



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/191/2021

Subhas Chandra Karmakar
Vill- Barocharaikhola,
PS-Golakganj,
Dist- Dhubri
Assam-783334

VERSUS

The Apex Professional University
Through its Registrar,
Pasighat-791102
Dist- East Siang

2:The University Grants Commission (UGC)
Age: 0
Occupation :
Bahadur Shah Zafar Marg
New Delh-110002

3.The Department of Higher and Technical Education
represented by Joint Secretary,
Department of Education,
Government of Arunachal Pradesh,
Itanagar-791111

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : L Das

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

Judgment & Order

Date : 10.06.2024

Heard Mr. M. Mili, learned counsel for the petitioner and Ms. J. Zongluju, learned counsel appearing for the respondents.

2. This is an application under Article 226 of the Constitution of India for writ in nature of certiorari and/or mandamus and/or any other writs, orders or directions.

3. This application has been filed challenging the order of termination, dated 22.12.2018, issued by the respondent No. 1/ the Apex Professional University (APU in short).

4. The case of the petitioner, in brief, is that the petitioner is a lecturer in English by profession with more than 23 years of teaching experience and also had held the post of a principle in two schools. He was appointed as lecturer in the Department of English in APU, Pasighat on 04.05.2018, vide its order dated APU/MC/RO/05/2018-283 on contractual basis for a period of 12 months from the date of joining, at a monthly salary of Rs. 14,400/- (subject to statutory and other deductions as applicable).

5. Consequently, on 22.12.2018, the petitioner received a termination letter from his service with immediate effect on the ground that the management was not satisfied with the performance of the petitioner. It is further mentioned that despite repeated efforts from the management to improve the petitioner's performance, it did not yield the desire result and therefore, his service was terminated. But the petitioner was not given a reasonable opportunity of showing cause against the action taken against him, which is not in conformity

with the provision under Section 16 sub-section 9 of the APU Act, 2012. The manner in which the petitioner's service was terminated does not comply with the principles of natural justice.

6. The petitioner's wife was hospitalized with Gallstone Pancreatitis since first week of November 2018 and accordingly, he applied for leave for 5 days which was duly granted to him but subsequently on 22.12.2018, he received the letter of termination and hence in reply to the termination letter, he written a letter to the Registrar, APU on 28.12.2018, pointing out a lot of anomalies and illegalities commonly practice in the University and also questioned its validity. He also wrote a letter to the University Grants Commission (UGC for short) and National Human Rights Commission (NHRC for short) wherein the petitioner gave information about the violation of norms/rules/laws of UGC/Government of Arunachal Pradesh and Government of India by APU, Arunachal Pradesh. The petitioner on 01.01.2019, wrote a letter to the Registrar, APU suggesting to have some arrangements with him. But no arrangement was made by the University and he was also directed to vacate accommodation provided by the University on or before 26.12.2018 without paying the salary which was due to him. However, on 30.03.2019, the petitioner was informed vide official order No. 133/2019 that his belongings were removed and kept somewhere unknown to the petitioner.

7. In pursuant to his letter to UGC, a show cause notice was issued by the Joint Secretary, Education Department, Government of Arunachal Pradesh to the Vice Chancellor of APU, Pasighat to respond to the letter given by the NHRC dated 08.02.2019. Accordingly, the Vice Chancellor, APU replied to the show cause notice on 06.05.2019 denying all the allegations made by the petitioner against the University.

8. It is submitted by Mr. M. Mili, learned counsel for the petitioner that the

terms and condition in the appointment letter, the contract of employment, manner/mode of termination and the University's reply to the show cause notice of the Education Department, Government of Arunachal Pradesh are arbitrary, exploitative, unjust and unconstitutional because of which the petitioner and his family have to go through immeasurable miseries and hardships. It is further submitted that the petitioner tried to do his best for the betterment of the students as well as the teachers and also request the University authorities for buying textbooks as there were no books in the library for the Department of English only to improve the performance as well as to facilitate the teachers to take classes. But not a single book had been purchased by the authority concerned rather it was claimed by the management that the petitioner did not improve his performances despite repeated efforts from the management. The petitioner being 51 years old and has no chance of being appointed in any capacity in other institute whose service have been terminated on the ground of unsatisfactory performance. Further, the petitioner has no other efficacious alternate remedy but to approach this Court under Article 226 of the constitution of India with a prayer for relief and justice. Accordingly, it is submitted that the respondent authority may be directed to release his salary from the month of November 2018 till the date of filing of the case and to return all belongings of the petitioner and also prays for a direction to the respondent authority concerned to issue Experience Certificate from 2018 to till date and give compensation of Rs. 20,00,000/- immediately of family maintenance.

