Varanaseya Sanskrit Vishwavidyalaya and Another

Vs

Dr. Rajkishore Tripathi and Another

Civil Appeal No. 473 of 1976

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

26.11.1976

JUDGMENT

BEG, J. –

1. The respondent was initially appointed as an Accountant on July 10, 1969, in the Varanaseya Sanskrit Vishwavidyalaya, Varanasi (hereinafter referred to as 'the University'). On December 4, 1969, he was transferred to another post, that of a "Senior Assistant". In January, 1970, Dr. Shambhu Nath Singh, who was the permanent lecturer in Hindi in the university proceeded on long leave, and the plaintiff-respondent, being already in the service of the university, was asked to teach classes for the time being. Applications were invited for filling up the post of Dr. Singh. The advertisement said that the appointment was to be temporary but likely to be made permanent later. The plaintiff-respondent, who was already officiating, also applied. He was temporarily appointed on February 25, 1970. On April 23, 1970, the Registrar of the university gave the plaintiff-respondent a notice that his temporary appointment would terminate on April 30, 1970. The plaintiff-respondent promptly brought his first suit in the court of Munsif City, Varanasi, to restrain the university from appointing anyone else in his place; but, this suit was ultimately dismissed. On July 15, 1970, Dr. Singh had resigned from his post so that the permanent vacancy was there to be filled up. At that time, the plaintiff's suit, mentioned above, was still pending. A Selection Committee of the university interviewed candidates, including the plaintiff-respondent on November 2, 1970, and submitted a list of names for appointment to the post. In this list, the plaintiff-respondent's name was placed first. As the Executive Committee of the university was not in session, it appears that the Vice Chancellor appointed the plaintiff on February 1, 1971, on the basis of the recommendations of the Selection Committee. The Vice Chancellor purported to act under Section 13, sub-section (7) of the Varanasi Sanskrit Vishwavidyalaya Adhiniyam, 1956 (hereinafter referred to as 'the Act'). The Executive Committee of the university then passed a resolution on March 17 or 18, 1971, approving what it assumed to be the recommendation of the Selection Committee to appoint the plaintiff-respondent temporarily. It also decided to advertise for the post again. On April 10, 1971, the plaintiff-respondent was informed by the Registrar of the university, communicating the decision of the Executive Committee, that his appointment was to continue only upto the end of the current academic session. On May 15, 1971, the plaintiff-respondent filed his second suit, now before us, for a permanent injunction to restrain the appellant university from terminating his services. This suit was dismissed by an Additional Civil Judge. On an appeal, it was decreed by the Additional District and Sessions Judge of Varanasi. The High Court of Allahabad, in second appeal, affirmed the judgment and order under appeal before it. The defendant university is now before this Court by grant of special leave to appeal.

2. The case of the plaintiff-respondent was : firstly, that the vacancy in which he was to be

appointed being permanent and the procedure of appointment through a Selection Committee being meant for permanent appointments, the plaintiff-respondent was actually recommended for a permanent appointment, but, there had been an alteration and interpolation in the recommendation of the Selection Committee so as to make it appear that the recommendation was only for a temporary appointment; secondly, that the Vice Chancellor, in any case, had the power to make a permanent appointment under Section 13, sub-section (7) of the Act and he had done so; frothly, that the plaintiff-respondent's appointment being complete and permanent, Executive Committee of the university had no power life to nullifying it, and, lastly, that the authorities of the university, that is to say the Vice Chancellor and the Executive Committee, had (in the words used by the plaintiff-respondent) :

> . . . in collusion with one another with a view to put an end to the plaintiff's services as Lecturer in Hindi in utter disregard of the statutes and rules and the appointment letter issued by the then Vice Chancellor have collusively arranged and made manipulation in the report of Selection Committee and resolution of the Executive Committee for an order dated April 10, 1971, and, in colourable exercise of power, are threatening to treat the plaintiff's appointment as continuing till the end of session but the plaintiff is continuing to discharge his function as permanent lecturer in Hindi and on account of interim injunction granted in Suit 289 of 1971 for permanent injunction restraining the defendants terminating the services of the plaintiff the defendants have not been able to do any act adverse to the interest of the plaintiff.

