

(2016) 07 MAD CK 0111

MADRAS HIGH COURT

Case No: W.A. No. 932 of 2013, M.P. Nos. 1 to 4 of 2013 and C.M.P. Nos. 1102 and 3026 of 2016

S.R.M. University

APPELLANT

Vs

Dr. Janet Jeyapaul

RESPONDENT

Date of Decision: July 14, 2016

Acts Referred:

- Constitution of India, 1950 - Article 12
- University Grants Commission Act, 1956 - Section 3

Citation: (2016) 2 CWC 847 : (2016) 6 MLJ 332

Hon'ble Judges: A. Selvam and P. Kalaiyarasan, JJ.

Bench: Division Bench

Advocate: Mr. T.V. Gopalan, Senior Counsel for Mrs. B. Saraswathi, Advocate, for the Appellants; Dr. Janet Jeyapaul, Advocate, (Party-in-person), for the Respondent

Final Decision: Partly Allowed

Judgement

P. Kalaiyarasan, J.—The instant writ appeal arises from the order, dated 08.04.2013 made in W.P. No. 12676 of 2012.

2. The facts in nutshell, leading to the filing of the intra court appeal are that the respondent/writ petitioner holding M.Sc., and Ph.D., in Applied Biology was appointed as Lecturer on 21.06.2008 in the Department of Biotechnology in the Faculty of Sciences and Humanities in the appellant University. The appellant University is a Deemed University under Section 3 of the University Grants Commission Act, 1956 (in short "UGC Act")w.e.f 01.04.2010.

3. The respondent was issued with a memo, dated 14.02.2012 to show cause why disciplinary action, as per Service Rules, should not be taken for not taking classes for 3rd year B.Sc., and 1st year M.Sc., She submitted her replies on 15.02.2012 and 20.02.2012 denying the charges. Again another memorandum, dated 22.02.2012 was issued by the Registrar (i/c) referring to certain complaints allegedly given by

students. She gave an explanation, dated 29.02.2012 refuting the charges. Not satisfied with the explanation, the appellant constituted an Enquiry Committee. The respondent appeared before the Committee on 02.03.2012 and submitted a detailed explanation, dated 26.03.2012 to the Committee. She received a notice, dated 04.04.2012, informing that she would be relieved from the University w.e.f., 04.05.2012 due to administrative reasons. She received the said notice on 16.04.2012. Challenging the same, the respondent filed the writ petition in W.P.No.12676 of 2012.

4. The learned single Judge of this Court, allowed the writ petition in its order, dated 08.04.2013, by quashing the termination notice and directed the appellant to reinstate the respondent into service. Aggrieved by that order, the present writ appeal has been filed.

5. A Division Bench of this Court, allowed the writ appeal on the ground of maintainability. The respondent herein took the matter to the Supreme Court. The Hon''ble Supreme Court in Civil Appeal No.14553 of 2015 allowed the appeal, holding that the Deemed University is amenable to writ jurisdiction, by setting aside the Judgment of the Division Bench of this Court and remanded back the matter to this Court, to decide the writ appeal on merits, on the question as to whether the single Judge was justified in allowing the writ petition on merits.

6. The Hon''ble Supreme Court held that the appellant, being Deemed University is an authority within the meaning of Article 12 of the Constitution and it becomes amenable to the writ jurisdiction of the High Court, under Article 226 of the Constitution. Thus the writ appeal is again before this Court now to decide it on merits.

7. The learned Senior counsel appearing for the appellant submitted that though a full fledged enquiry was conducted and completed by giving fullest opportunity to the respondent to defend herself, the termination notice, as per the appointment order and the contract was only given to relieve the respondent without any stigma and to safeguard the future interest of her and not otherwise. He further contends that denovo enquiry as ordered by the single Judge would not be possible, as the students, who gave the complaint are no longer in the college.

8. The respondent, who appeared party-in-person contends that the appellant, though issued notice of termination, as per the terms of the appointment order, after conducting an enquiry with regard to certain allegations would not be termination simpliciter and it amounts to dismissal. She further contends that the order of the single Judge is well reasoned one and therefore, writ appeal has to be dismissed.

9. The undisputed facts are that the respondent holding M.Sc., and Ph.D., in Applied Biology, was appointed as Lecturer in the Department of Biotechnology in the Faculty of Sciences and Humanities in the Appellant-University. She was promoted

as Senior Lecturer, w.e.f 01.04.2010. The Disciplinary proceeding was initiated, one for failure to take classes for students of B.Sc., third year course and M.Sc., first year course and another one regarding certain complaint given against the respondent by the students. The Enquiry Committee was constituted and after completion of the enquiry and finding that the charges were proved, the appellant issued termination notice, as per the terms of the appointment order.

10. Had disciplinary action not been initiated, the appellant's argument that termination, invoking Clause 6 of the appointment letter is valid maybe a moot point.

11. After the finding given by the disciplinary committee against the allegations levelled against the respondent, the appellant invoked the terms in the appointment letter and terminated the respondent with one month notice.

