

Dr. Meena Vs. the Vice Chancellor and Others

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Court : Mumbai Nagpur

Decided On : Jun-11-2012

Judge : A.B. Chaudhari

Appeal No. : Writ Petition No.1866 of 2011

Appellant : Dr. Meena

Respondent : The Vice Chancellor and Others

Judgement :

1. Heard. Rule. Rule returnable forthwith. Heard finally by consent of the learned Counsel for the rival parties.
2. By the present petition, the petitioner has put to challenge the judgment and order dated 28.2.2011, passed by the Presiding Officer, University and College Tribunal, Nagpur in Appeal No.N-4/2006, by which the appeal was returned to the appellant for presentation to the proper forum, upon holding the appeal to be not maintainable under Section 59 of the Maharashtra Universities Act, 1994, against the order of retirement from service of the petitioner, she being declared invalid by the Medical Board.
3. In support of the writ petition, Advocate Shri Sundaram for the petitioner vehemently argued that Section 59 of the Maharashtra Universities Act, 1994 provides for appeal for challenging even the 'otherwise termination', besides dismissal, removal or reduction in rank. According to him, the petitioner was finally

served with an order dated 21.2.2007 that she was found to be permanently incapacitated for further service as declared by the Medical Board and therefore, was retired on medical ground w.e.f. 1.2.2006. Since the petitioner is not entitled to serve further the employer, the relationship between master and servant is snapped since the relationship has been brought to an end by the said order of retirement. It is nothing but otherwise termination and therefore, the Tribunal erred in law in holding otherwise. He, therefore, prayed for setting aside the impugned judgment and order.

4. Per contra, Advocate Shri Kulkarni for respondent nos.1 to 3 opposed the writ petition and argued that the impugned judgment and order is legal, proper and correct and need not be interfered with. According to Advocate Shri Kulkarni, the order made by the Tribunal is based on the earlier Supreme Court judgments, in which it is held that despite compulsory retirement, the retired employee is entitled to pension etc. and therefore, the order of compulsory retirement cannot fall in the category of 'otherwise termination'.

5. I have perused the impugned judgment and order. I have heard learned Counsel for the rival parties. I have perused the decisions cited before me and which have been considered in the impugned judgment and order. The Tribunal has recorded a categorical finding that despite the order of compulsory retirement of the petitioner, who was declared invalid by Medical Board, she would be entitled to pension etc. and therefore, in the light of the Supreme Court decision in the case of Shyamlal...Versus...State of Uttar Pradesh and another, reported in AIR 1954 Supreme Court 369 and other decisions, such order would not fall in the category of 'otherwise termination'. Having considered the entire matter, at the outset, I find that the Supreme Court decisions, which have been relied upon by the Tribunal including the one in the case of Shyamlal...Versus...State of Uttar Pradesh and another, cited supra, were on interpretation of Article 311 of the Constitution of India. Article 311 of the Constitution of India reads thus;

“Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a

civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

6. Two things are clear from the reading of the above provision in the Constitution of India. Firstly, that it relates only to the Government servants and secondly, it speaks only of dismissal and removal from service. To repeat, the words 'otherwise termination' are not to be found in the aforesaid Article 311 of the Constitution of India. Further the petitioner cannot be held to be Government servant. The issue whether compulsory retirement amounts to dismissal or removal from service with reference to Article 311 of the Constitution of India was

the question decided by the Supreme Court in those cases. No decision has been cited to show that compulsory retirement resulting into payment of pension etc. would not fall within the meaning of term 'otherwise termination'. A Division Bench of this Court in the case of *ShriramSwami Shikshan Sanstha...Versus...Education Officer, Zilla Parishad, Nagpur and another*, reported in 1984, Mh.L.J. 31, in paragraph no.5 thereof held that forced recognition would fall in the category of 'otherwise termination' within the meaning of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. I quote paragraph no.5 of the said judgment.

“5. We have, therefore, to consider the question whether the employee can move the Tribunal under section 9 of the Act in the case of an alleged forced resignation. The language used in section 9 of the Act covers not only dismissal and removal but all forms of termination of service. On behalf of the petitioner, a decision of the Karnataka High Court in *M/s Southern Roadways Ltd., Bangalore v. Padmanabhan and another* arising under the provisions of the Industrial Disputes Act, 1947, is relied upon to show that the phraseology ‘or otherwise terminates the services’ covers the case of forced resignation and, therefore, a reference under section 2-A read with section 10 of the Act is maintainable in the case of a forced resignation. We feel that it is a well settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer. It, therefore, amounts to termination of service by the employer. In the decision of the Karnataka High Court (cited supra), the Court was considering the phraseology ‘otherwise terminates the services’ used in section 2-A of the Industrial Disputes Act, 1947. A similar phraseology is used in section 9 (1) of the Act. We are in agreement with the view taken by the Karnataka High Court in the decision cited supra. We are supported in this view also by an old decision by the Additional Judicial Commissioner in *Abraham Reuben v. The Karachi Municipality*, which has relied upon an English decision in *Stephenson v. London Joint Stock Bank Ltd.*. We, therefore, hold that the phraseology ‘whose services are otherwise terminated’ used in section 9 (1) of the Act covers cases of forced resignation and, therefore, in such matters, an

employee can move the Tribunal under section 9 (1) of the Act.”

7. In the service jurisprudence, termination is a concept which crystallizes into snapping of relationship of master and servant. The term 'otherwise termination' will have to be looked into from that angle. In the case of compulsory retirement by way of punishment or without punishment definitely there is a snapping of relationship of master and servant as in the case of forced resignation. Whether or not such a person gets pension due to the nature of compulsory retirement that is without punishment would not make any difference for bringing the same into the fold of term 'otherwise termination'. The principle, namely ubi ius ibi remedium is squarely attracted in the case at hand. The intention of the legislature in inserting the words 'otherwise termination' by providing appeal under Section 59 of the Maharashtra Universities Act, 1994, is obviously to provide a forum, namely appellate forum, when an employee is aggrieved by the predatory action of the Management in snapping the relationship of master and servant by taking resort to the order of compulsory retirement with or without punishment. Thus, it would not be legal and proper to deny a special forum created by the Legislature, namely appellate forum under the Maharashtra Universities Act, 1994 for hearing grievances of such employees, who can file appeal under Section 59 of the Maharashtra Universities act, 1994. To give narrow meaning to the words 'otherwise termination' is to deny important appellate forum and to make the said part of the provision nugatory. The decisions in the case of Shyamlal...Versus...State of Uttar Pradesh and another, cited supra and others are thus clearly distinguishable for the two reasons which I have already set out above. In the result, I find that the order made by the University and College Tribunal, Nagpur is not according to law and therefore, this petition must succeed. In the result, I make the following order.

ORDER

(i) Writ Petition No.1866/2011 is partly allowed.

(ii) The judgment and order dated 28.2.2011, passed by the Presiding Officer, University and College Tribunal, Nagpur in Appeal No.N-4/2006 is quashed and set aside.

(iii) Appeal No.N-4/2006 is restored back to the file of University and College Tribunal, Nagpur for fresh hearing and disposal in accordance with law.

(iv) The University and College Tribunal, Nagpur shall decide the appeal expeditiously and in any case within a period of six months from the date of receipt of writ from this Court.

Rule is made absolute in the above terms. No order as to costs.

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