

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.20877 of 2004

ORDER:

Heard Sri S.Satya Prasad learned Senior Counsel for petitioner.
None appeared for respondent.

The petitioner prays for Mandamus declaring Memo No.C2/5909/2004 dated 26-10-2004 as illegal, unconstitutional and contrary to the first Statute of the University and consequently prays for reinstating him into service as Professor.

The allegations in the affidavit are that in February 1980, the petitioner joined as Lecturer in the respondent University. The petitioner was promoted as Associate Professor and Professor in the years 1987-1997 respectively. In the month of October, 1999, the petitioner received an offer to work as Professor in A1-Ghurair Academy at Dubai. The petitioner accepted the offer of Professor from the Foreign University and represented to respondent to grant and continue lien so as to enable him to take Foreign Assignment in Dubai. The respondent issued Proceedings No.C2/5909/99 dated 08-10-1999 granting lien and permitted the petitioner to take assignment abroad for a period of one year. On 04-08-2000, the petitioner requested for extension of lien for two more years to stay abroad and work as Professor. As against the request of two years extended lien the respondent through Proceedings No.C2/5909/2000 dated 15-11-2000 extended the lien by one more year with effect from 14-10-2000.

The petitioner again on 21-08-2001 represented to the respondent University to grant extension to continue the Foreign assignment for one more year. The petitioner relies upon G.O.Ms.No.214 dated 03.09.1996 and contends that faculty in a University was enabled to seek employment abroad. According to petitioner, the Government employee will be allowed to go abroad for a maximum period of four years eleven months subject to terms and conditions mentioned therein. The foreign assignment, if is taken up for five years, it is stated results in cessation of employment. The argument of petitioner in other words is that the extension granted for the period 14-10-2001 to 30-06-2002 is in terms of G.O.Ms.No.214 dated 03.09.1996 and the benefit of instant Government order ought to be extended. The distinction the petitioner draws is that the Foreign assignment from 15-10-1999 to 14-10-2001 is in accordance with the Regulations of respondent University, and further extension of lien granted by respondent is in terms of G.O.Ms.No.214 dated 03.09.1996. Therefore, the case of petitioner is that the period of five years of benefit expires by 14-10-2006. The petitioner further informs that the Foreign University by recognizing the services of petitioner elevated the petitioner as Dean for the College of Computing at A1-Ghurair University at Dubai. It is further alleged that the refusal to grant further extension is illegal.

While matter stood thus, the respondent issued Memo No.C2/5909/2004 dated 27-07-2004 calling upon the petitioner to

report back to duty on or before 20-08-2004, in default, the respondent would be constrained to initiate disciplinary action against the petitioner.

The petitioner alleges to have sent a reply on 20-08-2004 by registered post with acknowledgement due and reiterates that he is entitled for consideration of five years extension of lien as matter of right in terms of G.O.Ms.No.214 dated 03.09.1996.

The respondent by registered post/air mail sent Memo No.C2/5909/2004 dated 24-09-2004 informing the decision of the Executive Council dated 17-09-2004 that final notice of one month to petitioner to report to University duty on or before 18-10-2004 was issued and in case of default, the services stand terminated.

The petitioner admits to have received Memo dated 24-09-2004 and that as called upon by the respondent, petitioner did not join duty in the University. The respondent issued Proceedings C2/5909/2004 dated 26-10-2004 terminating the services of petitioner with effect from 19-10-2004. Hence, the writ petition.

The Registrar of respondent University filed counter affidavit. The respondent does not dispute the dates chronologically referred to above. Hence, to that extent, for brevity, I am not referring to the dates and events once again.

The case of respondent is that the petitioner completed five years stay abroad by 14-10-2004. G.O.Ms.No.214 dated 03.09.1996 contemplates to sanction leave upto five years. Further leave

granted to an employee may be recalled or cancelled by respondent to meet exigencies in the administration. It is further stated that the petitioner cannot have it both ways namely, continuing lien in the University and enjoying the benefit of Foreign employment. The students of the University are facing difficulties on account of abandonment of service by Professors on the plea to take up Foreign employment. It is stated that final notice vide Memo.No.C2/5909/2004, dated 24-09-2004, was issued calling upon the petitioner to report for duty on or before 18-10-2004. As there was no reply from petitioner, the proceeding impugned in the writ petition has been issued. The respondent relies upon Proceedings No.C2/5909/1999 dated 08-10-1999 and the conditions imposed therein, which read as follows :-

- “1. xxxxxxxxxxxxxx
2. xxxxxxxxxxxxxx
3. xxxxxxxxxxxxxx
4. xxxxxxxxxxxxxx
5. xxxxxxxxxxxxxx
6. xxxxxxxxxxxxxx

7. The lien period will be reckoned from the date of relief in the University to the date of rejoining again in the University.