9. Mr. M. Mili, learned counsel for the petitioner submits that as per Clauses of the appointment letter, the petitioner should not have been terminated from his post without prior notice. The termination of service was given because of unauthorized absence from more than 5 days without given a notice. But he

duly applied for leave vide his application dated 19.12.2018. He sought leave from 22.12.2018 to 29.12.2018 for 5 days which was duly sanctioned by the authority concerned and subsequently, he also applied for leave from 02.01.2019 to 04.01.2019 but without giving any chance of hearing, the respondent authority had terminated his service with immediate effect on the ground that his performance was not satisfactory and even after repeated request, he has not improved his performance. Thus, the action taken by the University concerned is arbitrary and illegal which cause immense hardship to the petitioner.

10. In this context, Ms. J. Zongluju, learned counsel for the respondents has submitted that during the time of appointment, the petitioner did not submit NET qualification certificate in spite of several request from the respondent authorities, which is mandatory as per the UGC regulation for the post of teaching staff for higher institute. It is further submitted that the University gave ample opportunity to the petitioner to improve his performance, and mend his behaviour and attitude which was also intimated to him that his service might be terminated without any notice if he does not improve his performance and behaviour. Further, it is submitted that appointment of the petitioner was purely on contractual basis under Section 40(1) of the APU Act, under which both the parties to the contract entered into it with free consent and without undue influence after understating every clause of the contract. More so, leave was not officially sanctioned by the University and same is denied by the respondent. On 28.12.2018, the letter written to the Registrar, is a threat letter in un-parliamentary language with false, frivolous and baseless allegation without any documentary evidence. As per clause-11 of the contract of the employment clearly indicates that procedures to be followed in the event of any dispute arising between the University and the employees. The petitioner contrary to

the above procedure has indulged in an exercise of threat and baseless allegation to get back his job. Further, the petitioner had directly written a letter to the NHRC on 08.02.2019 without any documentary evidence only to destroy the image of the University and to hamper the smooth functioning of the University without any proof. Further, the petitioner has not submitted the 'No Due Certificate' and hence the salary of Rs. 14,956/- is withheld and the University asked the petitioner to vacate the resident allotted by the University vide its letters and email dated 10.01.2019, 21.01.2019, 05.01.2019 and 16.03.2019 but the same did not evoke any response till date.

11. It is further submitted by Ms. J. Zongluju, learned counsel for the respondent that the petitioner made complaint before various authorities deliberately to harass the University for regaining the employment. When the petitioner failed to get any undue benefit from any authority, he approached the chancellor of APU to create documentary evidence. When the petitioner made appeal before the Chancellor on 03.01.2021, the term of the contract was already expired on 08.05.2019. Therefore, the respondent University has no contractual obligation towards the petitioner and therefore the appeal was not maintainable. The termination letter was duly accepted by the petitioner on 24.12.2018 and did not try to resolve the dispute as per clause-11 of contract of employment. The petitioner lost his contractual service due to his non-performance, unauthorized absence from his duty, irresponsible behaviour and non-submission of NET qualification certificate, which is mandatory as per UGC norms.

12. The learned counsel for the respondents further submits that the respondent authorities had issued several reminders to the petitioner to submit his NET qualification certificate, despite several request and demand the petitioner did not submit the same rather several complaints were received from

the students regarding his unsatisfactory performance towards his duty and in the same time he also remain absent from the duty unauthorizedly, based on which the respondent had to issue termination letter to the petitioner. As per the contract, the respondent authorities have a right to terminate the employee without even issuing any notice if he fails to comply with the terms and conditions of the contract. The learned counsel further submits that the petitioner wrote a letter addressed to the Registrar using very unparliamentary words and also give threat to the University authority to file criminal case against the University. Though, the petitioner had applied for leave on 19.12.2018 for five days i.e. from 24.12.2018 to 29.12.2018 but he remained absent from his duty unauthorizedly. The petitioner also applied for leave from 02.01.2019 to 04.01.2019 when he was already terminated from his service on 24.12.2018. More so, as per clause-11 of the contract agreement, the petitioner should approach the Vice Chancellor if any dispute arise between the University and employee but here in the instant case, the petitioner had bypassed the Vice Chancellor of the University and he directly wrote a letter to the UCG and NHRC, which was not as per the contract agreement. She accordingly, submits that the University had right to terminate the petitioner from his service due to his poor performance and complaints received from the students as well as non-submission of NET qualification certificate which is a mandatory requirement and noncompliance of the contract agreement. She further submits that the contract was for only 12 months as per the contract agreement dated 04.05.2018.

13. In this context, the learned counsel for the respondents has referred to the judgment of the Apex Court, in the case of *Rajasthan State Roadways Transport Corporation Vs. Paramjeet Singh*, reported in (2019) 6 SCC 250 wherein the Apex Court has expressed a view that the Contract employees would have no

right to continuance or challenge their termination after the period of contract is over. Therefore, Ms. J. Zongluju submits that the present petition is liable to be dismissed as the petitioner deserve no relief at present.

