

R-97

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 14.12.2010
% *Judgment Delivered on: 20.12.2010*

+ **RSA No.8/2002 & CM No.21/2002**

JAWAHAR LAL UNIVERSITY Appellant
Through: Mr.S.C.Dhanda, Advocate.

Versus

BIRBAL TOKAS Respondent
Through: Mr.A.K.De, Mr.Rajesh Dwivedi,
Mr.Udit Chaturvedi & Mr.Keshab
Upadhyay, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. The plaintiff Birbal Tokas was employed as a physical instructor at the Jahawhar Lal University w.e.f. 03.7.1986. J.S.Khanna had been appointed as a Registrar in the defendant University in the year 1983. His wife was a qualified physical instructor. J.S. Khanna wanted to get his wife appointed to the post of physical instructor; as such he wanted the service of the plaintiff to be terminated. The plaintiff was under suspension on 22.6.1986 on false allegations which were leveled against him; allegation being that he had beaten Allen and Rajender Kumar, daily wagers of the University. Departmental proceedings were conducted against the plaintiff. His services were thereafter terminated on 03.7.1986. The present suit was filed by the plaintiff

seeking a declaration that the proceedings before the Departmental Authority be declared null and void and he be reinstated in service.

2. Trial Judge on the pleadings of the parties had framed the following three issues:

1. Whether the suit of the plaintiff is not maintainable in view of the prl. objections in the written statement? OPD
2. Whether the plaintiff is entitled to the relief of declaration as prayed in the suit? OPP
3. Relief.

3. On the basis of the oral and documentary led before the trial judge, the Court was of the view that the plaintiff was not entitled to any relief; a fair and reasonable opportunity had been granted to the plaintiff to defend his case before the enquiry officer; there has been no violation of the principles of natural justice. Suit was dismissed.

4. In appeal, vide impugned judgment dated 29.9.2001 the findings of the trial judge were reversed. It was held that the delinquent was not granted opportunity to defend his case through a defense assistant; there has been a violation of the principles of natural justice. The appeal was allowed; plaintiff was held entitled to the declaration prayed for; plaintiff was thus held to be treated in service with all consequential benefits with effect from the date of his termination.

5. This is a second appeal. On 26.8.2003 the appeal was admitted. Following substantial question of law was formulated on 22.11.2010 which inter alia reads as follows:

“Whether the findings in the impugned judgment dated 29.9.2001 are perverse and if so its effect?”

6. Counsel for the appellant has submitted that the impugned judgment is a perversity. It has recorded incorrect findings of fact which are not borne out from the record. Attention has been drawn to para 7. It is submitted that the findings in the impugned judgment that the documents including the list of witnesses had not been furnished to the delinquent is a misreading of the record; the services of a defence assistant had also been provided by the Vice-Chancellor; he was named; no prejudice has been suffered by the delinquent. The incident is dated 22.6.1984 and the statement of Rajesh was recorded on the same date as is evident from Ex.PW3/19; even otherwise no reliance has been placed upon this statement of Rajesh. The impugned judgment had decreed the suit of the plaintiff holding that because of the aforementioned irregularities there was a violation of the principles of natural justice; this perverse finding is liable to be set aside. Learned counsel for the appellant has placed reliance upon (1993) 9 SCC 553 Secretary to Govt. Home Deptt. & Ors. vs. Srivaikundathan, (1998) 6 SCC 340 Union of India & Ors. vs. B.K.Srivastava, (1998) 8 SCC 572 Superintendent Govt.T.B. Sanatorium & Anr. vs. J.Srinivasan,. It is submitted that the scope of judicial review over the findings of the Enquiry Officer are limited. Only if the findings of the Enquiry Officer are perverse or based on no evidence, order of the Enquiry Officer can be set aside. The Enquiry Officer had rightly concluded that the delinquent is guilty of the charges which had been proved against him. Learned counsel for the appellant has also placed reliance upon (2009) 7 SLR 272 C.N.Malla vs. State of Jammu & Kashmir & Ors. as also another judgment of the Apex Court

reported in 2010 (1) SLR Kesar Chand vs. Management of M/s Escorts Limited & Anr. to support his submission that even if the termination order is set aside back wages do not have to follow unless the workman has shown that he was not gainfully employed in this intervening period. Attention has been drawn to the statement of Birbal Tokas (PW-3) before the trial court wherein he had admitted that he was an advocate; he was admittedly enrolled with the Bar Council; being a professional and being gainfully employed in this intervening period he was even otherwise not entitled to back wages.

