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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5071/2019 & C.M.APPL.22483/2019 (stay)

Dr. K.S. JAWATKAR

..... Petitioner

Through: Petitioner in person.

versus

THE CHANCELLOR JAWAHARLAL NEHRU UNIVERSITY &
ORS.Respondents

Through: Mr. Kushal Kumar and
Ms. Monika Arora, Advocates for
JNU.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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21.11.2019

1. In this writ petition, the petitioner has prayed for the following reliefs:-

“(a) Declare 1993 amendment to Clause 6 of the Academic Ordinance of JNU Act, 1966, vide Res. No.5.6/EC/4.10.1993, as illegal, null and void and ultra vires the JNU Act, 1966, its Statutes and Ordinances and violative of the petitioner’s fundamental rights under Article 14,16, 19(1) (g) and 21 of the Constitution of India;

(b) Direct the Chancellor and the respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1.1.1992 and/or alternatively Appadorai Chair as contemplated in its order dated 27.7.1984 on the benefits of emoluments as well as seniority and promotions implicit in its final judgment dated 12.5.1989 JNU vs. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577 : (1989 3 SCR 273) and do complete justice under Article 142 of the Constitution;

(c) *Direct the Chancellor and the respondent – University the petitioner be deemed to have continued in service up to the age of 65 years in terms of statutory provision of Clause 6 of the Academic Ordinance vide Res. No.4(h)/EC/19.4.1976*

(d) *Direct the Chancellor and the respondent-University to pay the petitioner entire arrears of salaries up to 31st August 2003 and other statutory dues with interest @ 18% per annum thereon;*

(e) *Direct the Chancellor and the respondent – university to grant consequential benefits of service to the petitioner, including arrears of pension w.e.f. 1st September 2003, the benefits of emoluments, designation, scale of pay, increment, provident fund, retirement benefits, pensions etc. in terms of prayer (b), (c) and (d) above with interest @ 18% per annum thereon;*

(f) *Direct Registrar General of High Court of Delhi to refund the costs of Rs.60,000/- imposed by Ld. Single Judge vide judgment dated 3.3.2017 in writ petition No.884/2013 which judgment is a nullity. The costs was deposited with Registrar General and kept in fixed deposits to entertain the appeal vide order dated 27.8.2018 in LPA No.544/2017”*

2. At the outset, Mr. Kushal Kumar, learned counsel for the respondent no.2 – University has raised an objection as to the maintainability of the present petition in the light of the earlier litigations instituted by the petitioner herein on the same cause of action and on invoking the principles of *res judicata*. According to the learned counsel, this is the third round of litigation for the very same reliefs that have been declined to the petitioner by this Court.

3. In response, the petitioner, who appears in person, claims that the present writ petition is founded on the liberty granted to him by the Supreme

Court vide order dated 01.04.2019 passed in W.P.(C) No.207/2019, filed by him. He has relied on the judgment of the Supreme Court in Municipal Corporation of Greater Mumbai vs Pankaj Arora (Secretary) & Ors. reported as **(2018) 3 SCC 699**, to contend that once the Supreme Court has granted him liberty to approach the High Court, the present petition is maintainable.

4. Before proceeding further, it will be worthwhile to set out in brief, the history of the litigation, which the petitioner has initiated against the respondents spanning over several years.

5. The petitioner began his services in the Jawahar Lal Nehru University (JNU) in the year 1971, as a Research Assistant in International Relations in the Centre for International Politics & Organization. In 1973, he was appointed as an Assistant Professor/Associate Fellow at JNU Centre for post-graduate studies at Imphal. In the year 1982, the petitioner challenged his “automatic” transfer from JNU to Manipur University by filing W.P.(C) No.595/1982. The High Court decided the petition in his favor vide order dated 11.10.1984 and declared that he shall continue to be in the service of JNU. An appeal bearing LPA No.145/1982, preferred by JNU against the said judgment was dismissed by the Division Bench vide order dated 20.01.1984. SLP No.4933/1984 filed by the JNU was also dismissed by the Supreme Court in 1989.

6. In 1992, the present petitioner initiated fresh litigation claiming benefits of emoluments. He first filed W.P.(C) No. 251/1992 against JNU before the Supreme Court for enforcement of its previous directions dated 12.05.1989 and vide order dated 14.05.1992, the Supreme Court permitted him to file a petition before the High Court. Accordingly, on 15.07.1992 the petitioner filed a fresh writ petition bearing W.P.(C) No.2044/1992 for

payment of his salary at the revised scale along with the arrears of pay. During the pendency of that writ petition, the petitioner was promoted as an Associate Professor.