14. I have considered the submissions of the learned counsel appearing for the parties and also perused the record as well as the annexures filed in the petition.

15. It is an admitted fact that the petitioner was appointed as contractual employee as a lecturer in the Department of English in APU, Pasighat vide the order dated 04.05.2018 and his service was purely on contractual basis on the monthly salary of Rs. 14,400/-. It is the case of the petitioner that he received a letter of termination on 22.12.2018, terminating him from his service with immediate effect on the ground that the Management was not satisfied with the performance of the petitioner. As per the contention of the petitioner, he tried his best for betterment of the student as well as the teachers and also requested the University authorities to buy textbook as there were almost no books in the library for the Department of English, so as to improve performance as well as to facilitate the teachers to take classes. But despite of his best efforts to improve the institution, he was served with the notice of termination on 22.12.2018 and without giving opportunity of hearing and without issuing proper notice, the letter of termination was issued to the petitioner which is not in conformity with the provisions of Section 16 sub-section 9 of the APU Act, 2012. As per the petitioner, he never remained unauthorizedly absent from his duty and he applied for leave through proper channel for 5 days w.e.f. 24.12.2018 to 29.12.2018, which were duly sanctioned by the authority concerned and subsequently, he also applied for leave from 02.01.2019 to 04.01.2019 for medical emergency of his wife.

16. But from the submissions from the learned counsel for the

respondents/University authority, it is seen that the petitioner was asked to submit his NET qualification certificate by the respondent authorities which is a mandatory as per the UGC regulation for the post of teaching staff for higher institute but in spite of several request and demand, the petitioner did not file his NET qualification certificate rather the authority concerned had received complaints from the students and for which he was ask to improve his performance and mend his behaviour and attitude. It was intimated to him that his service may be terminated without even issuing notice if he does not improve his performance and behaviour. But in spite of such communication with the petitioner, he never tried to improve himself nor he furnished NET qualification certificate rather he remained unauthorizedly absent for more than one month which is against the terms and conditions of the appointment order.

17. It is also a fact that the appointment of the petitioner was purely on contract basis, under Section 40(1) of the APU Act, for 12 months and as per the terms of the appointment letter, the respondent authorities have right to terminate an employee without issuing a notice if he fails to comply with the terms and conditions content therein. Here in the instant case, it is seen that the petitioner not only remained absent unauthorizedly from the duty but also fail to furnished the NET qualification certificate which is a mandatory requirement as per the UGC norms and also fails to improve his performance in spite of repeated intimation from the University authority. It is also seen that he applied for leave for 3 days w.e.f. 02.01.2019 to 04.01.2019, but he was no more in his service during that period as he was terminated from his service on 22.12.2018. Further, from the annexures produced by the respondent authorities, it is seen that on 28.12.2018, he wrote a letter to the Registrar with some unparliamentary language and also threaten the University concerned through said letter.

18. As submitted by the learned counsel for the respondent that as per Clause-11 of the contract, the petitioner did not try to resolve the dispute and did not approach the authority concerned but directly he wrote a letter to the UGC and NHRC by bypassing the Vice Chancellor and Chancellor of the University. As per the Clause-11 of the contract agreement, the petitioner should have approached the Vice Chancellor if any dispute arise between the University and employee. More so, it is seen that the petitioner preferred an appeal before the Chancellor on 03.01.2021 when the terms of contract was already expired on 08.05.2019 and thus the University had no contractual obligation towards the petitioner and hence the appeal was not entertained by the authority.

19. As relied, by the counsel for the respondents, the case of *Rajasthan State Roadways Transport Corporation (supra)* wherein the Apex Court has expressed a view that the Contract employees would have no right to continuance or challenge their termination after the period of contract is over. But it is a fact that the petitioner was removed/terminated from his service while the contract was in continuance till 08.05.2019. The ground which was brought by the respondent authorities, it is seen that there was a violation of some terms and conditions of the contract by the petitioner for which the University authority had to take such step for issuance of termination letter to the petitioner. In the same time the period of contract has also over and at such, the order of termination cannot be challenged by the petitioner at this stage.

20. In view of the detail discussion made hereinabove, this Court is of the view that this is not a fit case where the exercise of power under Section 226 of the Constitution of India can be invoked, directing the respondent authorities to pay compensation as well as to issue experience certificate by the authority concerned. However, as the respondent authority has utilized his service till the date of his termination, the respondent is hereby directed to release the salary

of the petitioner of Rs. 14956/- which has been withheld by the respondent University within 1 (one) month of this order.

21. In view of the above, this writ petition stands disposed of.

JUDGE

Comparing Assistant