

In Chambers

Case :- WRIT - A No. - 5323 of 2016

Petitioner :- Sandeep Pandey

Respondent :- Union Of India And 8 Others

Counsel for Petitioner :- Rahul Mishra,Rajindar Sachar

Counsel for Respondent :- A.S.G.I.,Ajit Kumar Singh,Ananat Kumar
Tiwari,Anoop Trivedi,V.K.Upadhyaya

Hon'ble V.K. Shukla,J.

Hon'ble Mahesh Chandra Tripathi,J.

(Oral: Hon'ble V.K. Shukla,J.)

Sandeep Pandey is before this Court assailing the validity of the resolution dated 21.12.2015 of the Board of Governors, IIT, Banars Hindu, University, Varanasi and the consequential order passed by the Director, IIT, Banaras Hindu University, Varanasi, terminating the contract of petitioner as Visiting Faculty/Visiting Professor at the aforementioned institute w.e.f. expiry of one month from the date of order and alongwith the same other consequential reliefs have also been sought for.

Brief background of the case is that petitioner claims that he is an alumnus of the Institute of Technology, Banaras Hindu University (now Indian Institute of Technology (BHU), Varanasi). Petitioner did his Master's in Manufacturing & Computer Science from Syracuse University followed by Doctorate in Control Theory at the University of California, Berkely, which he completed in 1992. After completing the education, petitioner moved back to India and started teaching at the Indian Institute of Technology, Kanpur in 1992 and later founded a registered organization namely 'Asha Trust' which currently has several centres/chapters across India and his team has launched a people's group named 'Asha Parivar' in 2008 that focuses on strengthening democracy at the grass-roots in Hardoi, U.P. Petitioner's work at Asha Parivar is focused on Right to Information and other forms of citizen participation in

removing corruption and improving the efficiency of governance. Petitioner also leads National Alliance of People's Movement (NAPM), the largest network of grass-roots people's movements in India and was awarded the Ramon Magsaysay Award (often termed as 'Asian Nobel Prize') in 2002 for the emergent leadership category. Petitioner led an Indo-Pakistan peace march from New Delhi to Multan in the year 2005 and he has served as an Adviser to the Indian Government's Central Advisory Board for Education (CABE). Petitioner for the first time was associated as 'Visiting Faculty' with the Department of Chemical Engineering and Technology, IIT (BHU) during the academic session 2013-14 w.e.f. 1.8.2013 with honorarium of Rs. 65,000/- per month (consolidated) and free accommodation. Petitioner submits that he has been performing and discharging his duties as Visiting Professor and time to time extension has been accorded and last extension in question is come to an end upto the end of academic session 2015-16. Petitioner submits that his contractual tenure would come to an end on 30.7.2016 and to his utmost surprise he has been served with the impugned order dated 6.1.2016 wherein based on resolution No. 3.59 of the Board of Governors, IIT (BHU) held in the meeting dated 21.12.2015 his services in question as Visiting Faculty in the Department of Chemical Engineering, IIT (BHU) has been terminated. This action of the University concerned has impelled the petitioner to be before this Court.

Counter affidavit has been filed on behalf of the University and therein mention has been sought to be made that students of B.Tech. Are generally of impressionable minds and it is natural for such students of young age to be in intellectual awe of a mentor who has the credentials of being a Magsaysay awardee and such students naturally emulate such a mentor including his ideas and actions, in such a situation, such a mentor is under an onerous duty to be more circumspect in what he teaches and discusses with his students. Greater circumspection is required when the institute is located within the campus of Banaras Hindu University founded by Mahamana Madan Mohan Malviyaji and within the holy city of Varanasi, the religious centre of the country. It has been sought to be mentioned therein that the Vice-Chancellor, BHU and Chairman, Board of Governors, IIT (BHU), received a letter dated

