

**Chief Justice's Court**

**Case :- SPECIAL APPEAL No. - 236 of 2023**

**Appellant :-** Jitendra Singh

**Respondent :-** Union Of India Thru.Secy. Ministry Of Civil Aviation,  
Govt. Of India, New Delhi And Others

**Counsel for Appellant :-** In Person,Lalta Prasad Misra,Prabhu  
Ranjan Tripathi

**Counsel for Respondent :-** A.S.G.I.,C.S.C.,Shashi Prakash  
Singh,Raj Kumar Singh, Jai Narayan Mishra,, Anjana Goswami

**Hon'ble Arun Bhansali,Chief Justice**

**Hon'ble Jaspreet Singh,J.**

**(Per: Arun Bhansali, CJ)**

1. Heard Dr. Lalta Prasad Misra, learned counsel for the appellant, Sri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Sri Raj Kumar Singh, learned counsel for Respondent Nos. 1,4,5,6,7, Ms. Anjana Goswami and Sri Jai Narayan Mishra, learned counsel for Respondent Nos. 2 & 3.

2. This appeal is directed against the order dated 25.04.2023 passed in Writ A No. 3615 of 2022 whereby, the writ petition filed by the appellant against the order dated 27.04.2022 passed by Deputy Secretary, Proposal Note dated 31.03.2022 passed by Ministry of Civil Aviation and order dated 20.04.2022 passed by Competent Authority as Visitor, Rajiv Gandhi National Aviation University, Fursatganj, Amethi, U.P. (in short 'the University'), has been dismissed.

3. The appellant applied for the post of Registrar of the University and on 01.03.2019 offer of appointment was issued to the appellant. He joined on 08.04.2019. On account of certain events, which took place at the University, a proposal dated 17.12.2019 for termination

of appellant's probation was prepared, which was approved by the Visitor on 26.12.2019 and on 08.01.2020, services of the appellant as Registrar were terminated.

4. By communication dated 09.01.2020, the appellant was informed the grounds for termination of services. The termination was challenged by the appellant by filing Writ Petition No. 996/SS/2020 & Writ Petition No. 9048/SS/2020, which petitions were withdrawn and a fresh petition being Writ Petition No. 2295/SS/2021 was filed, which writ petition came to be allowed on 17.09.2021 whereby, the order dated 09.01.2020 was quashed and the appellant was directed to be reinstated with all consequential benefits. Aggrieved of the order dated 17.09.2021, the respondents filed special appeal being Special Appeal No. 418 of 2021, which was partly allowed and it was ordered that the termination needs to be revisited and the matter was remitted to the University to proceed in accordance with law and pass a fresh order. Entitlement of back wages was made subject to the outcome of further action to be taken by the University.

5. Pursuant to the said order of Division Bench, order of reinstatement was issued on 31.12.2021 and on the same day, the appellant was suspended. The order of suspension was challenged by filing Writ A No. 154 of 2022. The appellant was sent a memo of charges on 22.02.2022 to which, he responded denying all the charges. A report dated 23.03.2022 was prepared and based on the same, on 27.04.2022, the services of the appellant were terminated with retrospective effect i.e. from 08.01.2020.

6. Feeling aggrieved Writ A No. 3615 of 2021 was filed. Learned Single Judge after hearing the parties came to the conclusion that the appointment of the appellant was a fixed term appointment for a period of three years subject to probation period being extended at the discretion of the competent authority. The services of the appellant

was dispensed with prior to one year probation period coming to an end and that the right of the appellant to continue was subject to the terms and conditions of the appointment order and, therefore, the appellant would be entitled only to one month's notice and, therefore, directed the respondents to pay one month's salary to the appellant, which was not provided when the services of the appellant were terminated during the period of probation and dismissed the writ petition.