12. The respondent cited our Supreme Court ruling, Gujarat Steel Tubes Ltd., v. Mazdoor Sabha, reported in (1980) 2 SCC 593, and contended that issuance of termination order, after conducting enquiry is nothing but dismissal. The Hon"ble Supreme Court has held as follows :

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a G punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found..."

13. In this case on hand, the appellant after being satisfied of the guilt, abandoned the enquiry and proceeded to terminate, by invoking the terms in the appointment letter. Therefore, it amounts to dismissal and not termination simpliciter.

14. Even assuming that the termination is as per the terms of the appointment order, it is also hit by the principle of unconscionable contract. The Supreme Court has held that the appellant comes under the definition of Authority under Article 12 of the Constitution of India and therefore, it is amenable to the writ jurisdiction.

15. The Hon"ble Supreme Court in Central Inland Transport Corpn. Ltd., v. Brojo Nath reported in AIR 1986 SC 1571, held as follows :

"90...This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today"s complex world of giant corporations with their vast infra-structural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

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94... The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void."

16. Here in this case on hand, the appellant is the employer and the respondent is the employee. There is no doubt that inequality of bargaining power exists. The respondent has no choice but to give her assent to the terms, while fetching her appointment as Lecturer.

17. Applying the above principle laid down by the Hon"ble Supreme Court, this Court is of the considered view that terms in appointment letter with a clause for termination with one month notice by the Deemed University being an authority as defined under Article 12 of the Constitution of India is opposed to public policy. It is also pertinent to note that the respondent, though appointed as Lecturer, was subsequently promoted and therefore, she is deemed to be a permanent employee under the appellant.

18. As adverted to earlier, it is made clear that the termination of service of the respondent/petitioner done by the appellants is totally illegal and the learned single Judge has also given proper reason in the impugned order to that effect. Since the termination of service passed against the respondent/petitioner is illegal, she is entitled to get reinstatement. However, on the basis of the circumstances of the present case, the Court has to look into what kind of relief would be sufficient to meet the ends of justice.

19. Learned Senior counsel appearing for the appellant/management submits that denovo enquiry against the respondent is impossible due to efflux of time and the students who complained against the respondent had already left the Institution. The respondent, being Senior Lecturer in the University, may not have conducive atmosphere to work, even if she is reinstated.

20. It is appropriate to rely upon the decision in O.P. Bhandari v. Indian Tourism Development Corpn., Ltd., and others, reported in (1986) 4 SCC 337, wherein the Hon"ble Supreme Court held as follows :

"7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court.

8...What is more, reinstatement is perhaps not even in the interest of the appellant as he cannot give his best in the less-than-cordial atmosphere and it will also result in misery to him, let alone the other side. Neither the undertaking nor the appellant

can improve their image or performance, or, achieve success. In fact it appears to us that both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in lieu of reinstatement, and not reinstatement, is warranted in the circumstances of the present case.

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10. In our considered opinion, compensation equivalent to 3.33 years ♦ salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz.:

(1) The corpus if invested at the prevailing rate of interest (15 per cent) will yield 50 per cent of the annual salary and allowances. In other words every year he will get 50 per cent of what he would have earned by way of salary and allowances with four additional advantages:

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50 per cent of the salary he would have earned.

(iii) If he had been reinstated he would have earned the salary only up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50 per cent he would be getting annually he would get not only beyond the date of superannuation, for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event."

21. Considering the submissions made by the learned Senior counsel appearing for the appellant/management and the fact that relationship between the employer and the employee in this case has become strained, this Court feels that it is a fit case to award compensation to the respondent for loss of future employment and further if re-employment is given, it will not be beneficial to the respondent/petitioner.

22. The respondent is aged 52 years at the time, when she was out of employment as per the affidavit filed in the writ petition. She was appointed as Lecturer in 2008 and then promoted as Senior Lecturer in 2010. She is holding M.Sc., and Ph.D., in Applied Biology. The respondent in her additional affidavit filed to amend the prayer for reinstatement and payment of Rs.15 lakhs as back wages or a lumpsum of Rs.20 lakhs, averred that she was getting salary of Rs.25,000/- p.m at the time of dismissal and in case of up gradation, as requested by the respondent, she would get minimum Rs.50,000/- p.m. The factum of monthly salary at the time of dismissal has not been denied by the appellant/management.

23. Considering the last salary drawn, qualification and the nature of post held by the respondent, the ordeals meted out by the respondent from the date of termination and also loss of future employment, this Court is of the view that awarding a compensation of Rs.10,00,000/- (Rupees Ten lakhs only) would be just and proper.

24. In fine, this Writ Appeal is allowed in part without cost. The order, dated 08.04.2013 passed in W.P.No.12676 of 2012 by the learned single Judge in respect of reinstatement is set aside and in other aspects, the same is confirmed. As adverted to earlier, the appellants are directed to pay compensation of Rs.10,00,000/- (Rupees Ten lakhs only) to the respondent/petitioner within a period of two months from the date of receipt of a copy of this Judgment. Consequently, connected miscellaneous petitions are closed.