

2013(2) CHN (CAL) 609

W. P. No. 27047 (W) of 2012

Arun Mishra, CJ & Joymalya Bagchi, J.

SUBODH MITRA

VS.

UNION OF INDIA

February 25, 2013

Visva-Bharati Act, 1951;

Central Civil Services (Conduct) Rules, 1964; Rule 22—

Public Interest Litigation—Allegation of receiving excess amount of salary as well as pension in violation of provision of law and also alleged illegal expenses for alcoholic beverages on duty by Vice-Chancellor of Visva-Bharati. [Paras 1, 2 & 3]

Held: Regarding payment of excess salary and adjustment of pension—We are not inclined to examine the question in PIL—Purely Service Matter—In Service Matter PIL is not to be normally entertained—Petition cannot be said to be filed bona fide to cater public interest—Rather having axe to grind against Vice-Chancellor—Not inclined to entertain PIL on this ground—For hospitality of foreign delegates the bills of fooding and other beverages are borne by the institution—Question of fact—PIL dismissed. [Paras 11, 12, 13 & 15]

Pratik Dhar, Sulagna Bhattacharya, for the petitioner;

Arunava Ghosh, Soumya Majumder, Paritosh Sinha, Amitava Mitra, Dolon Dasgupta, for respondents No. 2 to 4;

Kishore Dutta, Sumita Shaw, for respondent No. 5.

By the Court: Affidavit-in-opposition filed on behalf of the respondent Nos. 2 to 4 today is taken on record. Affidavit-in-reply filed on behalf of the petitioner is also taken on record.

2. The petitioner has filed the petition praying for the relief to issue direction upon the Vice-Chancellor to step down and to take appropriate step for holding disciplinary enquiry. Prayer has also been made to refund the entire amount spent for alcoholic beverages on duty as Vice-Chancellor of the Visva-Bharati.

3. It is averred in the petition that the respondent No. 5 is the Vice-Chancellor of Visva-Bharati. It is submitted that Statute 3(5) states emoluments and other conditions of service of Vice-Chancellor. A person in receipt of any pension his salary shall be fixed after taking into consideration such pension or other benefits. However, apparently Vice-Chancellor is drawing pension as well as full salary of the Vice-Chancellor, Pension of the Vice-Chancellor which he has been receiving ought to have been deducted from his salary. He is drawing pension from Jawaharlal Nehru University, New Delhi. It is submitted that as per section 27(j) of the Visva-Bharati Act any person who had held any post and is in receipt of a pension or other form of

retirement benefits is appointed as an adhyapaka of the University or to any other academic post the salary of such person together with the pension and other benefits shall not exceed the salary payable to him in accordance with the Statutes. Certain other allegations have been made regarding conduct of the respondent No.5 in paragraph 10 of the petition with respect to which there is no supportive materials in the petition. His tenure has been extended from 65 years to 70 years. It is also submitted that the respondent No. 5 is making Visva-Bharati to pay amount towards consumption of alcohol by him at public places on different times. Certain bills have been annexed to show that part of the bills pertained to alcoholic beverages. Violation of Rule 22 of the Central Civil Services (Conduct) Rules, 1964 has been alleged. Various representations were submitted to the concerned authorities, but the representations have not been considered and as such the petition has been preferred.

4. The respondent Nos. 2, 3 and 4 in their affidavit-in-opposition have contended that the petition is not maintainable for various reasons. There is no element of public interest involved. Public Interest Litigation has been sponsored by an employee of Visva-Bharati, namely, Nilanjan Banerjee, who has been placed under suspension and against whom disciplinary proceeding has been initiated by Visva-Bharati for serious misconduct. The petitioner has not made out any case for issuance of a Writ of Quo Warranto. It is not alleged by the petitioner that the respondent No.5 is not eligible for appointment to the post of Vice-Chancellor of Visva-Bharati. The public Interest Litigation has been filed with intent of malicious propaganda and to defame the University's image. The petitioner claims to have derived information regarding the subject-matter of Public Interest Litigation from Shri Nilanjan Banerjee, employee facing Departmental Enquiry on serious charges. The petitioner had pre-planned media coverage at the time of filing the Public Interest Litigation. Various email messages have been sent to a large number of employees of the Visva-Bharati as also to various political personalities which tarnished the image of the Vice-Chancellor in the estimation of the employees of Visva-Bharati. Various electronic mail message were sent by the petitioner about filing of the petition itself. The petition has not been filed *bona fide*. The petitioner was questioned for hours by the C.B.I, in connection with the theft of Nobel Prize from Rabindra Bhavana. It is widely known in the locality that after interrogation, the petitioner decamped from West Bengal for a considerable long period of time. The last pay drawn by Dr. Dattagupta at Indian Institute of Science Education and Research (USER), Kolkata, was Rs.80,000/- basic pay and D.A. was Rs.40,800/- when he took over the office of the Vice-Chancellor in the respondent University. The Executive Council of Visva-Bharati has passed a resolution No. 34 dated 6.11.2011 and has resolved to protect the last basic pay drawn by the Vice-Chancellor. The Vice-Chancellor of Visva-Bharati is tenure post for five years and he has drawn salary according to the guidelines, regulations etc. made by the Central Government and UGC from time to time applicable for Central Universities.

5. In so far as the Vice-Chancellor of Visva-Bharati is concerned, he is not entitled to any pension in terms of the Central Government Rules for the service rendered as Vice-Chancellor. A fixed salary and other benefits during the tenure of

employment are all that a Vice-Chancellor of Visva-Bharati is entitled to. On expiry of the tenure, the Vice-Chancellor is paid a consolidated amount towards gratuity.

