

(2013) 07 P&H CK 0453

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 23686 of 2012 (O and M)

Dr. Dev Vrat Singh

APPELLANT

Vs

Kurukshetra University and
Others

RESPONDENT

Date of Decision: July 1, 2013

Citation: (2013) 3 SCT 771

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Rajbir Sehrawat, for the Appellant; S.C. Sibal with Ms. Balpreet Sidhu, Advocate for Respondents No. 1 and 2 and Mr. Vivek Singla, Advocate for Ashutosh Mishra, for the Respondent

Final Decision: Dismissed

Judgement

Rajesh Bindal, J.

The petitioner, who was working as Reader in the Department of Journalism and Mass Communication in Kurukshetra University, Kurukshetra (for short, "the University"), has filed the present petition challenging the communication dated 27.11.2012 (Annexure P-15), vide which his services have been terminated. Briefly, the facts of the case are that the petitioner applied against the advertisement issued for selection to the post of Reader in the Department of Journalism and Mass Communication in the University. His name was recommended by the Selection Committee. After approval from the competent authority, the appointment letter was issued to him on 11.7.2007 and in pursuance thereof, the petitioner joined his duty. The appointment of the petitioner was challenged by one Ashutosh Mishra by filing CWP No. 21150 of 2008, who could not be selected as was not found to be possessing necessary qualifications. In the written statement filed by the University in that writ petition, the stand taken by the petitioner therein that the petitioner in the present case was not eligible for the post was denied. Vide communication dated 30.6.2010, the petitioner was confirmed on the post subject to the decision of

the pending writ petition. During the pendency of the aforesaid writ petition, a post of Reader/Associate Professor was advertised by Maharishi Dayanand University, Rohtak (for short, "M.D. University"). The petitioner applied for the same through proper channel. He was even issued "No Objection Certificate" for appearance in the interview. After due process, he was selected as Reader in M.D. University. After his selection as Reader in M.D. University, the petitioner applied for extra-ordinary leave from the University, which was granted for one year, i.e., from 22.7.2010 till 21.7.2011. The petitioner joined on the post of Reader in M.D. University on 23.7.2010. The extra-ordinary leave granted to the petitioner was extended for another one year till 23.7.2012.

2. The writ petition filed by Ashutosh Mishra was dismissed as infructuous on 11.8.2010 on the statement made by learned counsel for the University that the petitioner had left the service. As the petitioner found the working environment in the University better than that of M.D. University, he sought to join back on 23.7.2011 and prayed for cancellation of extension of his extra-ordinary leave. CM No. 13360 of 2011 filed in CWP No. 21150 of 2008 for modification of the order dated 11.8.2010 was dismissed on 14.10.2011. The request of the petitioner for permitting him to join back was accepted and he was permitted to join on 25.10.2011. Ashutosh Mishra filed COCP No. 574 of 2012 claiming that by letting the petitioner join duty in the University, the order passed by this court on 11.8.2010 has been violated. In the aforesaid contempt petition, Registrar of the University was summoned in person. On appearance in court, he stated that necessary steps shall be taken to purge the contempt by removing the petitioner from service immediately. It was thereafter that vide impugned communication dated 27.11.2012, the services of the petitioner were terminated with immediate effect.

3. Learned counsel for the petitioner submitted that the manner in which the services of the petitioner have been terminated is totally unknown in the service jurisprudence. There was no order passed by the Court holding the petitioner ineligible to hold the post. The petitioner had not concealed or misstated any fact at any stage either during the process of selection or subsequent thereto. The writ petition filed by Ashutosh Mishra challenging the selection and appointment of the petitioner was dismissed as infructuous. The stand of the University in the aforesaid writ petition was that the petitioner has been duly selected and appointed and is fully eligible for the post. Even after joining of the petitioner back in the University after getting his extra-ordinary leave cancelled, an application filed by the University in the writ petition filed by Ashutosh Mishra was also dismissed. The impugned communication shows that services of the petitioner had been terminated on the advice given by the counsel for the University. While referring to the provisions of Kurukshetra University Calendar Volume-I, Annexure to Ordinance XX, learned counsel submitted that services of a confirmed employee cannot be dispensed with in the manner it has been done. For the purpose, disciplinary proceedings are to be initiated on the grounds available. After charge-sheet, enquiry officer is to be

appointed and it is only on the basis of report of the enquiry officer that the disciplinary authority can take a view and impose punishment, but in the case in hand, the petitioner has been removed from service unceremoniously.

4. Learned counsel for the University, while not disputing the sequence of events, submitted that services of the petitioner have been terminated with a view to purge the contempt. He did not dispute the fact that there is no finding recorded by any court that the petitioner was ineligible to hold the post. He further did not dispute the fact that in the writ petition filed by Ashutosh Mishra, the stand of the University was that the petitioner was eligible to hold the post. He submitted that there is no proceeding pending in the writ petition filed by Ashutosh Mishra, however, he submitted that as the eligibility of the petitioner was in dispute, the earlier writ petition should be revived and the matter be examined.

