
(1985) 03 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Amended Wrti Petition No. 5580 of 1983

Balbir Singh Grewal and Another

APPELLANT

Vs

G.D. Tapase and Others

RESPONDENT

Date of Decision : 20-03-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 213(1)

Maharshi Dayanand University Act, 1975 — Section 9, 9A(2)

Citation : AIR 1985 P&H 244 : (1985) 1 ILR (P&H) 480

Hon'ble Judges : Prem Chand Jain, Acting C.J.; R.N. Mittal, J; K.S. Tiwana, J

Bench : Full Bench

Judgement

Rajendra Nath Mittal, J.—Briefly the facts are that Shri Hardwari Lal respondent No. 2 was appointed as Vice-Chancellor of Maharshi Dayanand University, Rohtak (hereinafter referred to as the University) on 27th October, 1977 for a period of three years by the Chancellor, respondent No. 1, exercising the powers under statute 4(6) of the First Statutes of the University contained in the Schedule to the Maharshi Dayanand University Act, 1975 (hereinafter referred to as the Act) with a promise that his term would be renewed for a similar period. The Chancellor did not renew the term as promised by him. Therefore, the respondent filed Civil Writ Petn. No. 3658 of 1980 for mandamus that the Chancellor be directed to renew the second term inter alia on the ground of promissory estoppel. The Court accepted the writ petition on 16th September, 1981 on the ground that the doctrine of promissory estoppel was attracted and directed the Chancellor to renew the term of the respondent for a period of three years with effect from 27th October, 1980. The judgment is reported as Hardwari Lal Vs. G.D. Tapase and Others, (hereinafter referred to as the Full Bench judgment).

2. The Chancellor and the State Government preferred a SLP (S. L. P. No. 7941 of 1981) in the Supreme Court of India and also prayed for staying the operation of the judgment. On 30th September, 1981, the Court granted the stay as prayed for subject to the condition that the respondent would be entitled to the

use of his residence, car and Personal Assistant and that he would be paid the entire salary and allowances till the end of September, 1981 within a period of one month. The Registrar of the University was directed to carry on day to day administrative work of the University. In pursuance of the order the Registrar started discharging the functions of the Vice-Chancellor.

3. On 4th June, 1982, a compromise was arrived at between the respondent on the one hand and the Chancellor and the State Government on the other according to which it was agreed that the respondent would assume the office of the Vice-Chancellor immediately after the issuance of notification in terms of the judgment of this Court in the aforesaid writ petition. The Supreme Court, in view of the compromise between the parties, allowed the appellants to withdraw the appeal. In terms of the compromise, a notification dated 7th June, 1982 was issued by the Chancellor appointing the respondent as Vice-Chancellor of the University and he started functioning as such with effect from 8th June, 1982. His term, according to the notification, was to expire on 27th October, 1983.

4. The Chancellor, vide notification dated 10th October, 1983 published in the Haryana Government Gazette (Extraordinary) dated 10th October, 1983 (Annexure P-1) allowed the respondent to continue as Vice-Chancellor of the University for a period of 19 months and 10 days from 28th October, 1983 to 6th June, 1985.

5. Petitioner No. 1, an M. L. A., and petitioner No. 2, a Professor in the Kurukshetra University, have challenged the aforesaid notification, inter alia, on the ground that the Vice-Chancellor could hold office for a period of three years which term could be renewed for not more than one term under the Act; but by notification dated 10th October, 1983 further term for 19 months and 10 days has been given to the respondent. The Chancellor had no jurisdiction to issue the notification, especially in view of the judgment of this Court. It is further pleaded that during the pendency of the writ petition the Governor of Haryana promulgated Ordinance No. 7 of 1984 by which he added a proviso to sub-section (2) of Section 9A of the Act, which says that the person holding the office of the Vice-Chancellor, who was appointed or is deemed to have been appointed before 1st November, 1980, would continue to be governed by the law in force at the time of his appointment. It is alleged that the proviso was added for the benefit of the respondent and as such it was a colourable piece of legislation and liable to be struck down.

