

LOCAL ACTS REPORTER

2020

(e-Supplement)

Reports

Law Today Live Doc. Id. 14965

SUPREME COURT OF INDIA

Before: A.M. Khanwilkar, Hemant Gupta & Dinesh Maheshwari, JJ.

Civil Appeal No. 777 of 2020

Decided on: 28.01.2020

(arising out of SLP(C) No. 28507/2018)

Dr. Vijayakumaran C.P.V.

Appellant

Versus

Central University of Kerala & Ors.

Respondents

For Petitioner(s):

Mr. R. Basant, Sr. Adv. (NP), Ms. Resmitha R. Chandran, AOR, Mr. Biju Joseph, Adv., Mr. Manu, Adv., Mr. Pramod P., Adv.

For Respondent(s):

Mr. Vinay Navare, Sr. Adv., Mr. Nachiketa Joshi, AOR, Mr. Sajith Vishwanathan, Adv., Ms. Sucheta Joshi, Adv., Ms. Himadri Haksar, Adv., Mr. Vipul Tiwari, Adv.

A. Termination of Probationer employee – Regular Enquiry – Requirement of – Interpretation of -- It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in “any document referred to in the termination order” -- Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as *ex-facie* stigmatic order of termination.

(Para 8)

B. Stigmatic Termination of probationer -- Regular enquiry – Requirement of – Appellant has been subjected to a formal inquiry before the Committee constituted under statutory regulations to inquire into the allegations bordering on moral turpitude or misconduct committed by the appellant and that inquiry culminated in a finding of guilt against the appellant with recommendation of the Executive Council to proceed against the appellant as per the service rules – Termination order is illegal being *ex-facie* stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules.

(Para 7-12)

Cases referred:

1. Indra Pal Gupta vs. Managing Committee, Model Inter College, Thora [(1984) 3 SCC 384].
2. Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors. [(1999) 3 SCC 60].
3. Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr. [(2002) 1 SCC 520].
4. Managing Director, ECIL, Hyderabad & Ors. vs. R. Karunakar & Ors. [(1993) 4 SCC 727].

JUDGMENT**A. M. KHANWILKAR, J. –**

1. Leave granted.

2. The moot question involved in this appeal is: whether the order issued under the signatures of Vice-Chancellor of the Central University of Kerala (respondent No. 1), dated 30.11.2017 is simplicitor termination or *ex-facie* stigmatic? The said order reads thus:-

“Order

On scrutiny of report by the Internal Complaints Committee, other documents and academic performance, the Executive Council held on 30/11/2017 felt that the performance of Dr. C.P.V. Vijayakumaran on probation is not suitable for continuation and confirmation in this University and had resolved to terminate the services forthwith. It is ordered accordingly.”

3. Shorn of unnecessary details, on 5.6.2017, the respondent No. 1 – University sent an offer letter to the appellant for being appointed to the post of Associate Professor in the Department of Hindi. This letter stated that he would be on probation for a period of twelve months from the date of joining and governed by the rules and regulations of the Central University of Kerala for teachers and other academic staff, orders issued by the University/University Grants Commission (UGC)/Government of India from time to time and the code of conduct applicable to all the employees of the respondent No. 1 – University etc. A formal written contract was entered into between the appellant and the respondent No. 1 – University on 12.6.2017, restating the terms and conditions referred to in the offer letter. The relevant clauses of the contract read thus:-

“2. (a) The teacher shall be on probation for a period of 12 months which may be extended by a further period of 12 months. The total period of probation shall in no case exceed twenty four months.

(b) The case of each teacher shall be placed before the Executive Council for confirmation soon after the expiry of the period of probation prescribed that is within 68 weeks. The decision of the Executive Council with regard to his/her confirmation or extension of his/her probation period, should be communicated to the teacher immediately.

(c) If the University is satisfied with the suitability of the teacher for

confirmation he/she shall be confirmed on the post to which he/she was appointed at the end of the period of his/her probation.

(d) Where a teacher appointed on probation is found, during the period of probation, not suitable for holding that post or has not completed the period of probation whether extended or not, satisfactorily, the Executive Council may (i) if the appointment is by direct recruitment, terminate the teacher's Service from the University without the notice (ii) if the appointment is by promotion, revert the incumbent to previous post held by him.

