

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

% *Judgment Reserved on: 28.3.2011*
Judgment Delivered on: 30.3.2011

+ **RSA No.92/2005 & CM No.15001/2006**

SH. J.P.DIXIT Appellant
Through: Appellant in person.

Versus

THE MANAGING COMMITTEE, SCHOOL OF CORRESPONDENCE
AND CONTINUING EDUCATION, UNIVERSITY OF DELHI, DELHI
& ORS. Respondent
Through: Mr.Rajender Dhawan and Mr.B.S.
Rana, 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. This appeal has impugned the judgment and decree dated 04.12.2004 which had affirmed the finding of the trial judge dated 23.8.2003 whereby the suit filed by the plaintiff J.P.Dixit seeking declaration and mandatory injunction to the effect that his termination order dated 18.6.1984 by defendant no.1 (the Managing Committee, School of Correspondence Courses, University of Delhi) be declared null and void had been dismissed.

2. Plaintiff is the appellant before this Court. In his amended plaint it had been averred that the plaintiff is an employee of defendant no.1; his termination order dated 18.6.1984 is malafide; he is a victim of circumstances. It was contended that defendant

no.1 is subordinate to the management of defendant no.2
RSA No.92/2005

(Executive Council, Delhi University) and is managed by defendant no.2 and defendant no.3 (Delhi University). Services of the plaintiff were governed by the “Terms and Conditions of Service and Conduct Rules of the University Non Academic Employees, 1971” (hereinafter referred to as ‘the Service Rules’). Enquiry officer had illegally been appointed to enquire into the conduct of the plaintiff. All the charges leveled against him were fabricated and false. During the course of the enquiry proceedings a suit had also been filed by the plaintiff seeking a stay of the enquiry proceedings but the said suit was dismissed. It is contended that the termination of the services of the appellant was illegal and against the rules of natural justice; the said termination order was liable to be set aside.

3. Defendant had controverted this stand stating that the charges leveled against the plaintiff were that he had unauthorizedly addressed complaints to the Vice Chancellor; his grievance being that after his study leave he wanted to resume his duties with immediate effect but he was asked to report after some time; however arrangements were made and he was taken back on duty on 19.01.1981. The plaintiff had continued to nurse this grievance. He had violated Rules 52A and 54 of the Service Rules and Regulations. The report of the Enquiry Officer was in accordance with his conditions of service.

4. On the pleadings of the parties, the trial judge had framed the following seven issues:

1. Whether the plaintiff has no cause of action in his favour and the suit is not maintainable? OPD
2. Whether the suit is not maintainable and barred by the provisions of Specific Relief Act? OPD
3. Whether the suit of the plaintiff is barred by limitation? OPD

4. Whether the W/S has not been filed by duly authorized and competent person and on behalf of the defendant? OPP
5. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP
6. Whether the plaintiff is entitled to injunction as prayed for ? OPP
7. Relief.”

5. One witness on behalf of the plaintiff and correspondingly one witness on behalf of the defendants was examined. It was held that the enquiry qua the charges levelled against the plaintiff were conducted fairly and judiciously; there was no violation of the rules of natural justice; decree of declaration sought for by the plaintiff had been denied.

6. The first appellant Court had endorsed this finding. The finding returned in the impugned judgment reads as follows:

“10.In the suit filed before the trial court, plaintiff/appellant sought relief of declaration and mandatory injunction against the defendants seeking the reinstatement into the services of the defendants. It is prayed that order of termination dated 18.06.1984 be declared as void, illegal, malafide and without jurisdiction. The plaintiff has challenged the conduct of inquiry proceedings by the Inquiry Officer Shri O.P.Mittal and further imposition of major penalty of termination of services of the plaintiff. The main contention raised by the plaintiff are that in the departmental proceedings, rules of natural justice have not been properly followed and reasonable opportunity was not afforded to him to defend his case. The findings of the Inquiry Officer and consequent termination order are alleged to have been perverse and not in accordance with the statutory rules and regulations governing the services of the plaintiff. It is also contended that request of the plaintiff for preponement of the inquiry was not considered to and also, plaintiff was proceeded against ex parte illegally. The show cause/memorandum dated 30.04.1984 was served upon the plaintiff with a pre-determination for terminating the services of the plaintiff. The inquiry report was also not supplied to the plaintiff before deciding proposal for termination. The Memorandum and Inquiry report was served upon the plaintiff only on 24.5.1984. The defence/reply of the plaintiff dated 07.06.1984 was not considered.