6. It is then pleaded that under the Act the Vice-Chancellor could only be allowed two terms of three years each. The respondent has already enjoyed the two terms and now he is usurper of the office of Vice-Chancellor of the University and as such is liable to be removed. Consequently it is prayed that a writ of quo warrant to be issued removing him from the office of the Vice-Chancellor by quashing the notification dated 10th October, 1983 (Annexure P.1).

7. The writ petition has been contested by all the respondents. Shri G. D. Tapase,

who was then the Chancellor of the University (respondent No. 1) and had issued the notification (Annexure P.1), has pleaded that respondent No. 2 has been allowed to function as Vice-Chancellor for a period of 19 months and 10 days in lieu of the period from 28th October, 1980 to 6th June, 1982 during which he could not function for want of renewal of his term in time. The notification is a step in sequence of the Full Bench judgment and the term of respondent No. 2 has neither been renewed nor extended. The impugned notification is, therefore, in accordance with law. It is further pleaded that the petitioners have no right to file and maintain the writ petition as it does not involve question of general importance.

8. Shri Hardwari Lal, respondent No. 2, in the written statement took similar pleas. In addition, he has said that the petition is not bona fide as the petitioners have not been prompted by any public interest to file it. On the other hand, it is motivated. He pleaded that he had accepted the vice-chancellor's post on the condition that he would get at least six years to build up the University and that condition was accepted by the then Chancellor. The Chancellor by the notification had allowed him a second functioning term of three years. According to the law applicable to him, he could continue as Vice-Chancellor regardless of the fact that he had long attained the age of 65 years and that the number of terms as Vice-Chancellor could be two.

9. The State of Haryana, respondent No. 3, pleaded that in order to give full effect to the Full Bench judgment and to provide legal shape to the order of the Chancellor, it had become incumbent to make necessary amendments in the Act. Therefore, the Ordinance was promulgated under Article 213(1) of the Constitution of India. Later the said Ordinance was converted into the Act of the Legislature. The amendment has not been made in colourable exercise of the powers of the Haryana Legislature, it is also averred that no motive can be attributed to the Legislature.

10. Maharshi Dayanand University, respondent No. 4, has taken similar pleas as have been taken by respondent No. 2, and Shri S. M. H. Burney, the Chancellor (respondent No. 5) has taken similar pleas as have been taken by Shri G. d. Tapase, respondent No. 1.

11. The first contention of Mr. Hooda is that the notification dated 10th October, 1983 is against the judgment of the Full Bench which allowed respondent No. 2 a term of three years with effect from 27th October, 1980 to 26th October, 1983. The notification amounts to extension of the term of the respondent which could not be done by the Chancellor. He argues that the notification is, therefore, void ab initio.

12. We have duly considered the arguments. In order to decide the contention a few salient facts may be stated. Respondent No. 2 was originally appointed as Vice-Chancellor for a period of three years with effect from 27th October, 1977 with a promise to renew his term for a period of another three years. He took

charge on 28th October, 1977. However, his term was not renewed by the Chancellor in accordance with the promise. He came up in writ petition to this Court which was hotly contested by the Chancellor and State Government. The Full Bench to which I was a party, after considering the matter at a considerable length, came to the conclusion that the petitioner was entitled to renewal of the term for a period of three years with effect from 27th October, 1980. The relevant observations are as follows:

"The petitioner was appointed Vice-Chancellor on 27th October, 1977, for a period of three years, which tenure was to be renewed for another term of three years. In the earlier part of the judgment I have already held that the petitioner is entitled to the renewal of the term on the basis of the promise made and assurance given by the then Chancellor and on account of that finding the petitioner is entitled to continue and would be deemed to have continued as Vice-Chancellor with effect from 27th October, 1980, for another period of three years. Normally, the petitioner would be entitled to continue in that post for the full term which will expire only at the end of October, 1983. Now this term has been abruptly cut short by issuing the impugned Ordinance on 1st November, 1980, by which after Section 9, Section 9-A has been introduced, which puts a bar on a person to continue as Vice-Chancellor who has attained the age of 65 years. This ordinance was later on replaced by the Amendment Act on 26th December, 1980".

