



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6255 OF 2021
(ARISING OUT OF SLP(C) NO.17893 OF 2008)

DR. SUSHIL KUMAR TRIPATHI

.....APPELLANT(S)

VS.

JAGADGURU RAM BHADRACHARYA
HANDICAPPED UNIVERSITY & ANR.

....RESPONDENT(S)

J U D G M E N T

NAGARATHNA J.

This appeal has been filed by the appellant being aggrieved by the judgment dated 8th February, 2008, passed by the Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ petition No. 20470 of 2007, by which the aforesaid writ petition was dismissed.

2. Succinctly stated the facts of the case are that the respondent-University which was established in the year 2001 was included in the List of Universities eligible to receive assistance from the Central Government under Section 12(b) of

the University Grants Commission Act, 1956 ('UGC Act' for short) and Rules framed thereunder, with effect from 20th May, 2003.

3. The respondent-University framed Statutes in the year 2002 providing for various faculties including Faculty of Social Science of which Political Science is a Department.

4. In April, 2004, the University Grants Commission ('UGC' for the sake of convenience) under its Tenth Plan issued grants to the respondent-University including the grant in respect of financial support for one lecturer in the Department of Political Science. On 3rd July, 2004, the respondent-University advertised inter-alia for filling up of vacancy in the Department of Political Science. The appellant herein applied and was selected to the post of Assistant Professor and was issued appointment letter dated 4th December, 2004, in the grade pay scale of Rs.8,000-13,500.

5. According to the appellant, every month he was forced to pay Rs.5,000 from his salary to the University as donation to which he objected but nevertheless continued to pay the amount to the University. Thereafter, the appellant wrote to the Vice-Chancellor of the University to grant him Ph.D. incentive as admissible under UGC grant. On 19th July, 2006, the Registrar of the University replied that since his post was only for the Tenth Plan which was going to expire on 31st

March, 2007, his services would be automatically terminated on the said date i.e. 31st March, 2007. The appellant received another communication, dated 1st March, 2007, from the Registrar of the University stating that his services were no more required by the University with effect from 31st March, 2007, as his post was abolished.

6. The appellant being aggrieved by the abolition of the post and his consequent removal, filed a Civil Misc. Writ Petition No.20470/2007 before the Allahabad High Court. According to the appellant, on the one hand, the respondent-University had stated that his post had been abolished while on the other hand, had requested respondent no.2 - UGC for continuation of grant for all the posts under the Tenth Plan even under the Eleventh Plan by showing that the appellant was working in the Department of Political Science as on 6th April, 2007.

7. According to the appellant, the High Court listed his Writ Petition on 2nd November, 2007, and had directed that written arguments be filed on 5th November, 2007. By impugned order dated 8th February, 2008, the Division Bench of the High Court held that there was neither any illegality nor any infirmity in the orders of the respondent-University for abolishing the post and therefore had rightly terminated the services of the appellant and it dismissed the Writ Petition. Being aggrieved, special leave petition was filed by the appellant

herein in which leave was granted vide order dated 7th October, 2021.

8. We have heard Mr. Amit Anand Tiwari, learned counsel for the appellant, Mr. Jitendra Mohan Sharma, learned Senior Counsel for respondent no.1-University and Mr. Ravinder Agarwal, learned counsel for respondent no.2-UGC and perused the written submissions as well as the material on record.

9. Mr. Tiwari, learned counsel appearing for the appellant, contended that there has been wrongful termination of the appellant as Assistant Professor in the Department of Political Science by the respondent-University. In support of this submission, reliance was placed on the recommendation of the Expert Committee vide its Report dated 5th February, 2019, which has been accepted by the UGC and there has been no objection raised to the said recommendation by the respondent-University. Elaborating the said contention, it was submitted that the appellant was appointed as an Assistant professor pursuant to an advertisement dated 3rd July, 2004 and though the same was under the Tenth Five Year Plan and it was supported by the UGC, appellant's services were in fact continued even under the Eleventh Five Year Plan. However, the services of the appellant were wrongfully terminated on the lapse of the Tenth Five Year Plan on 31st March, 2007, with an intention of discontinuing the appellant as Assistant Professor in the respondent-University on the ground that he had been appointed during the Tenth Five Year Plan. But fact is that the respondent-University had communicated

to the UGC, the requirement of a post in the Department of Political Science even under the Eleventh Plan. This was the very post held by the appellant herein. Therefore, the termination of the appellant on the lapse of the Tenth Plan was illegal.

