

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

% *Date of Judgment: 25.03.2011*

+ **RSA No.120/2006 & CM No. 4761/2006**

SHRI B.D. DOBHAL (DECEASED) THROUGH
HIS LEGAL HEIRS Appellant
Through: Mr.M.G. Dhingra, Advocate.

Versus

TIBBIA COLLEGE BOARD & ANR. Respondents
Through: Mr.Sunil Bagai, Advocate.

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. (Oral)

1 This appeal has impugned the judgment and decree dated 24.01.2006 which had endorsed the findings of the trial Judge dated 07.02.1989 whereby the suit filed by the plaintiff R.D. Dobhal against the defendant namely Tibbia College Board to the effect that a decree of declaration be passed in his favour that his termination be declared null and void and he be treated to be in continuation of service with the defendant college had been dismissed.

2 The plaintiff was a student in the defendant College since 1939. He graduated with a gold medal. He was subsequently appointed as an officiating principal of the college and continued in employment thereof. In para 5 of the plaint, it has been averred

that the College was governed by the Tibbia College Act, 1952 (hereinafter referred to as the said Act); plaintiff was appointed in service by the Board. In para 7 of the plaint, it has been averred that the University of Delhi is a body incorporated under the Delhi University Act, 1922; Section 2 (a) defines 'teacher'. Defendant No. 1 i.e. the Tibbia College Board was affiliated to the Delhi University; Ordinance XVIII Clause (9) applicable to the Delhi University teachers clearly states that

'No decision for the termination of the services of any teacher or Principal appointed on substantive basis whether on probation or permanent, or for his suspension, shall be taken by the College or the Institution concerned without the prior approval of the Vice Chancellor.'

Contention of the plaintiff/ appellant is that he being a teacher of the Tibbia College Board which has since been affiliated to the Delhi University and as such he was governed by Ordinance XVIII Clause (9) which specifically postulated that no teacher or principal appointed shall be terminated from his service or suspended except with the prior approval of the Vice-Chancellor. It is submitted that no such approval had been taken. The enquiry proceedings had also been challenged; it was submitted that except the additional charge, all other charges leveled against the plaintiff/ appellant had been disproved; only the additional charge that he was employed in the period of his suspension in another place stood proved; enquiry was vitiated ; it was liable to be set aside. For all the aforementioned reasons, decree had been prayed for.

3 In the written statement, the specific defence of the defendant was that the defendant was not affiliated to the University of Delhi; plaintiff was not a "teacher" of the University of Delhi; ordinance XVIII of the Delhi University was not applicable. It was stated that the defendant was not affiliated to

the college in the strict sense; it had only been admitted to certain privileges by the University. Vide letter dated 06.05.1976 Ex. DW-2/2, the University had recognized that the service conditions of the University employees are not applicable to the employees of Ayurvedic & Unani Tibbia College. Attention has been drawn to the Regulations published by the Government of India, Delhi Administration (notified in the Delhi Gazette) in pursuance of Section 16 (c) of the Tibbia College Act, 1952. It is pointed out that 'principal' has been defined; 'teacher' does not find a separate definition; an "employee" has been defined; a teacher fits into the category of an employee. The plaintiff being an employee was terminated in terms of the aforementioned Regulations i.e. Regulation 17; the remedy available to the plaintiff/ appellant was to file an appeal against this order; in fact he had filed an appeal but during the pendency of the appeal, he had filed the present suit; suit is not maintainable.

4 Before the trial Judge issues were framed. Inter-alia issue No. 3 was framed. It reads as under:-

"Whether the plaintiff's services were governed by ordinance XI & XVIII of Delhi University as alleged in para 13 of the plaint? OPP"

5 Oral and documentary evidence was led. The plaintiff had produced documentary evidence i.e. Ex. PW-2/2, Ex. PW-3/1 to Ex. PW-3/3 to substantiate his submission that the defendant was affiliated with the University of Delhi. Per contra, defendant had relied upon Ex. DW-2/2 i.e. letter dated 06.05.1976 wherein the Delhi University had communicated that the service conditions of the University employees as prescribed under the Ordinance are not applicable to the employees of the Tibbia College Board. On the

basis of this oral and documentary evidence adduced before the court, the suit of the plaintiff had been dismissed.

