



2024:DHC:1031



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 07.02.2024

Judgment pronounced on: 12.02.2024

+ W.P.(C) 2644/2010

PROF. KRISHNA MOHAN SHRIMALI

..... Petitioner

versus

UNIVERSITY OF DELHI AND ANR.

.... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Aditya Kr. Choudhary, Mr. Gurmehar Vaan Singh and Mr. Sandeep Pandey, Advocates.

For the Respondent : Mr. Santosh Kumar, Mr. Kushagra Aman and Mr. Adithya Ramni, Advocates for R-1 and R-2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This petition under Article 226 of the Constitution of India, 1950, *inter alia*, seeking the following reliefs:-

“(a) Issue a writ of certiorari or any other appropriate writ order or direction to quash the letter dated 22.09.2009, and letter dated 23/29.12.2009 as being bad in law and in violation of the principles of natural justice;

(b) issue a writ, order or direction in the nature of a writ of mandamus or any other further writ order or direction declaring the action of the university' in stopping the increments and also the arrears of salary of the petitioner as arbitrary, whimsical and discriminatory and therefore, violative of Articles 14 and 16 of the Constitution of India;



(c) issue a writ/order or direction in the nature of mandamus directing the university to release the increments of the petitioner forthwith;

(d) issue a writ/order or direction in the nature of mandamus directing the university to release the arrears of salary due to the petitioner as has been paid to the other faculty members in the department of History; and

(e) issue a writ/order or direction in the nature of mandamus directing the university to pay interest @ 10% p.a. on the amount of arrears of salary; and

(f) issue such further appropriate writ/order/direction as this Hon'ble Court may be deem fit and proper in facts and circumstances of the case."

2. The petitioner claims to be a renowned historian and is presently professor of History in the University of Delhi and challenges the action of the Respondent-University withholding an increment merely on the ground that the petitioner did not send his "*Curriculum Vitae*" (hereinafter referred to as "*CV*") alongwith Periodical Increment Certificate (in short "*PIC*"), with the University, required for posting on its official website. The direction to the petitioner was stated to be on the basis of EC Resolution 128 dated 27.12.2007. Aggrieved by the deprivation of increment, the petitioner has filed the present petition.

3. The facts arising in the present case and germane to the dispute in hand shorn off all unnecessary details are enumerated below.

3.1. The Petitioner was appointed as lecturer of History in St. Stephen's College, University of Delhi on 27.07.1968. Thereafter, on 15/18.7.1981, Petitioner was thereafter appointed as Reader in History (Ancient Indian History) in the Department of History, University of Delhi. Subsequent thereto, the Petitioner was appointed as Professor of



Ancient Indian History on 13/14.05.1986.

3.2. That the Executive Council (in short “EC”) of Respondent University adopted amongst other resolutions, Resolution No. 128 dated 27.12.2007, according to which it was resolved that the faculty members in the post graduate department should provide their updated Curriculum Vitae for the purpose of next periodical increment and the same be sent alongwith their Periodical Increment Certificate to the University.

3.3. Thereafter, on 03.07.2009, the Respondent University issued a letter to the Head/Director of all the Departments including the Head of the Department of History on the subject “*release of annual increment of teachers on 1st July, wherein it was requested that PIC for release of annual increment to teachers be sent with a certificate that the teacher was present on 30.04.2009, i.e., the first day of opening of new academic session 2009-10*”. In the second paragraph of the said letter, it was mentioned that as per EC resolution no. 128 dated 27.12.2007, the CV of the Teacher concerned should also be sent with PIC increment certificate for hosting the same on University Website. The said letter was circulated to the members of the faculty.

3.4. The petitioner upon being appraised of the said EC resolution, addressed a detailed letter dated 17.07.2009, to the Vice-Chancellor of the Respondent University, wherein, he expressed his concern on the approach of the University especially *qua* the paragraph of letter dated 03.07.2009. On 17.07.2009 itself, the petitioner addressed a letter to his Head of Department referring therein about his letter to the Vice Chancellor and requested him to send his Periodic Increment Certificate



(PIC) along with the said letter. Thus, as requested by the Petitioner, the Head of Department of History send the PIC of the Petitioner to the University though without the CV.

