

Maharaja Sayajirao University of Baroda and Others

Vs

R. S. Thakar

Civil Appeal No. 1844 of 1984

(E. S. Venkataramiah, K. N. Singh JJ)

27.01.1988

JUDGMENT

SINGH, J. –

1. This appeal is directed against the judgment and order of the High Court of Gujarat dated October 12/13, 1983 directing the University of Gujarat to pay back wages to the respondent for the period September 20, 1973 to September 14, 1981 on the basis of the monthly emoluments which he was entitled to withdraw for the post to which he was reinstated in pursuance of earlier order of that court dated August 6/7, 1981.

2. The respondent was employed as a lecturer in the Faculty of Education and Psychology with the appellant University. In June 1970 the University sent him to West Germany on an educational scholarship for research work in Education. He applied for duty leave of four months for training in German language before taking up of his scholarship assignment in Frankfurt in November 1970. The University granted leave. The respondent was granted leave on half-pay for 180 days from May 30, 1971 to November 25, 1971 and then to January 28, 1973. His period of leave was further extended and ultimately he was requested by the University to resume duty in the University. On June 1, 1973 while the respondent was in West Germany, he applied for sick leave from June 1, 1973 to August 31, 1973 and sent a medical certificate along with his application for leave. The University granted conditional leave up to August 31, 1973. The respondent again applied for sick leave from September 1, 1973 to November 30, 1973 and sent a medical certificate in support of his application. The University did not consider that application instead it directed the respondent through a registered letter that no further leave would be granted to him and he should report for duty latest by September 20, 1973. The respondent again applied for leave from December 1, 1973 to February 28, 1974 but the University did not consider that application. Instead the University took the stand that the respondent ceased to be in the employment of the University in accordance with clause (20) of Ordinance 200. The respondent returned to India and reported for duty on March 1, 1974 but he was not permitted to resume his duty. The respondent's application for the review of the order terminating his services was not considered by the University. The respondent thereupon filed a writ petition in the High Court of Gujarat under Article 226 of the Constitution challenging validity of his termination and he further claimed salary for the period he was not permitted to work. The writ petition was partly allowed by a learned Single Judge holding that the respondent was not entitled to reinstatement but the learned Single Judge upheld the respondent's claim for payment of gratuity and provident fund. The learned Single Judge directed the University to decide the dispute after giving the respondent opportunity of hearing. The respondent filed an appeal against the order of the learned Single Judge. The Division Bench of the High Court of Gujarat by its judgment dated August 6/7, 1981 held that the termination of respondent's service was null and

void and it directed the University to reinstate the respondent in service with effect from September 15, 1981. On the question of payment of back wages to the respondent the Division Bench gave further opportunity to the University to show cause as to why the respondent be not paid the back wages. Thereafter, the Division Bench heard the parties at length and by its order dated October 12/13, 1983 held that the University was liable to pay back wages to the appellant from September 20, 1973 to September 14, 1981. Since the respondent had retired during the pendency of the litigation before the High Court and as he had started practice in law, the High Court directed the University to deduct a sum of Rs. 2500 which according to the High Court was the amount which the appellant had earned during the period he was practising law at the bar at Baroda.

3. The appellant-University filed an appeal before this Court against the judgment of the Division Bench dated August 6/7, 1981 challenging the order of the Division Bench of the High Court holding that the respondent's termination was null and void and that he was entitled to be reinstated in service. That appeal was dismissed by our order dated December 11, 1987 upholding the order of the High Court. In view of our judgment the termination of respondent's service was null and void and he was entitled to reinstatement.

4. As regards the present appeal, we have heard Shri S. H. Seth, Senior Advocate, for the appellant-University at length and we have also heard the respondent Shri R. S. Thakkar, who appeared in person. Since the respondent's termination was illegal he was entitled to reinstatement and back wages. The High Court has considered the question of back wages at length. Having considered the facts and circumstances of the case and the submissions raised by the parties we are in agreement with the view taken by the High Court. We, therefore, do not find any good reason to interfere with the judgment and order under appeal.

5. The appeal is accordingly dismissed but there will be no order as to costs.

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