

**(1991) 04 AHC CK 0101**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No"s. 9255 of 1983 and 5230 of 1984

Bans Gopal Misra

APPELLANT

Vs

Kulpati, Sampurnanand Sanskrit Vishwavidyalaya and Others

RESPONDENT

**Date of Decision :** 23-04-1991

**Acts Referred:**

Constitution of India, 1950 — Article 311

Uttar Pradesh State Universities Act, 1973 — Section 2(18), 31(11), 35(2), 50(1)

Uttar Pradesh State Universities Regulations, 1973 — Regulation 73

**Citation :** (1991) 2 AWC 196 : (1991) 2 UPLBEC 813

**Hon'ble Judges :** Om Prakash, J

**Bench :** Single Bench

**Advocate :** B.D. Mandhyan, for the Appellant; A.K. Sharma and R.P. Misra, for the Respondent

**Final Decision :** Dismissed

## Judgement

Om Prakash, J.—As common questions of law and fact arise in these two writ petitions and as they are connected by the Courts order, they are disposed of by a common order.

2. As the facts are almost common in both the writ petitions, they are, briefly, stated, with reference to the writ petition of Sri Bans Gopal Misra. One Sri Ganga Dhar Sharma, Principal of Sri Sanskrit Maha Vidyalaya Khakra, a college affiliated to Sampurnanand Sanskrit Vishwa Vidyalaya Varanasi retired in June, 1979 and then Sri Bhagwat Dutta Tripathi was appointed as an officiating Principal. The post of the Principal was advertised in July, 1980. Whereas the selection committee according to the management committee of aforesaid college recommended the name of Sri Han Krishna Bhardwaj for the post of Principal on 17th August, 1980, according to the Petitioner the selection committee recommended his name. It is averred that as the management was deeply interested in Sri Hari Krishna Bhardwaj and, therefore, it made interpolations in the recommendations of the selection committee in such a way so as to read that

not the Petitioner but Sri Hari Krishna Bhardwaj was recommended by the selection committee. Thereupon, the management referred the name of Sri Hari Krishna Bhardwaj to the Vice-Chancellor for seeking his approval. The said name was not approved by the Vice-Chancellor by the order dated 18-1-1981 on the ground that there was some manipulation in the recommendation of the selection committee and he directed that steps be taken for a fresh selection. By the order dated 3-4-1981, Annexure 1 to the writ petition, the name of Sri Bans Gopal Misra was approved by the Vice-Chancellor. It is averred by the Petitioner that he took over charge on 12-6-1981 and continued to work. On 31-10-1982, the committee of management passed a resolution dismissing the Petitioner which was conveyed to the Petitioner by the letter dated 2-11-1982, Annexure 16 to the writ petition. It is this order which is sought to be quashed by the Petitioner.

3. In the writ petition filed by Sri Bhagwat Dutta Tripathi and by the Committee of Management, the aforesaid order dated 3-4-1981 whereby the name of Sri Bans Gopal Misra was approved by the Vice-Chancellor for the post of Principal and the order dated 21-2-1984, Annexure 6 to the writ petition whereby the representation of Sri Bhagwat Dutta Tripathi challenging the validity of the order dated 3-4-1981 was rejected by the Vice-Chancellor, are sought to be quashed. The contention of the Petitioners is that the Vice-Chancellor is not possessed of the power of review and, therefore, after having disapproved the name of Sri Hari Krishna Bhardwaj he could not have approved the name of Sri Bans Gopal Misra. It is, therefore, prayed by these Petitioners that both the orders dated 3-4-1981 and 21-2-1984 be quashed.

Writ Petition No. 9255 of 1983:

4. The only question emerging in this writ petition for consideration is whether the Petitioner could be dismissed by the committee of management without seeking prior approval by the Vice-Chancellor. Sub-section (2) of Section 35 of U.P. State Universities Act, 1973 (for short, the Act, 1973) mandates that every decision of the management to dismiss or remove a teacher which word includes a Principal within the meaning of Sub-section (18) of Section 2 of the Act, 1973, shall before it is communicated to him, be reported to the Vice-Chancellor and shall not take effect unless it is approved by the Vice-Chancellor. Similar provision is made in Statute 11.31 Part II, Chapter XI of the 1st Statute of the Sampurnanand Sanskrit Vishwa Vidyalyaya Varanasi made in exercise of the powers conferred by Sub-section (1) of Section 50 of the Act, 1973. So prior approval by the Vice-Chancellor is a condition precedent to the order of dismissal of a Principal. Unless the approval is accorded by the Vice-Chancellor, no teacher or Principal can be dismissed within the meaning of Sub-section (2) of Section 35 of the Act, 1973. Admittedly, no approval has been accorded by the Vice-Chancellor and, therefore, the order of dismissal passed by the management is a nullity and has got to be quashed.

