BASUDEO TIWARY

v.

SIDO KANHU UNIVERSITY AND ORS.

SEPTEMBER 17, 1998

[DR. A.S. ANAND AND S. RAJENDRA BABU, JJ.]

Bihar State Universities Act, 1976 : Section 4(14) and 35(3).

Service Law—University—Affiliated college under private management—Appointment of lecturer—Take over of college as a constituent unit—Re-appointment of lecturer—Claim for regularisation from initial date—Rejection of—Termination on the ground that his appointment was contrary to law—Challenge to termination order—Held termination was illegal as no opportunity was afforded to employee.

Service law—Employer—Conferment of absolute power to terminate service—Legality of.

Natural justice—Statute—Silence as to requirement of natural justice—Need to read such requirement—When arises.

Constitution of India, 1950 : Article 14.

Equality—Non-arbitrariness is essential facet of Article 14—Audi alteram partem facet of natural justice is also a requirement of Article 14—Public employment—Employer's action against employee must be fair and reasonable.

The appellant was appointed as a Lecturer in History on 25.1.1978 in the S.R.T College, Dhamri which was an affiliated college under private management. Subsequently this college was taken over as a constituent unit of the University. Pursuant to a resolution passed by the University syndicate an order dated 4.2.1986 was passed re-appointing the appellant and he was posted to Godda College. His re-presentation for regularisation of his services with effect from 25.1.1978 was rejected by Vice- Chancellor of the University. On the other hand his services were terminated on the ground that his appointment was not lawful in asmuch as he should have been appointed to a post in the service of the University purely on temporary basis not exceeding a period of 6 months. Since he had been

A appointed for a period longer than six months it was not open to the University to do so without the express sanction of the Government. Consequently appellant's appointment was made contrary to the provisions of the Bihar State Universities Act, 1976. The appellant preferred a writ petition before the High Court which held that his appointment was illegal and consequently upheld the termination order. The B High Court did not examine the question of observance of rule of *audi alteram partem*. Section 35(3) of the Bihar State Universities Act, 1976 provides that "Any appointment or promotion made contrary to the provisions of the Act, statutes, rule or regulations or in any irregular of unauthorised manner shall be terminated at any time without notice."

C

In appeal to this Court it was contended on behalf of the appellant that the order made by the Vice-Chancellor was contrary to the principles of natural justice because it was passed without affording any opportunity of hearing to the appellant.

D

Allowing the appeal and setting aside the order of High Court, this Court

HELD : 1. In this case no notice has been given to the appellant before holding that his appointment is irregular or unauthorised. Conse- E quently, the order terminating his services cannot be sustained. [641-B-C]

2. The condition precedent for exercise of power u/s. 35(3) of the Bihar State Universities Act, 1976 is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to F arrive at such a conclusion a finding has to be recorded and unless such a finding is recorded, termination cannot be made. To arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in G holding such an enquiry, notice to the person whose appointment is under enquiry will have to be issued. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not H be just, fair or reasonable. [640-F-G-H]

Delhi Transport Corporation v. *D.T.C. Mazdoor Congress,* **AIR (1991) SC 101, relied on.** A

3. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. Consequently it would be deemed that he had died in harness. His legal Representatives would be entitled to the payment of B **arrears of salary from the date of termination of appellant's services upto the date of his death on the basis of last pay drawn by him. [641-C-D]**

4. Non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. The *audi alteram partem* facet of natural justice is also a requirement of Article 14, for, natural C **justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. [639-F-G]** D

Delhi Transport Corporation **v.** *D.T.C. Mazdoor Congress,* **AIR (1991) SC 101, referred to.**

5. In order to impose procedural safeguards the requirement of E **natural justice has to he read in many situations when the statute is silent on this point. Omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the Court merely supplies omission of the legislature** F **except in case of direct legislative negation or implied exclusion. [640-A-B]**

Mohinder Singh Gill & Anr. **v.** *The Chief Election Commissioner & Ors.,* **AIR (1978) SC 851 and** *S.L. Kapoor* **v.** *Jagmohan & Ors.,* **AIR (1981) SC 136, relied on.**

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4858 of 1998.

From the Judgment and Order dated 3.11.95 of the Patna High Court in C.W.J.C. No. 13221 of 1993. H

A Sudhir Chandra and Jayant Bhushan for the Appellant.