8. The University reserves the right to recall him for duty in the University at any time during the period of the foreign service.

9. xxxxxxxxxxxxxx

10. His lien shall not be considered for conversion to deputation nor he shall be granted deputation in continuation of lien or vice-versa.”

It is further alleged that the petitioner has not complied with the conditions of lien and did not pay leave salary and pension contribution for the lien period from 15-10-1999 to 14-10-2001. The petitioner was put on notice while granting lien through Memo dated 19-08-2003.

It is further stated that the services of petitioner are essential in the College and there is acute shortage of faculty in Computer Science and Engineering Department. Therefore, finally, in the Executive Council Meeting held on 17-09-2004 a Resolution to the following effect was passed :-

“Resolved to give final notice for one month time to Dr.G.Sagar, Prof. of CSE, JNTU CEH to report to the University on or before 18-10-2004. In case, he fails to report, his services stand terminated. Further, resolved to authorize the V.C. to take immediate action on the item without waiting for confirmation of the minutes”.

Hence, Memo No.C2/5909/2004 dated 26-10-2004 was issued terminating the services of petitioner. The respondent prays for dismissing the writ petition.

The petitioner filed W.P.No.19068 of 2004 challenging Memo No.C2/5909/2004, dated 24-09-2004 and with the service of termination order dated 26-10-2004, the said writ petition was dismissed as withdrawn and thereafter, the present writ petition has been filed.

Sri Satya Prasad contends that the respondent through the proceedings impugned in the writ petition terminated the services

of petitioner and the termination *prima facie* is contrary to the Statutes of University. He relies Statute No.33, which reads as follows :-

“Disciplinary Proceedings :- (1) The following penalties may for good and sufficient reason, and as hereinafter provided, be imposed on any manner of the service of the University namely:-

- i) censure ;
- ii) with holding of increments or promotion;
- iii) recovery of the whole or part of any pecuniary loss caused to the University ;
- iv) reduction to a lower service, grade or post or to a lower time scale, or to a lower grade in a time scale;
- v) compulsory retirement ;
- vi) removal from service which shall not be a disqualification for future employment under the University :
- vii) dismissal from service which shall ordinarily be a disqualification for future employment in the University.”

According to him, no order imposing the punishment referred to therein can be passed by the appointing authority and except by conducting an enquiry, the employee concerned has been given an opportunity of showing cause against the action proposed to be taken against him by the respondent University. As the proceeding terminating the petitioner's service did not precede show-cause notice and enquiry, the impugned proceeding is liable to be set aside.

He further contends that G.O.Ms.No.214 dated 03.09.1996 provides for five years of stay abroad. The respondent granted

permission in accordance with the Rules of the University to go abroad for the period 15-10-1999 to 14-10-2001 and the five year period starts with effect from 15-10-2001 and comes to end by 15-10-2006 and therefore, the termination order for all purposes denies the benefit granted to petitioner by G.O.Ms.No.214 dated 03.09.1996 and liable to be set aside.

Learned counsel fairly admits that the petitioner continues to work abroad even as on date.

I have taken note of the contentions urged on behalf of the petitioner and perused the material available on record.

Now the point for consideration is whether the proceeding No.C2/5909/2004, dated 26-10-2004 is illegal and contrary to G.O.Ms.No.214 dated 03.09.1996 and violative of Statutes of respondent University ?

Before taking up the correspondence between parties, let me first examine how five years period to which a Government employee is permitted to go abroad on Foreign assignment.

The petitioner has not placed G.O.Ms.No.214 dated 03.09.1996 on record but as it is not substantially disputed by the respondent, the objection raised by reference to G.O.Ms.No.214 dated 03.09.1996 is considered from the material available on record.