15.10.2015 of Avinash Kumar Pandey, a student of MA 2nd Year, Department of Political Science, Faculty of Social Science, BHU, appending therein certain documents being e-mails etc. regarding activities of the petitioner within the institute as Visiting Faculty and also his political ideologies, involvement in political activities and being an active sympathizer of naxalites. Mention has also been made that the said documents clearly suggested that the petitioner in the name of Development Studies was not only openly defying the law of the land himself but was also propagating such defiance of law within the campus of institute in question. It has also been mentioned that apart from the aforesaid other mass mails sent to the students by the petitioner on the official mail of the institute selecting discussion note appending his own controversial articles. The topics for group discussion held by him were 'Killing of Mohd. Akhlaq justified', 'beef eating', 'beef ban', 'should religion be a matter of personal faith', 'killing a rationalist: silencing reason', 'killing of Prof. M M Kulburgi, Shri Naresh Dabholkar & Shri Pansare', 'atmosphere in the country is suppressing people's freedom of expression', 'preparation of political speeches' and there were e-mails from the petitioner broadcasted through the Registrar of IIT (BHU) regarding the lectures organised under "Acharya Narendra Dev Discussion/Film Series", a forum founded by the petitioner, on several controversial topics which were either political or against the national interest. All the said lectures were held in Entrepreneurship Hall, MCIE of IIT (BHU). Apart from the aforesaid newspapers had been reporting the participation of the petitioner in demonstration etc. as well as petitioner's own e-mail dated 25.10.2015 on the official e-mail of the institute inviting donations for Asha Trust and Socialist Party (India), a political party, as the founder, Asha Trust and National Vice President, Socialist Party (India). The said e-mail dated 25.10.2015 was in clear defiance of IIT (BHU) Conduct Rules which covered the petitioner as well and had been duly communicated to him by letter dated 15.10.2015 of the Assistant Registrar (FA), IIT (BHU).

Mention has also been made that all the aforesaid materials were placed by the Chairman, Board of Governors, IIT (BHU) in the Board's meeting dated 21.12.2015 and as all the documents were the own

documents of the petitioner, the Board of Governors proceeded to take a resolve to dispense with the services of petitioner and as per the terms and conditions of the contract, services in question has been done with. Mention has also been made that the terms and conditions of the services of the temporary employees of the institute will be regulated as per the provisions of Statute 14 of IIT Kanpur, presently being followed by the institute in question and as per Statute 14(1) of IIT Kanpur the services of a temporary employee shall be liable to termination at any time by notice in writing given either by the employee to the appointing authority or by appointing authority to the employee. The period of such notice has to be one month unless otherwise agreed to by the institute and the employee. It has also been mentioned that entire activity of petitioner was in a temporary position and petitioner's services have been terminated after giving one month notice as per the Statute 14(1) and, accordingly, no interference is required by this Court.

To the said counter affidavit, rejoinder affidavit has been filed disputing the averments mentioned therein and reiteration has been made that the resolution of the Board of Governors tends to cast stigma and aspersions on the petitioner which has serious evil consequences and in this background, the hot-haste with which decision in question has been taken clearly reflects that order impugned is a punitive order.

After respective pleadings have been exchanged, present writ petition has been taken up for final hearing and disposal.

Sri Rahul Mishra, Advocate, submitted with vehemence that in the present case entire proceedings are speaking for itself, inasmuch as, decision in question has been taken by the authorities concerned to silence the voice of petitioner merely because distinctive ideology was being practised by the petitioner whereas such a recourse ought not to have been taken, as has been done in the present case and order in question on its face value is punitive and stigmatic and passed in utter contravention and violation of principle of natural justice, accordingly, this Court should lift the veil and come to rescue and relieve of the petitioner by awarding him fair treatment and the requisite relief in the facts of the case.

Sri V.K. Upadhyaya, Senior Advocate, assisted by Sri Ajit Kumar Singh, Advocate, on the other hand contended that petitioner is not a fit person to be associated with the University and in the present case no opportunity was required as whatever material has been utilized in passing the order, all such materials are the materials generated by petitioner himself on which there is no dispute and, in view of this, source of information is not at all relevant and the relevant is the material that has been relied upon and, in such a situation and in this background, as presence of petitioner has been polluting the academic atmosphere of the institution as he was serving sugar coated poison by his e-mails and articles to rectify such an activity such a decision has been taken so that the peaceful academic atmosphere of the University is not derailed and, accordingly, this Court should not at all interfere in the matter, in the facts and circumstances of the case.