10. Learned counsel for the appellant drew our attention to the fact that the Expert Committee constituted by the UGC initially had submitted an adverse recommendation but subsequently when another Expert Committee was constituted by the UGC a detailed report was submitted with the recommendation to reinstate the appellant as Assistant Professor of the respondent-University. The same is supported by reasons given by the Expert Committee. It was submitted that the Expert Committee had categorically stated that the termination of the appellant as Assistant professor in Department of Political Science was "perverse and incorrect". In the circumstances, the said recommendation may be accepted and the appellant may be reinstated in service. It was contended that the respondent-University had terminated the services of the appellant as he had earlier protested against payment of Rs.5,000 per month as donation to the University as said amount was deducted from his salary without any justification. Hence, it was submitted that relief may be granted to the appellant herein on the basis of the recommendation made by the second Expert Committee of the UGC as the respondent-University had not objected to the same.

11. Mr. Agarwal, learned counsel for the UGC, which was impleaded as respondent no.2 in this appeal, also submitted that the representation of the appellant dated 19th October, 2012, was

considered by the Chairman of the UGC as the errors in the Report of the earlier Expert Committee were pointed out and a second Expert Committee was constituted to reconsider the grievances of the appellant. The second Expert Committee took into account the documents submitted by the appellant including those obtained under the Right to Information Act (RTI Act) and it had observed as under:

- "In reply to the RTI application moved by the Petitioner, University had admitted that all teachers appointed under the Xth plan were made permanent with effect from the date of their appointment and an order to this effect was issued by the University on 27.03.2010.

- Vide letter dated 28.07.2018 written by the University to the UGC, it was stated that all the teachers appointed under the Xth Plan were appointed on a contract for 5 years, but pursuant to order dated 27.03.2020, the teachers appointed under the Xth Plan were treated as permanent with effect from the date of their appointment.

- Even after the abolition of the Department of Political Science and Philosophy, the University, vide letter dated 06.04.2007, had sought funds under the XIth Plan from UGC. In their proposal the University had shown an additional requirement of one post in Department of Political Science, and the existing working strength in the said department was shown as 2.

- In the letter dated 13.11.2008 written by the Vice Chancellor to the Petitioner it was admitted that there was nothing to show that the appointment of the Petitioner was contractual.

- The Vice Chancellor of the University in his letter dated 05.12.2008, had admitted that even in case where no students are enrolled, the Department may be abolished by making a provision for merger/absorption of the teachers in other department(s).

- All other appointees under the Xth Plan were made permanent except the Petitioner."

It was further submitted by learned counsel for the respondent-UGC that the second Expert Committee recommended that the termination of the services of the appellant was "perverse and incorrect" and hence, he had to be reinstated as Assistant Professor, Department of Political Science and in case the said department had been abolished, absorbed in any other department or faculty of the University.

12. Per contra, Mr. Sharma, learned senior counsel for the respondent-University reiterated the reasoning of the Division Bench of the High Court in the impugned judgment and contended that the appointment of the appellant was under a scheme of the UGC sanctioned under the Tenth Five Year Plan and the said appointment was to come to an end on the expiry of the said plan on 31st March, 2007. In the circumstances, the services of the appellant were rightly terminated by the University as the post held by the appellant stood abolished and the services of the appellant were no longer required by the University. It was contended that the appointment of the appellant was not on a permanent basis but the post which the appellant held was under the Tenth Plan and it was categorically mentioned in the letter of appointment dated 4th December, 2004, issued to the appellant that his appointment to the post was under the Tenth Plan and was likely to be continued depending upon his performance and availability of post. Since the Tenth Plan came to an end on 31st March, 2007, the post held by the appellant ceased and therefore the services of the appellant were rightly terminated as his appointment was a tenure based appointment and the post had been

abolished. It was urged that in view of the aforesaid facts, the High Court had correctly concluded that the services of the appellant were rightly terminated on 31st March, 2007, having regard to the nature of the appointment and the terms and conditions thereof. Learned senior counsel for the respondent-University submitted that there is no merit in this appeal and the same may be dismissed.

13. The question that arises in this appeal is, whether, the termination of the services of the appellant was legal and in accordance with law or not.

14. It is noted that as per communication dated 29th May, 2004, by the UGC, to the Universities of all the States/UTs, including the respondent-University herein, owing to the financial difficulties faced by the Universities, the UGC had decided to offer the following three options to the Universities for filling up all the posts approved during the Tenth Plan period to safeguard the interest of the students:

“(A) Assurance may be obtained from the State Government for taking over the liability of these posts after tenth plan period.