7. Learned counsel for the appellant made vehement submissions that the learned Single Judge was not justified in dismissing the writ petition. Submissions were made that the charge sheet was not approved by the appointing authority/disciplinary authority and despite the fact that the order impugned is stigmatic/punitive, procedure as prescribed under Rule 7 of U.P. Public Servant (Discipline and Appeal) Rules, 1999 was not followed. The punishment order was given retrospective effect, which is impermissible in law even as per the University's Statute, the initiation of inquiry was *malafide* and, therefore, the order impugned deserves to be set aside.

8. Further submissions were made that a bare look at the documents would reveal that at no stage, any of the authorities, as prescribed in the Act/First Statute, except one have had any role, while issuing the charge sheet/holding the inquiry and/or seeking its approval from the Visitor. The entire action has been taken by the Ministry of Civil Aviation, which has absolutely no role to play under the Act/Statute of the University and, therefore, the entire exercise undertaken by the respondents stood vitiated. Reference was made to the entire series of documents, which led to the passing of the order impugned. It was submitted that as the entire exercise undertaken is without jurisdiction, the order impugned deserves to be set aside.

9. Learned ASGI, vehemently contested the submissions. It was submitted that the Division Bench while remanding the matter directed the respondents to 'revisit the order', wherein no such objection was raised pertaining to the authority of the respondents to take action. The same authorities have passed the order impugned and, therefore, the plea raised in this regard has no substance.

10. Submissions were made that in so far as the plea raised by the appellant seeking reinstatement is concerned, the same is out of question as he was appointed for a period of three years and for one year, he was on probation and he was never confirmed and, therefore, the plea raised has no substance.

11. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

12. A perusal of the record *interalia* indicates that the appellant was given offer of appointment on the post of Registrar of the University by communication dated 01.03.2019 issued by the Vice Chancellor of the University. The terms of the offer *interalia* included that after successful completion of the period of probation, the appellant would be informed about the same in writing and he would be treated as a regular employee. It was further indicated that the appellant would be on contract basis for a term of three years as per RGNAU Act, 2013. The appellant joined pursuant to the said offer of appointment. The probation of the appointment came to be terminated by order dated 08.01.2020, which order was issued by the Under Secretary, Government of India, Ministry of Civil Aviation and copy whereof was *interalia* marked to the acting Vice Chancellor of the University on 09.01.2020. Reasons for removal were communicated to the appellant by the Under Secretary, Government of India, Ministry of Civil Aviation.

13. Feeling aggrieved, appellant filed writ petition being Writ Petition No. 2295 of 2021 and learned Single Judge of this Court by

judgement dated 17.09.2021 allowed the writ petition in the following manner:

*“38. A writ in the nature of mandamus is issued commanding the opposite parties to reinstate the petitioner on the post of Registrar of the University with all consequential service benefits in terms of his offer of appointment dated 1.3.2019 ignoring the employment notification for making appointment on the post of Registrar etc. in the University.*

*39. Since the services of the petitioner has been terminated by means of punitive and stigmatic orders, therefore, the petitioner shall be treated in service with back wages. However, his term of appointment shall be governed with the offer of appointment of the petitioner dated 1.3.2019.*

*40. Compliance of the aforesaid order shall be made with promptness preferably within a period of one month from the date of receipt of certified copy of this order, failing which the petitioner shall be entitled for the interest on the dues as per the current market rate.*

*41. Accordingly, writ petition is allowed.”*

14. Feeling aggrieved Union of India filed an appeal being Special Appeal No. 418 of 2021, which was partly allowed by a Division Bench on 17.12.2021 in the following terms:

*“Following the principles as laid down by the Hon'ble Supreme Court in **Dr. Vijayakumaran C.P.V. (supra)**, we are of the considered opinion that termination of probation of the respondent is illegal being ex-facie stigmatic. The termination order needs to be revisited. The matter is remitted to the University to proceed in accordance with law and pass a fresh order within a period of two months from today. So far as the entitlement of back wages is concerned, the same shall be subject to the outcome of further action to be taken by the University.*

*Accordingly, the present special appeal is partly allowed in the above terms. The judgment and order dated 17.09.2021 passed by the learned Single Judge is modified to the extent indicated above. ”*

15. Whereafter, on 31.12.2021, Under Secretary, Government of India, Ministry of Civil Aviation ordered for reinstatement of the appellant and on the same day by another order, appellant was placed

under suspension again by order of the Under Secretary, Government of India, Ministry of Civil Aviation.

