

Vice Chancellor, M.D. University, ... vs Jahan Singh on 8 March, 2007

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 853 of 2006

PETITIONER:

Vice Chancellor, M.D. University, Rohtak

RESPONDENT:

Jahan Singh

DATE OF JUDGMENT: 08/03/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Respondent herein was appointed as a Reader in Physics in Maharishi Dayanand University, Rohtak (hereinafter referred to as 'the University'). His services were terminated during the period of probation by an order dated 20.06.1979. He questioned the legality of said order of termination in a Civil Writ Petition before the High Court of Punjab and Haryana, but the same was dismissed.

It, however, appears that the respondent filed an application for his appointment as a Reader in the University of Zambia. The Zambia University accepted the said offer on the conditions mentioned therein, stating :

"If you are willing to accept the appointment on the above terms, I shall be grateful if you will sign and date all the enclosed copies of this letter, signing also and dating one copy of the terms and conditions of service sent herewith, and returning to me all the enclosed copies of this letter and one copy of the Terms and Conditions of Service within thirty days of the date of this letter."

Respondent accepted the said offer of appointment on 04.10.1983, stating :

"I accept appointment on the terms set out in this letter and in the document headed "Terms and Conditions of Service for Academic Staff". I agree to carry out such duties as are assigned to me from time to time by the Vice Chancellor and the Dean of the School of Natural Sciences."

Although, the respondent was not in employment of the University he purported to have filed an application for his reappointment in the post of a reader of the University on 05.10.1983, which was accepted on the same day.

The very fact that the respondent was appointed on the same day, as on the date of filing of application, evidently no selection process was undergone therefor.

He joined the services of the University on 05.10.1983. He applied for grant of extra-ordinary leave without pay for a period of two years, in view of his assignment with the Zambia University and the Executive Council of the University by a resolution dated 21.11.1983 acceded to the said request. On expiry of the said period of two years, he joined the University again in August 1985. He thereafter prayed for grant of increments in the pay scale during the period he was on extra-ordinary leave. The University referred the matter to the University Grants Commission, which in terms of its letter dated 10.12.1987 opined that the matter was within the domain of the State Government, stating :

"I am directed to refer to your letter No.ET- 2/87/13370 dated 21.9.87 on the above subject and to say that being an administration matter of the University. I am to request you to approach the State Government/Department of Education in this regard."

The Executive Council, however, amended the resolution on 28.11.1990.

The State Government, however, when approached refused to grant its approval in terms of its letter dated 04.02.1992, stating :

"Reference your letter No.ET-2/91/28102 dated 24.10.1991 on the above cited subject.

The Govt. have observed the decision taken by the Executive Council of M.D. University, Rohtak under its Reso. No.13 dated 28.11.1990, thereby proposing to grant the benefit of Extra Ordinary Leave (maximum three years) towards annual increments. The Govt. have found that this provision is contrary to the Govt. rules. There is no provision either in Govt. rules or in other Universities in the State for granting this benefit to the Govt./University employees. This proposal shall create anomaly amongst the Govt. employees and other University employees vis-à-vis M.D. University employees. In view of these facts, the University is requested to take immediate action in canceling these facts, the University is requested to take

immediate action in canceling the decision taken by the Executive Council under Resolution No.13 dated 28.11.1990."

Yet again the respondent prayed for condonation of break in his service with all resultant benefits, but yet again the State Government conveyed its objection thereto.

However, despite the same, it appears, the Registrar of the University by a letter dated 06.02.1995 conveyed to the respondent that the Vice- Chancellor had been pleased to count his extra-ordinary leave period when he had worked with the University of Zambia from 30.11.1983 to 14.08.1985 towards annual increment. It is, however, stated that the said resolution of the Executive Council and/or the said letter was not acted upon, inter alia, on the premise that being not in tune with the extant regulations. The matter was referred to the State Government and by reason of a letter dated 26.05.1997 it conveyed its objections thereto.

Respondent was apprised of the decision of the University that his request for increments during the period of extra-ordinary leave had not been acceded to by the University by a letter dated 15.04.1998. A writ petition came to be filed by the respondent, which was dismissed by a learned Single Judge of the High Court by an order dated 09.10.2001. However, on an intra-court appeal filed by the respondent, a Division Bench of the said High Court allowed the same by a judgment and order dated 29.11.2004.

Appellant is, thus, before us.

Mr. Nidesh Gupta, the learned counsel appearing on behalf of the appellant, would submit that in term of the extant rules, the respondent was not entitled to annual increments during the period of leave.

Respondent who appeared in person, on the other hand, would submit that the Executive Council having amended the relevant regulations with retrospective effect, he would be deemed to have been continuing in service since 1977 and in that view of the matter, no illegality has been committed by the High Court in directing grant of increments in his favour during the period he was serving the Zambia University.

It was furthermore submitted that in a similar matter involving one Satpal Taneja, the University had granted such increments. Respondent would contend that merely a sum of Rs. 388/- was paid to him by the University and the rest of the amount is yet to be paid, whereas in the case of the said Satpal Taneja, the entire amount had been paid.

