

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4160 of 2014

Dr.K.Venkata Rao

.. Petitioner

-vs-

1. Vel Tech Dr.RR & SR Technical University
represented by its Registrar having
its Administrative Office at
No.42, Avadi Vel Tech Road
Avadi, Chennai 600 062
2. District Collector
Thiruvallur District
Thiruvallur 602 001
3. Government of Tamil Nadu
represented by the Secretary
Department of Higher Education
Fort St.George
Chennai 600 009
4. Union of India
represented by the Secretary
Department of Higher Education
Ministry of Human Resource Development
Shastri Bhavan, New Delhi 110 001 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned termination order passed by the first respondent vzi., Vel Tech University made in Ref.No.VTU/Reg/FDA/13-14/88 dated 24.12.2013 and quash the same as illegal and consequentially to direct the first respondent to issue the original order of appointment of the petitioner forthwith and allow the petitioner to continue at the same position of Professor with all back wages and attended benefits.

For Petitioner :: Dr.K.Venkata Rao
Party-in-Person

For Respondents :: Mr.S.Thankasivam for R1
Mr.T.M.Pappiah
Special Government Pleader
for R2 & 3
No appearance for R4

ORDER

This writ petition is directed against the impugned order of termination of employment of the petitioner bearing Ref.No.VTU/Reg/FDA/13-14/88 dated 24.12.2013 issued by the Registrar of Vel Tech Dr.RR & SR Technical University, Avadi, Chennai, the first respondent herein.

2. The petitioner, appearing as party-in-person, submitted that he possessed the highest educational qualification of Doctorate in Philosophy in Mechanical Engineering awarded by Anna University, Coimbatore and served previously in the Indian Space Research Organisation (ISRO), Thiruvananthapuram as Scientist and specialised in rocket propulsion system development for the last 29 years. After taking voluntary retirement from ISRO in the year 2001,,he started working for the technical institutions for the last 12 years in different capacities and prior to his joining the first respondent University, he was working as Principal at Indira Gandhi College of Engineering and Technology for Women at Chengalpattu. With this background, he attended the interview in the month of May, 2013 for the position of Dean at Vel Tech University before a high level selection committee of ten eminent dignitaries and was selected for re-employment as Professor in the Department of Aeronautics with a cumulative salary of Rs.1,20,000/- per mensem. He also made contribution to the Provident Fund account, since his appointment was permanent, he pleaded. Adding further, he submitted that at the time of joining the first respondent University on 10.7.2013 by surrendering all his original certificates of qualification and experience, he was not issued with the original order of appointment. Therefore, he made several attempts to get his original order of appointment, but in vain. However, as he was specialised in the field of rocketry, he was assigned with two subjects for teaching, namely, rockets and missiles for the B.Tech students of VII semester and internal combustion engine for the M.Tech students of I semester for the academic year 2013-14. Although as per the UGC and AICTE norms, the re-employed Professors should be allotted only one theory subject to enable them to contribute more on research activities, contrary to the same,

the first respondent University has allotted two theory subjects to him and curtailed his scope for active research.

3. Continuing further, he stated that he produced more than 95% pass result in the VII semester B.Tech course and first semester M.Tech course in the University final examinations. Instead of providing adequate support to his research work, the first respondent accused him of not providing any research and publications, as a result the University demanded him to submit his resignation on 24.12.2013. On his refusal to do so, the first respondent University blocked his bio-metric attendance system. Therefore, he made a representation to the President of Vel Tech University on 30.12.2013 explaining the problems faced by him and at the same time, he also made a request to provide his original order of appointment. But the President of the University neither gave him any reply nor an opportunity to be heard in person. Hence he was constrained to make a complaint to the District Collector, Thiruvallur on 30.12.2013 to intervene and issue appropriate direction to the first respondent University to release his original order of appointment and also to allow him to perform his regular work with the availment of the eligible vacation.

