

R.N.R.

Before Surya Kant, J.

RANI,—Petitioner

versus

**GURU NANAK DEV UNIVERSITY AND
ANOTHER,—Respondents**

C.W.P. No. 9948 of 2009

14th December, 2010

Constitution of India, 1950—Art. 226—Audi alteram partem—Absence from duty—University dismissing services of a Sweeper after more than 34 years service—Unblemished service record—Petitioner satisfactorily explaining that her husband could not attend his duties as he was suffering from serious ailment—No reasonable opportunity to show cause of his absence—University authorities in a totally hurried manner passing order declaring post ‘vacant’—The fact that petitioner’s husband died after sometime giving credence to petitioner’s version that her husband had to absent from duty for a reason beyond his control—Petition allowed, respondents directed to release all consequential service benefits including family pension to petitioner.

Held, that the action under Statute 76 has to be preceded by a 'reasonable opportunity of hearing' to the affected employee, failing which it cannot stand to the test of 'reasonableness' and fairness'. The Principle of audi-alteram-partem is implicit in the 'equality' guaranteed by our Constitution. It needs no special mention that declaring a post 'vacant' tantamounts to 'removal' of the employee from service and termination of his 'lien' to hold the post as a matter of right. The provision, if applied in the manner as the respondents intend, would leave no distinction between the relationship of master and servant in 'public' or 'private' employment (s) Any action taken under Statute-74 without holding a regular inquiry cannot be sustained in a country like ours governed by the Rule of Law.

(Para 8)

Further held, that the petitioners's husband had served the University for a period of more than 34 years with unblemished service record. He is said to have absented from duty on 4th August, 2008 though the petitioner has satisfactorily explained that he could not attend his duties as he was suffering from serious ailment. Without awaiting for the explanation or giving him a reasonable opportunity to show cause of his absence, the University authorities have in a totally hurried manner, passed the impugned order dated 22nd September, 2008 declaring the post 'vacant' thereby dismissing the petitioner's husband from service on the presumed misconduct of wilful absence from duty though the allegation was never proved. The fact that he died after sometime also gives credence to the petitioner's hue and cry that her husband had to absent from duty for a reason beyond his control.

(Para 11)

R.K. Arora, Advocate, *for the Petitioner*.

Amrit Paul, Advocate, *for the Respondents*.

SURYA KANT, J. (ORAL)

(1) The petitioner is aggrieved by the orders dated 22nd September, 2008 and 27th January, 2009 (Annexures P-5 and P-11 respectively) whereby the post of Safai Karamchari (Sweeper) held by her deceased husband has been declared vacant w.e.f. 4th August, 2008 due to his alleged 'continuous absence from duty' and as a result thereto, her claim for the grant of retiral dues including family pension has also been turned down.

(2) The petitioner's husband was appointed as a Sweeper by the respondent University w.e.f. 23rd July, 1974 on regular basis. He continued to serve as such till he allegedly absented from duty w.e.f. 4th August, 2008. The petitioner's case is that her husband was hospitalized in Dr. A. S. Nahar's Clinic from 4th August, 2008 to 21st August, 2008 due to severe pain in abdomen. The petitioner's husband received a notice from the University seeking explanation for his absence from duty and in reply thereto also, he informed the authorities on 3rd September, 2008 that he was unable to join the duties due to his ailment. Without considering the explanation or holding any inquiry, the Registrar of the University, passed the impugned order dated 22nd September, 2008 (Annexure P-5) which reads as follows :—

“Under the Statute 76(vii) of Guru Nanak Dev University Calendar 1999 Part-I, the post of Shri Mohan Lal, Safai Karamchari, Estate Department has been declared vacant with effect from 4th August, 2008 due to his continuous absence from duty”.

(3) The petitioner's husband filed an appeal against the afore-stated order which was also turned down on 27th January, 2009 (Annexure P-11) though only after his unfortunate demise on 26th December, 2008. The respondent authorities thereafter rejected the petitioner's claim for retiral dues and family pension, giving rise to these proceedings.

(4) The respondent—University has filed its reply-affidavit asserting that the petitioner's husband gave no reply to the show cause notice and consequently the powers under Statute 76(vii) of the University Calendar, 1999, Part I, were invoked and the post occupied by the deceased employee was declared vacant.