6 This finding had been endorsed by the first appellate court. The finding, which is relevant for the decision of this appeal, related to issue No. 3 and reads as follows:-

“ Issue No. 3 was ‘whether the services of the appellant were governed by Ordinance XI & XVIII of Delhi University, as alleged in para 13 of the plaint.?’

In this regard, ld. Civil Judge came to the conclusion that service condition of university employees as prescribed under the ordinance were not applicable to the employees of defendant college. He came to the conclusion that plaintiff was a teacher, as defined in the Calender Ex. DW-2/2 pertained to the employees and not to the teachers. According to him, terms ‘employee’ was wide enough to include all types of employees, teaching and non-teaching. He relied upon Ex. PW-3/1 and came to the conclusion that it led to the same conclusion because in the said letter Deputy Secretary Medical had desired the defendant to bring their service condition in consonance with service condition of employees of Delhi University. He reasoned that if service conditions of Delhi University were to apply as such, there was no necessity of requiring the defendant/respondent to amend their service conditions to bring them at par with the service conditions of the employees of the university. Therefore he decided the issue against the appellant. I also do not find any infirmity in the conclusion reached by the ld. Civil Judge on this issue also.”

7 On behalf of the appellant, it has been urged that the finding in the impugned judgment is perverse, the impugned judgment has failed to appreciate that the oral and documentary evidence in the correct perspective. Attention has been drawn to the testimony of PW-2 as also the cross-examination of DW-2; attention has also been drawn to the documentary evidence noted supra. It is submitted that the appellant/plaintiff was admittedly appointed as a lecturer; he was not an employee; a lecturer is included in the definition of “teacher” as given in Section 2 (g)(h) of the Delhi University Act, 1922. The prior approval of the Vice-Chancellor had not been taken; termination of the plaintiff/appellant was thus

illegal; the Ordinance XVIII Rule (9) was clearly applicable to the case of the appellant.

8 Arguments have been countered. It pointed out that the defence of the defendant all along has been that Tibbia College Board was never affiliated to University of Delhi. The appellant was an employee of the said Board and was dismissed as per regulations which did not require prior approval of the Vice-Chancellor.

9 This is a second appeal. It had been admitted and on 29.03.2006, the following substantial question of law was formulated:-

"Whether the Ordinance XVIII clause 9 is applicable to the appellant who was a teacher in the respondent college?"

10 Record has been perused. The plaintiff was admittedly working in the Tibbia College; he was appointed as a lecturer and thereafter he became the officiating principal. PW-2 Rajinder Kumar was the Section Officer from the Delhi University. He had brought the summoned record. He had proved Ex.PW-2/1 to Ex. PW-2/3. PW-3 was a witness from the medical department of Delhi Administration. He had also produced the summoned record and proved Ex. PW-3/1 & Ex. PW-3/2. DW-2 had brought the summoned record of the Tibbia College Board. He had proved Ex. DW-2/1 & Ex.DW-2/2. This documentary evidence has been proved through summoned witnesses. Documents are not in dispute. These documents were scrutinized by both the two courts below. Ex.DW-2/1 is a communication dated 29.08.1975 wherein the University Grants Commission (UGC) had accepted the proposal of the Delhi University for affiliation of the Ayurvedic & Unani Tibbia

College w.e.f. 1973-1974 subject to the condition that this will not involve any financial liability on the part of the UGC. Ex.PW-3/1 dated 01.04.1976 is a communication of the Deputy Director of the Medical Department of the Delhi Administration to the Registrar of the Tibbia College Board stating herein as follows:-

"Since the Tibbia College has been affiliated to the Delhi University, it would be administratively more appropriate that the regulations governing the service conditions of the employee of the Tibbia College Board are brought in consonance with those governing the service conditions of the employees of the Delhi University"

This communication states that the service conditions of the employees of the Tibbia College may be considered to be brought in consonance with the service conditions of the employees of the Delhi University; it was a proposal yet to be considered and finalized.