Sri V.K. Singh, Senior Advocate, appearing alongwith Sri Anoop Trivedi, Advocate, on behalf of Vice-Chancellor of the University concerned has also toed the same lines and has submitted that services of petitioner was purely temporary and contractual one and governed by the terms and conditions of the contract and by virtue of being Visiting Faculty certain amount of conduct was required by him to be maintained and here in the present case petitioner has failed to maintain his conduct and, in view of this, once services in question has been disengaged by considering all aspect of the matter as per the terms and conditions of the contract in question, no interference should be made by this Court and writ petition is liable to be dismissed.

On the basis of arguments, that have been so advanced before us, the factual situation that is so emerging before us is that as far as petitioner is concerned apart from being Visiting Faculty he has been a social worker also and this much is also reflected from the record in question that has come forward that he has his own political ideology and has his own vision/perspective for the society at large. It appears that at BHU wherein he has been engaged to perform and discharge his duties as Visiting Faculty he has been looking for like minded people who may share his views and in the said direction petitioner, it is reflected from the record, has been propagating his views by means of e-

mails/articles etc. and by holding lectures. The resolution that has been filed in the counter affidavit same mentions that petitioner has tried to touch the controversial issues that are against the national interest and may disturb the communal harmony. The records are speaking for itself, in the present case, inasmuch as, the Vice-Chancellor of BHU and Chairman of Board of Governors, IIT (BHU) received a letter dated 15.10.2015 from Avinash Pandey, a student of MA 2nd Year, Department of Political Science, Faculty of Social Sciences, BHU, appending therein certain documents being e-mails/articles etc. regarding activities of the petitioner within the institute as Visiting Faculty and also his political ideologies, involvement in political activities and being an active sympathizer of naxalites. This much is accepted position that petitioner has been engaged in imparting instructions of development studies and it is being submitted that while imparting instructions in the name of development studies he was not only defying the law of the land himself but was also propagating such defiance of law within the campus of the institute in question. The Vice-Chancellor, who is the Chairman of Board of Governors, IIT (BHU) placed the said letters in the meeting of Board of Governors held on 21.12.2015 and therein following resolution has been passed;

"BoG Resol. No. 3.59

Ex-Agenda Item No. 3.59

The Chairman informed the members that he was in receipt of a letter dated 15.10.2015 from one Avinash Pandey, MA 2nd Year, Department of Political Science, Faculty of Social Sciences, BHU, making serious allegations against Dr. Sandeep Pandey, Visiting Faculty. The Chairman placed the letter alongwith its Annexures on Table. The major allegations levelled against Dr. Sandeep Pandey are as under:

I. As a part of Developmental Studies Course, screening of BBC documentary on Nirbhaya rape case, banned by the Government, was proposed on 11.3.2015 as per e-mail circulated by one Mr. Devansh Mittal on behalf of Dr. Sandeep Pandey. The screening was though subsequently cancelled, but on oral discussion on "Gender Issues and Gender Violence" was organized by Dr. Sandeep Pandey on 11.3.2015 as per the e-mail notification from Dr. Devansh Mittal. Moreover, as per e-mail dated 6.3.2015 of Devansh Mittal, a link for the banned documentary on "Youtube" was provided to the students by posting it on the internal FTP link of BHU:10.3.101.225. The complaint has also raised the

following question in his letter:

- a. Who is Devansh Mittal?
 - b. Who has authorized him to post banned documentary on BHU intranet?
 - c. Was the permission of BHU Vice-Chancellor obtained?
 - d. Does Developmental Studies Course require teaching students for defying law of land by screening and discussion banned documentary.
 - e. What are the credentials of teachers teaching developmental studies?
- II. There is no requirement of taking attendance, classes and examination in the "Developmental Studies Course" run by Dr. Sandeep Pandey and students get "A" grade without any examination. He taught students how to participate in dharnas. A live training was held last year in which mock rally was held.
- III. He makes students to discuss anti-social topics, such as "Kashmir should be declared an independent Nation", and many others.
- IV. The complainant had also attached some articles regarding Dr. Sandeep Pandey, some of which show his connections and sympathy with Naxalite Movement in the country.

