

A NATIONAL INSTITUTE OF TECHNOLOGY, JAMSHEDPUR AND ORS.

v.

CHANDRA SHEKHAR CHAUDHARY

NOVEMBER 13, 2006

B [ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Service Law:*

C *Relieving from duty—for pursuing Quality Improvement Programme—Associate Professor—Permission denied by Institute—On the ground that if he were relieved, the staff strength would be reduced by the specified percentage as per the norms of the Institute—Writ Petition challenging the denial—Single Judge as well as Division Bench held the denial not fair as the norms were not followed in several cases—Teacher had also abandoned the programme after some time—Also did not attend the same despite permission from the Institute—On appeal, held: Merely because in some cases norms are not followed, cannot be a ground to permit continuation of such departure.*

E *Constitution of India, 1950—Article 14—Claim for parity/equality—Held: A wrong order cannot be the foundation for claiming equality for enforcement of the same order.*

F **Respondent was an Associate Professor in appellant-Institute. Respondent applied for Quality Improvement Programme through the Institute. He was selected for admission in IIT, Madras. When he applied for being relieved, to make the pre-registration visit, he was denied the permission. He filed Writ Petition alleging that the permission was illegally and arbitrarily denied to him. Case of the Institute was that according to the norms, such permission could not be granted, if the staff strength in that department would go below 70%.**

G **Single Judge allowed the Writ Petition holding that since the norm was not followed in several cases, it would not be fair to deny, such an opportunity to the respondent. In Letters Patent Appeal, Division Bench of High Court upheld the decision of Single Judge. Hence the present appeal.**

### Allowing the appeal, the Court

**HELD: 1.** The wrong order cannot be the foundation for claiming equality for enforcement of the same order. Respondent's right must be founded upon enforceable right to entitle him to the equal treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.

[1106-E-F]

*State of Haryana and Ors. v. Ram Kumar Mann*, [1997] 3 SCC 321, relied on.

*State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr.*, [2000] 9 SCC 94; *Vikrama Shama Shetty v. State of Maharashtra and Ors.*, [2006] 6 SCC 70; *South Eastern Coalfields Ltd. v. Prem Kumar Sharma and Ors.*, (2006) 7 SCALE 240; *Ekta Shakti Foundation v. Government of NCT of Delhi*, JT (2006) 6 SC 500 and *South Eastern Coalfield Ltd v. Prem Kumar Sharma and Ors.*, AIR (2006) SC 2727, referred to.

**2.** Merely because in some cases the norms may not have been followed that cannot be a ground to hold that departure from norms should be continued. There are serious allegations about respondent having manipulated and fabricated documents to substantiate his stand. There is no official communication from IIT Madras to support the respondent's stand that he was asked by the authorities of the appellant-institute not to attend the programme. There should have been some material to support the stand. On the other hand admittedly after April, 2005 the respondent had abandoned the programme. It is also on record that the appellant notwithstanding these facts had asked the respondent to report back to IIT, Madras to continue studies in terms of High Court's direction. But that does not seem to have been done by the respondent. [1106-G-H; 1107-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4911 of 2006.

From the final Judgment and Order dated 13-5-2004 of the High Court of Jharkhand at Ranchi in Letters Patent Appeal No.147/2004.

Punit Dutt Tyagi for the Appellant.

Mahabir Singh, Binay K. Das, Rakesh Dahiya and Anil Kumar Jha for the Respondent.

A The Judgment of the court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

B Challenge in this appeal is to the judgment rendered by a Division Bench of the Jharkhand High Court dismissing the Letters Patent Appeal filed by the appellant against the judgment of the learned Single Judge in a writ petition. The respondent filed a writ petition for a direction to the appellant to relieve him so that he would be in a position to pursue his Ph.D course in Indian Institute of Technology, Madras (in short 'IIT').

C The background facts in a nutshell are as follows:

D The writ petitioner (respondent herein) is an Associate Professor in Metallurgical Engineering Department of the National Institute of Technology, Jamshedpur, the appellant herein. According to the writ petition, the writ petitioner submitted an application for admission in Quality Improvement Programme (QIP) sponsored by AICTE through Regional Institute of Technology, Jamshedpur. He was selected for admission in IIT, Madras and was asked to appear at that institution for completing pre-registration formalities. According to the writ petition, though he made an application to the appellant for relieving him to make the pre-registration visit, he had been illegally and arbitrarily denied the permission by the appellant. According to E the writ petitioner, the action of the appellant was unreasonable and was also discriminatory. The appellant resisted the writ petition by pointing out that according to the norms, if on relieving a teacher to attend such a programme, the staff strength in that department would go below 70 per cent of the fixed capacity, the permission was to be denied and if the writ petitioner was to be F relieved as sought for by him, the strength in that department would be reduced to 61.9% of the sanctioned strength and it was in that situation that he was not accorded permission to get himself registered for the course. It was also submitted that even originally, while forwarding his application, the writ petitioner had been informed that he would be able to pursue his course only if he could be relieved from the Institute and only if on his being G relieved, the staff strength would not be reduced below 70%. The plea of discrimination was denied and it was submitted that the writ petitioner was deliberately attempting to malign the department by raising the bogey of his being a member of a Scheduled Caste and was trying even to blackmail the authorities by threatening that he would commit suicide if he was not relieved. H The writ petition deserves to be dismissed.

Though the learned Single Judge found that there was a norm providing for refusal of permission to a teacher to go in for such a course if the staff strength would be reduced below 70% yet it was observed that there was no consistency in that regard and the norms were not followed in several cases. Therefore, it would not be fair to deny such an opportunity. The appellant preferred Letters Patent Appeal before the High Court.

It was pointed out that pursuant to an administrative decision dated 9.11.2003 by the Ministry of Human Resources Development (in short the 'HRD') the Board of Governors had adopted the Leave Rules and Conduct Rules of the National Institute of Technology for implementation in the institute. Such decision was taken on the day the matter was heard by a learned Single Judge and the orders were reserved. By the time the learned Single Judge pronounced its judgment IIT, Delhi Rules had already become operative and, therefore, no member of the teaching staff could be relieved for such a course, if the available strength of the staff gets reduced below 85%. To state differently, only quota of 15% could be permitted for such a course.

The Division Bench held that though on principles it would have agreed with the appellant's stand that when the norms prescribed that the strength should not be reduced below 70% by relieving a teacher for a programme such a teacher should not be relieved, yet it was held because the norm was not universally implemented. The learned Single Judge was justified in his view.

Learned counsel for the appellant submitted that merely because there may have been any lapse in the past, that could not have been taken as a ground by the High Court to grant relief to the respondent. It was further pointed out that the respondent did not continue his programme as Ph.D. degree at IIT, Madras after April, 2005. But as is evident from the letter of IIT Madras, respondent had secured low grades in the three subjects he had appeared and he had not attended the rest of the course. It was pointed out that the respondent has manipulated and fabricated documents to show that he was being prevented by the functionaries of the appellant from carrying on the study course. Respondent is also guilty, according to him, of making false and biased allegations against the functionaries of the appellant.

Learned counsel for the respondent on the other hand submitted that there is no reason as to why a different yardstick was sought to be applied for the respondent. He was the victim of machination. The respondent has

A clearly established as to how and why it was not possible for him to attend the course after April, 2005. It is submitted that the appellant with mala fide intention has pursued the respondent.

In *State of Haryana & Ors. v. Ram Kumar Mann*, [1997] 3 SCC 321 this Court observed:

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“The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly Circumstanced person claim equality under Section 14 for Reinstatement? The answer is obviously “No”.

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In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right”. [See: *State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr.*, [2000] 9 SCC 94, *Vikrama Shama Shetty v. State of Maharashtra and Ors.*, [2006] 6 SCC 70, *South Eastern Coalfields Ltd. v. Prem Kumar Sharma and Ors.*, [2006] 7 SCALE 240, *Ekta Shakti Foundation v. Government of NCT of Delhi*, JT (2006) 6 SC 500, and *South Eastern Coalfields Ltd. v. Prem Kumar Sharma and Ors.*, AIR (2006) SC 2727).

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Merely because in some cases the norms may not have been followed that cannot be a ground to hold that departure from norms should be continued. There are serious allegations about respondent having manipulated and fabricated documents to substantiate his stand. We need not go into these allegations. But as has been fairly accepted by the learned counsel for the respondent, there is no official communication from IIT Madras to support the

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respondent, there is no official communication from IIT Madras to support the respondent's stand that he was asked by the authorities of the said institute not to attend the programme. There should have been some material to support the stand. Unfortunately, for the respondent there is none. On the other hand admittedly after April, 2005 the respondent had abandoned the programme. It is also on record that the appellant notwithstanding these facts had asked the respondent to report back to IIT, Madras to continue studies in terms of High Court's direction. But that does not seem to have been done by the respondent.

The inevitable result is that the orders of the learned Single Judge and the Division Bench of the High Court cannot be maintained and are accordingly set aside. The appeal is allowed but in the circumstances without any order as to costs.

K.K.T.

Appeal allowed.