6. With respect to paragraph 10 of the petition, it is submitted that the allegation of sexual harassment leveled against the Vice-Chancellor was not found to be proved in the 30th Meeting of the Governing Body of the Centre held on 4.9.2004 by USER and the complaint was found to be frivolous. He had completed the entire tenure and also completed the additional term in USER before joining the post of Vice-Chancellor. He has received several international and national awards and also served as Council Member and Vice-President of three National Science Academies. Resolution to raise retirement age from 65 years to 70 years of the Vice-Chancellor was passed vide Resolution dated 16.11.2011, before joining the respondent No.5 as Vice-Chancellor. Thus he was not involved in the matter of enhancement of retirement age of Vice-Chancellor of Visva-Bharati.

7. It is further contended that Vice-Chancellor being Chief Academic and Executive Officer of the University has to host foreign visitors/delegates for exploring international collaborations on various academic fronts which is an age old practice in Visva-Bharati. Presently, it is carrying out delicate dialogues with the University of California, Oxford University, University of British Columbia, Peking University, Yonnan University in a few. India International Centre (IIC) is a convenient place for such discourses since Visva-Bharati is a corporate member of IIC, New Delhi, and thus gets facilities commercially. Various officials of Visva-Bharati use the facilities of boarding/lodging etc. of IIC while they are on the official work in New Delhi, All bills for boarding, lodging, food etc. of such officials are routinely sent to the address of the Vice-Chancellor and are finally paid by Visva-Bharati Accounts office directly to IIC. Out of the amount of nine months only an amount of Rs. 2210/- spent over beverage. The same relates to expenses borne by the University towards discussion in which foreigners were present. Bills were raised in the name of Vice-Chancellor for the purpose of communication and payment. It is a practice that IIC to raise bills in the name of Vice-Chancellor of Visva-Bharati. Expenses mentioned by the petitioner is wrong and incorrect as appearing from the bills.

8. In reply, the petitioner denied the averments made in the affidavit-in-opposition and repeated the averments made in the petition. It is submitted in reply that in fact consumption has been made by the respondent No.5 of alcoholic beverages and it is wrongly contended that the same had been consumed by the foreigners. Bills have been signed by the Vice-Chancellor containing the expenditure.

9. Mr. Dhar, learned counsel appearing on behalf of the petitioner, submitted that pension ought to have been adjusted out of the amount of salary which is being paid as per provisions contained in the aforesaid statute. He also submitted that certain bills have been signed by the Vice-Chancellor himself for consumption of alcoholic beverages at IIC. Mr. Dhar has made attempt to best of his ability and genuinity at his command to canvass that amount of pension has to be adjusted out of the salary being drawn by the Vice-Chancellor as done in the case of other Vice-Chancellors and then recovery of excess amount be ordered.

10. Learned Senior Counsel appearing on behalf of the respondent Nos. 4 and 5 and Counsel for the respondent Nos. 2, 3 and 5 have submitted that no case for interference is made out with respect to the pension part. It is purely a service matter and cannot be agitated by way of Public Interest Litigation matter. With respect to the allegation of consumption of alcoholic beverages, it is submitted that that foreign delegates had participated in the discussion and alcoholic beverages were consumed and all such bills for the foreign delegates including Vice-Chancellor and other officials are paid by the University and the bills as per practice are raised in the name of Vice-Chancellor. It is submitted that all bills for boarding, lodging and food etc., of the officials and other employees are routinely sent in the name of the Vice-Chancellor of the University and are being paid by Visva-Bharati. Thus, no impermissible expenditure has been incurred by the respondent No. 5.

11. Coming to the first submission raised by the learned counsel appearing on behalf of the petitioner as regards payment of excess salary and adjustment of pension, we are not inclined to examine the question in the Public Interest Litigation. Same is purely a service matter and in service matter PIL is not to be normally entertained. Besides it appears that Public Interest Litigation has not been filed bonafide at the instance of the petitioner. The petitioner has disclosed source of information to file PIL of one Nilanjan Banerjee, who is facing departmental enquiry on serious charge. Thus the petition cannot be said to be filed *bona fide* to cater to public interest, petitioner has been set up by incumbent having axe to grind against Vice-Chancellor. Thus, we are not inclined to entertain the Public Interest Litigation on this ground alone.

12. Apart from that we find there is nothing on record to suggest that the respondent No. 5 has suppressed the fact of receiving pension at the time of fixation of the salary which has been done by the order of the competent authority. If salary has been fixed in inappropriate manner, in that case, the petitioner has to approach the concerned body/respondent for fixing the salary after deduction of pension and not to raise the question in the Public Interest Litigation, that too relying on the information furnished by the employee who is facing departmental enquiry.

13. Coming to the question of beverages it has been explained in the Return that foreign delegates participated in Talks in Delhi when hospitality is extended the bills of foods and other beverages are borne by the Institution. Thus it is also being a question of fact whether the consumption was by the foreign delegates or by other persons cannot be looked into in the petition. Otherwise also, it cannot be said to be such a matter in the facts of the case on the basis of which interference is called for in the writ jurisdiction of this Court.

14. No other submission was raised by the learned counsel appearing on behalf of the petitioner.

15. In view of the aforesaid, we are not inclined to entertain the petition. The same is hereby dismissed.