In the end it was observed that the words "continue in if he has attained the age of 65 years" occurring in Section 9-A of the Ordinance and the Amendment Act were discriminatory and violative of Article 14 of the Constitution as the same were designed to operate to the detriment of one and one person only, i.e. the petitioner whose term had to be renewed as a result of the promise / assurance with effect from 27th October, 1980. The Chancellor had acted within the scope of his authority in laying down that the term of the petitioner would be renewed and that the petitioner had acted on that promise / assurance and had changed his position. It was a real promise--promise intended to be binding, intended to be acted upon and in fact acted upon. Consequently, the writ petition was accepted and the following direction was issued to the Chancellor:

"..... the writ petition is allow and a direction is issued to the Chancellor of the University. respondent No. 1 to issue notification renewing the term of the petitioner as Vice-Chancellor with effect from 27th October, 1980".

13. The Chancellor and the State Government went up in appeal before the Supreme Court of India wherein stay of the operation of the judgment of this Court was prayed for by them. The Supreme Court, while granting leave, allowed the stay to the petitioner on 30th September, 1981 in the following terms:

"Special leave to appeal is granted. Stay of the operation of the judgment of the High Court dated September 16, 1981 is granted. Until further orders of this Court the Chancellor of the University need not, as directed by the High Court to

issue notification renewing the term of the respondent as Vice-Chancellor. The respondent will accordingly not be entitled to function as Vice-Chancellor until further orders of this Court. We, however, direct that the respondent will be entitled to the continued use of the residence which he was using as a Vice-Chancellor and he will also be entitled to the use of the car which he was using as a Vice-Chancellor. The respondent will also be given the facility of the services of a personal assistant of his choice. The entire salary and allowances due to the respondent till the end of September, 1981 shall be paid to him within one month from today. Until further orders of this Court, the Registrar of the University shall carry on day-to-day administrative work of the University....."

The parties entered into a compromise on 4th June, 1982, according to which respondent No. 2 was granted another term of three years as ordered by the Full Bench. In view of the compromise the appeal was disposed of accordingly. The relevant terms of the compromise are set out below:

"Respondent No. 1 will assume the office of Vice-Chancellor immediately after the issuance of notification in terms of the High Court judgment dated 16th September, 1981 in Hardwari Lal Vs. G.D. Tapase and Others, . The notification will be issued within 5 days after the decision of the above appeal".

For the above said facts it is evident that the parties agreed that the term of respondent No. 2 was to be renewed with effect from 27th October, 1980 for a period of three years and the notification in that regard was to be issued within 5 days of the compromise. In pursuance of the compromise the Chancellor of the University issued the following notification on 7th June, 1982:

"In accordance with the judgment dated 16-9-1981 of the High Court of Punjab and Haryana in Hardwari Lal Vs. G.D. Tapase and Others, and in terms of the memorandum of compromise filed in the Supreme Court in Civil Appeal No. 2687 of 1981, decided on 4-6-1982, and, in exercise of the powers conferred on me by clause (7) of the Statute 4 as contained in the Schedule to Maharshi Dayanand University Act, 1975, I, G. D. Tapase, Chancellor of the Maharshi Dayanand University hereby renew the term of appointment of Shri Hardwari Lal as Vice-Chancellor of Maharshi Dayanand University, Rohtak for a period of three years with effect from 27th October, 1980.