(e) That the said Teacher shall be a wholetime teacher of the University and unless the contract-is-terminated by the Executive Council or by the teacher as hereinafter provided shall continue in the service of the University until he/she complete the age of 65 years."

xxx

xxx

xxx

7. It is further agreed that this engagement shall not be liable to be terminated by the University except on the grounds specified and in accordance with the procedure laid down in clauses (i) to (vi). Reproduced below:

- (i) **Where there is an allegation of misconduct against a teacher or a member of the academic staff the Vice-Chancellor may if he thinks fit by order in writing, place the teacher under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:**
- (ii) **Provided that the Executive Council may if it is of the opinion that the circumstances of the case do not warrant the suspension of the teacher or the member of the academic staff revoke that order.**
- (iii) **Notwithstanding anything contained in the terms of her contract of service or of her appointment, the executive council shall be entitled to remove a teacher or a member of the academic staff on the ground of misconduct.**
- (iv) **Save as aforesaid, the Executive Council shall not be entitled to remove a teacher or a member of the academic staff except for good cause and after giving three months notice in writing or on payment of three months salary in of notice.**
- (v) **No teacher or a member of the academic staff shall be removed under clause (ii) or under clause**
- (iii) **until she has been given a reasonable opportunity of showing cause against the addition proposed to be taken against her.**
- (vi) **The removal of a teacher or a member of the academic staff shall require a two-thirds majority of the numbers of the executive council present and voting.**

(vii) The removal of a teacher or a member of the academic staff shall take effect from the date on which the order of the removal is made.

Provided that where a teacher or a member of the academic staff is under suspension at the time of removal, the removal shall take effect from the date on which she was placed under suspension.

8. Any dispute arising, out of this contract shall be settled in accordance with the provisions of the Central University of Kerala."

(emphasis supplied)

4. After being appointed as Associate Professor in the Department of Hindi with effect from 12.6.2017, the appellant assumed office. But soon thereafter, a complaint was filed against him by a third-semester student on 13.7.2017 followed by two other complaints dated 14.7.2017 filed by 16 students and 29.8.2017 filed by 23 students. It is not necessary for us to highlight the grievance(s) set out in the said complaints. As a consequence of the stated complaints, the respondent No. 1 – University had no option but to constitute an Internal Complaints Committee in terms of the statutory regulations being University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 (for short, 'the 2015 Regulations'). Regulation 5 thereof sets out responsibilities of the Internal Complaints Committee and the process of conducting inquiry by the Committee is predicated in Regulation 8, which includes submission of inquiry report with its findings and recommendations to the Executive Authority of the respondent No. 1 – University. The stated Committee accordingly submitted its inquiry report with findings and recommendations. The operative part of that report reads thus:-

"

In view of all the facts above, it appears to the Committee that the complaint is genuine and consistent and it is improbable that all eighteen students of a batch (complainants) could be influenced to fabricate an allegation against the accused by the University authorities. The possibility of any such interventions was categorically denied by the complainants. The evidences against the accused, both verbal as well as written statements are strong and authentic, and the accused failed to establish his innocence during the investigation process. The Committee unanimously feels that the accused had committed sexual offences against girl students spoiling the entire academic atmosphere in the department and as well in the campus as a whole. We feel that this can affect the reputation of the University.

The committee further would like to emphasize on ensuring fearless learning environment for the woman students. Irrespective of possible positive decision if any in favour of the accused, the committee recommends that the accused should not be allowed to engage the classes and evaluation duties of the current Sem 1 and Sem 3 batches of the Hindi department.

All the evidences and conclusion are hereby submitted by the

Committee before the Hon, VC for further actions. (The minutes of the committee meetings and the voice records of the statements are already submitted with the interim report and hence not added this time.”

This report was taken up for consideration by the Executive Council of the respondent No. 1 – University on 30.11.2017. The relevant portion of the decision taken by the Executive Council reads thus:-

“

The Hindi Department is only having these two batches of students. The accused is presently aged 62. He had committed sexual misconduct with the girl students of his daughter's age and the same has been convincingly established in the report of the Internal Complaints Committee. Dr. C.P.V. Vijayakumaran, a probationer committed serious misconduct and brought disrepute to the University apart from vitiating the academic atmosphere at the University.