Akhilesh Kumar Pandey for the Respondents.

The Judgment of the Court was delivered by

B **RAJENDRA BABU, J.** Leave granted.

The appellant having died during the pendency of the proceedings is now represented by his Legal Representatives. However, for the purpose of convenience we shall refer to him as appellant in the course C of this order.

Pursuant to a Resolution made by the Syndicate on 24.1.1986. an order No. G.A. 13/86 dated 4th February, 1986 was made appointing the appellant as a lecturer who was hitherto working as lecturer, Department of History, S.R.T. College, Dhamri and was posted to Godda College. He D made representation to the Vice-Chancellor for regularisation of his services in terms of the relevant statutes of the University and on the basis that he had been working as lecturer in an affiliated college under private management before the same was taken over as a constituent unit of the University. The appellant was informed by a letter sent on 7.5.1993 that his E representation had been turned down by the Vice Chancellor. By another communication he was informed that the Vice Chancellor had directed for the termination of the services of the appellant on the ground that on 24.1.1986, the Syndicate had no power to make appointment of the lecturer and therefore his appointment was not lawful. Challenging this action of F the respondent- University, the appellant preferred a writ petition and sought for a direction to the University authorities to regularise his service with effect from 25.1.1978 when he was first appointed in the affiliated college which was at that time under the management of a private organisation and subsequently become a constituent unit of the University.

G The brief facts leading to this situation are that the appellant was working as a lecturer in a post sanctioned by the Government in the S.R.T. College at Dhamri as a lecturer in History. Though he continued to work as a lecturer in University at the time of take over of the said college by the University, the Principal wanted his brother to be appointed as a H lecturer of History in the college. On account of machinations adopted by

the Principal though the appellant had been appointed earlier, he was relegated to the second position and thereafter his name was not even disclosed to the University after its take over. On 14.10.1982 an agreement was signed between the University and the Governing body of the college in terms of which the college was taken over as its constituent Unit. The inspection team had visited the college and submitted a report on 23.9.1981. In that report the appellant's name did not figure. As stated earlier it was because of the manipulation of the Principal that his name was not shown. Thereafter representations were made by him to the Vice chancellor putting forth his grievance and the representations were placed before the Syndicate of the University which by a resolution made on 20.1.1985 constituted a Sub-Committee to enquire into his grievance. By a resolution passed on 20.1.1985, the Sub-Committee after enquiry made a report in the following terms :

> "From the analyses of above stated facts, it seems that the appointment of Shri Tiwari is effective from 25.1.78. Prior to acquisition that is from 25.1.78 to 23.9.81 (leaving the period 26.1.79 to 10.11.79 as he has not submitted any reliable certificate for this period) certificates of Secretaries cannot be relied. He was certainly working in the college. On visiting college and on enquiry information received and as per the said information it is known that as Shri Tiwari was working since 25.1.78 therefore he desired he should be treated on first post because Shri. Vipin Bihari Pandey was appointed on 11.11.79. The second party wanted that he should remain on second post which was not accepted by him. In this period, tussle also continued between Secretary and Principal. He was of the group of Secretary, therefore, it is possible that he might not get the protection of Principal. As a result of this struggle, his name was neither given to Enquiry Committee and nor he was allowed to enter in the college after acquisition on 14.10.82. Possibly, he was not allowed to enter the college from 23.9.81. The certificate issued by Secretary Smt. Parbha Devi for his working upto 14.10.82 does not appear very much reliable and in such circumstance, after approximately three years service and legally valid appointment, he has been removed which does not appear to be proper whereas one post of history is still lying vacant there. Two posts in History Department are sanctioned there (Letter No. B/111-17 dated 13.6.68 of University created on 11.5.69 and second

A post vide letter No. 1541 dated 1.9.81 of Education Department of Bihar Government. Because one post is still lying vacant, therefore, if it is considered appropriate Syndicate can take decision for his working in the post there."

B The Report of the Sub-Committee was placed before the Syndicate for its consideration in the meeting held on 9.5.85. The Syndicate accepted the report submitted by the Sub-Committee and thereafter in its meeting on 27th July, 1985 directed the implementation of its resolution. Finally on 24.1.1986 it took decision that the appellant should be re-appointed on a temporary basis. He was posted to Godda College and was working as such C in that capacity. Thereafter new Universities had been constituted in the State of Bihar. Both the Dhamri college where the appellant was working formerly and the Godda college where the appellant was posted in terms of the order dated 4.2.1986 fell within the jurisdiction of Sido Kanhu University, Dumka. At that stage appellant made a representation for regularisation of his service with effect from 25.1.78 from which date he D claimed to have been appointed which was not accepted, but, on the other hand, the Vice Chancellor decided to terminate his services.

