Mohd. Yasin vs University Of Kashmir, Srinagar And ... on 9 October, 1974

Equivalent citations: AIR1974SC2341, 1975LABLC293, (1975)1SCC150, 1974(6)UJ658(SC), AIR 1974 SUPREME COURT 2341, 1975 (1) SCC 150 1975 (1) SERVLR 18, 1975 (1) SERVLR 18

Bench: R.S. Sarkaria, V.R. Krishna Iyer

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JUDGMENT


Sarkaria, J.
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1. This is a petition for review of our Judgment, dated Nov, 5, 1973.

2. The petitioner was appointed on probation as a Reader in the University of Jammu & Kashmir, Srinagar in September, 1965. His period of probation was extruded for one year more by an order dated November 18, 1968 of the Vice-Chancellor. He executed an agreement of service with the University in the prescribed form. On June 26, 1969, a complaint of a serious misconduct was received against him. The Central Council of the University caused the service of a charge-sheet on him, and an enquiry was held into those charges The Enquiry Officer, Shri J.N. Bhan, submitted his report on Sept. 5, 1969, holding the petitioner substantially guity. Coincidentally, on the same date viz, September 5, 1969, the Jammu and Kashmir University Ordinance, 1969 was promulgated by the Governor establishing two separate Universities, one for Jammu and the other for Kashmer. Section 52 of that Ordinance inter alia laid down that within sixty days from the commencement of the Ordinance, the services of the teachers employed On contract basis were to cease unless otherwise ordered by the Chancellor. No such order was issued by the Chancellor extending the petitioner's employment The Vice Chancellor obviously in ignorance of this provision (Section 52) allowed the petitioner to continue in the employment. On Dec. 20, 1969, the Vice-Chancellor on the basis of the report submitted by the Enquiry Officer served a notice on the petitioner to show cause why he should not be dismissed from service. The petitioner submitted an explanation which was considered by the University Council and a decision was taken to remove him from service on payment of one month's salary.

3. The petitioner then filed a writ application in the High Court of that State under Articles 226/227 of the Constitution for setting aside his dismissal. As observed by the High Court in its judgment. "The case of both the parties was that the appointment of the petitioner as Professor was on contract basis". The High Court accepted the petition and declared the dismissal of the petitioner inoperative and of no effect in the eye of law on the ground that the service of the petitioner (who had admittedly been employed on contract basis) had ceased by the operation of Section 52(4) of the

Ordinance and the Act of 1969 on November 5, 1969 i.e., sixty days after the commencement of the Ordinance and the order of his dismissal made after that date had also lapsed. The High Court, however, held that from the facts and circumstances of the case, a fresh appointment of the petitioner as Professor and Head of Department of History of the new University of Kashmir by an implied contract could be spelled out; and once that position was reached, the termination of the petitioner's employment not being in accordance with the terms of the statutory regulations, was bad.

4. Accepting the appeal of the University, we held that since by the operation of Section 52(4) of the Ordinance and the Act of 1969 the petitioner had made a statutory exit from the employment of the University on November 5, 1969 the order removing from service had also become ineffectual. We further held that the Vice. Chancellor was not competent to allow the petitioner to continue in service after the said date.

5. Now in the review petition it is alleged that the petitioner's service with the University was not on contract basis, the contract entered into by him with the University being merely a statutory contract compulsorily executable by the entire teaching staff of the University, on these premises, he now contends that Section 52(4) of the Ordinance and the Act of 1969 could not apply and cause the statutory exit of the petitioner from the employment on November 5, 1969 Another plea now urged is that he was a confirmed Reader governed by the Regulations of the University in matters of employment and had a right to continue in service till he completed the age of 60 years In any case, it is contended, he still holds a lien in his substantive rank on the post of Reader, and on termination of his service as Professor, he had a right to be continued as a confirmed Reader.

6. An affidavit in opposition has also been filed on behalf of the University.

7. We have heard the learned Counsel on both sides. We are of opinion that this petition must fail. No apparent error or mistake on the face of our judgment has been pointed out. Nor has it been shown that these new pleas are based on any matter which he could not with due diligence, discover and produce earlier at the appropriate stages of the case. The stand now taken up in review petition is inconsistent with the position he had taken before the High Court and thereafter in this Court. Before the High Court, the petitioner's contention was that he had been employed on contract basis and consequently his services stood terminated on November 5, 1969 by the operation of the statute and on account of his statutory exit, the report of the enquiry officer and the order of the petitioner's dismissal passed thereon had also lapsed and become invalid and ineffectual. This stand of the petitioner was accepted by the High Court and also by this Court. It was on that basis that the petitioner sought and got riddance from the order of his stigmatic dismissal. The petitioner therefore cannot now in review be allowed to commit a volte face and take up new pleas, which are wholly inconsistent with his previous stand consistently taken at the trial and appellate stage. We have earlier in the judgment sought to be reviewed clearly stated that the petitioner's termination is without any stigma at all. We repeat it here.

8. We do not find sufficient reasons to reverse our Judgment. We therefore dismiss this petition.