3. The trial Court had held that, even if there had been an interpolation of the word temporary in the recommendation of the Selection Committee for a proposed appointment, it did not affect the result because the Vice Chancellor had neither the power to make a permanent appointment nor had he done so by means of his order dated February 1, 1971, which merely said that the plaintiff-respondent was appointed to lecture without specifying whether the appointment was to be temporary or permanent.

4. It appears to us that the appellate District Court had been very much carried away by the fact that there had been, in its opinion, an alteration or interpolation in the recommendation of the Selection Committee although the committee had no power whatsoever to determine the nurture of the appointment of the plaintiff-respondent. The appellate Court had, therefore, reached the conclusion, which did not really follow from this finding, that the appointment of the plaintiff-respondent was permanent in the eye of law. It also held that the Executive Committee had no power whatsoever to alter or touch the terms of the appointment made by the Vice-Chancellor, which amounted to an appointment on probation for two years. It reached this surprising conclusion despite the complete absence in the Vice Chancellor's order of any mention of a probation. The appellate Court had granted an injunction in the following terms :

> The defendants-respondents are permanently restrained from advertising the post of Lecturer in Hindi and from causing any interference in the plaintiff's discharge of his duties as lecturer in Hindi in the Varanasi Sanskrit Vishwavidyalaya by terminating his services or from withholding his salary in pursuance of resolution no. 44 dated March 17/18, 1971 passed by the Karya Karitini Parished of the Varanaseya Sanskrit Vishwavidyalaya and order no. 3 dated April 10, 1971 (Ex. 1) passed by the defendant-respondent 3.

5. The High Court, in agreement with the first appellate Court, had interpreted Section 13(7) of the

Act as conferring the power of absolute appointment to a permanent vacancy upon the Vice Chancellor. It had repelled the contention that Section 23(1)(g) of the Act gives exclusive powers to the Executive Committee to make appointments of teachers because that power is "Subject to the provisions of this Act and the Statutes". The power is :

> 23. (1)(g) to appoint the officers, teachers and other servants of the Vishwa Vidyalaya, to define their duties and the conditions of their service and to provide for the filling of casual vacancies in their posts;.
>
> The High Court sustained the injunction, but had modified it considerably by what it called a clarification in the following words :
>
> . . . as it is not yet certain whether the position of the plaintiff-respondent at present is that of probationer or a permanent employee, if for any valid reason the services of the plaintiff are terminated hereafter, the permanent injunction granted to the plaintiff-respondent by the lower appellate Court shall become inoperative and unenforceable.

6. After the High Court had diluted the injunction in a type of case in which the desirability of granting such a relief was very doubtful, it was perhaps not very necessary for this Court to consider the matter under Article 136 of the Constitution. Nevertheless, as this Court had thought fit to grant special leave in this case and the High Court's findings are not unequivocal, we propose to decide the question of interpretation of Section 13(7) of the Act and other questions which appear to us to have a bearing on the question whether it is desirable for courts to interfere by means of an injunction in the affairs of educational institutions.

7. The High Court itself has held that the ordinary power of making appointments of teachers of the university and of defining the nature of appointments and specifying conditions of service in such cases is vested in the Executive Committee. The emergency powers under Section 13(7) of the Act are obviously intended for certain emergent situations necessitating "immediate action". Before they can be exercised it must appear that there is, in fact, such a situation as to warrant the exercise of extraordinary powers conferred under Section 13(7) of the Act. It is apparent that the Vice Chancellor has to report the action taken to the authority or other body "which in the ordinary course would have dealt with the matter". It seems to us to be rather extraordinary that, despite these clear indications of the situation in which and the extent to which the Vice Chancellor may exercise his emergency powers, it should have been held by the first appellate Court and affirmed by the High Court that the Vice Chancellor had a power to make an absolute or clear appointment without any restriction or obligation to place the matter before the Executive Committee for confirmation. We find that the appellate Court had gone to the extent of saying that the Executive Committee had "no jurisdiction" or power left to consider the case. We think that this is an impossible view to take in view of the clear meaning of the words used in Section 13(7) of the Act. The object of the provision for reporting the matter to the body which deals with it in the ordinary course could not only be to leave the final decision to that body when it does meet. In other words, the power of the Vice-Chancellor was, in our opinion, confined to making a tentative decision which, whether he meant the appointment to be temporary or permanent, was subject to confirmation by the Executive Committee. Until then it was not final. When that body refused to treat the appointment as permanent and to readvertise the post, it clearly indicated its intention to specify the nature of the plaintiff-respondent's appointment which it alone could do.