16. Subsequent thereto, the memorandum dated 22.02.2022 was issued by the Ministry of Civil Aviation. A committee comprising of two Executive Council members and one from Ministry of Civil Aviation was set up by the Ministry to examine the reply. Pursuant to the memorandum, the appellant sent several communications demanding documents etc. The committee submitted its report dated 23.03.2022 to the Secretary, Ministry of Civil Aviation *inter alia* coming to the conclusion that charges of indiscipline etc. were established beyond doubt and, therefore, recommendation was made for termination of services of the appellant and the University may take action and that as three years period has already expired, nothing further was required to be done. It was also observed that the University may also ensure requisite recovery on account of use of vehicle etc.

17. Based on the said report, the order dated 27.04.2022 ordering for termination came to be passed, which reads as under:

*“AV-29012/22/2021-SDIT-MOCA-Part(1)*

*Government of India*

*Ministry of Civil Aviation*

*\*\*\**

*Rajiv Gandhi Bhavan,*

*New Delhi – 110003*

*27th April 2022*

**ORDER**

*The undersigned is directed to refer to the order dated 17.12.2021 passed by Hon’ble Division Bench of Hon’ble High Court of Judicature at Allahabad, Lucknow Bench in ‘Special Appeal No. 418 of 2021 Union of India vs Jitendra Singh,’ wherein the Hon’ble High Court directed Rajiv Gandhi National Aviation University (RGNAU) to revisit the termination Order No. AV-28011/2/2015-SDIT/NAU dated 08.01.2020 and pass a fresh order.*

*2. In compliance of the aforesaid order of Hon’ble High Court, the Ministry of Civil Aviation Order No. AV-28011/2/2015-SDIT/NAU dated 08.01.2020 has been revisited and the Competent*

*Authority has approved the termination of probation of Shri Jitendra Singh as Registrar of RGNAU with effect from 08.01.2020.*

3. *This issues with the approval of the competent authority.*

*(Om Prakash Sharma)*

*Deputy Secretary to the Government of India”*

18. A perusal of the entire sequence of events would reveal that while offer of appointment was accorded to the appellant by the Vice Chancellor of the University, the entire disciplinary action against the appellant has been initiated and taken by Ministry of Civil Aviation.

19. Learned ASGI was put a query pertaining to the jurisdiction of Ministry of Civil Aviation to deal with the matter in question, to which submissions were made that Ministry was dealing on behalf of Visitor of the University who under Section 9 of the Act is the President of India. Further submissions were made that the Division Bench had directed for ‘revisiting the order’, as no objection at any stage was made with regard to the jurisdiction or passing of the order, which, on the previous occasion was also passed by the same authority, the issue cannot be raised now.

20. In so far as the direction of the Division Bench requiring revisiting the order is concerned, the term ‘revisit’ has been defined in Collins English Dictionary as, “to visit again, to re-examine a topic or theme after an interval, with a view to making a fresh appraisal.”

21. The very fact that the term ‘revisit’ includes re-examine with a view to make a fresh appraisal, necessarily means that the entire exercise was required to be re-undertaken and only because the Court directed ‘revisit’, by itself did not uphold the jurisdiction of the authority, which had passed the order impugned.

22. It would be appropriate to quote the operative portion of the note sheet (Annexure-2 produced by the appellant with the writ petition), which led to passing of the order impugned, the same reads as under:

*“11. In view of the position stated above, we may seek approval of Hon’ble President of India in his capacity as Visitor of RGNAU for the following:*

- a) The services of Shri Jitendra Singh as Registrar of RGNAU stand terminated with effect from 08.01.2020 as per recommendation of the Committee.*
- b) Shri Jitendra Singh shall not be entitled to any back wages.*
- c) RGNAU may carry out requisite recovery of dues from Shri Jitendra Singh*

*12. Kind approval of the Hon’ble Minister of State for Civil Aviation is solicited before sending the proposal file to the Hon’ble Visitor, RGNAU, seeking approval on the proposal mentioned in para 11 above.”*

23. The above would reveal that the entire proposal was mooted at the Ministry level, approval was given by the Minister of Civil Aviation and directly approval was sought from the Visitor of the University. The University authorities nowhere came in picture.