5. Ashutosh Mishra, though has not been impleaded as one of the respondents in the present petition, is represented by a counsel. He submitted that the petitioner was ineligible. His challenge to the appointment of the petitioner deserves to be considered on merits. He had filed application in his earlier writ petition after filing of the present petition, however, the same was withdrawn on 11.1.2013. He further referred to Clause 11 of the Agreement of Service entered into between the petitioner and the University to state that the matter in dispute can be referred to the Tribunal of Arbitration.

6. Heard learned counsel for the parties and perused the paper book.

7. The undisputed facts on record are that the petitioner applied for the post of Reader in the Department of Journalism and Mass Communication in the University. He was selected. After approval from the competent authority, the appointment letter was issued to him on 11.7.2007 and in pursuance thereof, the petitioner joined his duty. The appointment of the petitioner was challenged by one Ashutosh Mishra by filing CWP No. 21150 of 2008. In the written statement filed by the University in that writ petition, the stand taken by the petitioner therein that the petitioner in the present case was not eligible for the post, was denied. The petitioner was confirmed on the post subject to the decision of the pending writ petition, which was ultimately dismissed as infructuous. During the pendency of the aforesaid writ petition, a post of Reader/Associate Professor was advertised by M.D. University. The petitioner applied for the same through proper channel. He was even issued "No Objection Certificate" for appearance in the interview. After due process, he was selected as Reader in M.D. University. After his selection as Reader in M.D. University, the petitioner applied for extra-ordinary leave, which was granted for one year, i.e., from 22.7.2010 till 21.7.2011. The petitioner joined on the post of Reader in M.D. University on 23.7.2010. The extra-ordinary leave granted to the petitioner was extended for another one year till 23.7.2012. The petitioner sought to join back on 23.7.2011 and prayed for cancellation of extension of his extraordinary leave. The request of the petitioner for permitting him to join back was accepted

and he was permitted to join on 25.10.2011.

8. C.W.P. No. 21150 of 2008 filed by Ashutosh Mishra challenging the appointment of the petitioner was dismissed as infructuous on the statement made by learned counsel for the University that the petitioner had left the service, though at that time he had taken extraordinary leave. After the petitioner sought to join back duty in the University by getting his extra-ordinary leave cancelled, the application filed by the University for modification of the earlier order passed was dismissed. Till that stage, there was no order passed by any court or the authority holding the petitioner to be ineligible for the post in question. Even in the reply filed to C.W.P. No. 21150 of 2008, the stand of the University was that the petitioner is fully eligible to hold the post. The writ petition was ultimately dismissed as infructuous. Still Ashutosh Mishra did not consider it appropriate to get the writ petition filed by him revived, but filed a contempt petition, in which the University took a stand that to purge the contempt, it will remove the petitioner from service. As to on what ground he was to be removed from service has not been referred to either in the form of a stand in the written statement or in the impugned communication. All what is stated in the impugned communication is that services of the petitioner are being terminated on the advice of the counsel. The petitioner herein was a confirmed employee of the University.

9. There is a set procedure prescribed in the Agreement of Service for University Teachers, as provided for in Annexure to Ordinance XX in Kurukshetra University Calendar Volume-I. Clause -6 of the Agreement of Service provides that the Executive Council of the University is entitled to initiate disciplinary proceedings against a teacher on certain specified grounds. If dissatisfied with the reply, an enquiry officer can be appointed and on the basis of report of the enquiry officer, appropriate punishment can be imposed on a teacher after providing an opportunity of personal hearing along with copy of the enquiry report. In the case in hand, admittedly, no show cause notice was issued levelling any charge against the petitioner, what to talk of holding the petitioner guilty of any charge after enquiry. The writ petition challenging his appointment was dismissed as infructuous. This court at this stage is not going into the circumstances under which the same was dismissed as infructuous, as it was for the parties thereto to have taken appropriate steps, if required. The fact remains that the application filed by the University for modification of the order passed was dismissed and the application filed by Ashutosh Mishra in the writ petition filed by him was dismissed as withdrawn. There is no finding recorded by any court or authority that the petitioner was ineligible to hold the post. This is not even the stand of the University in the present case.

10. The contention raised by counsel for Ashutosh Mishra regarding availability of arbitration is merely to be noticed and rejected for the reason that the same is at the option of the teacher concerned. For the reasons mentioned above, I find merit in the present petition. The impugned communication (Annexure P-15) issued by the

University terminating the services of the petitioner is set aside being illegal. The respondents are directed to take the petitioner back in service with all consequential benefits.