8. Although we are not satisfied that circumstances existed which justified the use of emergency powers of the Vice Chancellor under Section 13(7) of the Act, yet, we do not think it possible to enter upon this enquiry as no argument seems to us to have been advanced on this aspect in the High Court or in the District Courts. We, however, think that the first appellate Court had much too lightly believed that the plaintiff-appellant had been a victim of some kind of fraud, when no such particulars of that fraud or collusion were given as would satisfy the requirements of Order VI, Rule 4, Civil Procedure Code, which lays down :

> In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

9. We do not think it is enough to state in general terms that there was "collusion" without more particulars. This Court said in Bishundeo Narain v. Seogeni Rai [1951 SCR 548, 556 : AIR 1951 SC 280] (at p. 556) as under :

> General allegations are insufficient even to amount to an averments of fraud of which any Court ought to take notice, however strong the language in which they are coached may be, and the same applies to undue influence and coercion.

We have already set out the general allegations of alleged collusion by which the plaintiff-respondent seemed to imply some kind of fraud. He indicated no reason for this and made no specific allegation against any particular person.

10. Apart from some suspicion surrounding the alleged alterations in the recommendation of the Selection Committee, which did not have as the appellate Court rightly held, the power to determine the nature of appointment of the plaintiff-respondent, nothing more seems to have been provide here at all on the findings of fact recorded. It is in evidence that the Selection Committee itself was presided over by the Vice Chancellor. It is true that the alterations have not been initialled. But, considering the most unsatisfactory and haphazard manner in which the records of this university had been kept (we have examined the original records), we would not be surprised if the actual proceedings were, quite honestly, recorded in this fashion. If the Vice Chancellor, who presided, had any actual prejudice or animus against petitioner, he would not be a party to placing the plaintiffs name first let alone the recommendation for a temporary appointment of an employee whose worth must be known to him. There was nothing to prevent a Selection Committee from making a particular recommendation of this kind. It certainly had no power to make the appointment which vested only with the Executive Committee. But, its powers of recommendation were not fettered. At any rate, no rule was shown to us as to how it should send its report. Furthermore, if the Vice Chancellor was prejudiced against the plaintiff-respondent and had even altered records, he could not have passed an order of appointment without even clearly specifying that the appointment was temporary. The original order on the record shows that the petitioner was appointed without specifying whether he was being appointed permanently or temporarily. Obviously, if the Vice Chancellor did not have the power to make a permanent appointment, as we think he did not, we do not think that it would have made a difference even if he had purported to make a permanent appointment which would have been invalid. However, on the exact terms of the order of the Vice Chancellor, it could not be said that he had passed any order for a permanent appointment. The resolution of the Executive Committee, which was also presided over by the Vice Chancellor, could not be said to be dishonest or collusive. We think that the first appellate Court was unduly swayed

by what it thought was a dishonest interpolation in the report of the Selection Committee.

11. The result of the consideration of the applicable provisions and the pleadings and findings of fact in the case before us is that we think that the plaintiff-respondent has failed completely to show that the resolution of March 17/18, 1972, of the Executive Committee, which had the final power to appoint and to specify conditions of service, under Section 23(1)(g) of the Act, could be said to be either collusive or inoperative.

12. We would also like to observe that, in a matter touching either the discipline or the administration of the internal affairs of a university, courts should be most reluctant to interfere. They should refuse to grant an injunction unless an fairly good prima facie case is made out for interference with the internal affairs of an educational institution.

13. We presume that the plaintiff-respondent has been working as a result of the injunction granted to him. We, however, see no justification for continuing the injunction. We, therefore, allow this appeal to the extent that we withdraw the injunction. This means that the parties are left free to adjust their differences. If, upon the strength of any facts subsequent to the institution of the suit now before us, the plaintiff has acquired any new rights which have been infringed he is free to seek relief. We make this observation as it was stated on his behalf that he claims some rights on the strength of subsequent facts too. As those are not before us, we can say nothing about them.

14. The result is that we allow this appeal and set aside the decree and order of the High Court and restore those of the trial Court. The parties will bear their own costs throughout.

</html