2. Terms and conditions of his appointment will be issued separately."

14. It is clear from the language of the compromise and the notification that the term of respondent No. 2 was renewed for a period of three years with effect from 27th October, 1980. Thus the term was to come to an end on 26th October, 1983. Before the expiry of term on 10th October, 1983 the Chancellor issued another notification granting 19 months and 10 days to respondent No. 2 with effect from 28th October, 1983 up to 6th June, 1985, on the ground that he could not act as a Vice-Chancellor for want of renewal of his term in time. It is not mentioned under what power the Chancellor issued it. Normally while issuing the notification the chancellor mentions the source of his power. It is not

understandable as to why the source of power was not mentioned by him in this case. At this stage it is relevant to notice the impugned notification dated 10th October, 1983 (Annexure P.1) which reads as follows:

"No. HRB-DSRB-21(1) (19)-83/4968/73.--Chancellor, Maharshi Dayanand University (Governor, Haryana), is pleased to allow Shri Hardwari Lal, Vice-Chancellor, Maharshi Dayanand University, Rohtak to continue as such for a period of 19 months and 10 days from 28th October, 1983 to 6th June, 1985, in lieu of the period from 28th October, 1980 to 6th June, 1982 during which Shri Hardwari Lal could not function as Vice-Chancellor, for want of renewal of his term in time.

2. Other terms and conditions will be issued separately".

The terms and conditions of appointment were issued by the Chancellor vide orders dated 21st October, 1982 and 9th November, 1983. The conditions regarding use of a staff car and furnished house, medical treatment and leave were identical in both the orders. Regarding the pay it was provided in the first order that the respondent would be entitled to get Rs. 3000/- per mensem and that the amount already paid to him as per orders of the Supreme Court dated 30th September, 1981 would be adjusted while giving pay and allowances to him for three years period beginning from 27th October, 1980. It was also provided that he would be paid sumptuary allowance at the rate of Rs. 250/- per mensem from 8th June, 1982. In the second order it was said that in lieu of the pay the respondent would be paid Rs. 500/- per mensem as honorarium, which included sumptuary allowance. The matter is to be examined with this background.

15. The history of the case makes it clear that respondent No. 2 sought a term of continuous six years on the plea that the said period was necessary to build up the University. In the first instance he was given a term of three years with a promise to renew the same for another period of three years. The second term was not renewed and, therefore, he filed a writ of mandamus that the Chancellor be directed to give to him another term of three years. The writ was decided on 16th September, 1981, and a direction was issued that the term of the respondent be renewed with effect from 27th October, 1980. He did not claim before the Full Bench that he should be given three years period from the date of the decision of the writ petition. He also did not file an appeal against the judgment of the Full Bench, which proves beyond a shadow of doubt that he had no grievance against it. On the other hand, the Chancellor and the State Government went up in appeal before the Supreme Court. The application of stay moved on their behalf was accepted by the Supreme Court subject to the condition that the respondent was entitled to the salary and use of the residence, car and personal assistant. Even at that stage he did not say that his primary aim was to build up the University and would not accept the pay and other facilities unless he was appointed as the Vice-Chancellor and that he would be entitled to act as Vice-Chancellor for a further period during which the matter remained pending before the High Court and Supreme Court. Rather he accepted

the back salary and enjoyed other facilities as ordered to be provided to him. That is a pointer that the period during which he drew salary, he would be deemed to be in the office. Later at the time of compromise he agreed to be appointed as Vice-Chancellor in terms of the judgment of the High Court. He could claim at that time that he should be allowed to continue for a period of 19 months and 10 days more as during that period he could not function but for the reasons best known, he did not do so. Even at the time of issuance of the notification dated 7th June, 1982 by the Chancellor in terms of the judgment of the High Court, he did not request the Chancellor that he should be given three years terms from the date of the notification. He very well understood the implications of the judgment. On an earlier occasion he even wrote to the Chancellor that if his services were no longer required, he should be paid the salary for the remaining period. After the Full Bench judgment he accepted the salary and other benefits in terms of the order of the Supreme Court. If he was interested only in building up the University, it was not expected of him that he should have accepted the salary and other benefits from it till he was reinstated as Vice-Chancellor. It also does not make any difference, that he does not intend to draw any salary for the extended period but intends to take honorarium amounting to Rs. 500/- per mensem. The other benefits, however, he will still enjoy. In view of the aforesaid circumstances, he cannot be allowed to say, that he is entitled to a further term of 19 months and 10 days.