7. Arguments have been countered. Learned counsel for the respondent has submitted that the background in which the enquiry proceedings had been conducted necessarily has to be gone into before the court can draw a conclusion as to whether there has been any violation of the principles of natural justice or not. Attention has been drawn to the Rules governing the "Terms and Conditions of the Teaching Staff of Jawahar Lal Nehru University" as also the definition of an "employee". It is pointed out that the Memorandum of Charge detailing the substance of imputations of misconduct/misbehavior of the delinquent had been issued to the respondent on 16.7.1985 but even as per the case of the department the documents on which the department has placed reliance had been furnished to him only on 19.12.1985 i.e. the date of the initiation of the enquiry which is violative of Rule 55 (4) of the Rules governing the defendant university. Attention has been drawn to Section IV of the said Rules which deal with the Procedure for Imposing Penalties.

Rule 55 (4) reads as under:

“The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputation or misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained; and shall require the employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desired to be heard in person.”

8. It is submitted that it was for the Disciplinary Authority to have furnished to the employee a copy of the articles of charge along with list of witnesses when the charges were imputed against the delinquent which date was much prior in time to the initiation of the enquiry proceedings. These proceedings had started when the memorandum had been issued to the delinquent on 16.7.1985. There has been a clear violation of provisions of Rule 55 (4). It is pointed out that although the services of a defence assistant had been allowed to the delinquent yet Jagdish Lal, the defence assistant who had been permitted to present the case of the delinquent was not relieved from his duty in order that he could defend the case of the delinquent which has prejudiced and biased his defence; the presenting officer was a qualified graduate; the delinquent not having been given the assistance of a defence assistant of an equal caliber there was a violation of the principles of natural justice. Four witnesses had been examined on behalf of the department and thereafter two more witnesses whose names did not find mention in the initial list of witnesses were also examined which is again a violation of principles of natural justice. The department had introduced new document i.e. Ex.PW3/19 which was the statement of Rajesh which document had never been furnished to the delinquent. All these cumulative factors show that the findings of the enquiry officer were perverse and

were rightly set aside in the impugned judgment which judgment calls for no interference. For this proposition reliance has been placed upon AIR 1972 SC 2173 C.L.Subramaniam vs. The Collector of Customs, Cochin (1973) 1 SCC 409 Sirsi Municipality by its President Sirsi vs. Cecelia Kom Francis Tellis, 59 (1995) DLT 742 (DB) G.S.Bajwa vs. Union of India & Ors.

9. Perusal of the record shows that the delinquent Birbal Tokas had been charged on the following count:

“Mr.Tokas was alleged to have committed misconduct by wrongfully confining, abusing and beating up the two Anti Malaria Workers, Mr.Rajendra Kumar and Mr.Allen when they visited the residence of Mr.Tokas for checking water in the room Cooler. The incident reportedly occurred at 9.40 A.M. on 22 June, 1985.”

10. Enquiry officer was Mr.Rameshwar Singh. He was a professor and admittedly unconnected with the department of the delinquent. Four witnesses were examined on behalf of the Department which included Mr. Allen, Mr. Rajinder, Mr. V.S.Mann and Dr. Anuradha Sahai. They were admittedly in the list of witnesses which had been filed along with the charge sheet. Thereafter on the request of Mr. Tokas two other employees of the University Mr. Basoya and Mr. Attar Singh were examined. This is evident from the order dated 5.3.1986 of the enquiry officer. Attar Singh was a security guard and so also was Mr. Basoya. They were both admittedly not eye-witnesses. Reference in the report of enquiry officer has also been made to the statement of Rajesh (Ex.PW3/19) but no reliance has been placed upon this version by the Enquiry Officer; apart from a one line mention no further reference of this statement of Rajesh was noted; there is no support taken by the Enquiry Officer from the statement of Rajesh.

