

SUPREME COURT OF INDIA

The Indian Institute of Information Technology, Deoghat Jhalwa
Allahabad

Vs.

Dr.Anurika Vaish

C.A.No.4406-4418 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

24.03.2017

JUDGMENT

Kurian Joseph,J.,

SLP.(Civil)No.13914-13926 of 2016

1. Leave granted.

2. Certain appointments to the post of Professor, Associate Professor and Assistant Professor made in various divisions of the appellant-Institute, pursuant to advertisement dated 30.01.2013, were subsequently cancelled by the Board of Management ("Board"). The selection was held on 06.04.2013 and the incumbents were appointed accordingly. The Board, in its Eighth Meeting, as Item No.16, took a decision to cancel the appointments. The relevant consideration reads as follows:

"ITEM NO.16

To consider the Status Report on Selection of Academic Staff done on April 6, 2013. The Board considered the Status Report on the selection of the Academic Staff and deliberated upon it at length. In the context, in addition to the minutes as at Item No.1 of this meeting, it was apprised by some Board members that the advertisement brought out by IITA for these selections was NOT as per norms. Also for some of the appointments, eligibility criteria were unduly relaxed, taking incorrect pretext of the earlier BOM resolutions. The Board also noticed that through a GO issued vide F.No.3.11014/11/Q4-CDN dated 19th July, 2004, MHRD had advised heads of all autonomous Bodies prohibiting all the retiring Directors, for any action to make selections / promotions two - three months before the expiry of their term or retirement, as the case may be. Further, the erstwhile director's term expired on 26th December, 2012 and he was on six months extension in April 2013. Therefore, in April 2013, he was neither competent nor authorised to call for any selections.

When these facts became known to the Board in this meeting, it became clear that the entire process of selection / appointment and other recommendations mentioned by the selection committee therein, was wrong into. Accordingly, the BoM in this Meeting recommended, in supersession to the earlier decisions of the Board in this matter, that all selections / appointments done on April 6th, 2013 are CANCELLED. ...”

3. Based on the above-said decision, the teachers were terminated from service. They challenged the same before the High Court in Writ Petition No.22558 of 2014 and connected cases. Those cases were disposed of by judgment dated 11.12.2015. Though the High Court has gone into the various aspects, the Court finally found that the decision-making process adopted by the Board was vitiated. The High Court was of the view that the appellant should have considered as to whether it was bound by University Grants Commission Regulations or the qualifications prescribed by the Institute and as advertised in the Notification for Selection. It was also held that the relaxation of qualification had to be individually assessed, having regard to the requirement based on experience, etc. The High Court hence set aside the Resolution at Item No.16 taken in the Board and the consequential termination of the appointments. To quote the operative portion:

"For all the aforesaid reasons recorded hereinabove the entire decision making process is clearly vitiated and the unclarity on the issue of the authority of the respondents to undertake this exercise as also the correct application of rules and the law in this regard therefore persuade us to strike down the action taken against the petitioners. Consequently, the impugned cancellation orders on the basis of the impugned resolution of the 8th Board Meeting cannot be sustained and the same are hereby quashed. The writ petitions are accordingly allowed and the impugned cancellation orders in these petitions as well as the 16th Resolution of the 8th Board Meeting are hereby quashed. The resolutions passed in the 7th Board Meeting and 8th Board Meeting only in so far as they are adverse to the petitioners shall be open to consideration in the light of the observations made hereinabove. In view of the findings recorded by us hereinabove, we leave it open to the Board to take a fresh decision as may be permissible in the light of the observations made hereinabove within three months after opportunity to the petitioners."

4. The appellant-Institute, in purported implementation of the directions in the judgment dated 11.12.2015 again unilaterally took certain decisions in the Fourteenth and Fifteenth Meetings of the Board and subsequently issued show-cause notices to the teachers as to why their appointment should not be cancelled.

5. Since some of the teachers were not reinstated despite the declaration by the High Court that the termination was illegal, they filed contempt petitions. Since, show-cause notices were issued, some teachers challenged those show-cause notices and the High Court has stayed those show-cause notices. It is at that stage, the appellant has chosen to challenge the common final judgment and order dated 11.12.2015 passed by the High Court of Judicature

at Allahabad in Writ-A No. 22558 of 2014, 21309 of 2014, 21319 of 2014, 21595 of 2014, 37213 of 2014 and 36461 of 2014; and against the Interim Order dated 16.03.2016 passed by the High Court of Judicature at Allahabad in Contempt Application (Civil) No. 645 of 2016 and 1033 of 2016; and against the Interim Order dated 04.04.2016 passed by the High Court of Judicature at Allahabad in Writ-A No. 14486 of 2016, 14488 of 2016 and 14490 of 2016; and against the Interim Order dated 13.04.2016 passed by the High Court of Judicature at Allahabad in Writ-A No. 16715 of 2016.