Mr. Sudhir Chandra, learned Senior Advocate for the appellant submitted that the University had the necessary jurisdiction to enter into E agreement with private institutions for promoting the purpose of the Act: to assume the management of any institution under its jurisdiction; to take a decision as to whether or not the appellant was lawfully employed at Dhamri College at the time of take over; and to decide the dispute between appellant and other candidates as to who was legally appointed to the F sanctioned post of lecturer in History in terms of Section 4 (14) of the Bihar University Act (hereinafter referred to as "the Act"). He further contended on the basis of this provision that appointments made in the colleges and direct the appointment of the appellant. He submitted that in this background appellant having been appointed, it was not at all open to the Vice Chancellor to have treated such appointment as not having been G validly made and to terminate the services of the appellant. He further submitted that at any rate the order made by the Vice Chancellor was contrary to the principles of natural justice inasmuch as the appellant had been appointed to a post in the University and he was holding the same and without giving any opportunity of hearing to the appellant, the order H in question could not have been passed.

Shri Akhilesh Kumar Pandey, learned counsel for the respondent submitted that the appointment made by the University was not at all proper inasmuch as the appellant should have been appointed to a post in the service of the University purely on temporary basis not exceeding a period of 6 months. Since the appellant had been appointed for a period longer than that, it was not open to the University to do so without the express sanction of the Government. In this situation it was certainly open to the Vice Chancellor to treat the appointment made as contrary to the provisions of the Act or statutes or rules or regulations or in any other manner irregular. If that was so, it was certainly not necessary for the University to have afforded an opportunity of being heard to the appellant. He relied upon Section 35(3) of the Act which was introduced into the enactment by an amendment made by Bihar Act 17 of 1993 which came into effect from 22.8.93.

Several contentions have been addressed by learned counsel on either side. However, for the purpose of disposal of this appeal, it is suffice to consider only one aspect of the matter and that is, whether the appellant had been given an opportunity of being heard before terminating his services and in the absence of the same whether such termination is valid. The High Court took the view that the appointment of the appellant made by the Syndicate of the University by its resolution dated 24.1.86 is illegal and on that basis took the view that the termination of the services was in order but did not examine the aspect with which we are concerned in the present case as to the non-observance of rule of *Audi Alteram Partem*.

The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of state action governed by Article 14. It has come to be established, as a further corollary, that the *audi alteram partem facet* of natural justice is also the requirement of Article 14, for, natural justice the antithesis of arbitrariness. In the sphere of public empolyment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in *Delhi Transport Corporation* v. *D.T.C. Mazdoor Congress*, reported in AIR (1991) SC 101.

A In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when the right of a party is affected B adversely. The justification for reading such a requirement is that the Court merely supplies omission of the legislature. (vide *Mohinder Singh Gill & Anr.* v. *The Chief Election Commissioner & Ors.*, AIR (1978) SC 851) and except in case of direct legislative negation or implied exclusion. (vide *S.L. Kapoor* v. *Jagmohan & Ors.*, AIR (1981) SC 136.

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In the light of these principles of law, we have to examine the scope of provision of Section 35(3) which reads as follows :

> "35(3) Any appointment or promotion made contrary to the D provisions of the Act, Statutes, rules or regulations or in any irregular or unauthorised manner shall be terminated at any time without notice.

The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the E provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statutes, rules or F regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in G holding such an enquiry the person whose appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not H be just, fair or reasonable as noticed by this Court in *D.T.C. Mazdoor*

Sabha's case. In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35(3) in this case will have to be read.

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B

Admittedly in this case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence the impugned order terminating the sevices of the appellant cannot be sustained.

C

The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services upto the date of his death on the basis of last pay drawn by him. Let Respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives.

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In the result, we allow the appeal in the terms stated above, set aside the order made by the High Court and allow the writ petition quashing the notification as stated earlier. However, in the circumstances of the case the parties are directed to bear their own costs.

F

T.N.A. Appeal allowed.