OR

(B) Assurance may be given by the University through a resolution of the Executive Council to bear the burden of these posts after Tenth Plan.

OR

(C) Appointment shall be made on contractual basis.”

The University could opt for any of the above three options for filling up all the posts by fulfilling the

conditions regarding qualification, etc., of the posts as prescribed under the UGC Regulations.

15. Accordingly, the respondent-University on 3rd July, 2004, advertised for filling up, inter-alia, vacancy in the Department of Political Science. Pursuant to the advertisement, the appellant applied for the vacant post and was appointed as Assistant professor in the Department of Political Science, Faculty of Social Science. The Clause No. 7 of appointment letter dated 4th December, 2004, reads as under

"His appointment to the post is to be for X-Plan, but likely to be continued depending upon the performance of the candidate and availability of post."

16. The pay scale of the appellant was Rs.8,000-13,500 and the gross salary was Rs.13,095. According to the appellant, Rs.5,000 per month was being deducted from the salary as donation which was 38.18% of his gross salary to which objection was raised by the appellant. Further, appellant by his letter dated 19th July, 2006, addressed to the Vice Chancellor of the respondent-University, sought for grant of benefit of Ph.D incentive and annual increment and for payment of Dearness Allowance, etc., There was no response to the aforesaid letter but on 1st March, 2007, the Registrar of the respondent-University informed the appellant that he was appointed in the Faculty of Social Science, Department of

Political Science as Assistant professor under the Tenth Five Year Plan which was coming to an end on 31st March, 2007, and therefore, his appointment was to automatically come to an end on the said date and the requirement of his services would depend entirely on the decision of the University. As a sequel to the above, on 31st March, 2007, the Registrar communicated to the appellant that as per the decision of the University dated 28th March, 2007, the post held by the appellant had been abolished and therefore, his services were no more required by the University.

17. Appellant has produced the communication dated 6th April, 2007, written by the University addressed to the Chairman, UGC, acknowledging the generous contribution from the UGC during the Tenth Plan and the contribution to be made by the UGC to the Eleventh plan proposal including the details of the strength in each faculty. According to the appellant, at the end of Tenth plan, the Department of Political Science had not been abolished by the University nor could it be said there was no requirement of any lecturers, etc. in the said Department.

18. Further, on a reading of the appointment letter dated 4th December, 2004, it is evident that the appointment of the appellant was not on contractual basis but it was categorically stated therein that the appointment was under

Tenth Plan and it was likely to be continued depending upon the performance of the candidate and the availability of the post.

19. In fact, UGC was impleaded in this appeal by order dated 6th May, 2010 as respondent no.2 and was directed to consider the representation of the appellant herein without being influenced by any finding of the High Court.

20. According to the UGC, initially, the representation of the appellant was placed before an Expert Committee, which examined the grievances of the appellant and submitted its report to the UGC. The UGC examined the representation of the appellant in light of the report submitted by the Expert Committee and by order dated 23rd December, 2011, had rejected the representation. The appellant again addressed a representation to Chairman of the UGC dated 19th October, 2012, pointing out the errors in the report of the Expert Committee and requested for re-examination of his case. The appellant had also obtained certain documents under Right to Information Act for the consideration of the UGC and the Expert Committee.

21. The UGC constituted another Expert Committee to look into the grievances of the appellant afresh on the direction of this Court and after deliberations held on 29th January, 2019,

and taking into consideration the material placed by the appellant has observed and recommended as under:

“(I) As regards the terms of the appointment letter dated 04.12.2004, it is observed that the appointment letter was completely silent on the issue as to whether the appointment was permanent or contractual. It simply mentioned that his appointment to the post was for X-Plan, but was likely to continue depending upon the performance of the candidate and availability of post. As per the Clause 10.21 of the JRHU Regulations, 2002, all appointments of teachers was to be made on probation for a period of 12 months and in no manner it could be extended beyond 24 months. As per Clause 10.22, at the end of the probation period, the incumbent was to be made permanent on his appointment by the EC. This was also admitted by the University in its reply under RTI to Dr. Tripathi vide their reply dated 14.08.2013. It was also mentioned in the said reply (Reply at 1/B) that upon the completion of probation, all the appointment would be treated as permanent. Moreover, it was also stated in the said reply that the teachers appointed under the X Plan were made permanent w.e.f. the date of their appointment and the said order was issued on 27.03.2010 (Reply at 3 of RTI reply). In the same reply under RTI, it has been stated that the appointed teachers had also been given annual increments w.e.f. the date of completion of probation. It must be highlighted here that Dr. Tripathi was also given annual increment.

