

Ras Behari

Vs

Haryana Agricultural University through Vice-Chancellor, Hissar and Others

Civil Appeal No. 713(N) of 1972

(M. P. Thakkar, S. Natarajan JJ)

25.07.1986

JUDGMENT

1. Heard counsel for the parties.

2. The impugned order of termination of service cannot be sustained having regard to the law laid down by this Court in Anoop Jaiswal v. Government of India ((1984) 2 SCC 369 : 1984 SCC (L&S) 256), Indra Pal Gupta v. Managing Committee, Model Inter College, Thora ((1984) 3 SCC 384 : 1984 SCC (L&S) 555). The appeal must therefore be allowed and the impugned order of termination must be quashed and set aside. As a consequential relief we will have to reinstate the appellant. However, complications will arise inasmuch as there is only one post of Assistant Agronomist. And as someone else has already been appointed to the said post his service may have to be terminated in order to make room for the appellant as the appellant cannot be appointed on any other post in view of his special qualifications. Since the appellant does not insist on reinstatement, if he is awarded compensation in lieu thereof, payment of lump sum compensation will solve the problem to the satisfaction of both the sides.

Having regard to the facts and circumstances of the case, we direct that the respondent-University shall pay a sum of Rs. 1,60,000 in full and final settlement of all the claims including the claim for compensation in lieu of reinstatement, salary for the intervening period, and his claim in regard to provident fund and gratuity etc. On payment of the said sum of Rs. 1,60,000 the appellant shall have no other claim against the University. We may mention for the sake of record that in fixing the aforesaid amount we have taken into consideration the fact that the appellant was gainfully employed elsewhere.

3. We also consider it necessary to pass an order in the same terms as was passed in K. C. Joshi v. Union of India ((1985) 3 SCC 153 : 1985 SCC (L&S) 656), viz. : (SCC pp. 161-62, para 17)

Now that the amount is being paid in one lump sum, it is likely that the employer may take recourse to Section 192 of the Income Tax Act, 1961 which provides that any person responsible for paying any income chargeable under the head 'Salaries' shall, at the time of payment, deduct income tax on the amount payable at the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If therefore the employer proceeds to deduct the income tax as provided by Section 192, we would like to make it abundantly clear that each appellant would be entitled to the relief under Section 89 of the Income Tax Act which provides that where, by reason of any portion of assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of

clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21-A of the Income Tax Rules. The appellant is entitled to relief under Section 89 because compensation herein awarded includes salary which has been in arrears for 18 years as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income Tax Act read with Rule 21-A of the Income Tax Rules. The appellant indisputably is entitled to the same. If any application is necessary to be made, the appellant may submit the same to the competent authority and the Commission shall assist the appellant for obtaining the relief.

4. Liberty to pay a cheque in favour of the appellant crossed and endorsed "Payee's Account" to learned counsel for the appellant Mr. V. J. Francis, who will pass due receipt on behalf of his client.

5. The appeal is disposed of accordingly. There will be no order as to costs.

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