

Civil Misc. Writ Petition No.17549 of 2010

Dr. Shrinivas Ramchandra Siras & Ors.

Vs. The Aligarh Muslim University & Ors.

Hon. Sunil Ambwani, J.

Hon. K.N. Pandey, J.

Smt. Sunita Agrawal has accepted notice on behalf of respondent Nos.1 to 3. She is allowed three weeks' time to file counter affidavit. The petitioner will have one week, thereafter, to file rejoinder affidavit. List on 4th May, 2010.

By this writ petition the petitioner aged 64 years serving as Reader and Chairman in the Department of Modern Indian Languages in the Aligarh Muslim University, living in a flat being Quarter No.C-21, Medical Colony Campus, in the University, and awaiting promotion as Professor prior to his retirement due on September, 2010, has challenged the orders dated 09.2.2010 by which the Vice Chancellor of the Aligarh Muslim University has placed him under suspension, the order dated 9.2.2010 by which he has been directed to vacate the staff quarter allotted to him. He has also prayed for quashing Memorandum bearing No.24.2.2010 along with the Article of Charge; to issue an appropriate writ to consider the petitioner for appointment on the post of Professor; to issue directions to destroy originals and all copies of the video clippings and photographs of the incident that occurred on 8.2.2010, in possession of the respondents, and to restrain them from publication of the video clippings and photographs. The petitioner has also claimed compensation and damages quantified at Rs.30 lacs.

The petitioner has been placed under suspension on prima facie satisfaction of alleged gross misconduct committed by him by the Vice Chancellor of the University, in exercise of his powers under Section 40 (3) (c) of the Statutes of the University. He has been served with a memorandum dated 24.2.2010 for holding an

enquiry against him under Statute 40 (3) (c) of the Statutes of the University, on the imputation of misconduct, in the Article of Charge No.1 as follows:-

“Article of Charge No.1

That the aforesaid Dr. Shrinivas Ramchandra Siras while working as Reader & Chairman, Department of Modern Indian Languages has committed act of misconduct in as much as he indulged himself into immoral sexual activity and in contravention of basic moral ethics while residing in Quarter No.21-C, Medical Colony, A.M.U. Aligarh thereby undermined pious image of the teacher community and as a whole tarnished the image of the University.

The above act on the part of Dr. Shrinivas Ramchandra Siras is unbecoming on the part of a teacher of the University, thereby, he undermined pious image of the teacher community and as a whole tarnished the image of the University.”

The statement of imputation of misconduct alleges that Prof. M. Zubair Khan, Proctor dated 9.2.2010 submitted a report to the Vice Chancellor alleging that at about 8.45 p.m. on 8.2.2010, while taking dinner at the University Guest House No.1, he was informed by Deputy Proctor Dr. Fareed Ahmad Khan, that some media persons are making some kind of film in Lecturer Quarter No.21C, Medical Colony, occupied by Dr. Shrinivas Ramchandra Siras of Modern Indian Languages. The proctor reported that on reaching there along with Dr. Rahat Abrar, PRO and Prof. N.A.K. Durrani, they found four Media persons were talking to Dr. Siras, who were wearing Pajama and Shirt. He was begging for forgiveness from the media persons. Since they were not aware of the business, which was going on in that house, the Media persons were taken in another room. They were informed by them of the incident, which took place there. The Media persons showed the video clippings. The Proctor and the PRO requested the electronic media persons namely Mr. Syed Adil Murtaza of TV 100 News Channel and Mr. Ashu Misam of Voice of Nation TV Channel not to release the video clippings to their channels.

It is submitted by Shri Anand Grover appearing for the petitioner assisted by Shri Arvind Kumar that there was no complaint of any indecent behaviour or of any misconduct made against the petitioner at any time. He is a respected Professor, aged 64 years and going to retire in September, 2010. In reply to the imputation of charges, the petitioner has frankly replied:-

“I say that I am gay (or of homosexual orientation), I have never hidden my sexual orientation and people know about the same. Moreover, I submit that my sexual orientation is not at all any person's concern and what I do in the privacy of my home is protected within the right to privacy and equality recognized under the Indian Constitution under Articles 14, 15 and 21 of the Constitution of India. I further submit that I am very much entitled to exercise of my right to privacy and equality and what I do in exercise cannot pose any threat or danger to the reputation and image of this pious University. However, by certain unknown persons barging into my home with the active connivance of the University staff without my knowledge and/ or consent is a flagrant breach of my fundamental rights and therefore the same requires your attention and action.”

The petitioner has further stated in his reply that three unknown persons entered in the bed room of his house without his consent. The said three men pounced on the petitioner and his friend. They had cameras in their hands and were telling that they want to take pictures. They threatened them. Some of the Professors in the University entered his flat. It is obvious that University staff know about the said three media persons barging into his home and that some of the University staff has conspired with the said three persons entering into his house without his consent and intruded his privacy.