These facts, obtained under RTI by the applicant-Dr. Tripathi, were not placed before the UGC Committee that had considered and disposed of the representation of Dr. Tripathi in 2011.

Placed at Annexure-III

(II) Here reference may also be made to the letter dated 28.07.2018 written by the University to the UGC wherein it has been categorically stated that all the teachers appointed under the X Plan were appointed on contract for 5 years at the end of their term on 31.03.2007 but pursuant to the order dated 27.03.2010 and in compliance of the same, the teachers appointed under X Plan were treated as permanent w.e.f. the date of their appointment.

Placed at Annexure-IV

This fact was also not placed before the UGC Committee that had considered and disposed of the representation of Dr. Tripathi in 2011 as this information was provided by the University in its response dated 28.07.2018 to a letter of UGC.

(III) As regards the stand taken by the University vide their letter dated 25.04.2008 that the appointment made in the X Plan was on contractual basis, the same seems to be an afterthought as it is made out from two communications of the University. 1st the EC meeting dated 28.03.2007 wherein it was decided that all the other departments would continue except for the Political Science and Philosophy departments that were decided to be closed down. But ironically, the University in its letter dated 06.04.2007, written immediately thereafter and addressed to the Chairman, UGC has mentioned in its proposal for the XI Plan, about the additional requirement of the post of Political Science (1) and has shown in the column "number of enrollment as on 31.03.2007" as 60 total. Working strength is also shown to be as "2" in the Department of Political Science.

Placed at Annexure- V & VI respectively

(IV) It is also pertinent to mention that UGC on the basis of the letter dated 06.04.2007 of the University, vide their letter dated 16.07.2007 released 1st instalment of General Development Assistance specifically mentioning therein that 'the Commission has decided to allow the Universities to use this grant for purchase of books, journals and equipments and X Plan posts'.

Placed at Annexure-VIII

(V) It is also pertinent to observe that the Vice Chancellor of JRHU vide his letter dated 13.11.2008 addressed to Dr. Tripathi had stated categorically that "the appointment of Dr. Shushil Kumar Tripathi does not show any condition that he has been appointed on contract basis and in fact he has been shown as permanent employee in letter dated 22.01.2006, the Vice Chancellor of the University wrote to Deputy Director, Distance Education Council, Maidan Garhi, New Delhi."

I must mention here that the sanctioned and financially supported post(s) by the UGC under 10th

Plan cannot be self-abolished at the end of the plan. However, the University has the power to abolish any department but not the post sanctioned under 10th Plan by the UGC after giving assurance".

The Committee also refers to letter dated 05.12.2008 written by the Vice-Chancellor, JRHU to Dr. Tripathi wherein it is stated as below:

"It is clarified that any department cannot be abolished in the event of the students are enrolled. Even in the cases when are no students, only the department may be abolished by making a provision for merger/absorption of the employee and teachers in other department/faculty of the University".

Copy of letters dated 13.11.2008 & 05.12.2008 are placed at Annexure-VIII.

(VI) This goes to demonstrate that the University, for reasons best known to them, were not interested in continuing with Dr. Tripathi only whereas all the other appointees under the X Plan were made permanent and were extended all other benefits."

"In view of the above said facts and circumstances of the matter and in supersession of the earlier order dated 23/12/2011 of UGC bearing no. F 85-1/2013 (SU-II), this Committee is of the considered opinion that the abolition/termination of the post/services of Dr. Sushil Kumar Tripathi as Assistant Professor, Political Science was perverse and incorrect and thus, this Committee recommends that the services of Dr. Sushil Kumar Tripathi as Assistant Professor, Department of Political Science in JRHU may be continued as had been so done in the cases of similarly placed appointees/teachers of X Plan. In case the Department of Political Science has been abolished by the University, the University may absorb Dr. Sushil Kumar Tripathi in other Department/Faculty of the University."

A copy of the minutes of the Expert Committee dated 5th

February, 2019 is annexed as Annexure R-1 by the UGC.