16. The contention of the counsel for the respondents is that respondent No. 2 was not allowed to function for full second term and, therefore, he was granted the functioning term for the period for which he could not work. It is further contended that he joined as a Vice-Chancellor on the condition that he would get at least six years in order to build up the University. All that the Chancellor had done was to allow him a second functioning term of three years. The contention to our mind is utterly devoid of any force. The reasons have already been given above and it is not necessary to refer to them again. Our attention has not been brought to any provision of the agreement, that the respondent was entitled to functioning term. No such term has been provided in the Act or statutes. Consequently we reject the submission.

17. The matter may be examined from another angle. Generally in the service conditions the age of retirement for employees is prescribed. It is common experience that during their tenure of service sometimes some of them are unable to attend to the work for some unforeseen reason such as long illness, suspension, etc. On rejoining after expiry of leave or reinstatement, they cannot be allowed to say that they could not work for some period for reasons beyond their control and, therefore, they should be allowed extension after the date of superannuation for a similar period for which they could not work. If that principle is followed, an anomalous position would arise. In our view this cannot be done.

18. Faced with that situation the learned counsel for the respondents sought to

urge that in view of the second proviso to Section 9A of added by Act 2 of 1984, respondent No. 2 was governed by the Statutes which were in force when he was appointed as Vice-Chancellor. He submits that in terms of clause 7 of Statute 4 the Chancellor was entitled to grant another term to respondent No. 2 and that the period of 19 months and 10 days may be deemed to be another term. The learned counsel for the petitioners in reply has argued that while issuing notification dated 10th October, 1983 (Annexure P. 1) the Chancellor did not exercise powers under clause 7 of Statute 4. He has further argued that the Chancellor under the said clause could renew the term once and, therefore, after the term having been renewed once he could not grant him a further period of 19 months and 10 days.

19. We do not find any substance in this submission of the learned counsel for the respondents too. The notifications dated 7th June, 1982 and 10th October, 1983 have already been noticed above. While issuing notification dated 7th June, 1982 the Chancellor stated in unambiguous terms that in view of the judgment of the Full Bench and the powers conferred upon him under clause 7 of Statute 4 he was renewing the term for a period of three years but while issuing notification (Annexure P.1) dated 10th October, 1983 he merely said that he was granting him 19 months and 10 days to respondent No. 2 as Vice-Chancellor in lieu of the period during which he could not function as such. From the language of the latter notification it is clear that he did not exercise power under the said Statute. Even in his reply the Chancellor did not say that the power was exercised by him under the said Statute. Therefore, we agree with the first part of the submission of Mr. Hooda by way of reply and hold that the Chancellor while issuing notification dated 10th October, 1983 did not exercise powers under clause 7 of Statute 4.

20. In view of the above observations it is not necessary to go into the other submission of Mr. Hooda that the Chancellor could not further renew the term of respondent No. 2 for a period of 19 months and 10 days after having renewed the term once.

21. After taking into consideration all the aforesaid facts and circumstances we are of the opinion that the notification dated 10th October, 1983 is against the judgment of the Full bench and, therefore, it is void.

22. Mr. Hooda has next argued that the impugned notification was neither in the public interest nor in the interest of the University. On the other hand, it was motivated and was to benefit Shri Hardwari Lal respondent. He has also argued that u/s 9A(2) of the Act the Chancellor could grant extension for a period which could neither be less nor more than three years. According to him, the extension of 19 months and 10 days given to respondent No. 2 was, thus, against the provisions of the said section. He has further challenged the vires of Haryana Act No. 2 of 1984 on the ground that it was violative of Article 14 of the Constitution of India and that the proviso added by it repeals the main section. In our opinion, the argument in view of the decision on the first point, need not be gone

into. Therefore, we do not propose to deal with the points raised by Mr. Hooda.

23. Before parting with the judgment we may notice a preliminary objection raised by Mr. Gupta. It is that the petition is not bona fide as the petitioners have not been prompted by any public interest in moving the petition. According to him, the petition is motivated. He submits that the petition is liable to be dismissed on this short ground. In support of his contention he placed reliance on *S.P. Gupta Vs. President of India and Others*, .

