

Before Rajesh Bindal, J.

DR. NEETU RANI—Petitioner

versus

**UNIVERSITY OF KURUKSHETRA AND
ANOTHER—Respondents**

CWP No. 17141 of 2011

February 14, 2013

Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Service Law - Lecturer under Self Financing Scheme - Allegation of plagiarism - Petitioner seeking direction to Respondent-University to issue experience certificate without there being any comments thereon and for quashing enquiry for attempt to plagiarise after resignation accepted - Admittedly paper allegedly plagiarised not available on record of Respondent-University - Comment regarding

case of plagiarism against Petitioner in experience certificate will amount to penalty for all times to come and shall be blot on her career throughout especially when action is without enquiry - No rules allowing holding an enquiry after employee has left service - Enquiry held in spite of absence of such rules is without jurisdiction - Writ petition allowed - Enquiry quashed and directions issued as prayed for.

Held, that the line added in the experience certificate that at the time of relieving the petitioner from the University, a case of plagiarism was pending against her, will amount to penalty for all times to come, as the same shall be a blot on her career throughout. The action is without any enquiry.

(Para 15)

Further held, that as far as continuance of enquiry against the petitioner is concerned, the same is totally without jurisdiction. When acceptance of resignation of the petitioner was being considered, the respondents could decide to continue with the enquiry while not accepting the same. There is no condition attached in the acceptance of resignation as conveyed to the petitioner. Learned counsel for the respondents did not point out any rules which enabled the University to either initiate any enquiry after an employee is not in service or even continue with the proceedings initiated earlier. In the present case, nothing had been initiated against the petitioner while she was still in service as no charge-sheet had been issued, hence, the enquiry proceedings initiated against her are quashed being without jurisdiction.

(Para 15)

Further held, that for the reasons mentioned above, the writ petition is allowed. The respondent-University is directed to issue experience certificate to the petitioner without recording any comments regarding alleged allegation of plagiarism or any other comment and further the communications issued to the petitioner asking her to appear for enquiry for alleged allegation of attempt to plagiarise are quashed. It is held that no such enquiry can be initiated now.

(Para 15)

Vijay Kumar, Advocate with Mansi Gupta, Advocate *for the petitioner.*

Ramesh Hooda, Advocate, *for the respondents.*

RAJESH BINDAL J.

(1) The petitioner, who resigned from the respondent-Kurukshetra University (for short, 'the University') after serving for a period of 5 years, has approached this court for a direction for issuance of experience certificate without there being any comments thereon and further for quashing of enquiry sought to be initiated against her for alleged attempt of plagiarism after she had resigned.

(2) Briefly, the facts are that the petitioner was appointed as Lecturer in Mathematics in the University Institute of Engineering & Technology, Kurukshetra (for short, 'the Institute') under Self Financing Scheme vide letter dated 8.9.2004. She continued working till 11.12.2009, when she left the job after resigning. The resignation was tendered on account of marriage of the petitioner. When she asked for experience certificate, it was granted by mentioning that at the time of her relieving from the University, a case of plagiarism was pending against her. The petitioner approached this court for a direction to the respondents for issuance of a certificate without any comments thereon and further for quashing of the notice issued for initiation of enquiry against the petitioner for alleged attempt of plagiarism about two years after the petitioner had resigned from the job.

(3) Learned counsel for the petitioner submitted that the petitioner served the Institute to the best of her ability. On account of her marriage, she could not continue in job, hence, she submitted her resignation, which was accepted on 11.12.2009. No condition was mentioned at the time of acceptance of the resignation that the same was subject to any condition. However, still the experience certificate was not issued. When the petitioner requested for the same, with great difficulty, the certificate dated 3.2.2010 was issued mentioning therein that when the petitioner was relieved from the University, a case of plagiarism was pending against her. The comments made in the certificate were totally un-called for as there was nothing available with the respondents on the basis of which such a comment could be made in the experience certificate. Even as per the stand taken by the respondents, it was a case of attempt to plagiary. No rules and instructions are available, in terms of which an employee could be punished on this charge. Even if there is some allegation regarding this, it is a matter between

two private persons and the University has nothing to do. The petitioner is sought to be penalised only to satisfy ego of another teacher in the University because of professional jealousy.