3.5. Consequently, petitioner received a letter dated 22.09.2009 from the Respondent University wherein, it was brought to his notice that as per the EC resolution no.128 dated 27.12.2007, it was “*mandatory*” to send the CV along with PIC for hosting the same on University Website.

3.6. Petitioner thereafter addressed a letter to the Assistant Registrar (Establishment) and sought the copy of the aid EC Resolution which was duly supplied to him on 24.11.2009/25.11.2009.

3.7. In the meanwhile, Respondent No. 2 issued a letter/circular dated 01.12.2009/07.12.2009 to all the Heads of department of the University for circulation to all faculty members asking therein to send CVs the purpose being to connect to the outside world and even more to keep the university community well informed.

3.8. The Petitioner addressed letter dated 09.12.2009 to the Registrar of the Respondent University stating therein that upon enquiry he had come to know that payment of arrears of an account of fixation of new scales cannot be finalized because the annual PIC, in his case, had not been received from his department. In response thereto, petitioner received a letter dated 23/29.12.2009 from Asstt. Registrar of the Respondent University, stating that as per the EC resolution “*every faculty member of the post graduate department of the University, on the date of marking their presence for the purpose of next increment, shall provide the university with an updated CV for hosting the same on the University Website.*”



3.9. In furtherance of the earlier requests made *vide* letter dated 01.12.2009 to all the Heads of the Department of the University, the Respondent No. 2 on 12.02.2010 issued another request to all the Heads of Departments.

4. Aggrieved by the same, Petitioner has challenged the requirement of the Respondents for submission of curriculum vitae (CV) by the teachers for the purpose of release of increment, non-compliance of which leads to withholding of the increments accruable to the Petitioner at the hands of respondent-University.

CONTENTIONS OF THE PETITIONER

5. Learned counsel for the petitioner had opened his arguments by drawing attention to Chapter IV of Ordinance XI of the Delhi University Calendar, which provides *inter alia* for the terms and conditions of service of the teaching staff. Clause 3 provides that the University shall pay to the teacher concerned during the continuance of engagement, a remuneration per mensem, raising by annual increments. There are two provisos to Clause 3 which in the submission of the petitioner, are relevant and are therefore, being extracted herein below for ready reference:-

"Provided that wherever there is any change in the nature of appointment or the emoluments of the teacher, particulars of the change shall be recorded in schedule -I annexed hereto, under the signatures of both parties and the terms of this agreement shall apply mutatis mutandis to the new post and the terms and conditions attached to that post:

Provided further that no increment shall be withheld or postponed save by a resolution of the Executive Council on a reference by the Vice Chancellor to it, and after the teacher has been given sufficient opportunity to make his written representation. "



6. Learned counsel submits that in terms of the aforesaid, the petitioner as also the respondent–University, executed a Contract of Service. He referred to the second proviso to Clause 3 of the said Contract to submit that the increment could not be withheld or postponed except by way of a resolution of the Executive Council on a reference by the Vice Chancellor to it. Moreover, it was only after the affected teacher had been given sufficient opportunity to make his written representation, that the increment could be either withheld or postponed.

7. Learned counsel submits that neither having been done, the subsequent action of the University in issuing the impugned letter, would not withstand the scrutiny of law.

8. Mr. Choudhary, learned counsel referred to Clause 6 of the said Contract to submit that the EC was the competent authority to initiate disciplinary proceedings against any teacher of University in case of any misconduct. He submits that if the University was under the impression that by not sending his CV, the petitioner was violating any rule, regulations or any procedure having statutory backing, the EC could have exercised the power under Clause 6 of the Contract to initiate appropriate disciplinary proceedings. No such proceedings were initiated by the EC in regard to non-compliance of the directions to send the CV.