The Chairman also tabled copies of some e-mails from Dr. Sandeep Pandey broadcasted through the Registrar of IIT (BHU) regarding lectures organized under "Acharya Narendra Dev Discussion/Film Series" on several controversial topics which are either political in nature or against the national interest. All these lectures were held in Entrepreneurship Hall, MCIIE of IIT (BHU). E-mail evidences for the Group Discussions on such controversial topics in the classes as part of the curriculum of the said developmental studies course were also presented. Further, several newspaper clippings showing Dr. Sandeep Pandey's involvement in demonstrations, etc. were presented.

The Director informed the Board that Dr. Sandeep Pandey teaches Control Theory, Developmental Studies, etc. as per time table.

The Board took cognizance of the aforementioned documents. The members were of the opinion that the act of posting of Nirbhaya documentary, banned by the Government, falls under the category of cyber crime. Further, the members were of the opinion that the topics covered by Dr. Sandeep Pandey in the classroom teaching of the said course on developmental studies are against the national interest and may disturb the communal harmony as well as encourage students to take law into their hands on the campus.

RESOLVED that the engagement of Dr. Sandeep Pandey as Visiting Faculty of the institute be terminated immediately after serving one month notice to him.

RESOLVED FURTHER that an enquiry committee be constituted by the Chairman, BoG to look into the serious questions raised in the complaint letter.”

Based on this resolution, the services of petitioner has been dispensed with by passing the following order;

“Ref No. IIT (BHU)/FA/Vis Fac/

Date: 06.01.2016

Confidential

Order

In pursuance of Resolution No. 3.59 of the meeting of the Board of Governors held on 21.12.2015, Dr. Sandeep Pandey is hereby informed that his services as Visiting Faculty in the Department of Chemical Engineering stand terminated after the expiry of one month from the date of issue of this order.

Director

Ref No. IIT (BHU)/FA/Vis Fac/4/13706 Date: 06.01.2016

Copy forwarded to for information and necessary action the following:

.....”

The order dated 6.1.2016, it is clearly reflected, is in pursuance of the resolution no. 3.59 and, in view of this, the resolution no. 3.59, as quoted above, is being looked into. A bare perusal of the Board of Governors' resolution no. 3.59 would go to show that the said complaint in question has been made by a student, who is totally unconnected with the IIT (BHU) and has never been student of the petitioner rather his description is Avinash Pandey, MA 2nd Year, Department of Political Science, Faculty of Social Sciences, BHU and the Vice-Chancellor/Chairman of the Board of Governors, IIT (BHU) based on the said letter and the materials, that have been so supplied, placed the same before the meeting of the Board of Governors and in the said meeting as far as Director is concerned, he informed the Board that Sandeep Pandey teaches Control Theory, Developmental Studies, etc. as per time table. The Board of Governors took cognizance of the aforementioned documents and the Members were of the opinion that the act of posting of Nirbhaya documentary, banned by the Government, falls under the

category of cyber crime and further the Members were of the opinion that the topics covered by the petitioner in the classroom teaching of the said courses on developmental studies are against the national interest and may disturb communal harmony as well as encourage students to take law into their own hands into the campus. Once the Board of Governors were acting on a complaint forwarded by Avinash Pandey, a student of MA 2nd Year, Department of Political Science, Faculty of Social Sciences, BHU, and based on the same opinion was formed that activities of petitioner falls within the category of cyber crime and his classroom teaching of the said courses on developmental studies are against the national interest and may disturb communal harmony as well as encourage students to take law into their own hands into the campus, then in our considered opinion, these are serious allegations against an incumbent casting aspersions on his character and as well as on his integrity. It is true that requirement of natural justice is not mandatory in each cases and the principle of natural justice has a flexible nature and there is no straight jacket formula and in matter wherein in useless formalities test no test of prejudice involved, the same can be waived as per the Apex Court in the case of ***Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati & others, 2015 (8) SCC 519***, but in the present case, looking into the seriousness of the nature of accusations levelled, in our considered opinion as per the another judgment of Apex Court in the case of ***Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences & others, 2015 SCC Online SC 954***, we will certainly lift the veil to find out as to what is the real reason for taking such an action.