22. The UGC by its order dated 28th February, 2019 on quoting the aforesaid recommendation addressed to the Registrar of the respondent-University as well as to the appellant herein informed about the recommendation of the Expert Committee, inviting objections, if any, to the same by the University within a month from the date of the receipt of the said order in the following terms:

"In view of the abovesaid facts and circumstances of the matter and in supersession of the earlier order dated 23/12/2011 of UGC bearing No.F.85-1/2003(SU-II), this Committee is of the considered opinion that the abolition/termination of the post/services of Dr. Sushil Kumar Tripathi as Assistant Professor, Political Science was perverse and incorrect and thus, this Committee recommends that services of Dr. Sushil Kumar Tripathi as Assistant Professor, Department of Political Science in JRHU may be continued as had been so done in the cases of similarly placed appointees/teachers of X Plan. In case, the Department of Political Science has been abolished by the University, the University may absorb Dr. Sushil Kumar Tripathi in other Department/Faculty of the University."

There is no material placed on record to show that any objection has been raised by the respondent-University to the aforesaid order of the UGC.

23. It is evident that the aforesaid recommendation of the Expert Committee constituted by the UGC order dated 8th February, 2019, is contrary to the earlier order passed by the UGC dated 23rd December, 2011, rejecting the representation of the appellant.

24. In fact, on perusal of the communication dated 13th November, 2008, sent by the Vice-Chancellor of the respondent-University to the appellant herein, it was clearly indicated that the appointment of the appellant was not on contractual basis and in fact, the appellant was shown as permanent employee in letter dated 22nd January, 2006, written by Vice-Chancellor of the University to Deputy Director, Distance Education Council. It further stated that the post held by the appellant was sanctioned and financially supported by the UGC under the Tenth Plan, and the same would not have been automatically abolished at the end of the Plan.

25. Moreover, the respondent-University had the power to abolish any department but not the post sanctioned under the Tenth Plan by the UGC. Another letter of the Vice-Chancellor of the respondent-University, dated 5th December, 2008, addressed to the appellant, also stated that if the students are enrolled in a department, the department could not be abolished. Only when there are no students, the Department could be abolished by making a provision for merger or absorption of the employees and teachers of the department in other departments or faculties of the University.

26. On a consideration of the material on record, the following inferences would arise:

- (a) The appointment of the appellant was not contractual in nature and he was being paid annual increments also. But, since he protested regarding the deduction of Rs.5,000 from his salary every month, the increments were stopped and later, his services were also terminated.
- (b) Further, when a communication was addressed by the Vice Chancellor of the respondent-University to the UGC for sanctioning of grant for Eleventh Plan, there was no mention regarding abolition of appellant's post.
- (c) There was also adequate strength of students for the continuation of the Department of Political Science by the University.
- (d) The UGC had the funds to pay as grants for the post even after the completion of the Tenth Five Year Plan insofar as regular appointees are concerned and the appellant was one such regular appointee who was appointed after following the requisite procedure as prescribed under the Statutes of the University.
- (e) The University, represented to the UGC on the one hand held out that the post of Assistant professor had been abolished while on the other hand, it also stated that the Department of Political Science was being continued having adequate strength of students.
- (f) The UGC by its communication dated 16th July, 2007, had directed the respondent-University to continue the Tenth

Plan as Eleventh plan. The post held by the appellant would correspondingly continue even under the Eleventh Plan.

- (g) There was no abolition of the post held by the appellant herein and nor was the Department of Political Science abolished by the respondent-University.
- (h) It is in the aforesaid circumstances that the UGC, while reconsidering the representation of the appellant pursuant to the direction issued by this Court recommended that the termination of the services of the appellant was incorrect and therefore his services be continued as has been so done in the case of similarly placed appointees of the Tenth Plan. The UGC also recommended that in case the Department of Political Science has been abolished by the University then the appellant be absorbed in the Social Science Faculty of the University.
- (i) There has been no objection raised to the aforesaid recommendation of the UGC and order of the respondent-University.

27. In view of the aforesaid discussion, we find that the termination of the services of the appellant was illegal and not in accordance with law. Consequently, we set aside the impugned order passed by the High Court and allow the appeal. In the circumstances, the respondent-University is directed

to reinstate the appellant as Assistant Professor in the Department of Political Science and also grant him the benefit of continuity of services only for the purpose of pension and retiral benefits, if any. The appellant will not, however, be entitled to any disbursement of salary for the period from 31st March, 2007, till the date of reinstatement as he has not worked for the said period on the principle of "no work, no pay". The appellant is, however, entitled to notional fixation of salary and other benefits in the event other persons similarly situated to the appellant, have been extended such benefits by the University.

28. Pending interlocutory applications, if any, stand disposed.

.....J
[DR DHANANJAYA Y CHANDRACHUD]

.....J
[VIKRAM NATH]

.....J
[B.V. NAGARATHNA]

NEW DELHI;
OCTOBER 29, 2021.