9. Learned counsel submits that the direction by way of the impugned letter to the petitioner to send his CV to the University failing which the increment would also be denied, is arbitrary, whimsical, unjust, contrary to their Statute as also the terms of the contract of



service and are therefore, wholly unconstitutional. Learned counsel submits that the impugned letter dated 22.09.2009 which was issued two years after the EC's Resolution was based on a wrong premise and incorrect interpretation of the EC's Resolution No.128 dated 27.12.2007. He brings attention of this Court to the EC Resolution No.128 to submit that, though the Resolution provided that the faculty members in the Post Graduate department should provide an updated CV and send the same along with the periodical increment certificate to the University for hosting the same on the University's website, however, conspicuously does not mention any consequence much less a penal consequence for non-compliance of the said Resolution.

10. He submits that the EC Resolution No.128 was a mere guideline and not a mandatory direction or statutory rule. In any case, learned counsel submits that the same would be covered by Proviso to Clause 3 of the said Contract of Service and it was mandatory for the EC or the respondent-university to issue a notice to the petitioner in case any such penal action was contemplated. According to learned counsel, no such show cause notice was ever issued to the petitioner either by the respondent-university or by the EC. As such, learned counsel submits that the entire action of stoppage of his increment, solely on this basis, is violative of his fundamental rights and ought to be quashed and set aside.

11. Learned counsel also invites attention of this Court to the letter dated 01.07.2009 issued by the then Vice Chancellor, to submit that, the inclusion of the records/credentials of the faculty member of the University, Department and Centre was felt necessary only for the



purposes of not only updating their records but also for prospective student community in getting vital information about the university as also the faculty.

12. He relies upon the judgments in the case of *O.P. Gupta v. Union of India* reported in (1987) 4 SCC 328 and *The Director (Admn. And Hr) Kptel vs. C.P. Mundinamani* reported in 2023 SCC OnLine SC 401 in support of his aforesaid submissions. He submits that in view of the above letter be quashed and respondents be directed to release the increment along with consequential benefits and interest on account of delay in payment.

CONTENTIONS OF THE RESPONDENTS

13. *Per contra*, Mr. Santosh Kumar learned counsel appearing for the respondent vehemently submits that the EC's Resolution no.128 is very clear and brooks no doubt. He refers to Section 17 of the Delhi University Act, 1922 to submit that according to said provision, the Executive Council is a statutory authority defined therein and is the executive body of the University. He submits that as per Statute 6(1), the Executive Council is vested with the powers to prescribe service conditions of the teachers including Professors. The Executive Council is also vested with the powers to frame Ordinances under Section 31 of the Act. As such, the Executive Council is fully competent to prescribe such conditions as provided in the EC Resolution No. 128, dated 27.12.2007.

14. Learned counsel further submits that the Respondent being the principal employer of the petitioner has every right to obtain information relating to academic achievements of the teacher during a



year for the purpose of displaying it on the University website for the information of students, researchers and other stakeholders. That such information as per respondent-University is considered an asset to the organization. The respondents being the Principal employer of the petitioner reasonably expects from its faculty members to progress in the field and no fundamental rights of the petitioner is affected because of seeking such information. The petitioner has given no reasons or justification for not submitting his CV to the Respondent, being his employer. He further submits that although the resolution of the Executive Council mandates every faculty member of the University to submit their CV, it has not prescribed any minimum standard of achievement or progress to be made by each faculty in the given field and so no prejudice is caused to the petitioner.

15. Learned counsel for the respondents submits that the consequences of not complying with the directions in the EC are inbuilt in the language of such resolution itself. Moreover, according to learned counsel, the petitioner had apparently understood the consequences of such violation which is clear from his own letter dated 17.07.2009 wherein while refusing to send the CV, he had categorically stated that he was prepared to face the consequences. In other words, learned counsel submits that the submissions of the petitioner before this Court that there are no consequences or violation of Resolution No. 128, as the same were not specified in the resolution itself, is devoid of any merit since he admitted that there are going to be consequences for such violation.