Apex Court in the case of ***High Court of Gujarat Vs. Jayshree Chamanlal Budhhabhatt, 2013 (16) SCC 59***, has taken the view that once any allegations are made against the incumbent concerned, which results in stigma, the minimum requirement is to inform the concern person, the charge against him, and to give him reasonable opportunity of being heard.

Apex Court in the case of ***SBI Vs. Palak Modi, 2013 (3) SCC 607***, has considered the issue of termination simplicitor or punitive termination. Mention has been made that if misconduct/misdemeanour

constitutes the basis of final decision taken by competent authority to dispense with the services of an incumbent albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simplicitor, the employer has punished the employee for misconduct.

Here the termination order certainly proceeds to make a note that services of petitioner are being disengaged in consonance with the terms and conditions of the service but the larger question is as to whether the order in question on its face value, appears to be innocuous, is a stigmatic order or not. In the present case, the order in question has to be accepted as stigmatic/punitive one for the simple reason that here petitioner has been not only accused of committing cyber crime but has also been accused of imparting teaching contrary to national interest. In the counter affidavit, conscious of the fact that line has already been crossed, as a damage control device, observations have been termed to be on *prima facie basis*. Once the Board of Governors proceeded to form such an opinion and based on the same such a decision has been taken, then it may be true that nature of the engagement of petitioner is a contractual one but once the order is not a termination simplicitor as per the terms and conditions of the contract rather on lifting the veil, it is clearly reflected that basically differences of ideologies has led to such action as petitioner appears to be a believer of different ideologue than the ideologue believed by the incumbent, who proceeded to make complaint, and the people saddled with the administration came on the same page, for reasons best known to them, and here before us from the side of petitioner it has been submitted that academic administrators have lineage to the ideology from which the complainant came forward. Academic administrators should be politically neutral, at the point of time of dealing with academic/administrative matters of the University. The decision of Academic Administrator has to be free from malice and the said authority has to be exercised in free, fair and transparent manner after complying with the principle of natural justice. Apex Court in the case of ***Andhra Pradesh State Road Transport Corporation Vs. State Appellate Tribunal, 1998 (7) SCC 353***, held that the power can not be arbitrarily/indiscriminately exercised. The power is coupled with duty.

The Authority must genuinely address itself to the matter before it. It must act in good faith, must have regard to all relevant considerations and must not be shirked by irrelevant consideration, must not shriek to promote alien to the letter and spirit of legislation that gives it power to act and must not act arbitrarily or capriciously. Here once the complaint was made and it was going to have serious repercussions, then, at the said point of time, it is true that petitioner may be the author of the aforementioned documents in question but certainly as to whether it falls within the category of cyber crime or in any way all such materials affected the national interest certainly would have been explained by the petitioner, who is alumnus of the University and a Magsaysay Award winner and fully understand the consequences of his activities. Petitioner has been performing and discharging his duties in BHU and he is bound by the conduct rules and in case petitioner has proceeded to cross the lines, then certainly after affording adequate opportunity of hearing and after examining all these aspects of matter, his services could have been disengaged, as per the terms and conditions of the contract. The case in hand is not a termination simplicitor rather it is a punitive/stigmatic order wherein petitioner has been alleged to have committed cyber crime and not only that he has been accused of cyber crime, allegations have been there that he is acting against the national interest. Heavy words such as commission of cyber crime and acting against national interest have been loosely used. All these allegations are serious in nature and such allegations have serious aspersions on the conduct and character of an incumbent and the way and manner in which decision in question has been taken as against him ex-parte cannot be approved of by us.

We may make note of the fact that under our Constitution, the phrase "freedom of speech and expression" contained in Article 19 (1) (a) has been given a very wide interpretation by the Apex Court in the case of ***People's Union for Civil Liberties & another Vs. Union of India, 2003 (4) SCC 399***, by mentioning that it includes "freedom of propagation of ideas", "right to circulate ones ideas, opinion and views", "right of citizen to speak, publish and express their views as well as rights of people to read" as well as to know about the affairs of the Government. Freedom of speech can be restricted only in the interest of the security of State,

friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The only restriction that may be imposed on the rights of individual under Article 19 (1) (a) are those which Clause (2) of Article 19 permits and no other.