He has been drawing salary, without any academic work w.e.f. 19 September 2017 due to the complaints and indefinite boycott of classes by the I Semester and III Semester students. The Executive Council has also examined the academic performance of Dr. C.P.V. Vijaya Kumaran from the date of appointment.

Decision: On scrutiny of report by the Internal Complaints Committee, other documents and academic performance it is felt that performance of Dr. C.P.V. Vijaya Kumaran on probation is not suitable for continuation and confirmation in this University and therefore it is resolved to terminate the services forthwith. The Vice-Chancellor is authorized to issue orders accordingly.....”

5. From the perusal of the termination order dated 30.11.2017 issued by the Vice-Chancellor, it is evident that the same was issued in the backdrop of the Internal Complaints Committee report. The opening part of the order itself mentions that on scrutiny of report by the Internal Complaints Committee, other documents and academic performance, the Executive Council in its meeting held on 30.11.2017, decided to take the decision to terminate the services of the appellant forthwith.

6. The appellant had assailed the impugned termination order dated 30.11.2017 being *ex facie* stigmatic. The learned single Judge of the High Court of Kerala at Ernakulam (for short, 'the High Court') vide judgment and order dated 30.1.2018 in Writ Petition (Civil) No. 39013/2017, however, construed the same as one of termination simplicitor. The Division Bench of the High Court vide impugned judgment and order dated 20.2.2018 in Writ Appeal No. 444/2018 has affirmed that view taken by the learned single Judge and rejected the appeal preferred by the appellant.

7. Accordingly, the moot question before us is: whether the order dated 30.11.2017 can be regarded as order of termination simplicitor or is *ex facie* stigmatic? Going by the tenor of the stated order, it is incomprehensible as to how the same can be construed as termination simplicitor when it has made the report of the inquiry conducted by the Internal Complaints Committee and the decision of the Executive Council dated 30.11.2017 as the foundation, in addition to the ground of academic performance. Had it been a case of mere unsatisfactory academic performance, the situation would have been entirely

different. The stated order not only adverts to the report of the Internal Complaints Committee, but also the decision taken by the Executive Council, which in turn highlights the fact that the appellant had to face an inquiry before the Committee in reference to the allegations of serious misconduct committed by him. Notably, the appellant has been subjected to a formal inquiry before the Committee constituted under statutory regulations to inquire into the allegations bordering on moral turpitude or misconduct committed by the appellant and that inquiry culminated in a finding of guilt against the appellant with recommendation of the Executive Council to proceed against the appellant as per the service rules. In such a situation, it is unfathomable to construe the order as order of termination simplicitor.

8. It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in "any document referred to in the termination order". Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as *ex-facie* stigmatic order of termination. A three-Judge Bench of this Court in **Indra Pal Gupta vs. Managing Committee, Model Inter College, Thora**¹ [(1984) 3 SCC 384] had occasion to deal with somewhat similar situation. In that case, the order of termination referred to the decision of the Managing Committee and subsequent approval by the competent authority as the basis for termination. The resolution of the Managing Committee in turn referred to a report of the Manager which indicated serious issues and that was made the basis for the decision by the Committee to terminate probation of the employee concerned. Relying on the aforementioned decision, the Court in **Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.**² [(1999) 3 SCC 60], observed as follows:-

"32. The next question is whether the reference in the impugned order to the three earlier letters amounts to a stigma if those three letters contained anything in the nature of a stigma even though the order of termination itself did not contain anything offensive.

33. Learned counsel for the appellant relies upon *Indra Pal Gupta v. Managing Committee, Model Inter College* (1984) 3 SCC 384 decided by a three-Judge Bench of this Court. In that case, the order of termination of probation, which is extracted in the judgment, reads as follows: (SCC p. 386, para 1)

"With reference to the above (viz. termination of service as Principal), I have to mention that in view of Resolution No. 2 of the Managing Committee dated April 27, 1969 (copy enclosed) and subsequent approval by the D.I.O.S., Bulandshahr, you are hereby informed that your service as Principal of this Institution is terminated...."