4. When the matter stands as above, all of a sudden the first respondent issued the impugned order of termination dated 24.12.2013, which was served on him on 20.1.2014. Assailing the impugned order of termination, the petitioner submitted that when he was appointed only on 10.7.2013, the termination of his employment on 20.1.2014 is highly arbitrary and unlawful, that too without issuing any show cause notice, since the first respondent has taken a decision to terminate his service on the ground of inefficiency, irregularity and failed to maintain cordial relation with students, staff and administration. He further submitted that although he was a probationer, as per the judgment of the Apex Court in Shamsher Singh and another v. State of Punjab, AIR 1974 SC 2192, even the simple termination of a probationer on the ground of unsuitability is bad in law. Again referring to another judgment of the Apex Court in Civil Appeal No.6767 of 2013 dated 12.8.2013 (Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and others), he submitted that the Courts must always keep in mind that in case of wrongful or illegal termination of service, the wrongdoer should be made to pay the employee his dues in the form of full backwages. Again canvassing the conduct of the first respondent University, the petitioner submitted that from the date of his appointment, the first respondent did not come forward to issue the original appointment order, in spite of repeated requests. Only during the pendency of the writ petition, by way of additional document, the order of appointment with certain artificial conditions has been filed, therefore, the same cannot be taken on record. For all these reasons, he prayed for

allowing the writ petition by setting aside the impugned order of termination.

5. A detailed counter affidavit has been filed by the first respondent. The learned counsel appearing for the first respondent, urging this Court to dismiss the writ petition, submitted that the petitioner was appointed as Professor on 10.7.2013 making it clear that he would be on probation for a period of one year and that the contract shall be liable to be terminated at the discretion of the management. When a perusal of the impugned order of termination clearly shows that his contract was terminated during the period of one year of his probation, as per the ratio laid down by the Apex Court in Chaitanya Prakash and another v. H.Omkarappa, (2010) 2 SCC 623, the impugned order of termination, being a simpliciter, cannot be said to be stigmatic, he pleaded.

6. Heard both sides.

7. Before going to the rival contentions, it is relevant to extract the relevant terms and conditions of the order of appointment dated 10.7.2013 issued to the petitioner, which are necessary for the disposal of this case, as follows:-

"1. This appointment as PROFESSOR takes effect from the date of joining the duty.

2. You shall be on probation for a period of one year.

3. The management has the right to extend the period of probation for a further period of one year or a part thereof at its discretion. You should produce satisfactory documentary evidence in proof of a proper relief from present appointment if any.

4. This contract shall be liable to be terminated at the discretion of the Management.

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to

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17. You must ensure that you will take all possible steps for prevention of ragging in the premises of the educational institution and you are liable for action in case of non-compliance.

...."

The first condition shows that the petitioner was appointed as Professor on and from the date of his joining duty. The second condition shows that he shall be on probation for a period of

one year. The third condition shows that the Management has the right to extend the period of probation for a further period of one year or a part thereof at its discretion and he should also produce satisfactory documentary evidence in proof of a proper relief from present appointment, if any. The fourth condition says that the contract shall be liable to be terminated at the discretion of the Management.

8. The above conditions themselves are self-explanatory and the petitioner has joined duty on 10.7.2013 as Professor accepting the above terms and conditions. On perusal of the documents filed by the first respondent, it is seen that even during the period of probation, the petitioner has visited with several complaints and warning letters have been issued by the Management. To cite a few, by letter dated 17.8.2013, the first respondent has advised the petitioner to show good performance in the forthcoming cycle test 2, since the performance of the petitioner in the cycle test 1 on the subject 'Rockets and Missiles' for VII semester aeronautical engineering students was only 39%. Similarly, based on the complaints received from the students of M.Tech ARAI programme that he petitioner did not show any interest in accreditation activity, which was forwarded by the concerned HOD to the Dean vide his letter dated 6.11.2013, it is seen that the first respondent-Registrar vide the letter dated 16.12.2013 has warned the petitioner for not carrying any research work during the last six months and that he was directed to submit his explanation for such poor performance in research on or before 17.12.2013 and also assurance to show progress every month and also to bring out publication within three months from the date of receipt of the letter. But the petitioner, although has averred in the affidavit that he has given more than 95% pass percentage in VII semester in respect of B.Tech students and I semester in respect of M.Tech students in the University final examinations, has even refused to receive the warning letter. It is also seen from the documents filed by the first respondent that the petitioner has neither made any publications nor involved himself in research activity/departmental activity and that he also refused to take Headship of the department in utter disobedience to competent authority. Therefore, the first respondent University has issued the impugned order of termination on the petitioner on the ground that he had shown no improvement in research publication and also failed to maintain cordial relation with students, staff and administration.

