

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 9305 of 2021

Sudipta Bhattacharyya & Ors.

Vs.

Visva-Bharati & Ors.

For the writ petitioners	:-	Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Samim Ahamed, Adv. Mr. Arka Maity, Adv. Mr. Baboni Bhattacharjee, Adv.
For Visva-Bharati	:-	Mr. Pranit Bag, Adv. Mr. Anuj Kumar Mishra, Adv.
Heard on	:-	14-07-2021
Judgment on	:-	27-07-2021

Amrita Sinha, J.:-

The issue to be decided in the instant writ petition is, whether the University can deduct a portion of the salary of its employees, as donation, without obtaining their consent.

The petitioners are Adhyapakas of different departments of Visva-Bharati, Santiniketan. They are dissatisfied with the action on the part of the Registrar (Acting), Visva-Bharati in issuing a notice being No. REG/1547 dated 24th May, 2020 intimating that the accounts office will deduct a day's salary from the monthly salary of May, 2020, for donating the same in the Chief Minister's Relief Fund, West Bengal/West Bengal State Emergency Relief Fund in aid of the people affected by cyclone Amphan that hit Kolkata and several districts of West Bengal on 20th May, 2020.

A subsequent notice dated 29th May, 2020 issued by the Registrar (Acting) has also been placed before the Court. The notice mentions that by virtue of the powers vested in the University and the Vice-Chancellor as per Sections 6 and 14(3) read with Section 5A and other provision of the Visva-Bharati Act, 1951, herein after referred to as 'the Act', the Vice-Chancellor has found it appropriate for the University to contribute to the Chief Minister's Relief Fund, West Bengal/West Bengal State Emergency Relief Fund by means of donation of one day's salary of all permanent employees to support the endeavour of the Government. The notice further mentions that the permanent employees of Visva-Bharati are expected to donate a day's salary in keeping with the Rabindrik tradition and objectives of the University which are described in Sections 5A, 6 and elsewhere in the Act and Statutes.

The aforesaid Sections of the Act have been placed.

According to the petitioners, the deduction is impermissible without obtaining the consent of the employees.

The learned advocate appearing on behalf of the petitioners contends that the unilateral action on the part of the University in deducting the salary from the employees, including the petitioners, is wholly without jurisdiction and de hors the provision of law.

According to the petitioners, there is no provision in the Act which entitles the University to deduct a portion of the salary of an employee. The provisions relying which the salary has been deducted do not confer any such power upon the University. The petitioners strongly contend that the deduction is without any authority of law.

The petitioners inter alia pray for a direction upon the respondent authorities to refund the amount illegally deducted from their salary.

Per contra, the learned advocate representing Visva-Bharati submits, that the deduction has been made invoking the provision of Section 14(3) of the Act which permits the Vice-Chancellor to exercise any power conferred on any authority of the University if immediate action is necessary on any matter.

It has further been submitted that the second proviso of Section 14(3) of the Act lays down that, an employee who is aggrieved by the action of the Vice-Chancellor shall have the right to appeal against such action to the Karma-Samiti (Executive Council) within ninety days from the date of communication of such action. It has been submitted that instead of exhausting the remedy available under the Act, the petitioners have approached this Court directly. Submission has been made for dismissal of the writ petition on the ground of availability of an alternative remedy under the Act.

I have heard the submissions made on behalf of both the parties.

The petitioners are the employees of the University. As per their service condition they are entitled to receive their salary, on monthly basis, at the end of each month. The basic pay which the petitioners are entitled to receive is a fixed and definite amount.

‘Salary’ as per Oxford Dictionary is, the money that employees receive for doing their job. According to Black’s Law Dictionary ‘salary’ is an agreed compensation for services.

The University by a notification dated 28th March, 2020 informed its staff, that it has been decided that all faculty members and officers of the University will donate their one day’s salary to the Prime Minister’s National Relief Fund, in aid of the people affected by the Corona Virus. Staff members who wish not to opt to donate, shall inform the Joint Registrar (Accounts) so that no deduction is made from their salary. The petitioners did not exercise opt out option, and voluntarily donated a day’s salary as requested.

A further notice was issued by the Registrar (Acting) on 24th May, 2020 intimating the staff of the employee that the University has a duty towards fellow citizens and expressed desire to donate a day's salary to the Chief Minister's Relief Fund, West Bengal/West Bengal State Emergency Relief Fund in aid of the people affected by Cyclone Amphan. It was indicated that the Accounts Office will deduct a day's salary from the monthly salary of May of all permanent employees.

The petitioners, through their Association, immediately made a representation before the Registrar on 25th May, 2020 objecting the unilateral salary cut and requested the authority to revise the notice dated 24th May, 2020 and to give option to the employees to express their choices. There was no reply to the representation filed by the Association of the petitioners. A subsequent notice dated 29th May, 2020 was published in furtherance to the earlier notice dated 24th May, 2020, wherein it was mentioned that, by virtue of the powers vested in the University and the Vice-Chancellor as per Sections 6, 14(3) read with Section 5A and other provisions of the Act, the Vice-Chancellor has found it appropriate for the University to contribute to the Chief Minister's Relief Fund, West Bengal/West Bengal State Emergency Relief fund by means of donation of one day's salary of all permanent employees. It was further mentioned that the permanent employees of Visva-Bharati are expected to donate a day's salary in keeping with the Rabindrik tradition and objectives of the University.