11. The scope of judicial review available with the court in service matters is limited to the extent that there is proper compliance of procedure and rules of natural justice in the departmental proceedings. The Supreme Court has discussed the jurisdiction of the court in disciplinary proceedings in case B.C. Chaturvedi vs. UOI wherein it was observed:-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the conclusion, which the authority reaches, is necessarily correct in the eyes of the court. When an inquiry is conducted on charges of mis-conduct by a public servant, the court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with, whether the decisions or conclusions are based on some evidence; the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach the finding of fact or conclusion. Neither the technical rules of Evidence Act nor of proof to fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts that the evidence and conclusion received support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charges. The Court/Tribunal in its power of judicial review does not act as appellant authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the court may interfere with the conclusion of the finding and would give relief so as to make it appropriate to the facts of the case.”

12. Coming to the present case of the plaintiff/appellant, after having considered the facts, evidence and the contentions of both the sides, I am of the opinion that during the departmental inquiry and while passing the order of termination, fair and reasonable opportunity was afforded to the plaintiff/appellant for his defence. It is evident from the record of proceedings of Inquiry Officer that rules of natural justice were properly followed and due notice was given to the plaintiff for participation in the inquiry proceedings. The plaintiff has been charge sheeted on specific grounds and the plaintiff has himself admitted that he has been preferring various representation to the higher authorities in violation of the statutory rules of his service. There is nothing on the record to suggest that free and fair opportunity was denied to the plaintiff during the proceedings before the Inquiry Officer or thereafter. The inquiry report was also furnished to the plaintiff alongwith the show cause notice/memorandum with respect to the proposed penalty and plaintiff was specifically asked to give his representation in defence. Before passing the termination order dated 18.06.1984, the matter was considered by the disciplinary

authority in the independent manner. I do not find violation of any statutory rules or procedure in the case of the plaintiff. Various notices were sent to the plaintiff for joining the inquiry proceedings, but the plaintiff deliberately failed to participate in the inquiry proceedings leading to the conclusion that there has been no lapse on the part of the defendant authority and there has been no malafide intention or illegality in the departmental proceedings. The facts, evidence and other material was properly appreciated by the Inquiry Officer and reasoned findings were recorded in the inquiry report. The disciplinary authority on consideration of the findings of the Inquiry Officer and further on finding that plaintiff has failed to show any sufficient cause in his defence, imposed the major penalty of termination of service upon the plaintiff/appellant. I find no substance in the grounds taken in the plaint to challenge the order of termination and also no merit in the grounds taken in the present appeal. The ld. trial court was justified in dismissing the suit of the plaintiff. No grounds for interference with the judgment of ld.Civil Judge is made out in view of the aforesaid observations. The appeal is, accordingly dismissed.”

7. This is a second appeal. It has been admitted on 20.03.2008.

The following substantial question of law have been formulated:

1. Whether the appellant was not terminated by a competent authority?
2. Whether the respondent no.1 imposed penalty without jurisdiction and against natural justice and against Rules 67, 68, 69, 70 and 71 of Delhi University Non Teaching Employees Terms & Conditions Service Rules?”

8. On behalf of the appellant, arguments have been addressed in person. Attention has been drawn to the University Non-Teaching Employees (Terms & Conditions Service) Rules, 1911. It is pointed out that the competent authority for dismissing the services of the plaintiff was only the Executive Council; the Executive Council had not delegated this power to defendant no.1; there is also no such evidence of any delegation; termination order had been passed by defendant no.1; defendant no.1 was not the appointing authority; the appointing authority was the University of Delhi; in these circumstances dismissal of the plaintiff from

services by an order of defendant Ino.1 is clearly an illegality. Reliance has been placed upon Rules 63, 67 and 68 of the said Service Rules to support this submission.

9. Arguments have been countered. It is pointed out that the appointing authority in this case is defendant no.1; attention has been drawn to the appointment letter dated 10.11.1964 issued by defendant no.1. Even otherwise Section 16 of the General Clauses Act 1897 specifically postulates that a person having power to appoint a person also has the authority to dismiss him. For this proposition reliance has also been placed upon AIR 1977 SC 2257 M/s Heckett Engineering Co. Vs. Their Workmen. It is pointed out that the two questions of law formulated by this court in fact do not emanate from the pleadings of the parties; it was never averred before the Courts below that the dismissal of the appellant/plaintiff was by an incompetent person or that defendant no.1 did not have the delegated power to do so. Reliance has been placed upon AIR 2001 SC 965 Santosh Hazari Vs. Pursushottam Tiwari to substantiate a submission that to be a question of law involved in the case there must be a foundation for it laid in the pleadings; in the absence of this it cannot amount to a substantial question of law.

