

THE HIGH COURT OF MADHYA PRADESH, JABALPUR

Writ Petition No.	:	1865 of 2021
Parties Name	:	Chandresh Shukla Vs. The Registrar, People's University
Bench Constituted	:	Hon'ble Shri Justice Vishal Mishra, J.
Name of counsel for parties	:	For Petitioner: Shri Atul Anand Awasthy For Respondent: Shri Aditya Vijay Singh
Whether approved for reporting	:	Yes/No
Law laid down	:	- The order should clearly reflect the reasons thereof, subsequent explanation or reasons justifying the impugned order not permissible. (See para-10) - Recording of reasons for terminating the services in the impugned order is necessary, as the reasons are the heart beat of any order. Non speaking orders does not stand judicial scrutiny. (See para-9)
Significant paragraphs	:	9 & 10

ORDER

24.11.2021

With the consent of the parties, the case is finally heard.

1. The present petition has been filed challenging the order dated 11.01.2020, passed by the respondent/University; whereby, the services of the petitioner has been terminated.
2. It is argued that objection is being taken with respect to the maintainability of the Writ Petition under Article 226 of the Constitution of India challenging the action taken by the private respondent. Counsel appearing for the petitioner submits that the respondent/University is running various Educational Institutions including the People's College of Dental Science and Research Centre, Bhopal and has performing the public functions and looking to the judgment of the Hon'ble Supreme Court in the

case of **Marwari Balika Vidyalaya Vs. Asha Shrivastava**, reported in **2019 (4) Scale 600** the Writ Petition under Article 226 of the Constitution of India is maintainable as against the private unaided educational institutions also if they are performing the public duties and imparting education. Considering the fact that the respondent/University is imparting education is performing public duty, this Court deems it appropriate to entertain the Writ Petition under Article 226 of the Constitution of India.

3. The petitioner is a registered Dental Practitioner under the State Dental Association, Madhya Pradesh and was appointed as a Senior Lecturer by the respondent vide order dated 19.05.2011.

4. He is a renowned Medical Practitioner and a Surgeon since last 13 years and has been recognized by the Dental Fraternity and various Organizations. The respondent/University is running various Educational Institutions including People's College of Dental Science and Research Centre and performing public functions. After appointment of the petitioner and looking to his qualification skills and performance he was promoted to the post of Reader after completion of four years of teaching experience as Senior Lecturer on 20.05.2015. All of a sudden, a letter has been issued on 11.01.2020 informing the petitioner that his services has been terminated. It is submitted that Annexure A-1, the impugned order is a non speaking order assigning no reasons regarding discontinuation of service of the petitioner. It is submitted that the impugned order reflects that the services of the petitioner has been discontinued in pursuance to the order dated 19.05.2011 i.e. appointment order of the petitioner. The conditions of governing the services of the petitioner, Article-9 deals with termination and provides that the services can be terminated by granting one month's notice in writing or salary in lieu thereof and the services can be terminated without giving any notice with immediate effect during probation in case the trust was not satisfied with the work and performance or in case any

breach has been committed or any instance of misconduct, gross negligence, etc. is done by the employee. It is submitted that no such conditions are being fulfilled by the respondents nor are being reflected from the impugned order. No reasons are being assigned regarding termination of the services of the petitioner. It is submitted that the order impugned is contrary to the dictum laid down by the Hon'ble Supreme Court in the case of **M/s Kranti Associates Pvt. Ltd. and Another Vs. Masood Ahmed**, reported in **2010 9 SCC 496**. He has prayed for quashment of the impugned order with a prayer for reinstatement with all consequential benefits.

5. Per contra, counsel appearing for the respondent has opposed the prayer and supported the impugned order. It is pointed out that the petitioner's services were terminated owing to the fact that a criminal case has been registered against the petitioner for the offence punishable under Sections 419, 420, 467, 468 and 471 of IPC and he was arrested on 04.01.2020. The aforesaid aspect was suppressed by the petitioner from the respondent/University, but the respondent/University came to know about the same and in pursuance to the same immediate action was taken and the services of the petitioner was discontinued; therefore, the petitioner was orally informed regarding the aforesaid reason of termination of his services; therefore, there is no illegality in terminating the services of the petitioner.

6. Heard the learned counsels for the parties and perused the record.

7. From the perusal of the record, it is seen that the petitioner's services were discontinued by Annexure A-1, dated 11.01.2020; which reads as under: -

"As per terms and conditions of your Appointment Order No.HR/T/PCDS/5277/11, dated 19.05.2011, it has been decided

to discontinue your services as Reader (Orthodontics) with immediate effect.”

8. The order reflects that in pursuance to the appointment order dated 19.05.2011, the petitioner’s services has been discontinued, the order dated 19.05.2011 being an appointment order of the petitioner. There is a procedure prescribed for terminating the services under Article-9 which reads as under:-

BY “TRUST”

- The “Trust” shall have the right to terminate your employment by giving one month’s written notice or salary in lieu thereof.
- However the “Trust” shall have the right to immediately terminate your employment without giving any notice under the following conditions:
 - During Probation, in case the “Trust” is not satisfied with your work and conduct;
 - In case you commit any material breach of any provision of this Agreement, rules and regulations of the “Trust”;
 - Any issuance of misconduct, gross negligence shall continue sufficient grounds for immediate dismissal. (Misconduct shall be as per the Code of Conduct of the “Trust”)

BY EMPLOYEE

During probation you may terminate your services/employment by giving one month notice to the Trust or salary in lieu thereof and after probation (i.e. upon your services being confirmed) the notice period would be three months or salary in lieu thereof. Upon such notice of Termination, you must complete all outstanding matters or projects and also avail a NO DUES CERTIFICATE (NOC) from the relevant departments and any other report deemed necessary by the “Trust”.

DEEMED TERMINATION

In the event of your absence from duty without information or permission or extending your sanctioned leave without approval, the Management will treat you as having voluntarily abandoned the services of the “Trust” and your employment would deemed to be

terminated with immediate effect. In such a case no relieving order will be issued and settlement of dues will be at the discretion of the "Trust". Further the "Trust" reserves the right to recover, as liquidated damages, an amount equal to gross salary (Last drawn by you) by initiating appropriate legal proceedings against you.

9. It is seen that certain procedure is being prescribed for terminating the services, no notice was issued to the petitioner neither any one month's notices was provided to him nor one month's salary in lieu of notice is being given to the petitioner. The order impugned is totally a non speaking order. The Hon'ble Supreme Court in the case of **M/s Kranti Associates Pvt. Ltd. and Another (supra)** has held as under:-

"47. Summarizing the above discussion, this Court holds:-

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process."

10. It is a settled proposition of law as has been held by Hon'ble the Supreme Court in the case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others** reported in **1978 (1) SCC 405**, that the impugned order has to be judged by the reasons mentioned therein and subsequent filing of an affidavit or giving explanation will not be considered to be a plausible explanation for passing the impugned order. In the present case the order impugned which is a termination order does not reflect any reason for termination. In such circumstances, the impugned order dated 11.01.2020 (Annexure A-1) being a non speaking order, the same does not stand the judicial scrutiny, the same is hereby quashed.

11. The matter is relegated back to the authorities for reconsideration of the case of the petitioner in accordance with law.

12. The exercise be completed within a period of 30 days from the date of receipt of certified copy of this order.

13. Accordingly, the petition stands **allowed and disposed of**.
Certified copy as per rules.

(VISHAL MISHRA)
JUDGE

taj.