Shri Grover submits that media persons followed by the University persons had entered the petitioner's flat unauthorisedly without his consent. They intruded into his privacy in violation of Art.21 of the Constitution of India. The petitioner is a highly learned and reputed person. As an adult he has not violated any law in having sexual preference. He relies upon the judgment

Naz Foundation Vs. Government of NCT of Delhi, 2010 CrLJ 94 and the conclusions drawn by the Division Bench of the Delhi High Court. The judgment is in appeal in the Supreme Court. The Union of India has not challenged the judgment. Shri Anand Grover submits that in view of Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr., (2004) 6 SCC 254 para 19 and 22, the judgment of the Delhi High Court has effect throughout the territory of India, subject to applicability of the Act. He would submit that the petitioner is entitled to the fundamental rights to his privacy, dignity, equality and non-discrimination on the basis of sexual orientation, and freedom of movement.

Shri Grover submits that motion of basic moral ethics must take into account adversity in sexual orientation, which is part of constitutional morality, under Indian law, and not the whims and fancies of certain group of people. Art.14 and 16 of the Constitution of India forms a complete code with respect to equality, and guarantees equality to all persons, irrespective of their sexual orientation, and prohibit discrimination on such ground. Any Act done in the privacy of a person's home, which does not affect his employment, is not a misconduct for initiating departmental enquiry, and persecution.

It is submitted that the petitioner is facing severe stigma and is unable to find a house to live in Aligarh. The order by which his movement has also been restrained from Aligarh is entirely without jurisdiction. The media has started publishing the video tapes and clipping, tarnishing his image. The Court may interfere into the matter to protect fundamental rights of the petitioner which include right of privacy under Art.21 of the Constitution of India, and to rescue him.

Smt. Sunita Agrawal appearing for the University has raised preliminary objections to the maintainability of the writ petition. She submits that the order of the Vice Chancellor is subject to the approval of the Executive Council. The enquiry has been initiated

by submitting the charge sheet and appointment of enquiry officer. The petitioner has replied to the chargesheet. The petitioner has remedies under Section 36 (B) of the Aligarh Muslim Universities Act, 1920 to appeal to Executive Council, and in any case to make representation under Section 13 (6) to the Visitor.

Prima facie we find that the allegations constituting misconduct are still subject matter of enquiry. Shri Anand Grover has a point in submitting that sexual preference of an adult may not amount to misconduct specially in the circumstances (in violation to the right of privacy) in which the act was alleged to be discovered. The right of privacy is a fundamental right, needs to be protected and that unless the conduct of a person, even if he is a teacher is going to affect and has substantial nexus with his employment, it may not be treated as misconduct. We also find the allegations made against the petitioner, an imminent person aged 64 years, due to retire shortly, would require strict proof of falling in the definition of immorality and amounting to undermining the pious image of the teacher community as a whole and the image of the University, amounting to 'misconduct' under Statute 40 (B) (c) under the Aligarh Muslim University Act, 1920. The question of the applicability of the judgment of Naz Foundation Vs. Union of India (Supra) does not presently arise in the case as the allegations are not the basis of any criminal offence, charge or conviction involving moral turpitude. The power of removal in the case of an action taken on the basis of conviction, involving moral turpitude, is applicable to the officers of the University. In the matter of disciplinary action against the teachers, Statute 40 (3) (A) is applicable. The words 'moral turpitude' are significantly absent in Statute 40 (3) (a). The appeal to Executive Council, the approving authority of suspension order is not a bar to entertain the writ petition, and a representation to the Hon'ble Visitor under Section 13 (6) lies to annul any proceedings of the University, which is not in conformity with the Act, statues

and Ordinances. At present the allegations of misconduct, in violation to fundamental rights, do not fall within the purview of the consideration by Hon'ble Visitor. The delay in hearing the University will continue to harm petitioner's reputation irreparably.

Having regard to the facts and circumstances, as an interim measure, the effect and operation of the order of the suspension dated 9.2.2010 (Annexure No.13), which also includes restriction of petitioner's movements is stayed. We also stay the operation of the Office Memorandum dated 9.2.2010 (Annexure No.14) directing the petitioner to vacate the residential quarter and the order dated 13/15.2.2010 (Annexure No.16) by which the electricity and water connection of his flat has been directed to be disconnected and the Office Memo dated 10.2.2010 (Annexure No.15). The departmental enquiry will, however, continue and will be concluded in accordance with law expeditiously. The petitioner will have liberty to apply to appropriate orders, if and when the matter of promotion to the post of Professor comes up for consideration.

We also find it expedient to direct that pending the writ petition, the media including news channels and the newspapers are restrained from publishing any material, pictures or video clippings or to publish any comments, on the incident, in any manner whatsoever.

Dt.01.04.2010
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