10. Record has been perused.

11. Arguments urged before this Court were admittedly never a part of the pleadings in the two courts below. Plaint had been amended by the plaintiff. Even in the amended plaint, it was never the contention of the appellant/plaintiff that his termination order by defendant no.1 was incompetent for the reason that it was the Executive Council alone which could terminate his services; had

this contention been urged in the courts below, the counsel for the respondent has rightly urged that it would have been put to alert and the defendant would have produced the delegation of power by the Executive Council in favour of defendant no.1. This plea was admittedly not taken in the plaint; it cannot now be urged before this Court. In Santosh Hazari (supra) while dealing with the meaning of a substantial question of law, the Apex Court had inter alia held as follows:

“A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be ‘substantial’ a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.”

Had the respondent been put to notice that defendant no.1 was not the competent authority to appoint or to dismiss the plaintiff/appellant, delegation of power in favour of defendant no.1 to do so which is permissible under the rules would have been brought forward in evidence.

Rule 63(b) defines the Disciplinary Authority as follows:

63. Interpretations:

“In this chapter unless the context otherwise requires:

.....

(b) 'Disciplinary Authority'- In relation to the imposition of penalty on an employee means the authority competent under these rules to impose on him any of the penalties specified in rule 67."

Penalties are of two kinds; major and minor. Dismissal or termination from service is a major penalty.

Rule 68 stipulates as follows:

"Disciplinary Authorities:

- (i) The Executive Council may impose on an employee any of the penalties specified in rule 67,
- (ii) The Vice chancellor may impose on an employee any of the penalties specified in Clause (i) (ii) and (iii) of rule 67.

Rules 68 (i) states that the Executive Council may impose upon an employee any one of the penalties specified in Rule 67 which includes the penalty of dismissal or termination of service.

The Delhi University Ordinance XX which is admittedly applicable to the case of the appellant is also relevant. Clause 10 of the Ordinance reads as follows:

"To appoint suspend or terminate the services of the administrative and other non-academic staff of the School in respect of who such powers may have been delegated by the Executive Council, and to determine the emoluments and conditions of service:"

Power of delegation is specifically contained hereinabove; Executive Council may delegate such power in favour of another.

Clause 16 of the General Clauses Act 1897 reads as follows:

"16.Power to appoint to include power to suspend or dismiss.- Where, by any [Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power."

In M/s Heckett Engineering Co. (supra) while examining the

provisions of Section 16 of the General Clauses Act the Apex court had held that the power to terminate the service is a necessary adjunct of the power of appointment and is exercised as an incident to or as a consequence of that power.

12. It was never the case of the appellant that the Executive Council alone could terminate the services of the appellant. In the absence of such a specific pleading defendant could not have controverted the stand and was precluded from producing the delegation of power of appointment and termination by the Executive Council in favour of defendant no.1. This argument now urged does not emanate from the pleadings in the two fact finding courts below. It cannot be raised now. Powers of delegation by the Executive Council in favour of another is also clearly stated in Ordinance XX Clause 10 which is an Ordinance admittedly applicable to the service conditions of the appellant; Contention of the defendant that this power of appointment and dismissal had been delegated by the Executive Council in favour of defendant no.1 has to be accepted; there was no documentary evidence forthcoming to this effect only for the reason that this was never contended by the appellant in both the fact finding courts below. In fact in the plaint, it is admitted by the plaintiff that he had been appointed by defendant no.1; his contention that he was actually an appointee of defendant no.2 has nowhere been mentioned; his only contention is that he is governed by service condition of defendant no.3. Even in the body of the appeal before this Court it has been admitted that the plaintiff is an appointee of defendant no.1. Appointment letter dated 10.11.1964 of the plaintiff is also relevant. It is issued by defendant no.1 and signed by its director

Sh.J.N.Mitra. The appellant/plaintiff being an appointee of defendant no.1 was thus validly terminated by defendant no.1 who was its appointing authority.

13. Rules 67 to 71 of the said Rules have also in no manner been violated. In fact the arguments are as aforementioned; no other argument has been urged on the other Rules contained in the said service conditions. There is no perversity in the findings of the two courts below.

14. It has also not been urged that there has been any violation of the principles of the natural justice. Be that as it may, substantial question of law already stand formulated on 03.4.2007. In view of the discussion noted hereinabove both the substantial question of law are answered against the appellant and in favour of the department.

15. Appeal as also pending application is dismissed.

INDERMEET KAUR, J.

MARCH 30, 2011
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