16. Regarding the clauses of the contract particularly Clause 6,



learned counsel submits that those are related only to the disciplinary action, if any, to be initiated by the EC on allegations of misconduct. He argues that the submission of CV along with periodical increment certificate was a procedure prescribed by the EC which was mandatory to be followed by the teachers of the University. Learned counsel reiterates that the power of the Executive Council over the management in administration of the revenue and property and also the power to regulate the conditions of service etc. are undoubtedly within the domain of Statute governing the University. As such, the violation would necessarily entail deprivation of increment to the petitioner. He submits that there is no reason why the petitioner could not have simply submitted his CV since the same would have enhanced the prestige of the University of Delhi in India and abroad. He further dilates the said submission by submitting that the respondent-Delhi University is a renowned institution not only amongst the student in India but also those who are in countries other than India.

17. Learned counsel submits that since there is no violation of fundamental rights of the petitioner, the present petition is not maintainable. Even on facts, learned counsel submits that there is no reason why this Court would interfere and give a discretion relief to the petitioner who violated the mandatory conditions contained in EC Resolution No. 128 dated 27.12.2007.

ANALYSIS AND CONCLUSIONS

18. This Court has heard the submissions of learned counsel for the parties, perused the records and considered the judgments relied upon by the parties.



19. The dispute in the present petition is within a narrow compass. In that, this Court is only to consider as to if the petitioner had not submitted his CV along with the periodical increment certificate in terms of the EC Resolution No.128 dated 27.12.2007, *(a) whether the respondent could have withheld his increment on the non submission of the CV?* and if so, *(b) whether petitioner's increment could be withheld by the respondent without issuing a show cause notice as contemplated in the Second Proviso to Clause 3 of the Contract of Service?*

20. In regard to the aforesaid, it would be extremely relevant to extract hereunder the EC Resolution No.128 dated 27.12.2007, Clause 3 of the Contract of Service, Section 17 and 45(1) of the Delhi University Act, 1922 as also Statute 6.1 of the Statues of the University are extracted hereunder:-

EC RESOLUTION No.128 dated 27.12.2007

"128/ The Council considered the issue of providing the University an updated CV be every faculty member in the post-graduate department, on the day of marking their presence for the purpose of next increment and resolved that the faculty members in the post graduate department should provide an updated 'curriculum vitae' and the same be sent along with the periodical increment certificate to the University, for hosting the same in the University Website."

CLAUSE 3 of the CONTRACT OF SERVICE

"3. That the University shall pay Dr Krishna Mohan Shrimali during the continuance of his engagement hereunder as a remuneration for his services a salary of Rs.1250/= per mensem, rising by annual increment Rs.50/60 -to a maximum salary of Rs.1900 per mensem:

Provided that wherever there is any change in the nature of the appointment or the emoluments of the teacher, particulars of the change shall be recorded in Schedule I annexed hereto, under the signature of both parties and the terms of this agreement shall apply mutatis mutandis to the new post and the terms and conditions attached to that post:



Provided further that no increment shall be withheld or postponed save by a resolution of the Executive Council on a reference by the Vice-Chancellor to it, and after the teacher has been given sufficient opportunity to make his written representation.”

SECTION 17 OF THE DELHI UNIVERSITY ACT, 1922

“17. Authorities of the University.— The following shall be the authorities of the University:—

- (i) the Court,*
- (ii) the Executive Council,*
- (iii) the Academic Council,*
- [(iiia) the Finance Committee,]*
- (iv) the Faculties, and*
- (v) such other authorities as may be declared by the Statutes to be authorities of the University.”*

SECTION 45 THE DELHI UNIVERSITY ACT, 1922

[45. Conditions of service of officers and teachers.— (1) Every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy thereof shall be furnished to the officer or teacher concerned.

(2) Any dispute arising out of a contract between the University and any of its officers or teachers shall, at the request of the Officer or teacher concerned or at the instance of the University, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the Visitor, and the decision of the Tribunal shall be final.]

STATUTE 6.1 of THE STATUTES OF THE UNIVERSITY

6. (1) The Executive Council shall, subject to the control of the Court, have the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

xxx

xxx

xxx.”