(4) Learned counsel for the petitioner further submitted that though in the preliminary enquiry conducted against the petitioner, in which she was not associated, it was held that the petitioner had copied certain contents of a paper earlier published by Prof. M. D. Sharma, however, copy of that publication is not available with the University, on comparison with which, it could be opined that there was some case of plagiarism. It was further submitted that when the petitioner resigned from job on account of her marriage, the report of a fact finding committee was already there. Though the same was without any basis, but still the case of the petitioner was dealt with for acceptance of resignation with two options, namely, either to hold enquiry or to accept the resignation. The second option was chosen, i.e., to accept the resignation. In these circumstances, it was totally arbitrary to have mentioned a fact in the experience certificate regarding pendency of some enquiry. It is, in fact, punishment without holding an enquiry as the contents of the certificate will debar the petitioner from any service.

(5) Learned counsel further submitted that as the petitioner had already resigned, there was no relationship of master and servant, hence, no enquiry could be initiated against her. There was no enquiry pending when the resignation was accepted, hence, it cannot be said that the same continued. Even for continuation of enquiry, there is no enabling provision. It is the admitted case of the respondents that plagiarism, as alleged, was never committed. It is their own case that it was an attempt and the attempt as such has not been defined to be indiscipline in the rules or regulations applicable, for which any one could be punished. It was further submitted that the communications through e-mails between some alleged publisher and Prof. M. D. Sharma have no relevance and evidentiary value at this stage for the reason that the conditions laid down in Section 65A and 65B of the Indian Evidence Act, 1872 have not been complied with. These are communications between two different parties. In fact, these may have been created just to nail the petitioner on account of professional jealousy. The stand of the respondents in a query raised by the petitioner under the Right to Information Act, 2005 was that there was no communication available in the record with any publisher.

(6) It was further submitted that the aforesaid documents were placed on record after entire pleadings in the case were complete, by filing an application by the counsel only with no supporting affidavit. The affidavit was filed only after this court directed. It is the undisputed case of the respondents that in response to the notice issued, the petitioner had submitted her explanation on 19.9.2009 and had sought certain information, however, that was never furnished till such time she submitted her resignation.

(7) In support of the arguments, learned counsel for the petitioner placed reliance upon *Harabilas Biswas versus Commissioner of Income-tax, West Bengal (1)*, *B. J. Shelat versus State of Gujarat and others (2)*, *M/s J. K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur versus State of U. P. and others (3)*, and *Bhagirathi Jena versus Board of Directors, O. S. F.C. and others (4)*.

(8) On the other hand, learned counsel for the respondents submitted that documents (Annexures R-1 to R-5) annexed with CM No. 15300 of 2012 clearly make out a case of plagiarism. It has been specifically mentioned in these letters from the publisher that the petitioner had copied the earlier paper written by Prof. M. D.Sharma. In the light of the aforesaid communications, nothing wrong has been committed by the University in mentioning the fact in the experience certificate. It is not disputed that resignation of the petitioner was accepted and no condition was mentioned therein. However, it was submitted that in the report by the fact finding committee, it was opined that there was an attempt of plagiary by the petitioner. However, learned counsel for the respondents could not dispute that the paper allegedly published by Prof. M. D. Sharma, which had allegedly been copied by the petitioner, is not available in the record of the University. It was further submitted that proceedings had been initiated against the petitioner prior to acceptance of her resignation. In fact, she had resigned only because of initiation of enquiry against her which could continue even after her retirement. It was further submitted that merely mentioning a fact in the experience certificate does not amount to punishment, hence, the petitioner cannot raise a grievance against the same.

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- (1) AIR 1963 Cal. 359
 - (2) AIR 1978 SC 1109
 - (3) AIR 1990 SC 1808
 - (4) JT 1999 (3) SC 52

(9) Heard learned counsel for the parties and perused the paper book.

(10) The petitioner served with the Institute as Lecturer in Mathematics and worked from 14.9.2004 till 11.12.2009. The petitioner had tendered her resignation vide letter dated 6.11.2009, which was duly accepted by the University vide communication dated 11.12.2009, with effect from the same date. Prior to that, the petitioner had been issued a notice to explain her position with regard to a complaint made by Prof. M. D. Sharma regarding attempt of plagiarism. The same was replied to by the petitioner vide communication dated 19.9.2009 (Annexure P-6). Certain documents were asked for from the University to enable her to file detailed reply. In reply given to the query raised by the petitioner under the Right to Information Act, 2005, it was stated that no reply was sent by the University to the petitioner in response to letter dated 19.9.2009.