7. Several other writ petitions for various reasons were filed by the petitioner over a period of time which included W.P.(C) No.6107/2000, for his promotion to the Appadorai Chair and for continuance in service of the University till he attained the age of 65 years as per Clause 6 of Academic Ordinance of JNU Act, 1966, vide Resolution No.4(h)/EC/19.4.1976. He also made a detailed representation dated 04.09.2006 to the University claiming inapplicability of the 1993 amendments to Clause 6 of Academic Ordinance to him by virtue of Clause 7 and his appointment to the Appadorai Chair as Professor. Since no response was received from the Chancellor and Vice Chancellor of JNU, the petitioner filed a fresh writ petition bearing W.P.(C) No.5/2007 before the Supreme Court which was allowed to be withdrawn with liberty to approach the High Court vide order dated 22.01.2007. Accordingly, the petitioner filed W.P.(C) No.911/2007, in which it was prayed that he be promoted as a Professor to the Appadorai Chair w.e.f. 01.01.1992. He had also sought a declaration that he should be deemed to have continued in service upto the age of 65 years based on Clause 6 of the unamended Academic Ordinance.

8. Both the captioned writ petitions, namely, W.P.(C) Nos.911/2007 and 2044/1992 were heard and disposed of vide judgment dated 16.09.2011 whereunder, W.P.(C) No. 911/2007 was dismissed and W.P.(C) No. 2044/1992 was disposed of by granting simple interest @ 9% on the arrears of the revised pay.

9. Pursuant to the orders of the Supreme Court dated 02.01.2013, passed in W.P.(C) No.499/2012, as claimed by him, the petitioner filed W.P.(C) No.884/2013 for the following reliefs :-

“(a) Declare 1993 amendment to Clause 6 of Academic Ordinance of JNU Act, 1966, vide Res. No.5.6/EC/4.10.1993, as illegal, null and void and ultra-vires the JNU Act, 1966, its Statutes and Ordinances and violative of the Petitioner’s Fundamental Rights under Article 14, 16, 19(1)(g) and 21 of the Constitution of India;

(b) Direct the Chancellor and the respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 01.01.1992 and/or alternatively Appardorai Chair as contemplated in its order dated 27.07.1984 on the benefits of emoluments as well as seniority and promotions implicit in its final judgment dated 12.05.1989: JNU v. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: [1989] 3 SCR 273 and do complete justice under Article 142 of the Constitution;

(c) Direct the Chancellor and the respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of statutory provision of Clause 6 of Academic Ordinance vide Res. No.4(h)/EC/19.4.1976;

(d) Direct the Chancellor and the respondent-University to pay the petitioner entire arrears of salaries up to 31 August 2003 and other statutory dues with interest thereon;

(e) Direct the Chancellor and the respondent-University to grant consequential benefits of service to the petitioner, including the benefits of emoluments, designation, scale of pay, increment, provident fund, retirement benefits, pension etc. in terms of prayers (b), (c) and (d) above with interest thereon;

(f) *Pass such and further order, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and*

(g) *Award the costs to the petitioner.'*

10. The above petition was dismissed by the learned Single Judge vide judgment dated 03.03.2017 with costs of Rs.60,000/-. Aggrieved thereby, the petitioner preferred an appeal bearing LPA No.544/2017. Vide order dated 30.11.2018, the Division Bench upheld the decision of the learned Single Judge. Subsequently, the petitioner approached the Supreme Court by filing SLP No.33906/2018, but the same was dismissed as withdrawn vide order dated 07.01.2019. After that, the petitioner seems to have filed writ petition bearing No.207/2019 before the Supreme Court, which was dismissed by way of the following order : -

"We decline to interfere in the jurisdiction under Article 32 of the Constitution of India. The writ petition is dismissed accordingly with liberty to the petitioner to approach the High Court, if so advised.

Pending applications, if any, stand disposed of.'

11. It is on the basis of the above order that the petitioner has filed the present petition with materially the same prayers as made by him in W.P.(C) No.884/2013, contending that he had been granted such a liberty by the Supreme Court.