9. Now the first question to be answered is whether the petitioner, who has been terminated during his probation period, is entitled to challenge the termination order on the ground that he was not issued with any notice or enquiry before such termination? Even the judgment of the Apex Court relied upon by the petitioner in Shamsher Singh and another v. State of

Punjab, AIR 1974 SC 2192 clearly holds that if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some other cause.

10. In fact, the Apex Court in Chaitanya Prakash and another v. H.Omkarappa, (2010) 2 SCC 623, while considering a termination simpliciter, has succinctly held as follows:-

"18. It is no longer *res integra* that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In this connection, we make a reference to the decision of the Supreme Court in *Abhijit Gupta v. S.N.B. National Centre, Basic Sciences*, (2006) 4 SCC 469, wherein also a similar letter was issued to the employee concerned intimating him that his performance was unsatisfactory and, therefore, he is not suitable for confirmation. We have considered the ratio in light of the facts of the said case and we are of the considered opinion that the basic facts of the said case are almost similar to the one in hand. There also, letters were issued to the employee concerned to improve his performance in the areas of his duties and that despite such communications the service was found to be unsatisfactory. In the result, a letter was issued to him pointing out that his service was found to be unsatisfactory and that he was not suitable for confirmation, and, therefore, his probation period was not extended and his service was terminated which was challenged on the ground that the same was stigmatic for alleged misconduct. The Supreme Court negatived the said contention and upheld the order of termination.

19. In *Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd.*, (2003) 3 SCC 263 also the employee concerned was kept on probation for a period of two years. During the course of his employment he was

also informed that despite being told to improve his performance time and again there was no such improvement. His shortfalls were brought to his notice and consequently by order dated 16.1.1997 his services were terminated, wherein also a reference was made to his unsatisfactory service. In the said decision, the Supreme Court has held that on the basis of a long line of decisions it appears that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case.

22. In our considered opinion, the ratio of the above referred decisions are squarely applicable to the facts of the present case. The respondent was time and again informed during the probation period about his deficiencies and was given ample opportunities to improve them. Therefore, enough precautions were taken by the appellants to see that the respondent improved his performance and such an opportunity was provided to him. But such advices and opportunity were totally misplaced as the respondent considered the same as unnecessary encroachment and interference in his work..."

11. In the light of the above ratio, in the case on hand, when the petitioner, who was appointed on 10.7.2013 as Professor in the first respondent University, was put on probation for a period of one year, making it clear that his contract shall be liable to be terminated at the discretion of the Management, the termination of his service before completion of one year does not give any cause of action for him to challenge before the Court of law. Accordingly, the first question is answered against the petitioner.

12. Coming to the second contention made by the petitioner that he was not issued with the order of appointment even after the termination order, the learned counsel for the first respondent has placed on record a copy of the letter dated 24.1.2014 issued by the petitioner to the first respondent. A perusal of the said copy clearly shows that after service of the termination order on the petitioner, to receive his salary for December, 2013, he has tendered the no due certificate and even in the said letter, he has not mentioned that he was not issued with the appointment order. Again while receiving his experience certificates and the original educational certificates on 24.1.2014, the petitioner has specifically

acknowledged that he has no claim from the Management. Had he not been issued with order of appointment he would not have been issued with NOC. That shows that the petitioner has no claim either pecuniary or otherwise, therefore, it is absolutely improper for the petitioner to make an allegation before this Court while challenging the impugned order that he was not issued with the original order of appointment. When the petitioner has clearly admitted that he has no claim from the Management at the time of receiving his original certificates, this Court is not inclined to accept his contention that he was not issued with appointment order even after the issuance of the termination order.

13. For all the aforesaid reasons, this Court is not able to find any substance in the contentions made by the petitioner. Accordingly, the writ petition fails and it is dismissed. Consequently, M.P.No.1 of 2014 is also dismissed. No costs.

-s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

To

1. The District Collector
Thiruvallur District
Thiruvallur 602 001
2. The Secretary to Government
Department of Higher Education
Fort St.George
Chennai 600 009
3. The Secretary to Union of India
Department of Higher Education
Ministry of Human Resource Development
Shastri Bhavan
New Delhi 110 001

+2 Ccs to Mr.Dr.K.Venkata Rao, sr 24205
+1 CC to Mr.S.Thankasivam, Advocate sr 24389
+1 CC to M/s. Sunitha Kumari, sr 24225
+1 CC to Govt. Pleader sr 24476

W.P.No.4160 of 2014

NR II (CO)
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