Ex.PW3/19 is the said statement of Rajesh which had been recorded prior to the enquiry i.e. on the date of incident itself i.e. 22.6.1984. The impugned judgment has recorded a finding that this statement is recorded on 22.6.1985 which is not borne out from this document. Ex.PW3/19 at one part where the signatures have been initialled mentions the date incorrectly as 22.6.1985 but the latter part of the document nullifies it by mentioning the correct date at two places i.e. of 22.6.1984. This finding in the impugned judgment is clearly an illegality. The statement of learned counsel for the respondent that a new document (Ex.PW3/19) and new witnesses were introduced prejudicing the delinquent is thus not borne out.

11. Rule 55 (4) of the Rules governing the defendant university has been relied upon by the learned counsel for the respondent. This Rule stipulates states that the Disciplinary Authority will deliver to the employee a copy of the articles of charge, the statement of imputation of misconduct or mis-behaviour and the list of documents and witnesses by which each article of charge is proposed to be sustained within a specified time period. In this case, on the first date of enquiry i.e. on the initiation which was on 19.12.1985, in the proceeding sheet, it is clearly recorded that the presenting officer Mr. Arora has informed that the acknowledgment due card (document no. 2) had proved that Mr.Tokas had been sent the Articles of charge; however on the said date Mr. Tokas was again given the Article of charge along with the enclosures which consisted of 11 pages. These 11 pages included the list of witnesses and list of documents along with statement of imputation of misconduct leveled against the

delinquent. Admittedly, these pages had been furnished to the delinquent on 19.12.1985. Contention of the department was that even prior thereto the same had been sent by the registered post to the delinquent and proof of the same was in the form of the acknowledgment card proved before the enquiry officer as document no.2. The submission of the respondent that the articles of charge had to be furnished on 16.7.1985 itself does not advance his case inasmuch as besides the fact that the delinquent had been unable to show that he has not received these articles of charge (which had been sent to him by registered A/D by document no.2); even otherwise, what was the prejudice he had suffered has also not been detailed. Document no.2 established that a registered A/D communication had in fact been sent to the delinquent with the substance of the imputations of misconduct along with the other annexures. Presumption of service under Section 27 of the General Clauses Act, 1897 as also Section 114(f) of the Indian Evidence Act, 1872 also arose in favour of the Department.

12. The defence assistant was permitted to appear on behalf of the delinquent which is evident from the order of the Vice Chancellor who had issued the memorandum on 16.7.1985 to the delinquent. Proceedings of 19.12.1985 i.e. the first date of enquiry show that Jagdish Lal Section Officer had in fact appeared on behalf of Mr.Tokas and Mr.Tokas had made a statement that he agrees that Jagdish Lal will assist him who was accordingly permitted to do so. Submission of the respondent that Jagdish Lal was not relieved from his duty is not borne out from the record. Even otherwise as rightly pointed out by the counsel for the appellant, it was for the delinquent to have taken appropriate

action in this regard by seeking directions from the concerned authority to relieve Jagdish Lal to assist him. Reliance by the counsel for the appellant on the observations of CVC in this regard are of little assistance as they are indeed observations only which are advisory in nature. The delinquent has also not before today raised this query that he was prejudiced for lack of a qualified defence assistant. The Presenting Officer was no doubt a law graduate but this can well be answered by the fact that his qualification matched in fact the qualification of the delinquent who was also admittedly a law graduate.

13. Thus the findings in the impugned judgment as noted hereinabove namely that documents had not been furnished to the delinquent; statement of Rajesh having been recorded one month prior to the date of incident; defence assistant not having been furnished to the delinquent are all findings which are unsustainable as they are not borne out from the record. The record speaks otherwise and as aforenoted.

14. Trial judge had rightly held that the findings of the report of the Enquiry Officer call for no interference. The Apex Court has time and again reiterated that the scope of judicial review is limited. The nature of evidence led before the Enquiry Officer is not to be examined as if it was a criminal trial; unless the findings are perverse, based on no evidence, the said findings should not be set aside. Rules of evidence are not strictly applicable. Doctrine of "proof beyond doubt" has no application; preponderance of probabilities and some material on record necessary to reach a conclusion is the thumb rule of the requirements before the

Enquiry Officer. Test of a reasonable man should be applied. The findings in the impugned judgment cannot be sustained. Appeal is allowed; suit of the plaintiff is dismissed.

INDERMEET KAUR, J.

DECEMBER 20, 2010

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