24. We have duly considered the argument. Mr. Gupta made reference to the para in *S. P., Gupta's case (Supra)* wherein it is observed that the individual who moves the Court for judicial redress in public interest must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. However, it is also observed in the latter para that cases may arise where there is undoubtedly public injury by the act or omission of the State or public authority but such act or omission also causes a specific legal injury to an individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission.

25. Thus it is evident that in the case of an injury affecting the public, a public man having some interest can maintain an action challenging the action of the Government. The facts of the present case are to be examined in the light of the above observations. In order to show mala fides on the part of the petitioners, respondent No. 2 has alleged in the reply that one Dr. Bhim Singh Dahiya was once employed in M. D. University, Rohtak whose services were terminated by the University at his instance. Dr. Bhim Singh Dahiya since then had been maligning him. He later joined the University of Kurukshetra as a teacher and Dr. Suraj Bhan petitioner is his colleague in that University. Sh. Balbir Singh Gerwal, M. L. A. is Dr. Dahiya's colleague and partyman in Vidhan Sabha. It is alleged that at the instance of Dr. Bhim Singh Dahiya the petitioners have filed the writ petition.

26. It is further alleged that Dr. Suraj Bhan had also a grievance of his own against him. In 1960-61 he (respondent No. 2) was the Vice-Chancellor of Kurukshetra University. Dr. Suraj Bhan wanted to be appointed as Reader in that University but he did not think Dr. Suraj Bhan fit for the Reader's job and, therefore, did not support his candidature. After he left the University, Dr. Suraj Bhan managed to join Kurukshetra University as Reader. Later when Dr. Budh Parkash, Professor of Ancient Indian History, suddenly died, Dr. Suraj Bhan tried to be appointed as the Professor in the University. The then Vice-Chancellor wrote a confidential letter to him as to why Dr. Suraj Bhan was not accepted as a Reader in 1961. He wrote back to the Vice-Chancellor that in his opinion Dr. Suraj Bhan was not even fit to be appointed even as Reader not to speak of

professor. Thus Dr. Suraj Bhan had been feeling aggrieved against him.

27. The petitioners in the replication denied the allegations of respondent No. 2. They have inter alia pleaded that they take interest in all social, political and educational matters in the State of Haryana, that they have filed the petition in the public interest and that it is not in any manner motivated. It is further pleaded that petitioner No. 2, after passing his M. A. was appointed as a Lecturer in the Punjab University in 1962. The petitioner never wanted to be appointed as a Reader in Kurukshetra University in 1962 and the allegation that the respondent did not think him fit for Reader's post and did not support his candidature was false and motivated. He denied that he approached respondent No. 2 for a job in those years. He also denied the allegations that respondent No. 2 wrote any letter to the Vice-Chancellor, Kurukshetra University against him.

28. Thus the main allegation of respondent No. 2 against the petitioners is that they are friends of Dr. Dahiya who had a grievance against him. The allegation appears to be farfetched to us. The other allegations of respondent No. 2 against Dr. Suraj Bhan have been emphatically denied by the latter. No document in support of the allegations has been produced by respondent No. 2. In the circumstances his ipse dixit in this regard cannot be accepted. We are consequently of the opinion that the respondents have failed to prove that the petition is motivated. Petitioner No. 1 is an M. L. A. and he is, therefore, interested in public affairs. Petitioner No. 2 is an educationist and thus has interest in the Universities and other educational institutions in the State. They, therefore, feel concerned if the appointment of the Vice-Chancellor of a University in the State has not been made properly. Therefore, we are of the view that the petitioners have a right to file the petition and the observations of the Supreme Court on which reliance has been placed by Mr. Gupta are not applicable to the facts of the present case.

29. For the aforesaid reasons we accept the writ petition, quash the impugned notification dated 10th October, 1983 (Annexure P. 1) and issue a writ of quo warranto for bearing respondent No. 2 from acting as the Vice-Chancellor of the Maharahi Dayanand University. However, in the circumstances of the case we make no order as to costs.

30. Petition allowed.