Clause 10 of the agreement are void being repugnant to and inconsistent with Sections 7 to 12 of Chapter XXIX of the University Code. Section 7 of Chapter XXIX of the Code provides for suspension or abolition of any professorship, readership, lecturership or other teaching post. Section

8 of Chapter XXIX of the Code empowers the Syndicate to suspend any teacher of the university for a maximum period of one year or to require him to retire on sufficient cause shown and after due investigation. Section 9 of Chapter XXIX of the Code confers power on the Syndicate to remove a teacher for misconduct on his part or for breach by him of one or more of the terms of the contract which he has entered into with the university, which, in the opinion of the Syndicate, makes him unfit to hold the post. Section 10 of Chapter XXIX of the Code invests the Syndicate with power to terminate the services of a teacher on the ground of ill health. Section 11 of Chapter XXIX of the Code prescribes the procedure for removal of a teacher. It also confers the right of appeal on the teacher who is removed from service or is suspended. Section 12 of Chapter XXIX of the Code bars a claim for damages or compensation by a teacher against whom disciplinary action is taken i.e. who is suspended or removed from service under Sections 8 and 9 of Chapter XXIX of the Code.

16. The aforesaid sections of the Code have nothing to do with termination simpliciter of the services of a teacher without casting any aspersion on him, which is a distinct and separate matter and is provided for in Section 24 of Chapter V of the Administration Manual and Clause 10(b) of the aforesaid contract of service. As such, neither Section 24 of Chapter V of the Administration Manual nor Clause 10(b) of the Agreement can be held to be void on the ground of repugnancy to Section 7 to 12 of Chapter XXIX of the University Code.

17. This takes us to the third and last contention raised on behalf of the appellant which is also devoid of substance. The instant case, it will be seen, is neither a case of abolition nor suspension of a post as contemplated by Section 7, nor of suspension as contemplated by Section 8, nor of dismissal or removal for misconduct as contemplated by Section 9, nor of termination of services on the grounds of ill-health. It is, in our opinion, a case of termination of service simpliciter without attaching any stigma which is governed by the conditions of service specified in the aforesaid contract of employment which the Syndicate was empowered to lay down under Section 19(c)(iii) of the Act and is clearly covered by the decision of this Court in Sirsi Municipality by its President v. Cecelia Kom Francis Tellis [(1973) 3 SCR 348 : (1973) 1 SCC 409 : 1973 SCC (L & S) 207] where one of us, namely the learned Chief Justice, after an exhaustive review of the case law bearing on the matter observed : [SCC p. 413 : SCC (L & S) p. 211, paras 15, 18]

> Relationship of master and servant is governed purely contract of employment. Any breach of contract in such a case is enforced by a suit of wrongful dismissal and damages. Just a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the law of Specific Relief Act. . . . Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages.

18. That the impugned action is not invalid would also be clear from a perusal of another decision of this Court in Delhi Transport Undertaking v. Balbir Saran Goel [(1970) 3 SCR 757 : (1970) 1 SCC 515]. There the respondent, who was a employee of the appellant undertaking, established under the Delhi Transport Authority Act, challenged his demotion by filing a petition under Article 226 of the Constitution. After the dismissal of the petition, the appellant-undertaking passed an order terminating the services of the respondent stating that they were no longer required and that

one month's salary in lieu of notice would be paid. The respondent thereupon filed a suit seeking a declaration that the order of his dismissal was illegal. On the questions (1) whether the respondent's services could be terminated under Regulation 9(b) by giving one month's notice or pay in lieu thereof without complying with the procedure of enquiry prescribed by Regulation 15(2)(c) and (2) whether although the order was made in perfectly harmless and innocuous terms and purported to be within Regulation 9(b) it was a mere camouflage or cloak for inflicting punishment for breach of Standing Order 17 in as much as the respondent had approached the High Court under Article 226 of the Constitution without exhausting the departmental remedies, it was held :

> (i) Even if it be assumed that the law is the same as would be applicable to a case governed by Article 311, it was difficult to say that the services of the respondent were not merely terminated in accordance with Regulation 9(b) which governed the conditions of his employment. It may be that the motive for termination of his services was the breach of Standing Order 17 i.e. of filing a writ petition in the High Court against the demotion without exhausting departmental remedies but the question of motive is immaterial. No charge-sheet was preferred under Regulation 15 nor was any enquiry held in accordance therewith before the order under Regulation 9(b) was made.
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> (ii) As regards the punishment having been inflicted for the misconduct the order being a mere camouflage, no such question could arise in the present case. Regulation 9(b) clearly empowered the authorities to terminate the services after giving one month's notice or pay in lieu of notice. The order was unequivocally made in terms of that regulation. Even if the employers of the respondent thought that he was a cantankerous person and it was not desirable to retain him in service, it was open to them to terminate his services in terms of Regulation 9(b) and it was not necessary to dismiss him by way of punishment for misconduct. If the employer chooses to terminate the services in accordance with clause (b) of Regulation 9 after giving one month's notice or pay in lieu thereof it cannot amount to termination of service for misconduct within the meaning of clause (a). It is only when some punishment is inflicted of the nature specified in Regulation 15 for misconducted that the procedure laid down therein for an enquiry etc. becomes applicable.

19. The decision of the House of Lords in McClelland's case [McClelland v. Northern Ireland General Health Services Board, (1957) 1 WLR 594] on which strong reliance is placed by Mr. Garg is not at all helpful to the appellant. In that case, the dismissal of the plaintiff was on the ground of redundancy of the staff which was not one of the grounds specified in the terms and conditions of service. In the present case, no such difficulty could arise as the terms and conditions of service specified in the contract of employment entered into between the appellant and the university under Section 34 of the Act contained an express provision for termination of his services by six month's notice on either side.

20. Thus all the contentions raised on behalf of the appellant having failed, the appeal cannot succeed and is hereby dismissed. In the circumstances of the case, the parties are left to bear and pay their own costs of the appeal.

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