IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Moushumi Bhattacharya

WPA 13266 of 2021

Dr. Kausik Paul

Vs.

Seacom Skills University and Others.

For the Petitioner	:	Mr. Soumya Majumder, Adv. Mr. Meghnad Dutta, Adv. Mr. Abhishek Shaw, Adv.
For the State	:	Mr. Anirban Roy, Adv. Mr. Raja Saha, Adv. Mr. Biswabrata Basu Mallick, Adv.
For the UGC	:	Mr. Anil Kumar Gupta, Adv. Mr. Yogesh Kr. Sharma, Adv.
For the Respondent Nos. 1 to 5	:	Mr. Partha Sarathi Bhattacharya, Adv. Mr. Mani Shankar Chattopadhyay, Adv. Mr. Raju Bhattacharyya, Adv.
Last Heard on	:	10.03.2022.
Judgment on	:	23.03.2022.

Moushumi Bhattacharya, J.

1. By an order dated 22nd February, 2022, this Court had decided the issue of maintainability in favour of the petitioner. The writ petition

is now being decided on merits.

2. The writ petitioner seeks an order for cancellation of a letter dated 19th July, 2021 by which the writ petitioner was asked to discontinue his service as Assistant Professor in Bio-Sciences effective from 19th August, 2021. The writ petitioner also seeks an order declaring Clause 6 of the letter of appointment dated 27th February, 2021 to be declared illegal and null and void. Clause 6 of the letter of appointment provides for termination with the management reserving the right to terminate the services of the petitioner without any notice in case of misconduct and violation of the rules of the University.

3. Learned counsel appearing for the petitioner submits that the said clause in the letter of appointment is arbitrary and is contrary to the principles of natural justice as it confers unfettered power on the University to terminate the service of an employee without assigning any reason. Counsel submits that the University did not give a show-cause notice to the petitioner before issuing the impugned letter of discontinuation dated 19th July, 2021. Counsel prays that the letter of discontinuation be set aside.

4. According to learned counsel appearing for the respondent University, the petitioner failed to abide by the terms and conditions of the University which would be evident from the letters on record and the

University was hence constrained to issue the impugned letter of discontinuation.

5. The facts which would be relevant for ascertaining the legality of Clause 6 of the letter of appointment are briefly stated below.

6. The petitioner was appointed to the University as Assistant Professor in Bio-Sciences by the letter of appointment dated 27th February, 2021. Clause 6 of the said letter is reproduced below-

> "*6. Termination Notice*
>
> *The management reserves the right to terminate your services without any notice, in case of misconduct, violation of the University rules, breach of the contract and severe non-performance in normal circumstances, one month prior notice on either side as Permanent Teaching Faculty Staff of the University.*"

7. The writ petitioner joined the University on 5th March, 2021. On 11th June, 2021 the Vice-Chancellor of the University issued a letter evaluating the performance of the petitioner. The letter contains several allegations on the petitioner's failure to fulfil certain responsibilities. The petitioner was given seven days to respond to the issues raised in the letter and was further informed that the University will thereafter decide whether the petitioner's service is required or not. The impugned letter of discontinuation was issued thereafter on 19th July, 2021. This was followed by a letter of apology dated 23rd July, 2021 from the petitioner

undertaking to abide by the terms and conditions of the University. The petitioner also requested the University to withdraw the letter of discontinuation and give an opportunity to the petitioner to continue with his service. By a further letter dated 2nd August, 2021 the petitioner sought to know the facts and circumstances and the specific points in relation to Clause 6 of the appointment letter. The writ petition was filed on 18th August, 2021.

8. The facts indicate that the petitioner was put on notice of the impugned clause in the appointment letter and the petitioner joined the University after accepting the terms of the letter of appointment. Moreover, the letter of discontinuation cannot be seen as a bolt from the blue, so to speak, or said to have completely caught the petitioner unawares since the petitioner was put on notice of his less than satisfactory performance by the letter dated 11th June, 2021 from the Vice-Chancellor. The said letter contains particulars of the inadequacy of the petitioner's performance and the fact that the petitioner was not attending pre-submission seminars or submitting detailed project reports and not even completing the course allotted to the petitioner. The letter also gave an opportunity to the petitioner to respond to the contents of the letter or seek clarification with regard to the same. The petitioner was also informed that if the petitioner fails to respond, the University would take a decision on whether the petitioner's services would be continued.

