

LAL BAHADUR GAUTAM

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v.

STATE OF U.P. AND OTHERS

(Civil Appeal No. 4794 of 2019)

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MAY 08, 2019

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Service Law:

Termination of service – Of a lecturer of a private unaided college, affiliated to an University created under a statute – Propriety of – Service of the appellant initially terminated by a non-speaking order – Set aside by Vice Chancellor's order dated 16.7.2016 being violative of s. 35(2) of Universities Act and granting liberty to the College to initiate departmental proceedings – College after initiating departmental proceedings passed fresh order of termination without prior approval as per s. 35(2) and Rule No. 16.06 of University Regulations – Writ petition challenging the termination was dismissed by High Court as not maintainable – Appeal to Supreme Court – Held: The college being affiliated to the University was bound by the provisions of the Act with its attendant consequences for non-compliance – As per section 35(2) of the Universities Act prior approval of the Vice Chancellor was mandatory before terminating the services of the appellant – The termination order being in the teeth of s. 35(2) is patently unsustainable – Uttar Pradesh State Universities Act, 1973 – s. 35(2) – Chaudhary Charan Singh University Regulations – Rule No. 16.06.

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Judiciary:

Justice delivery system – Reliance on a judgment based on repealed Act (statute) – Held: Reliance on the judgment based on repealed Act is akin to relying on an overruled judgment – Even if such action is negligent, could be fatal by misleading the court leading to erroneous judgment – Such action would also result in

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- A *waste of judicial time of the Court – Failure in that duty is a wrong against the justice delivery system – It is duty of the parties and their Counsel to double check and verify before making any presentation to Court – It is also for the Court to consider whether a particular presentation before the Court has occasioned unnecessary waste of court time.*
- B *Advocate/Advocates:*

Role of Advocate – Held: As a responsible officer of the Court and an important adjunct of the administration of justice, a higher

- C *responsibility goes upon a lawyer representing an institution – He owes a duty to the Court as well as to opposite side – He cannot act as a mere mouthpiece of his client – He has to be fair to ensure that justice is done.*

Disposing of the appeal, the Court

- D **HELD: 1.1** The order of the High Court is cryptic, non-speaking and devoid of any consideration of the statutory provisions of the Uttar Pradesh State Universities Act, 1973. The effect and consequences of the order of the Vice-Chancellor dated 16.07.2016 has also not been considered. [Para 5] [383-G]
- E **1.2** The college being affiliated to the University was bound by the provisions of the Act with its attendant consequences for non-compliance. The college having accepted the order of the Vice-Chancellor and acted upon the same by holding departmental proceedings cannot urge that it is bound by one part of the order and not the other. It cannot have the benefit of the order without complying with its obligations under the order. A bare reading of the statutory provision i.e. s. 35(2) of the Act makes it manifest that prior approval of the Vice-Chancellor was mandatory before termination of the appellant. If the management of the college opined otherwise, it ought to have challenged the order of the Vice-Chancellor dated 16.07.2016, if such a challenge was maintainable. Having allowed the order to attain finality, it is not open for the college management to now urge that it was not
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bound to follow the procedure. The order of termination dated 24.04.2017 being in teeth of Section 35(2) of the Act is patently unsustainable. [Para 8] [394-F-H; 395-A]

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1.3 The appellant is held entitled to reinstatement. The respondent management is not precluded from proceeding afresh in accordance with law from the stage of irregularity. In that eventuality the Vice-Chancellor shall consider any request for approval on its own merits in accordance with law without being influenced by any observation in the present order. The question of back wages, if any, shall abide by any such decision of the Vice-Chancellor. [Para 15] [399-A-B]

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2.1 Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier, reliance was placed by the respondent Management upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. Though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment. [Para 10] [395-F-H]

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2.2 Simply, failure in that duty is a wrong against the justice delivery system in the country. Over the years, responsibility and care on this score has shown a decline. It is time that the Court takes note of the problem, and considers such steps to remedy the problem. It is duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to