Apex Court in the case of ***Shreya Singhal Vs. Union of India, 2015 (5) SCC 1***, has reiterated the view noted above, in reference of Section 66 of IT Act by mentioning that a provision of law that forces people to self censor their views for fear of criminal sanction violates the constitutional guarantee of free speech. Freedom of speech and expression includes the right to acquire information and to disseminate it. Same is necessary for self expression, which is an important means of attaining free conscience and self-fulfilment. A legitimate right of freedom of speech and expression including fair criticism is not to be throttled. No responsible person in democracy could incite the people to disobey the rule of law duly enacted, but situations may arise where responsible persons may feel that it is their duty to criticise the subject and invite the people to come for discussion on subject. Apex Court in the case of ***Baldev Singh Gandhi Vs. State of Punjab, 2002 (3) SCC 667***, has clearly ruled that discussions believed to be in public interest would not constitute misconduct.

Rights, restrictions and duties co-exist. Apex Court in the case of ***S. Rangarajan Vs. P. Jagjivan Ram, 1989 (2) SCC 574***, held:

“The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom, by an intolerant group of people. The fundamental freedom under Article 19 (1) (a) can be reasonably restricted only for the purposes mentioned in Articles 19 (2) and the restriction must be justified on the anvil of necessity and not the quickstand and of convenience or expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.”

Freedom of speech has been quoted by S.G. Tallentyre, author of

the book 'Friends of Voltaire' as follows;

"I disapprove of what you say, but I will defend to death your right to say it."

The Banaras Hindu University was conceived as a residential University, keeping in view its objective of complete character development and through monitoring of students. The Founder's vision has been as follows;

"India is not a country of Hindus only. It is country of Muslims, the Christians and the Parsees too. The country can gain strength and develop itself only when the people of different communities in India live in mutual goodwill and harmony. It is my earnest hope and prayer that this Centre of life and light which is coming into existence will produce students who would not be intellectually equal to the best of their fellow students in other parts of the world, but will also live a noble life, love their country and be loyal to the supreme ruler."

Education is a cultural pursuit consisting in the appropriate training of human being. Prof Ernest Barker defines the concept of University as "an organised and degree giving institution intended for the study and advancement of higher branches of learning, self governing in its nature, and, to a greater or lesser extent national in scope". A teacher plays pivotal role in process of education and for fulfilling the aims and object for which the University has been established. A teacher is conscious of his responsibilities and the trust placed in him to mould the character of youth and to advance knowledge, intellectual freedom and social progress. Discipline is the bedrock on which an educational system is founded. Educational institutions in the said direction, are free to lay down Code of Conduct and guidelines to be adhered by the Authorities/Teaching/Non-teaching staff. Such an exercise of authority is essential for proper balancing of interests of an individual as a citizen and the right of institution to frame Code of Conduct for its employees in the interest of proper functioning of the institution. Authorities/Teaching/Non-teaching staff while discharging their duties are in effect discharging public duty and are regulated by Rules/Regulations/Statutes of the University. On one hand it is necessary to maintain and preserve freedom of speech and expression in democracy, on the other hand when one is discharging public duty he/she will have to to keep in mind that Rules/Regulations/Statutes framed by

the University/Educational Institution has not been breached.

Even at Banaras Hindu University there is a prescribed Code of Conduct provided for and breach of any of the provisions of Code of Conduct has to be treated as misconduct for which teacher may be liable for disciplinary action when it is found that teacher has been conducting himself in a manner that is inconsistent with the faithful discharge of his obligations. Here, in pith and substance, petitioner has been attributed with misconduct and without holding enquiry by violating the principle of natural justice with impunity impugned order has been passed that clearly casts stigma on the character of petitioner and is punitive in nature.

Consequently, in the facts of the case, on overall assessment of all aspect of matter, the decision dated 6.1.2016, which has been taken in pursuance of meeting dated 21.12.2015 of the Board of Governors, IIT (BHU), Varanasi, is hereby quashed and set-aside.

Writ petition is **allowed**, accordingly with all consequential benefits with cost.

Order Date :- 22.4.2016
Shekhar

(Mahesh Chandra Tripathi,J.)

(V.K. Shukla, J.)