12. We may notice at this point that W.P.(C) No. 884/13 was dismissed by the learned Single Judge vide judgment dated 03.03.2017, also imposing costs on the petitioner as it was held that by way of the captioned petition, the petitioner was seeking to reopen issues already settled by the courts in

W.P.(C) No.911/2007 and W.P.(C) No.6107/2000. Quoting extensively from the prayers in W.P.(C) No.6107/2000 and W.P.(C) No.911/2007, the learned Single Judge held that prayer clauses (b), (c) and (d) in the first petition and the prayers in the latter petition were the same as in W.P.(C) No.844/2013. It may be noted here that prayer clauses (b), (c), (d) and (e) of the present petition are also the same as in the previous three writ petitions. The observations made by the learned Single Judge are apposite and are quoted below :-

“3. The present writ petition, as the discussion given hereinafter will show, is hopelessly barred by the principles of res judicata. In fact the filing of the present writ petition is a gross abuse of process of law because the present writ petition is not the first writ petition seeking the reliefs of benefits of higher age of retirement to 65 years and for grant of promotion to the post of Professor/Appadorai Chair, but is in fact the third writ petition filed by the same petitioner on the same subjects and in which earlier petitions the petitioner was unsuccessful. Putting it in other words, inspite of the issues raised having been decided in one earlier writ petition, the petitioner thereafter inspite of the bar of principles of res judicata filed yet another second writ petition seeking the same reliefs and which was held to be barred by the principles of res judicata in terms of the judgment dated 16.9.2011 in W.P. (C) No. 911/2007. Petitioner has however once again filed this present third writ petition for the same reliefs and which thus is liable to be dismissed as being barred by the principles of res judicata”.

(Emphasis added)

13. The learned Single Judge observed that the captioned writ petition was barred on the grounds of *res judicata* as also on the doctrine of delay and laches as well as on merit. The learned Single Judge further observed

that the petitioner had indulged in semantics and in actual fact, his service conditions had not been amended to his detriment as under the unamended Clause 6 of the Academic Ordinance prior to 1993 and the amended clause thereafter, it was noted that the unamended clause provided for an entitlement of re-employment for 3 years which continued in terms of Clause 6.2 of the amended clause 6 of the Academic Ordinance. Also, under the unamended Clause 6, a teacher was entitled to continue till the maximum age of 65 years which continued to be so under Clause 6.3 of the amended Clause 6 of the Academic Ordinance.

14. With respect to the appointment sought by the petitioner to the Appadorai Chair, the learned Single Judge observed that this issue had been decided against him in two earlier writ petitions, namely, W.P.(C) Nos.6107/2000 and 911/2007 and yet, he had sought the same relief in prayer (b) of the said petition.

15. Noting that each time the petitioner had preferred LPAs against the dismissal of his writ petitions by the learned Single Judge and had filed SLPs before the Hon'ble Supreme Court after the dismissal of the LPAs, yet he persisted in raising the same issues in fresh petitions, the learned Single Judge found it fit to dismiss the petition and impose costs observing as follows :-

“25. Since the petitioner is found to be indulging in and is habitual of unnecessary repeated litigations, although the issues argued and urged have achieved finality, the only way to stop the petitioner from indulging in repeated litigations is to impose costs upon the petitioner. Although, the facts of the present case require that in view of wastage of valuable judicial time of this Court, and unnecessary expenditure to the employer/JNU, the writ petition must be

dismissed with costs of at least Rs. 2,00,000/- with Rs.1,00,000/- being payable to the Prime Minister's National Relief Fund and Rs.1,00,000/- to the employer/JNU, however, considering that the petitioner was a teacher in JNU, this writ petition is dismissed with costs of only Rs.60,000/-, out of which Rs.30,000/- shall be paid to the respondent no. 4/employer/JNU and costs of Rs.30,000/- being deposited with Friendicoes, No. 271 & 273, Defence Colony, Flyover Market, Jangpura Side, New Delhi-110024. Costs be paid in six weeks failing which the same can be recovered as per law.”

(Emphasis added)

16. However, it appears that the desired effect was lost on the petitioner. Against this judgment of the learned Single Judge, the petitioner filed LPA No.544/2017. Before a coordinate Bench of this Court, the petitioner raised an objection as to the jurisdiction of the learned Single Judge contending that in view of the Gazette Notification dated 17.11.1995 issued by this Court on the administrative side, pertaining to the jurisdiction of the Single Judges and all Benches of the Court, petitions where *vires* of an Act is challenged, should be decided by a Bench of two judges and the judgment rendered by the learned Single Judge was a nullity. Secondly, it was contended that Clause 6 of the Academic Ordinance of the JNU was amended on 04.10.1993 but under the JNU Act, no change could be made in the terms and conditions of the service of a teacher after his/her appointment, so as to adversely affect him. In the LPA, while dealing with the first contention, the Division Bench had observed as under:-

“11. Having heard the appellant and perused the records of the case, insofar as the first submission of the appellant that in view of the Gazette Notification dated November 17, 1995, the learned Single Judge had no

jurisdiction to hear the petition, as it pertains to the vires of the Act is concerned, suffice it to state that the Notification refers to “petitions where vires of the Acts are challenged”. Further, a perusal of the relief clause, as reproduced above, it is clear that the relief of the appellant was a challenge to the vires of Clause 6 of the Academic Ordinance of the JNU and not to any provisions of JNU Act, 1966. If that be so, there was no bar on the learned Single Judge to hear and decide the petition. Suffice it to state, that the learned Single Judge was within his right to hear and decide the writ petition.”