(11) As is noticed above, the information sought by the petitioner was never supplied to her. By that time, the petitioner had submitted her resignation stating personal difficulty for the reason that she had been married at a different place. In the report of fact finding committee, it was recorded that there was an attempt of plagiarism by the petitioner. The aforesaid finding is apparently without any basis, for the reason that in a query raised by the petitioner regarding supply of copy of the journal in which the paper written by Prof. M. D. Sharma was published, vide letters dated 18.1.2010 and 3.3.2010, it was stated that the journal in which the aforesaid paper was published is not available. It is even so recorded in the office noting dated 9.12.2009 after the petitioner had tendered her resignation, that copy of the research paper published by Prof. M. D. Sharma was not sent to the petitioner. The fact that such a paper is not available in the University has not been denied even by the counsel for the respondents at the time of arguments, as the same was not placed on record. Without there being any material on record, the fact finding committee submitted its report.

(12) It is also evident from the aforesaid noting that till date there were no prescribed rules/agreement providing for terms and conditions of

service of teachers working under self-financing scheme. In the end, the proposal was put as to whether while supplying the documents sought by the petitioner vide letter dated 19.9.2009, the petitioner may be asked to submit her reply or as the petitioner had already resigned, her resignation may be accepted. It is also mentioned in the note that even if the proceedings are initiated against her, as she has resigned from the job, the same may not be concluded by that time. Ultimately, her resignation was directed to be accepted, though it is mentioned in the end in the noting that in the experience certificate a line be added about pendency of enquiry regarding plagiarism.

(13) The petitioner herein was not issued the experience certificate after she had resigned. As the petitioner was only supplied with a photo copy of the experience certificate on 19.6.2010 and the stand of the University was that it was despatched to the petitioner, she sought information under the Right to Information Act, 2005 on 12.7.2010 asking for information as to through which agency the envelope was sent and the date and proof of delivery etc. In response thereto, the University replied that the certificate was delivered in the office of the Institute. Regarding date of delivery, the query was transferred to the Institute. In response to the aforesaid query, which was transferred for providing information to the Institute vide letter dated 28.7.2010, it was stated that the experience certificate was never despatched by the Institute to the petitioner as no such information was available. Still the fact remains that the certificate of experience, which was allegedly sent by the University to the petitioner, was in fact not sent. Apparently a wrong stand was taken.

(14) Regarding reliance on the communications (Annexures R-1 to R-5) produced along with the application is concerned, the same cannot be relied upon by the respondents at this stage, for the reason that in a specific query raised by the petitioner in an application under the Right to Information Act, 2005, vide its reply dated 18.1.2010, it was stated that there is no communication available on record between the University and the publisher. Now the documents are sought to be placed on record, which are stated to be some e-mail communications between the publisher and Prof. M. D. Sharma, from where it is sought to be proved that the petitioner

made an attempt to plagiarise by copying the paper published by Prof. M. D. Sharma. However, the communications cannot be taken on its face value at this stage as these were never referred to nor produced in any proceedings earlier. The documents were placed on record with an application merely signed by the counsel. Affidavit in support thereof was filed only when directed by this court on 13.12.2012. Even in terms of the provisions of the Indian Evidence Act, 1872, it may not be safe to place reliance on these documents as such considering the totality of circumstances.

(15) The line added in the experience certificate that at the time of relieving the petitioner from the University, a case of plagiarism was pending against her, will amount to penalty for all times to come, as the same shall be a blot on her career throughout. The action is without any enquiry.

(16) As far as continuance of enquiry against the petitioner is concerned, the same is totally without jurisdiction. When acceptance of resignation of the petitioner was being considered, the respondents could decide to continue with the enquiry while not accepting the same. There is no condition attached in the acceptance of resignation as conveyed to the petitioner. Learned counsel for the respondents did not point out any rules which enabled the University to either initiate any enquiry after an employee is not in service or even continue with the proceedings initiated earlier. In the present case, nothing had been initiated against the petitioner while she was still in service as no charge-sheet had been issued, hence, the enquiry proceedings initiated against her are quashed being without jurisdiction.

(17) For the reasons mentioned above, the writ petition is allowed. The respondent-University is directed to issue experience certificate to the petitioner without recording any comments regarding alleged allegation of plagiarism or any other comment and further the communications issued to the petitioner asking her to appear for enquiry for alleged allegation of attempt to plagiarise are quashed. It is held that no such enquiry can be initiated now.