6. Having extensively heard Shri Sunil Gupta, learned Senior Counsel for the appellant and Shri Rakesh Dwivedi and Shri V. Giri, learned Senior Counsel appearing for the affected teachers, other learned Counsel appearing for teachers and Dr. Ashutosh Kumar Singh, respondent-in-person, we are of the view that the whole ill-advised exercise undertaken by the appellant-Institute only led to unnecessary litigation. In the judgment dated 11.12.2015, the High Court has set aside Resolution at Item No.16 of the Eighth Board Meeting. It is seen from the discussion that the decision to cancel the appointments was based on a Status Report which was not furnished to the affected teachers. The High Court hence found that the decision taken by the appellant-Institute is in violation of the principles of natural justice. That is the quintessence of the judgment. And thereafter, the High Court gave liberty to the appellant to take a fresh decision in accordance with law, that is to say, after affording an opportunity of hearing to the affected teachers.

7. All that the appellants should have done is to make available a copy of the Status Report discussed in the Eighth Board Meeting which led to cancellation of their appointments and afford an opportunity of making a representation and hearing. Short of that, the appellant-Institute has taken several other steps. Maybe they have intended well but worked out poorly. The teachers could not have been issued the show-cause notices based on any decision taken subsequent to the judgment.

8. Since we intend to remit the matters to the Institute with a direction to start the process from the stage of the judgment of the High Court dated 11.12.2015, we do not propose to make any further observations in this regard. Accordingly, these appeals are disposed of as follows:

“A. The appellant-Institute shall serve a copy of the Status Report discussed in the Eighth Board Meeting to the affected teachers forthwith and also provide a further period of two weeks for making a fresh representation. On receipt of the representations, the affected teachers shall be given an opportunity of hearing on all the aspects referred to in the Status Report and on the reasons for termination as referred to in the Eighth Board Meeting. Thereafter, the Board shall take a fresh decision in the case of each individual in accordance with law. We make it clear that the only notice which the teachers could have been issued is on the basis of the consideration in the Eighth Board Meeting and not thereafter. The Status Report considered by the Eighth Board Meeting and the decision taken by the Eighth Board Meeting shall be treated as show-cause notice by the affected teachers.

B. The decisions in the Fourteenth and Fifteenth Board Meetings, as far as the further course of action for implementation of the judgment dated 11.12.2015 is concerned, are wholly unwarranted and are set aside.

C. Since the cancellation of appointment and consequential termination have been set aside by the High Court in the judgment dated 11.12.2015, the teachers concerned are to be deemed to be in service under law until a fresh decision is taken as per the judgment. In this context, we may also extract a submission made by the Counsel for the appellant-Institute in the High Court in Contempt Application No. 645 of 2016, which reads as follows:

"Shri Navin Sinha, learned Senior Advocate assisted by Shri Rohan Gupta, for the opposite party, however, submits that in view of the inquiry being undertaken by the opposite party regarding irregularities in the appointment of the applicants and other appointees, they are not allowed to work against their post. However, he submits that as per his instructions, the applicants/appointees would be paid their salary even for the period of non working i.e. from the date of order dated 11.12.2015 passed by the Writ Court till a decision is taken by the Board. This period would not be treated as the period of non working of the applicants/appointees."

However, we make it clear that in case any of the teachers has been working elsewhere or has been working in a different capacity in the Institute, such teachers shall not be entitled to the benefit of the above declaration. Their further fate will depend on the fresh decision to be taken by the appellant.

D. The appellant-Institute shall take a fresh decision within a period of two months from the date of receipt of the representations from the affected teachers.

E. Since we have set aside the decisions in the Fourteenth and Fifteenth Board Meetings, the contempt petitions and writ petitions do not survive. Accordingly, those contempt petitions and writ petitions are struck off from the file of the High Court of Judicature at Allahabad."

9. There shall be no order as to costs.