The fact that the services of the respondent were terminated during his period of probation is not in dispute. He, therefore, on or about 27.09.1983 was not in the services of the University. He furthermore, as noticed hereinbefore, neither applied for his appointment with the University of Zambia himself or not through the University, nor was it legally permissible as he was not in service at the relevant point of time. It is also not in dispute that before the respondent was reappointed by the University on humanitarian ground or any other ground as a Reader therein, a contract of

service subject to fulfillment of certain terms and conditions between the respondent and the University of Zambia came into being only thereafter. The appointment of the respondent would be treated to be a fresh appointment and not a continuing one. His services having been terminated during the period of probation, even no re-appointment was permissible in law. In the aforementioned factual backdrop, the legal questions raised before us are required to be considered. The University is a creature of statute. It was created under the Maharishi Dayanand University Act, 1975 (for short, 'the Act'). The said Act provides for the regulations making power. The University framed leave regulation. Regulation 26(i)(c) deals with extra-ordinary leave, which reads as under :

"(i) An employee (whether permanent or temporary) may be granted extra ordinary leave by the competent authority.

a) when no other leave is admissible; or

b) when other leave is admissible, the employee applies in writing for the extra ordinary leave for any special reason.

ii) Extra ordinary leave shall be without pay and allowances. However, House Rent Allowance will be admissible for a period not exceeding first four months at the rate at which an employee was drawing before proceeding on such leave provided he has not been in employment elsewhere during that period. The leave shall not ordinarily exceed one year at a time.

Extraordinary leave shall not count for increment, except in the following cases :-

a) The sanctioning authority is satisfied that such leave was taken by an employee on account of illness or for any other cause beyond his control provided that employee has no other kind of leave to his credit;

b) Leave is granted for the purpose of higher studies and research; and

c) Leave is granted to accept an invitation to a teaching post or fellowship or research-cum-teaching post or academic work of importance.

Provided that the maximum total period for which such leave is granted shall not ordinarily exceed three years and in exceptional cases such leave may be extended so that the total period of leave, during the whole tenure of service of an employee does not exceed five years."

Clauses (a) and (b) of Regulation 26 (ii)(c) are not attracted herein. Clause (c), according to the respondent, is attracted in the instant case.

However, before proceeding to consider the matter further, we may notice that the said regulation was purported to have been amended with retrospective effect on the following terms :

"Considered the following amendment in Clause 26) of 'Leave Regulations' appearing at pages 159-60 of M.D. University Calendar Volume-III :-

PROPOSED Leave is granted to accept an invitation to a teaching post or fellowship or research-cum-teaching post or an assignment for administrative or technical or academic work of importance.

Provided that the maximum total period for which such leave is granted shall not ordinarily exceed three years and in exceptional cases such leave may be extended so that the total period of leave, during the whole tenure of service of an employee does not exceed five years. Provided further that the benefit of increment for a period upto three years of extra- ordinary leave may be allowed for accepting such assignments and for the purpose of higher studies and research anywhere in India or abroad.

The word 'Invitation' of the above rule may include both a direct offer sent by the host institution and any offer received in response to an application, bio-data sent by the employee through the University to any institution in India or abroad."

RESOLVED that the above amendment be approved.

FURTHER RESOLVED that the amended provision would take retrospective effect and would be applicable to both teaching and non-

teaching employees who undertake administrative/ teaching assignment anywhere in India or abroad."

The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been given retrospective effect or retro-active operation as it is now well-settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect. In *Mahabir Vegetable Oils (P) Ltd. and Another v. State of Haryana and Others* [(2006) 3 SCC 620] this Court stated;

"41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See *West v. Gwynne*)

43. A retrospective effect to an amendment by way of a delegated legislation could be given, thus, only after coming into force of sub-section (2-A) of Section 64 of the Act

and not prior thereto."

See also MRF Ltd., Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and Others [(2006) 8 SCC 702] In any event, the said purported resolution appears to be vague, inasmuch as it does not lay down as to from which date, the said amended regulation would come into effect.

No retrospective operation could also be given having regard to the fact that thereby the rights of other employees of the University could not have been taken away. It is not in dispute that other teachers of the University have been given promotion. Respondent would be entitled to be promoted only in the event his break in his service is condoned and the increments as prayed for by him for the period during which he was working with the Zambia University may be granted and not otherwise.

Furthermore, the State has declined to grant such benefits to the respondent. It was on that premise the purported offer made by the University was recalled. The same, therefore, cannot be said to be arbitrary in nature.

In terms of the original Regulation 26(ii)(c), leave was to be granted on an invitation to a teaching post. No such invitation was made to the respondent. He applied for his appointment with the Zambia University himself. Even assuming that the amendments made in the regulation is valid, the extended meaning of 'invitation' would also have no application in the fact of the present case. By reason of the said amendment, invitation may include both the direct offer or any offer received in response to an application, but indisputably such an application or bio-data must be sent by the employee through the University to an institution in India or abroad. As the respondent was not in the service of the University before he had made such an application, a fortiori the question of the respondent's application being sent by the employee through the University did not and could not arise.

Our attention has been drawn to a decision of this Court in State of U.P. and Another v. Jogendra Singh and Another [(1998) 1 SCC 449], which deals with payment of retiral benefits. The said decision has, however, been relied upon for the proposition that all laws are prospective unless made retrospective either expressly or by necessary implication.

We have noticed hereinbefore that the retrospective operation purported to have been given by the Executive Council is ultra vires the Act. So far as the case of Satpal Taneja is concerned, the same stands on a different footing. We do not intend to dilate on the said question in details as the learned Single Judge in his judgment pointed out the case of the respondent viz.-e-viz. Mr. Taneja at some length. We agree therewith. Even assuming the respondent and the said Shri Taneja were similarly situated, we may observe that Article 14 of the Constitution of India carries with it a positive concept. Article 14 of the Constitution cannot be invoked, for perpetuating illegality. {See Kuldeep Singh v. Govt. of NCT of Delhi [(2006) 5 SCC 702] } We, therefore, are of the opinion that the Division Bench of the High Court was not correct in interfering with the judgment of the learned Single Judge as the case of the respondent is not even covered by the said regulations.

For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly and that of the learned Single Judge is restored. The appeal is allowed.

However, if any amount has been paid to the respondent by the University, the same may not be recovered from him.