(Emphasis added)

17. In respect of the second submission, the Division Bench observed as under:-

“13. The appellant in the earlier two writ petitions, instead of challenging Clause 6, had sought the benefit under Clause 6. Whereas, in this petition he has challenged the vires of Clause 6 which is clearly impermissible, as, the petitioner could have sought such a prayer in the earlier two writ petitions. But he chose not to seek such a relief. Hence the prayer now shall be hit by principles of res judicata or constructive res judicata. In any case, the relief, for being continued till the age of 65 years has been rejected in the earlier writ petitions. That apart, the appellant having retired in the year 2003 at the age of 63 years, could not have agitated the issue in the year 2013, after a period of 10 years for being continued in service till 65 years. The petition was also hit by delay and laches. We are of the view that the learned Single Judge was right in his conclusion in paras 23 to 25, which we have already reproduced above”.

(Emphasis added)

18. Aggrieved by the order dated 30.11.2018, the petitioner preferred SLP bearing No.33906/2018 before the Supreme Court, which was dismissed on 07.01.2019 vide the following order : -

“We are not inclined to interfere with the judgment and order passed by the High Court.

The Special Leave Petition is dismissed accordingly.

Later on, the Petitioner-in-person seeks permission to withdraw the special leave petition. Permission granted. The special leave petition is dismissed as withdrawn.

Pending applications, if any, stand disposed of.’

19. Despite the efforts of the learned Single Judge to discourage the petitioner from re-agitating dead issues, the record bears out the fact that the petitioner filed a fresh writ petition before the Supreme Court bearing W.P.(C) No.207/2019, for the very same relief which was dismissed vide the order dated 01.04.2019, reproduced hereinabove. As noticed above, the contention of the petitioner is that vide the order dated 01.04.2019, the Supreme Court had granted him liberty to approach the High Court, “if so advised”. The petitioner does not seem to have gone beyond himself for suitable advice and claims that on the basis of the decision of the Supreme Court in the ***Municipal Corporation of Greater Mumbai’s*** case (Supra), the present petition is maintainable. He has particularly relied on the following paragraph:

“9. Having heard the learned counsel for the appellant and going through the relevant material before us, we are of the opinion that the High Court through the impugned order has erred in dismissing the criminal writ petition at

the threshold level without examining the merits of the case.”

(Emphasis added)

20. It is apparent that this judgment relied upon by the petitioner is inapplicable to the facts of the present case inasmuch as here, the matter had been heard at length and disposed of on merits by the learned Single Judge as well as by the Division Bench and not at the threshold. Significantly, even the Supreme Court did not find any merit in the SLP filed by the petitioner and had initially dismissed the SLP but subsequently, permitted the petitioner, who appeared in person, to withdraw it.

21. The contention of the petitioner that the judgment of the learned Single Judge is a nullity and therefore, the present petition is maintainable, is liable to be rejected outright in the face of the observations of the Division Bench in the order dated 30.11.2018, as extracted in para 15 above. Certainly, by way of the present writ petition, the petitioner cannot expect a coordinate Bench to interfere with the conclusions drawn by the Division Bench on 30.11.2018.

22. Therefore, it goes without saying that the petitioner has once again abused the process of the court by filing the instant petition. The petitioner having exhausted his remedies before the learned Single Judge and the Division Bench as also the Supreme Court on the issue relating to his age of retirement and promotion and the applicability of the amended Clause 6 of the Academic Ordinance, has chosen to come before this Court once again with the very same prayers including a prayer seeking setting aside of the costs imposed on him, to the tune of Rs.60,000/-, vide judgment dated 03.03.2017 in W.P.(C) No. 884/2013 which should have been a subject

matter of LPA No.544/2017 and SLP No.33906/2018 and therefore, cannot be re-agitated before us.

23. The instant writ petition is dismissed as meritless along with pending applications and with additional costs of Rs.10,000/- to be deposited with the Delhi High Court Staff Welfare Fund within four weeks along with the previous costs of Rs.60,000/- imposed in terms of the order passed in W.P.(C) No.844/2013.

HIMA KOHLI, J

ASHA MENON, J

NOVEMBER 21, 2019

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