According to petitioner, the period of lien was granted from 15-10-1999 to 14-10-2001 as per the Rules of the University. Therefore, the petitioner assumes starting point for five years from

15-10-2001. After perusing the material on record, this Court is of the view that the submission of petitioner is contrary to the proceeding dated 08-10-1999 granting lien to petitioner. Condition No.7 of the proceeding dt.08-10-1999 stipulates that the lien period will be reckoned from the date of relieving in the University and to the date of rejoining again in the University. The fact that the petitioner has brought to the notice of the University G.O.Ms.No.214 dated 03.09.1996 through his representation dated 01-07-2002, is no answer to accept that the five years period of lien permitted by the Government Order starts from 01-07-2002. The condition incorporated in proceeding dt.08-10-1999 reserves right to University to recall the petitioner to duty at any time during the period of Foreign Service.

In the case on hand, the respondent did not recall when the lien was extended but refused to extend the lien beyond five years from 15-10-1999.

The interpretation or benefit sought to be derived through G.O.Ms.No.214 dated 03.09.1996, in my considered view, is untenable and this contention is liable to be rejected and accordingly rejected.

It is the further case of petitioner that the services of petitioner are terminated without conducting enquiry or affording opportunity to petitioner and therefore, the impugned proceeding is liable to be set aside.

After perusing the statute relied on by petitioner and chronological appreciation of dates and events, this Court has no hesitation to observe that one cannot have a cake and eat it too. The petitioner, admittedly, has denied his services to the students in the respondent University and has accepted Foreign assignment for whatever reason. When the Foreign Assignment has promoted him as Dean and he realized the responsibility entrusted to him by foreign University and requests that further extension of lien be granted. In examining such request the respondent is entitled to take the requirements of its students and either can call back an employee on Foreign Assignment or refuse to further extend the lien.

In the case on hand, the respondent through Memo No.C2/5909/2002 dated 25-09-2002 has called upon the petitioner to report to duty by 01-04-2003 without fail. The petitioner did not comply with the order of respondent. The petitioner's reply that no further permission is required for working abroad was rejected by respondent and finally directed petitioner to report for duty by 31-12-2003.

The respondent has been informing the petitioner that necessary action against the petitioner would be initiated by treating his absence from 31-03-2003 as unauthorized as per Rules. The petitioner on 31-12-2003 replied that he is entitled for continuation of lien. He has further cautioned the respondent that

the respondent would be held responsible for all the damages petitioner suffers on account of hasty action. Thereafter, the respondent issued Memo No.C2/5909/2004 dated 27-07-2004 informing that the absence of petitioner from 31-03-2003 is unauthorized as per Rules and necessary action will be initiated. Finally, as noted above, through Memo dated 24-09-2004 the Resolution of the Executive Council was informed to petitioner and one month time was granted to report back to duty. The petitioner though acknowledged Memo, did not send reply or comply with the Resolution. The correspondence clears the onus cast on respondent in showing that procedure was followed. Thereafter, the respondent issued proceedings impugned in the writ petition.

This Court is of the view that the petitioner for all purposes is absent from 31-03-2003 and same is rightly treated as unauthorized. That means, the respondent has not extended the lien or permission to petitioner to stay abroad with effect from 31-03-2003. The petitioner having not complied with the demand of respondent to report back to duty cannot insist upon conducting a regular enquiry for terminating his services. The petitioner for his own reasons and views on scope of G.O. it has to abandon the service in respondent University and he cannot now rely upon the Statute to challenge the termination proceeding impugned in the writ petition. It could be different if the petitioner having acknowledged the registered air mail sent on 24-09-2004 sent a reply to respondent or complied with the demand of University, but having not done so the same has

another implication particularly when the petitioner chooses to act as he has understood the G.O. The Resolution passed by the Executive Council has made termination automatic, if the petitioner does not report to duty as directed by the Executive Council.

Having regard to the sequence of events and the conduct of petitioner, I am satisfied the ground urged by reference to Statute is misconceived, not available and accordingly rejected.

The writ petition fails and is accordingly dismissed. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

Date: 27-03-2017
Prv



S. V. BHATT, J