24. The role of the Visitor of the University is contained in Section 9 of the Act, which reads as under:

*“9. (1) The President of India shall be the Visitor of the University:*

*Provided that the President may, by order, nominate any person to be the Visitor and such person so nominated shall hold office for such term, not exceeding five years as may be specified in the order and the person so nominated shall exercise the powers and discharge duties of the Visitor.*

*(2) The Visitor may, from time to time, appoint one or more persons to review the work and progress of the University, including colleges and institutions managed by it, and to submit a report thereon; and upon receipt of that report, the Visitor may, after obtaining the views of the Executive Council thereon through the Vice-Chancellor, take such action and issue such directions, as he considers necessary, in respect of any of the matters dealt within the report and the University shall be bound to comply with such directions.*

*(3) The Visitor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, libraries, laboratories and equipment, and of any college, institution or campus maintained by the University and also of the examinations, instruction and other*



*work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the administration or finances of the University, colleges or institutions.*

*(4) The Visitor shall, in every matter referred to in sub-section (3), give notice to the University of his intention to cause an inspection or inquiry to be made— (a) to the University, if such inspection or inquiry is to be made in respect of the University or any college or institution maintained by it, or (b) to the management of the college or institution, if the inspection or inquiry is to be made in respect of the college or institution admitted to the privileges of the University, and the University or the management, as the case may be, shall have the right to make such representations to the Visitor, as it may consider necessary.*

*(5) After considering the representations, if any, made by the University or the management, as the case may be, the Visitor may cause to be made such inspection or inquiry as is referred to in sub-section (3).*

*(6) Where any inspection or inquiry has been caused to be made by the Visitor, the University shall be entitled to appoint a representative, who shall have the right to be present in person and be heard at such inspection or inquiry.*

*(7) The Visitor may, if the inspection or inquiry is made in respect of the University, college or institution maintained by it, address the Vice-Chancellor with reference to the result of such inspection or inquiry together with such views and advice with regard to the action to be taken thereon, as the Visitor may be pleased to offer, and on receipt of address made by the Visitor, the Vice-Chancellor shall communicate forthwith to the Executive Council the results of the inspection or inquiry, and the views of the Visitor and the advice tendered by him upon the action to be taken thereon.*

*(8) The Visitor may, if the inspection or inquiry is made in respect of any college or institution admitted to the privileges of the University, address the management concerned through the Vice-Chancellor with reference to the result of such inspection or inquiry, his views thereon and such advice as he may be pleased to offer upon the action to be taken thereon.*

*(9) The Executive Council or the management, as the case may be, shall communicate, through the Vice-Chancellor to the Visitor such action, if any, as it proposes to take or has been taken upon the result of such inspection or inquiry.*

*(10) Where, the Executive Council or the management does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council or the management, issue such directions as he may think fit and the Executive Council shall comply with such directions.*

*(11) Without prejudice to the foregoing provisions of this section, the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with the Act, the Statutes or the Ordinances: Provided that before making any such order, the Visitor shall call upon the Registrar to show cause why such an order should not be made, and, if any cause is shown within a reasonable time, he shall consider the same.*

*(12) Notwithstanding anything contained in the foregoing provisions, the Visitor may give any direction to the University after giving an opportunity to the University as the circumstances warrant.*

*(13) The Visitor shall have such other powers as may be prescribed by the Statutes.”*

25. A perusal of the above reveals that under Section 9(3) of the Act, the Visitor has the right to cause inspection and cause an inquiry to be made, which pertains to the administration or finances of the University and has nothing to do with an individual employee. Further under Section 9(13), no powers under the Statutes have been prescribed.