5. Coming to the consequential relief, the question is whether the Petitioner is entitled to full salary from July, 1981 till the date he resumes the duties. By

virtue of the order dated 3-4-1981, the Petitioner became entitled to function as Principal. The contumacious conduct of the Management is manifest from para 33 of its counter affidavit in which it is averred:

...the Petitioner was never given the charge of the post of Principal of the College and he never worked as Principal of, the College...

It shows that the management wilfully obstructed the Petitioner in discharging his duties as Principal without any authority and arbitrarily, and therefore, the management should be held liable to pay the salary of the Petitioner from July, 1981 till he resumes the duties as Principal. The management being enjoined upon to discharge statutory functions is expected to act in a most reasonable, fair and bonafide manner. As the public representatives share power in a democratic set up, it is their first and foremost duty to comply with the orders of the statutory authorities and the statutory provisions and if they do not then they or the body which they belong to should be held personally liable for their arbitrary acts. In this case, the Vice-Chancel for already approved the appointment of the Petitioner by the order dated 3-4-1981, Annexure 1 to the writ petition but despite that he was not permitted to functions as Principal as averred by the management itself in the above reproduced para 33 of the counter affidavit. Mot only this, some time later by the resolution dated 30-10-1982, Annexure 16 to the writ petition, the Petitioner was dismissed from service without complying with the statutory provisions, that is, without seeking prior approval of the Vice-Chancellor. But for these acts of the management, the Petitioner would have continued in service and his salary would have been paid by the Government which cannot be doubly burdened for the payment of salary, that is, one to the Officiating Principal and the other to the Petitioner for no fault of it. It is interesting to note that Sri H.K. Bhardwaj whose name was referred to for being approved has not instituted anys proceedings but the management alone resisted the claim of Petitioner. Such cases should be strictly dealt with and a wrong doer alone should be burdened with the liability. It is necessary to inject greater discipline into the public life and to train and tame the public representative who should get used to rule of law. It is all the more required in the present days when it is a matter of common experience that very often the management committees violate the statutory provisions and the orders of the statutory authorities to the detriment of the employees.

6. It is not known as to what is the financial capacity of the management Respondent No. 4. Therefore, it is held that if adequate funds are not there to meet out full liability, then salary to the Petitioner shall be paid by the management, Respondent No. 4 from its funds to the extent they are available. If the funds of the management fall short even to meet out 50 per cent salary of the Petitioner, then the liability to pay salary will be restricted to 50 per cent only and the difference of the salary paid from the funds of the management and of 50 per cent amount of the salary of the Petitioner shall be paid by the Respondent No. 2, the representative of the State.

7. Then Sri Sharma made some unsustainable submissions which are taken up seriatim. First submission is that the State of U.P. having not been impleaded as Respondent, no direction for payment of salary could be issued in this case and the writ petition is not maintainable in that regard. The Respondent no 2 is the Government authority and, therefore, I do not see any substance in his submission. When the concerned Government authority is impleaded, the writ petition will not become non-maintainable simply on account of the technical plea that the State of U.P. itself has not been impleaded. The next submission is that the petition is not maintainable, inasmuch as a Civil Suit was filed and on that ground earlier writ petition of the Petitioner was already dismissed by this Court. The submission seems to be misconceived. A copy of the plaint of Civil Suit No. 336 of 1981 filed by the Petitioner in the Civil Court, is Annexure 18 to the writ petition in which the prayer of the Petitioner was that the Defendant be restrained from interfering in his functioning as Principal and that all the registers concerning to the College be delivered to him within the time prescribed by the Court. The prayer made in the Civil Suit is therefore, entirely different from the relief being sought in the writ petition. It so happened that when the earlier writ petition was filed by the Petitioner, this Court dismissed the writ petition on the ground that the Petitioner had filed a Civil Suit. At that stage, the Petitioner under some erroneous belief did not agitate the matter properly that the relief sought in the Civil Suit was entirely different and that the Civil Suit which was later withdrawn in no case could have been an alternative remedy for the Petitioner. Since this Court dismissed the earlier writ petition on 1-8-1983 under some misconception, the instant writ petition was laid before the same Bench which dismissed the earlier writ petition and then the Bench comprising Hon''ble K.N Singh, J. as he then was and Hon''ble V.N. Khare, J. admitted the instant writ petition. Therefore, it is apparent that the instant writ petition was admitted by the same Bench which dismissed the earlier writ petition on 1-8-1983. The instant writ petition was admitted because the Bench discovered that the earlier writ petition in which the relief sought was entirely different from that which was sought in the Civil Suit by the Petitioner, and, therefore, the order dated 1-8-1983 dismissing the earlier writ petition could not operate as res-judicata. The plea of non-maintainability on this ground raised by Sri Sharma deserves to be rejected.