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- A **be utilized for justice delivery and in the adversarial system, is not a licence for waste. [Para 11] [396-A-C]**
 2.3 As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. A higher responsibility goes upon a lawyer representing an institution. [Paras 12 and 14] [396-D; 398-E]
- B **to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. A higher responsibility goes upon a lawyer representing an institution. [Paras 12 and 14] [396-D; 398-E]**
- C *Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others (1976) 2 SCC 58 : [1976] 2 SCR 1006 ; State of Punjab & Ors. v. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1 : [2016] 4 SCR 685 ; D.P. Chadha v. Triyugi Narain Mishra and others, (2001) 2 SCC 221 : [2000] 5 Suppl. SCR 345 ; State of Rajasthan and another v. Surendra Mohnot and others, (2014) 14 SCC 77 : [2014] 6 SCR 191 – relied on.*
- D *Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others (1976) 2 SCC 58 : [1976] 2 SCR 1006 ; State of Punjab & Ors. v. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1 : [2016] 4 SCR 685 ; D.P. Chadha v. Triyugi Narain Mishra and others, (2001) 2 SCC 221 : [2000] 5 Suppl. SCR 345 ; State of Rajasthan and another v. Surendra Mohnot and others, (2014) 14 SCC 77 : [2014] 6 SCR 191 – relied on.*

Case Law Reference

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| E | [1976] 2 SCR 1006 | relied on | Para 4 |
| | [2016] 4 SCR 685 | relied on | Para 12 |
| | [2000] 5 Suppl. SCR 345 | relied on | Para 13 |
| F | [2014] 6 SCR 191 | relied on | Para 14 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4794
of 2019.

- G From the Judgment and Order dated 31.05.2017 of the High Court of Allahabad in C.M.W.P. No. 25599 of 2017.

Bray Kishor Mishra, Vikram Patralekh, Raj Kishor Choudhary,
Advs. for the Appellant.

Konark Tyagi, Sanjay Kumar Tyagi, Ajay Kumar Pandey, Advs.
for the Respondents.

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The Judgment of the Court was delivered by

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NAVIN SINHA, J.

1. Delay condoned. Leave granted.

2. The appellant, a lecturer in a private unaided college affiliated to the Chaudhary Charan Singh University (hereinafter referred to as ‘the CCS University’), Meerut under the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as “the Act”), assails his termination dated 24.04.2017 as being contrary to the provisions of the Act.

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3. Learned counsel for the appellant submits that the termination was in violation of Section 35(2) of the Act as no prior approval had been taken. The High Court erred in holding that the writ petition was not maintainable. The earlier order of termination dated 04.06.2015 had been set aside by the Vice-Chancellor on 16.07.2016 for that reason and as also being in violation of Rule No. 16.06 of the University Regulations. The order had attained finality in absence of any challenge by the respondent management.

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4. Learned counsel for the respondent management submitted that the writ petition was not maintainable against a private unaided college as it was not “State” within the meaning of Article 12 of the Constitution. The order of the High Court does not call for any interference. There can be no enforcement of a contract of personal service. There was a simple relationship of master and servant. The departmental proceedings were held in accordance with law. The managing committee of the college was not a statutory body. Reliance was placed on *Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others*, (1976) 2 SCC 58.

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5. We have considered the submissions on behalf of the parties. The High Court held that merely because of affiliation to the CCS University, the writ petition was not maintainable against a private unaided college. The order is cryptic, non-speaking and devoid of any consideration of the statutory provisions of the Act. The effect and consequences of the order of the Vice-Chancellor dated 16.07.2016 has also not been considered.

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6. The respondent college terminated the services of the appellant on 04.06.2015 by a non-speaking order with immediate effect. The appellant approached the Vice-Chancellor who after hearing the college,

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- A held that prior approval not having been obtained under Section 35(2) of the Act read with Rule No. 16.06 of the University Regulations, the termination was bad and set it aside. But, because there were serious allegations of financial misappropriation, liberty was granted to the management to hold departmental proceedings. The management accepted the order and initiated departmental proceedings culminating in a fresh order of termination dated 24.04.2017. The fresh order of termination was again in violation of the provisions of the Act and the Regulations of the CCS University.