11 Ex. PW-3/3 (upon which heavy reliance has been placed by learned counsel for the appellant) is a copy of letter dated 22.09.1978 from the Deputy Registrar, University of Delhi to the Under-Secretary Medical, Delhi Administration. It reads as follows:-

"Disciplinary Action against some of the members of the teaching staff-A & U Tibbia College

Pease refer to your letter No. F.31(16)/78-M (P&H) dated on the subject.

In this connection, I am directed to draw you attention to the clause 9 of the Ordinance XVIII quoted below as desired:-

'No decision for the termination of the services of any teacher or Principal appointed on substantive basis whether on probation or permanent, or for his suspension, shall be taken by the College or the Institution concerned without the prior approval of the Vice Chancellor'"

This communication has only highlighted the contents of

Ordinance XVIII sub Rule 9.

12 This was the evidence adduced by the plaintiff.

13 Per contra, the defendant has placed heavy reliance upon Ex. DW-2/2 dated 06.05.1976. This communicated reads as follows:-

"Dear Sir,

With reference to your letter No. F.7(25)/75-TCBO/340 dated 26.04.1976, I am to inform you that the service conditions of the University employees as prescribed under the Ordinances are not applicable to the employees of your College and as such, the University has nothing to say in this regard.

Yours faithfully

Deputy Registrar (Colleges)"

14 This communication by the Deputy Registrar of the Delhi University to the principal of the defendant college informed him that the Ordinances of the University of Delhi are not applicable to the employees of the defendant college.

15 It was this document which had been relied upon by the two courts below to return a finding that the service conditions of the appellant/plaintiff are not governed by the Delhi University Act, 1922, Ordinances framed thereunder including Ordinance XVIII Rule 9 is inapplicable. These are two concurrent findings returned on the basis of examination of oral and documentary evidence which finding in no manner can be said to be perverse.

16 The impugned judgment had rightly held that Ex. DW-2/2 clearly stated that the plaintiff/ appellant who was an "employee" of the defendant college was governed by the Regulations framed thereunder and had been dismissed under regulations 17. The

Regulations admittedly provide for a forum of appeal which had not been adverted to by the plaintiff/appellant; he had filed an appeal but during the pendency of the appeal, he had preferred to file the present suit.

The said Regulations which have been framed under Section 16 (c) of the Tibbia College Act, 1952 are a government publication. In the definition clause 'chairman' has been defined; "employee" has also been defined; he must be a whole time employee of the Board. "Principal" has also been defined. The contention of learned counsel for the respondent that a teacher/lecturer has not been specifically defined and fits within the definition of "employee" is forceful; a lecturer/teacher is a wholetime employee of the Board. The plaintiff/appellant being a lecturer was an "employee" of the defendant corporation; he was governed by the regulations framed under the Tibbia College Act, 1952 in terms of which he was terminated. Ex. DW-2/2 clearly stated that employees of Tibbia College are not governed by the Ordinances of the Delhi University Act. Ordinance XVIII Rule 9 framed under the Delhi University Act, 1922 was not applicable.

17 In AIR 1962 SC 1314 Sir Chunilal V. Mehta & sons Vs. Century Spinning and Manufacturing Co. Ltd. has reiterated that the proper test for determining as to whether a question of law raised in the case is substantial or not would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question

is settled by the highest court or the general principles to be applied in determining the question are well settled and it is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

18 In AIR 2010 SC 2685 *Bharatha Matha & Anr. Vs. R. Vijaya Renganathn & Ors.*, the Apex Court has reiterated that High Court must not reappreciate evidence in a second appeal unless there is perversity; interference is not called for.

19 There is no perversity in the impugned judgment. Substantial question of law is answered accordingly. It is against the appellant. Appeal as also the pending application are dismissed.

INDERMEET KAUR, J.

MARCH 25, 2011

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