Now the copy of the resolution of the Managing Committee appended to the order of termination stated that the report of the Manager was read at the meeting and that the facts contained in the report of the Manager being serious and not in the interests of the institution, that therefore the Committee unanimously resolved to terminate his probation. The report of the Manager was not extracted in the enclosure to the termination order but was extracted in the counter filed in the case and read as follows:

(SCC p. 388, para 3)

“It will be evident from the above that the Principal’s stay will not be in the interest of the Institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e., for termination of his period of probation, too, the approval of the D.I.O.S. will be necessary. Accordingly, any delay in this matter may also be harmful to our interests.

Accordingly, I suggest that instead of taking any serious action, the period of probation of Shri Inder Pal Gupta be terminated without waiting for the period to end.”

It was held by Venkataramiah, J. (as he then was) (p. 392) that the letter of termination referred to the resolution of the Managing Committee, that the said resolution was made part of the order as an enclosure and that the resolution in its turn referred to the report of the Manager. A copy of the Manager’s report had been filed along with the counter and the said report was the “foundation”. Venkataramiah, J. (as he then was) held that the Manager’s report contained words amounting to a stigma. **The learned Judge said: “This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct ...”, that these findings in the Manager’s report amounted to a “mark of disgrace or infamy” and that the appellant there was visited with evil consequences.** The officer was reinstated with all the benefits of back wages and continuity of service.

34. It will be seen from the above case that the resolution of the Committee was part of the termination order being an enclosure to it. But the offensive part was not really contained in the order of termination nor in the resolution which was an enclosure to the order of termination but in the Manager’s report which was referred to in the enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager’s report were the basis for the termination and the said report contained words amounting to a stigma. The termination order was, as stated above, set aside.

35. **The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted.** We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.”

(emphasis supplied)

9. In the case of *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of*

Medical Sciences & Anr.³ [3(2002) 1 SCC 520], the Court observed thus:-

“21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.”

In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is *ex-facie* stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.

10. Upon receipt of complaints from aggrieved women (girl students of the University) about the sexual harassment at workplace (in this case, University campus), it was obligatory on the Administration to refer such complaints to the Internal Committee or the Local Committee, within the stipulated time period as predicated in Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, ‘the 2013 Act’). Upon receipt of such complaint, an inquiry is required to be undertaken by the Internal Committee or the Local Committee in conformity with the stipulations in Section 11 of the 2013 Act. The procedure for conducting such inquiry has also been amplified in the 2015 Regulations. Thus understood, it necessarily follows that the inquiry is a formal inquiry required to be undertaken in terms of the 2015 Regulations. The allegations to be inquired into by such Committee being of “sexual harassment” defined in Section 2(n) read with Section 3 of the 2013 Act and being a serious matter bordering on criminality, it would certainly not be advisable to confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence. We say no more.

11. A priori, we have no hesitation in concluding that the impugned termination order dated 30.11.2017 is illegal being *ex-facie* stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted backwages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a matter to be taken

forward by the authority concerned in accordance with law. We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in **Managing Director, ECIL, Hyderabad & Ors. vs. R. Karunakar & Ors.**⁴ [(1993) 4 SCC 727]. In that case, the Court was called upon to decide as to what should be the incidental order to be passed by the Court in case after following necessary procedure, the Court/Tribunal was to set aside the order of punishment. The Court observed thus:-

“31.

Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

(emphasis supplied)

Following the principle underlying the above quoted exposition, we proceed to hold that even though the impugned order of termination dated 30.11.2017 is set aside in terms of this judgment, as a result of which the appellant would stand reinstated, but at the same time, due to flawed approach of the respondent No. 1 – University, the entitlement to grant backwages is a matter which will be subject to the outcome of further action to be taken by the University as per the service rules and in accordance with law.

12. Accordingly, this appeal partly succeeds. We set aside the impugned judgments and orders dated 30.1.2018 and 20.2.2018 passed by the High Court including the order of termination dated 30.11.2017 issued under the signatures of the Vice-Chancellor of the respondent No. 1 – University; and instead direct reinstatement of the appellant and leave the question regarding backwages, placing him under suspension and initiating departmental or regular inquiry as per the service rules, to be taken forward by the authority concerned in accordance with law.

13. The appeal is disposed of in the above terms. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

Order accordingly.