26. The Registrar under Section 10 of the Act is an officer of the University and under Clause 7 of RGNAU First Statute 2016, the Registrar is to be appointed by the Executive Council on the recommendation of Selection Committee constituted for the purpose.

27. It would also be appropriate to notice provisions of Clause 28 of the Statute, which has been invoked by both the sides, which reads as under:

**“28. Removal of employees of University.—***(1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor, in the case of the teacher or member of the*

*academic staff, and the authority competent to appoint (here after in this Statute referred to as the appointing authority) in the case of other employee, may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:*

*Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or the member of the academic staff, revoke such order.*

*(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and conditions of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority, in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.*

*(3) Save as aforesaid, the Executive Council, or as the case may be the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.*

*(4) No teacher, member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.*

*(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made: Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.*

*(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or other employee may resign—*

*(a) if he is a permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof; and*

*(b) if he is not a permanent employee, only after giving one month's notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof:*

*Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority, as the case may be. ”*

28. The above clause deals with removal of employees of the University, which *interalia* provides that the appointing authority in case of employees other than teacher and academic staff shall have power to remove on the grounds of misconduct and that the removal shall take effect from the date on which the order of removal is made and in case the employee is under suspension at the time of removal, such removal will take effect from the date of suspension.

29. From the above sequence of events, and the orders passed from time to time, from the point of taking disciplinary action against the appellant, it is apparent that at no stage, any of the actions were taken by the University/Vice Chancellor, the appointing authority of the appellant, as reflected from the offer of appointment. Each and every communication has been made by the Under Secretary, Government of India, Ministry of Civil Aviation, with the approval of the Ministry/Minister, which Ministry/Minister apparently had no role worth the name under the entire Act and the Statutes.

30. A specific question was put to learned ASGI, if under any of the provisions, as contained in the Act or Statute, the Department of Civil Aviation comes into picture, the only answer as noticed herein above has been that as the Visitor happens to be the President of India, the action has been taken by the Ministry of Civil Aviation. The said plea as raised also apparently has no substance.

31. As noticed herein above, under the Act, the Visitor has no role to play in so far as the disciplinary action against the officers, employees etc. of the University is concerned, and the very fact that under the Act or the Statute, the Ministry of Civil Aviation has no role to play and in the present case, the University/Vice Chancellor has not come into picture at all and the entire exercise has been undertaken by the authorities otherwise than under the Act and Statute, the entire action against the appellant was wholly without jurisdiction and the same, therefore, cannot be sustained.

32. The submissions made about not raising the issue in the earlier writ petition cannot have any bearing as the issue of fundamental lack of jurisdiction can be raised at any stage.

33. As to what relief, the appellant could be entitled, as the action of the respondents was earlier quashed by the learned Single Judge and upheld by the Division Bench directing the entitlement of back wages would be subject to the further action to be taken by the University pursuant to which, though the appellant was reinstated on 31.12.2021, however, he was again suspended on the same day. The impugned order of termination has been passed on 27.04.2022 w.e.f. 08.01.2020. As noticed under Clause 28(5) of the Statutes, the termination could have come into force w.e.f. 31.12.2021 only i.e. the date the appellant was again suspended and not from 08.01.2020. However, the said aspect has lost significance as the order impugned has been found to be unsustainable. As the original three years' term of the appellant as indicated in the offer of appointment dated 01.03.2019 had come to an end on 28.02.2022, therefore, as a consequence of setting aside of the orders impugned, the appellant would be entitled to back wages/salary for the period 08.01.2020 till 28.02.2022.

34. Consequently, the appeal is **allowed**.

35. The order dated 25.04.2023 passed by learned Single Judge as well as order dated 27.04.2022 passed by the Deputy Secretary are set aside and quashed.

36. The appellant would be entitled to back wages/salary for the period upto 28.02.2022. Needful be done by the respondents within a period of six weeks.

**Order Date :- 22.05.2024**

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(Jaspreet Singh, J)      (Arun Bhansali, CJ)