9. The petitioner admittedly did not respond to the letter of the Vice-Chancellor dated 11th June, 2021.

10. The impugned letter of discontinuation was issued more than a month after the petitioner was put on notice by the Vice-Chancellor. The petitioner was asked to discontinue from his position as Asst. Professor with effect from 19th August, 2021 under Clause 6 of the appointment letter dated 27th February, 2021. Significantly, the petitioner did not dispute or object to either the contents of the letter dated 11th June, 2021 or the letter of discontinuation. The Vice-chancellor's letter of 11th June, 2021 was served on the petitioner which would be evident from a copy of the relevant mail which has been produced by the University in Court. Instead, the petitioner by the mail dated 23rd July, 2021, acknowledged his mistake in the performance of duties and apologised for the same and undertook to abide by the terms and conditions of the University. The chain of correspondence indicates that not only was adequate notice given to the petitioner before the impugned letter of discontinuation but also that the petitioner acknowledged and accepted the charges of failure/ inadequacy of performance. The documents hence belie the contention of the petitioner that the petitioner was an innocent victim of a "hire and fire" policy of the University in breach of the principles of natural justice. The documents also run contrary to the stand of the petitioner, namely, that the letter of discontinuation read with Clause 6 of the appointment letter violates the right to a fair hearing since the petitioner chose not to respond to the letter dated 11th

June, 2021 by which the petitioner was given an opportunity to answer to the charges made against him.

11. The words “hire and fire” carry a sense of an inherent and abrupt injustice. The underlying imputation is one of summary dismissal without an opportunity of a meaningful say in the decision of dismissal. There are also several sectors where the persons are employed under the condition of a summary dismissal on the happening of certain events. In other spheres, these conditions may be seen as necessary for maintaining disciplinary standards and the competence levels of employees. This was recognized by the Supreme Court in *Krishnadevaraya Education Trust vs L.A. Balakrishna; (2001) 9 SCC 319* where the Supreme Court held that the employer is entitled to assess the suitability of an appointee and has a right to terminate the services if the services are found to be unsatisfactory.

12. The perceived unfairness of a “hire and fire” policy or a clause of summary dismissal is substantially diluted where sufficient notice is given to the employee to respond to the charges made against the employee. Courts usually intervene and rectify a situation where a clear breach of the rules of natural justice is established on fact or where the notice of termination is opaque and indecipherable in failing to disclose reasons for the sudden dismissal.

13. In *Central Inland Water Transport Corporation Limited vs Brojo Nath Ganguly; (1986) 3 SCC 156,* the Supreme Court dealt with the reasonableness of Clause 9(i) and (ii) of the Central Inland Water Transport Corporation Ltd. (Service, Discipline and Appeal) Rules, 1979 framed by the Corporation. This Clause provided for termination of the service of a permanent employee on the ground that his services may no longer be required in the interest of the Company and without assigning any reason. The Supreme Court evocatively described the said clause as the "Henry VIII Clause" as conferring absolute and unguided power upon the Corporation. The Supreme Court was also concerned that the Clause does not specify as to who would exercise that power on behalf of the faceless Corporation. Most of all, the case highlighted the inequality of bargaining power caused by a disparity in the economic strength of the contracting parties and that the weaker party may not be in a position to object to the terms imposed by the stronger party. The decision brought to the fore cases where a man has no choice, far less a meaningful choice, but to sign on the dotted line in a standard form contract and accept a set of rules however unconscionable the rules may be. The decision involved an ordinary employee who was pitted against an all-powerful Corporation with an unmistakable element of social justice. A similar vein of reasoning can be found in *Videsh Sanchar Nigam, Ltd. vs Dipali Bandopadhyay; 1995 - I L.L.N. 310* where a Division Bench of this Court dealt with a similar contractual clause providing for termination at any time by giving three months' notice in

writing. The Division Bench, relying upon *Brojo Nath Ganguly,* found the clause to be violative of Article 14 of the Constitution.

14. It is important to note that both *Brojo Nath* and *Dipali Bandopadhyay* dealt with instances where due process was given a short shrift by the employees. The decisions also dealt with permanent employees who had served the respective Companies for a long period of time. In the facts of the present case, although the letter of appointment does not indicate whether the petitioner was taken on probation, the admitted fact is that the petitioner had just completed four months in service when the impugned letter of discontinuation was served on the petitioner. There is admittedly no element of an unequal bargaining power between the petitioner and the respondent or any sense of the petitioner being in a position of comparative weakness which could have forced the petitioner to accept an unreasonable term in a contract. Moreover, the letter of appointment entails an unmistakable flavour of a contract of personal service between the petitioner and the University and the University being established by a statute does not diminish that flavour. Clause 6 of the terms under the appointment letter may also be seen as a facilitator for preserving the excellence of the University and to safeguard the interest of students.

15. Considering the sequence of correspondence exchanged between the petitioner and the University and the relevant law on the subject, this Court is unable to accept the contention that Clause 6 of the letter

of appointment is discriminatory and should be declared null and void on that basis or that the impugned letter of discontinuation dated 29th July, 2021 should be revoked in the facts of the case.

16. W.P.A. 13266 of 2021 is accordingly dismissed without any order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)