The petitioners have submitted that even though they had lodged a formal complaint against the unilateral salary cut, the University deducted a day's salary from the petitioners, without paying any heed to their objection.

The University has taken recourse to Sections 6, 14(3) and 5A of the Act.

Section 6 of the Act lays down the powers of the University. Section 14(3) mentions that the Upacharyya (Vice-Chancellor) may, if is of opinion that immediate action is necessary on any matter, exercise any power conferred on any

authority of the University by or under the Act and shall report to such authority the action taken on such matter.

The second proviso to Section 14(3) of the Act mentions that, provided further that an employee of the University who is aggrieved by the action taken by the Upacharyya (Vice-Chancellor) under this sub-Section, shall have the right to appeal against such action to the Karma-Samiti (Executive Council) within ninety days from the date on which such action is communicated.

Section 5A of the Act lays down the objects of the University.

None of the above provisions gives any power to the University to unilaterally deduct any amount from the salary of an employee as donation.

Meaning of the term 'donation' in the Oxford Dictionary is, something that is given to a person or an organisation such as a charity, in order to help them.

The expression donation implies that the sum is being given as aid with the view to help the person/organisation. Donation is a voluntary act of a person who intends to donate.

The employer neither has the power nor the authority to deduct salary or any portion thereof of an employee, unilaterally, in the garb of donation. A person cannot be forced to donate. The moment force is applied, the act of the donor does not remain voluntary, and it amounts to forcible deduction, which is grossly different from the term donation.

It appears that, on receipt of the objection from the unwilling employees, the University, to legalise the forcible deduction, took recourse to the provision of Section 14(3) of the Act.

Submission has been made on behalf of the University that, the said section gives power to the Vice-Chancellor to take immediate action on 'any matter' of the University. Expression 'any matter' in the opinion of the Court will mean, any

matter authorised by law, under the Act. Taking a decision on any matter does not give unbridled power or authority to the Vice-Chancellor to act contrary to the provision of law.

The Section clearly mentions that, the Vice-Chancellor could exercise any power, on any matter, conferred on any authority of the University or under the Act. There is no provision in the Act which permits the University to suo motu deduct a portion of an employee's salary on the garb of donation.

An employee is paid salary in lieu of the service rendered. The same is a valuable right in the hand of the employee. The said right cannot be curtailed or infringed without a definite provision of law. Though the University tried to overcome the lacuna in the notice dated 24th May, 2020, by publishing the subsequent notice dated 29th May, 2020 by invoking certain provisions of the Act, but even then, the act of the University cannot be said to be a valid one.

The notice dated 29th May, 2020 mentions that the employees of Visva-Bharati 'are expected to donate'. The term 'expected' can never be treated as a mandate. An option to 'not opt' ought to have been inserted. The University deducted a day's salary from several employees by ignoring their unwillingness.

When the University was trying to provide aid to the needy and affected people, it ought to have adopted a better approach to set up a corpus for providing help, but should not have used a whip to deduct money from reluctant employees. The same has caused dissent and resentment in the mind of the employees. The apparently noble work to stand by the needy got marred due to overzealous action of the University. The same certainly does display the Rabindrik tradition which the University boasts of.

I am of the considered opinion that, unilateral deduction of salary or any portion thereof, from an employee, without any authority of law, without taking his consent, cannot be termed as donation. The same amounts to illegal deduction.

However, keeping in mind that the deduction was made from the monthly salary of the employees for the month of May, 2020, and by this time the amount collected from the employees may have been transferred to the account of the donee, and may have been used for the aid of the needy, the Court exercises judicial restraint in passing any order for refund of the amount deducted. The organisation which received the money as donation will also not be in a position to refund the same at such a distant date as the money might have been utilised by now.

Moreover, the petitioners have approached this Court after nearly a year of the publication of the impugned notice. The petitioners have themselves admitted in paragraphs 14 and 15 of the writ petition, that, if the prayer of the petitioners for refund is allowed, such refund cannot be lawfully made from any budgeted head of the University.

The country is passing through an unprecedented crisis. It is desirable that citizens come forward voluntarily to help the needy. Providing help, certainly, does not mean, snatching away the legal right of an employee. To donate is a benevolent act. It comes from the free will of the donor. It is not to be obtained by force or coercion. The University can always adopt ways and means to provide relief to those in need. It is not necessary that force has to be applied to reach the goal. Applying force is sharply contrary to the Rabindrik culture and tradition which gurudev symbolizes.

In view of the discussions made hereinabove the writ petition stands partly allowed.

No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)