7. Section 35(2) of the Act in its relevant extract reads as:

- C **“35. Conditions of service of teachers of affiliated or associated colleges other than those maintained by Government or local authority.** - (1) Every teacher in an affiliated or associated college (other than a college maintained exclusively by the State Government) shall be appointed under a written contract which shall contain such terms and conditions as may be prescribed. The contract shall be lodged with the University and a copy thereof shall be given to the teacher concerned, and another copy thereof shall be retained by the college concerned.
- E (2) Every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated to him, be reported to the Vice-Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor.

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- F 8. The college being affiliated to the University was bound by the provisions of the Act with its attendant consequences for non-compliance. The college having accepted the order of the Vice-Chancellor and acted upon the same by holding departmental proceedings cannot urge that it is bound by one part of the order and not the other. It cannot have the benefit of the order without complying with its obligations under the order. A bare reading of the statutory provision makes it manifest that prior approval of the Vice-Chancellor was mandatory before termination of the appellant. If the management of the college opined otherwise, it ought to have challenged the order of the Vice-Chancellor dated 16.07.2016, if such a challenge was maintainable. Having allowed the
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order to attain finality, it is not open for the college management to now urge that it was not bound to follow the procedure. The order of termination dated 24.04.2017 being in teeth of Section 35(2) of the Act is patently unsustainable.

9. Reliance on **Lakshmi Narain** (*supra*) is completely misplaced. It has no application whatsoever to the present case either on facts or in law. The order of termination in the said case was dated 29.03.1967 and was made under the provisions of the Agra Universities Act, 1926 which had no similar provisions as Section 35(2) of the Act. Additionally, the Agra Universities Act, 1926 has been repealed by Section 74(1)(c) of the Act. It is indeed unfortunate that the learned counsel for the respondent management has sought to rely upon a judgment under the repealed Act. The admitted position in **Lakshmi Narain** (*supra*) was that the management of the college was not bound by the statutes and the provisions of the Agra Universities Act, 1926 but was merely following the same as a matter of convention. Statute 14(A) of the Agra University Hand Book also did not contain any provisions like Section 35(2) of the Act.

“Statute 14(A): Each college, already affiliated or when affiliated, which is not maintained exclusively by government must be under the management of a regularly constituted governing body (which includes managing committee) on which the staff of the college shall be represented by the principal of the college and at least one representative of the teachers of the college to be appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year.”

10. Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier, reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment.

- A 11. Simply, failure in that duty is a wrong against the justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.
- B 12. As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in *State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors.*, (2016) 6 SCC 1:-
- C “34....relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client.....”
- D 13. The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed in *D.P. Chadha vs. Triyugi Narain Mishra and others*, (2001) 2 SCC 221:-
 - E “22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject-matter and the context wherein the term is called upon to be employed. A lawyer in discharging his
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professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

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24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of

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- A duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

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- B 26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.”

14. That a higher responsibility goes upon a lawyer representing an institution was noticed in *State of Rajasthan and another vs. Surendra Mohnot and others*, (2014) 14 SCC 77: -

- C “33. As far as the counsel for the State is concerned, it can be decidedly stated that he has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say “things fall apart”. He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones. We hope, that there would be response towards duty; the hallowed and honoured duty.”

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15. In view of the conclusion that the termination is in teeth of the provisions of the Act, it is set aside. The appellant is held entitled to reinstatement. The respondent management is not precluded from proceeding afresh in accordance with law from the stage of irregularity. In that eventuality the Vice-Chancellor shall consider any request for approval on its own merits in accordance with law without being influenced by any observation in the present order. The question of back wages, if any, shall abide by any such decision of the Vice-Chancellor.

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16. The appeal stands disposed of.

Kalpana K. Tripathy

Appeal disposed of.