(5) It is the fairly conceded position that the validity of a similarly worded provision contained in the University Calendar, namely, Statute-74 which also empowers the University to 'declare' the post 'vacant' if the incumbent-employee remains absent without leave or over-stays leave, came up for consideration before a co-ordinate Bench in CWP No. 16010 of 2007 decided on the 8th July, 2010 and the manner of invoking powers under such like provisions was held to be violative of Article 14 of the Constitution as also the principles of natural justice. The impugned order in that case founded upon the University Statute-74 was quashed. LPA No. 1580 of 2010 preferred by the respondent-University has also been dismissed by a Division Bench of this Court on 7th December, 2010.

(6) I have heard learned counsel for the parties at some length and perused the records.

(7) While an act of 'wilful' absence from duty would undoubtedly be a 'misconduct', the absence from duty for a reason beyond the control of an employee cannot be termed so. If an employee is unable to attend his duties for a reason, like mishap; serious ailment of his own or in family; law and order problem; failure of transport etc., it cannot be termed as a case of 'deliberate' or 'wilful' absence from duty. Where an employee is accused of absence from duty and he gives a plausible explanation and if the Competent Authority does not *ex-facie* accept such explanation, it shall be obligated to hold an inquiry to find out as to whether such an absence from duty is wilful, deliberate or for the reasons beyond the control of the employee. The observance of principles of natural justice is *sine-quo-non* before subjecting an employee with a punitive order.

(8) Contrary to it, the archaic provision contained in the Statute-76 with its literal meaning empowers the University to terminate services of a regular confirmed employee irrespective of the length of his service merely on the assumption that he is absent from duty. In my considered view, the action under Statute-76 has to be preceded by a 'reasonable opportunity of hearing' to the affected employee, failing which it cannot stand to the test of 'reasonableness' and 'fairness'. The principle of *audi-alteram-partem* is implicit in the 'equality' guaranteed by our Constitution. It needs no special mention that declaring a post 'vacant' tantamounts to 'removal' of the employee from service and termination of his 'lien' to hold the post as a matter of right. The provision, if applied in the manner as the respondents intend, would leave no distinction between the relationship of master and servant in 'public' or private' employment[s]. Any action taken under Statute-74 without holding a regular inquiry cannot be sustained in a country like ours governed by the Rule of Law.

(9) The reliance placed upon a Division Bench judgment of this Court in **Baldev Singh versus Guru Nanak Dev University, Amritsar and Another, (1)** in support of Statute-76 also does not advance the cause of the University as in that case the employee remained absent from duty for over three years without rendering any plausible explanation. This Court took notice of the provisions in the University Statute and held that it was not a fit case for interference under Article 226 of the Constitution.

(10) In **Central Inland Water Transport Corporation versus Brojo Nath Ganguly**, (2) the Hon'ble Supreme Court considered the question as to whether or not an unconscionable term in a contract of employment which also forms part of the Statutory Rules governing the service conditions of an employee would be void and violative of Article 14 of the Constitution ? The Service Rules in that case conferred upon the Corporation right to terminate the employment of a permanent employee by giving him three months' notice or pay in lieu thereof. The said provision in the Statutory Rules which was detrimental to the interest of the employees, was held to be unconscionable, unfair, unreasonable, against the public policy, public interest and violative of Article 14.

(11) The petitioner's husband in the present case had served the University for a period of more than 34 years with unblemished service record. He is said to have absented from duty on 4th August, 2008 though the petitioner has satisfactorily explained that he could not attend his duties as he was suffering from serious ailment. Without awaiting for the explanation or giving him a reasonable opportunity to show cause of his absence, the University authorities have in a totally hurried manner, passed the impugned order dated 22nd September, 2008 declaring the post 'vacant' thereby dismissing the petitioner's husband from service on the presumed misconduct of wilful absence from duty though the allegation was never proved. The fact that he died after sometime also gives credence to the petitioner's hue and cry that her husband had to absent from duty for a reason beyond his control.

(12) For the reasons afore-stated, the writ petition is allowed; the orders dated 22nd September, 2008 and 27th January, 2009 [Annexures P-5 and P-11] are hereby quashed and the respondents are directed to release all the consequential service benefits including 'family pension' to the petitioner along with interest @ 7% per annum within a period of three months from the date a certified copy of this order is received. The petitioner shall also be entitled to the costs of Rs. 25,000.

(13) Disposed of. *Dasti*.

R.N.R.