21. Upon examining Section 45(1) of the Act, it is clear that the teacher of the University is appointed under a written contract and the terms contained therein would be binding on both the parties. This is not



to say that the petitioner is not bound by the Ordinances or Statutes of the respondent University. Clause 3 of the contract of service as noted above, would gather significance. Particularly, the second proviso to Clause 3 would, in the opinion of this Court, be squarely attracted to the facts which arise in the present case. It is undoubted that upon non furnishing of the CV by the petitioner, the respondent had withheld the increment accrued, as on the due date according to the rules. It is also not doubted that the Executive Council, only upon a reference by the Vice Chancellor to it, is empowered and has the authority to withhold or postpone any increment to which a teacher is entitled to, in a particular year. However, it is of great significance to note that the second proviso to Clause 3 puts fetters on such power, directing the respondent-University, to issue a show cause notice mandatorily before contemplating any such action for withholding or postponing the increment.

22. It is not disputed that neither any show cause notice was ever issued by the respondent-University to the petitioner, nor learned counsel for the respondent was able to show any such document to this Court. In view of the aforesaid position on law, the action of the respondent withholding the increment which fell due to the petitioner is by itself violative of the conditions of the contract of service and as such cannot withstand the scrutiny of law.

23. That having been said, it would now be relevant to consider as to in what manner the CV is linked with the grant or refusal of increment.

24. The EC resolution No.128 as noted above, resolved that the faculty members in the post graduate department should provide an



“*updated curriculum vitae*” and the same be sent along with the Periodical Increment Certificate to the University, for hosting the same on the University’s website. This read in conjunction with the letter of the then Vice Chancellor dated 01.07.2009 leave no manner of doubt in the mind of this Court that the purpose for which the updated CV was being sought was only for the “*facelift*” of the website. It was also projected in the said letter that the steps as aforesaid would go a long way in not only maintaining the updated record of the teachers but also help the present and prospective student community in getting vital information on the University and the faculty serving it. From an overall reading of the EC Resolution coupled with the letter of the then VC, it appears to this Court that the action of seeking CV was linked to the website of the University rather than the increment by itself.

25. If this Court would assume for the moment, in favour of the respondent, even then, the said action of withholding of increment could not have been resorted to, unless the action contemplated in second proviso to Clause 3 of the contract of service was undertaken. Looked at it any which way, the impugned letters and the action of withholding of the increment would appear to be arbitrary and violative of the Act as also the conditions of contract of service. The argument regarding whether the EC Resolution No.128 does or does not contemplate any penal consequences would not now remain relevant in view of the aforesaid conclusion drawn by this Court. In that, withholding of increment for whatever reason, whether it is alleged violation of EC Resolution No.128 or otherwise, could not have been contemplated unless a show cause notice was issued. This observation is in line with



the well settled service jurisprudence on this issue.

26. As a consequence of the aforesaid, the letters which are impugned are quashed and set aside.

27. In view of the fact that there is neither any categorical averment nor any document placed on record or shown/referred to, by any of the parties, regarding the assessment procedure governing the increments to the incumbents, adopted by the respondent-University hitherto before the said EC Resolution No.128 dated 27.12.2007, it is deemed appropriate to direct the respondent-University to reconsider the issue of grant of increment to the petitioner in the manner, as was done prior to 27.12.2007. The same shall be done within 8 weeks from today.

28. If the petitioner is found entitled, the University shall grant the same to the petitioner, from the date from which it is due, with all consequential benefits in accordance with law within eight weeks from today, failing which, the petitioner would be entitled to arrears at the rate of 6% interest per annum.

29. Since this Court has reached the conclusion that the show cause notice should precede the contemplation of withholding of increment, the respondent University would be at liberty, if so advised, to take action therewith in accordance with law, if available.

30. In view of the observations made hereinabove, issues (a) and (b) are answered accordingly.

31. With the aforesaid directions, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 12, 2024/rl/ms