8. Lastly Sri Sharma relying on Executive Committee of Vaish Degree College Shamli v. Laxmi Narain (1976) 2 SCC 58, urged that this being the contract of personal service cannot be enforced because the case of the Petitioner does not fall under any exceptions carved out in that case. In Vaish Degree College, exceptions made for enforcing a contract of personal Service are enumerated thus:

- (1) Where a public servant is sought to be removed in contravention of the provisions of Article 311 of the Constitution;
- (2) where a worker is sought to be reinstated on being dismissed under

Industrial law, and;

(3) where a statutory body acts in breach of mandatory provisions of a Statute.

There is well settled law that a mandamus can issue against the management which discharge statutory functions. Similar contention was raised in *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others*, , and then in para 16 on page 347 the Supreme Court rejecting such contention held:

On a conspectus of these decisions the irresistible conclusion follows that the impugned order of termination of the Appellant from the post of Principal of the Higher Secondary School in breach of the Regulation 73 framed under the said Act is illegal and as such the same is liable to be quashed as the Regulations have got statutory force. The Appellant is liable to be re-instated in the service as Principal of the said College.

9. It is sufficiently clear from the dictum of the Supreme Court that an illegal order of termination can be quashed under extra ordinary jurisdiction, inasmuch as the management is amenable to writ jurisdiction.

Writ Petition No. 5230 of 1984;

10. Turning to this writ petition, Sri A.K. Sharma learned Counsel for the Petitioners urged that no dismissal order was necessary in the case of Bans Gopal Misra. Respondent No. 3, inasmuch as his appointment was approved by the Vice Chancellor by the order dated 3rd April, 1981 which itself is void as that was passed by way of review which power is not vested in the Vice Chancellor. Respondent No. 3 denied the order dated 3-4-1981 having been passed by way of review It is contended by him that by the order dated 18-1-1981, Annexure 2 to the writ petition, the Vice Chancellor refused to approve the recommendation of the Selection Committee because that contained certain interpolations rendering the recommendation inoperative being a forged document. The submission of Sri B.D. Mandhyan, learned Counsel for the Respondent is that the aforesaid order dated 18-1-1981, Annexure-2 to the writ petition does not amount to disapproving the name of any candidate, recommended by the selection committee, but the Vice Chancellor refrained from exercising jurisdiction vested in him as the recommendation purporting to have been made by the selection committee was tampered with and manipulated by the management which was interested in the appointment of Sri Hari Krishna Bhardwaj and hostile to the Respondent. In short, the contention of Sri Mandhyan is that the aforementioned order dated 18-1-1981, Annexure 2 to the writ petition is nor the one that can be passed by the Vice Chancellor under Clause (c) of Sub-section (11) of Section 31 of the, 1973.

11. Substantial question that falls for consideration, therefore, is whether the order dated 18-1-1981 Annexure 2 to the writ petition is an order of disapproved by the Vice Chancellor as envisaged by Clause (c) of Sub-section (II) of Section 31 of the Act, 1973 and if not whether the order dated 3-4-1981, Annexure 4 to

the writ petition can be said to have been passed by way of review. To answer this question, it is necessary to dissect the anatomy of Sub-section (11) of Section 31. The Sub-section (11) contains three clauses. Clause (a) of Sub-section (11) prohibits appointment by the management of any teacher recommended by the selection committee unless prior approval of the Vice Chancellor has been obtained. Clause (b) enjoins upon the management to submit the recommendation of the management committee along with other relevant document to the Vice Chancellor for approval as soon as possible. Clause (c) of Sub-section (11) which is most important for the purposes of this case, states that the Vice Chancellor if he is satisfied that a candidate recommended by the selection committee does not possess minimum qualifications for experience prescribed or that the procedure laid down in the Act for the selection of the teacher has not been followed shall convey to the management his disapproval. So the Vice Chancellor can convey his disapproval to the management only if he is satisfied:

- (i) that the candidate recommended by the selection committee does not possess the minimum qualification or experience prescribed, or
- (ii) that the procedure laid down in the Act for the selection of the teacher has not been followed.

Unless the Vice Chancellor gathers satisfaction on either aforesaid conditions, he cannot convey his disapproval to the management under Clause (c) to Sub-section 11 of Section 31. What is to be seen is whether the Vice Chancellor has proceeded under Clause (c) of Sub-section (11) of Section 31. By the order dated 18-1-1981, Annexure 2 to the writ petition, the Vice Chancellor does not disapprove the name of Sri Hari Krishna Bhardwaj which was referred to him for approval by the management on the ground that he did not possess the minimum qualification or prescribed experience or that the procedure laid down in the Act for selection was not followed. In the order dated 18-1-1981, Annexure 2 to the writ petition, the Vice Chancellor simply states that it was not possible for him to accord approval as the recommendation of the selection committee was tampered with and, therefore, he directed the management to initiate the selection process de novo. Therefore, the order dated 18-1-1981, Annexure 2 to the writ petition passed by the Vice Chancellor is not an order of disapproval as envisaged by Clause (c) to Sub-section (11) of Section 31. If there were any order of disapproval as contemplated by Clause (c) to Sub-section (11) then surely the Vice Chancellor could not have reviewed the same as the power of review is not vested in him. But as no disapproval was conveyed by the Vice Chancellor by the order dated 18-1-1981 within the meaning of Clause (c), the Vice Chancellor was fully entitled to accord the approval to the appointment of Sri Bans Gopal Misra by the order dated 3-4-1981, Annexure 4 to the writ petition. The order dated 3-4-1981, therefore, cannot be impugned on the ground of being a review order in nature. The Respondent No. 3 having been duly appointed could not have been dismissed without prior approval of the Vice

Chancellor and, therefore, the order dated 21-2-1984, Annexure 6 to the writ petition rejecting the representation of the Petitioner No. 1 does not suffer from any infirmity.

12. Annexure 1 to the writ petition is the recommendation purporting to have been made by the selection committee with regard to Sri H.K. Bhardwaj which was sent to the Vice Chancellor by the management seeking approval which according to the Vice Chancellor was tampered with and contained interpolations. The contention of Sri Mandhyan is that the genuine recommendation made by the selection committee is Annexure 1 to the supplementary affidavit whereby the name of Sri Bans Gopal Misra alone was recommended by the selection committee. The Vice Chancellor proceeded on the footing that the Annexure I to the writ petition was an ingenuine document on account of being tampered with and. therefore, it was not possible for him to act upon that and later he found that " Annexure 1 to the supplementary affidavit by Sri Bans Gopal Misra was genuine The contention of Sri Sharma is that such conclusion of the Vice Chancellor is erroneous. Which of the two aforesaid recommendations is genuine this is a highly disputed question of fact and cannot be decided in the writ jurisdiction.

13. In the result, writ petition No. 9255 of 1983 succeeds and is allowed. The dismissal order dated 2-11-1982, Annexure 16 to the writ petition is quashed and the management, Respondent No. 4 is directed to pay the salary of the Petitioner from July, 1981 till he resumes the duties from its funds and if the funds are not adequate then to the extent of availability of the funds within two months from the date a certified copy of this order is served upon it by the Petitioner. If the funds of the management fall short to pay even fifty percent salary of the Petitioner then the liability to pay the salary will be restricted to 50 per cent only and the difference of the salary paid by the management from its funds and of the 50 per cent amount of the total salary payable to the Petitioner shall be borne by the State, that is, the Respondent No. 2 which he shall pay within the aforesaid period.

14. Writ petition No. 5230 of 1984, therefore, fails and is dismissed. The interim order dated 4th April, 1984 is vacated.

15. There will be no order as to costs in either petition.