

(2012) 09 CAL CK 0035

In the Calcutta High Court

Case No : A.S.T. 39 of 2012 and A.S.T.A. 38 of 2012

Dr. Amit Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 14

Citation : (2012) 4 CALLT 592 : (2013) 3 WBLR 281

Hon'ble Judges : J.N. Patel, C.J.; Sambuddha Chakrabarti, J

Bench : Division Bench

Advocate : Saktinath Mukherjee and Mr. Aniruddha Chatterjee, for the Appellant; Kalyan Bandopadhyay, Learned Senior Counsel, Mr. Indranil Roy, Advocate and Mr. Ayan Bhattacharya, Advocate for the WBUHS, Mr. Anindya Mitra, Ld. Advocate General, Mr. Subrata Talukdar, Advocate, Mr. Debabrata Saha Roy, Advocate and Mr. Tapas Kundu, Advocate for the State and Mr. T.M. Siddiqui, Advocate for the Union of India, for the Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—This appeal at the instance of the writ petitioner is directed against a judgment and order dated February 1, 2012 passed by a learned single Judge of this Court in WP No. 12726(W) of 2011. By the said judgment and order the learned single Judge had dismissed the writ petition with consequential orders. The appellant filed a writ petition inter alia, praying for a writ in the nature of Mandamus commanding the respondents to withdraw, cancel or set aside an e-mail order dated July 1, 2011 and to allow him to perform his duties and obligations as the Vice Chancellor of the West Bengal Health Sciences University ("the University", for short), a direction upon the respondents to pay remuneration and benefits attached to the concerned post till the completion of his tenure and other consequential reliefs.

2. On February 3, 2011 the University issued a notification by which the appellant was appointed to the post of Vice Chancellor by the Executive Council.

It was specifically mentioned that the appellant would hold the post of the Vice Chancellor for a period of three years from the date of his joining or attaining the age of 65 years whichever would be earlier. The appellant at that point of time was holding a teaching post at the G.B. Pant Hospital, New Delhi. He made necessary application to the appropriate authority seeking permission and deputation to join his new post. The Registrar of the University also had written to the said authority informing about the appellant's appointment as the Vice Chancellor of the University.

3. For our present purpose we need not consider all the subsequent communications. The next communication of importance is a letter dated May 31, 2011 by which the Registrar of the University had requested the Additional Director General, Health Sciences and Dean, Moulana Azad Medical College, requesting him to release the appellant so that he might join the new post by June 15, 2011.

4. The appellant in his turn had written to the Registrar that the matter relating to his release by the Government of NCT of Delhi was lying with its Chief Secretary who was at that point of time not in India. The appellant expressed that he would be able to join shortly with clearance from his cadre controlling authority and he was hopeful that he would be able to join within a few days after June 15, 2011.

5. On June 30, 2011 the Under Secretary to the Government of India wrote to the Special Secretary, Government of NCT of Delhi to convey the permission of the competent authority to the appellant to take up the new assignment for a period of three years from the date immediately following his date of release by the Government of NCT of Delhi. On the same date the Deputy Secretary to the Government of NCT of Delhi had communicated to the Director, G.B. Pant Hospital that he had received a letter from the Secretary, Government of India, Ministry of Health and Family Welfare, New Delhi with a request to relieve the appellant with immediate effect with a direction to take up the new assignment on deputation basis for a period of three years from the date of relieving.

6. Again on that very date, i.e., on June 30, 2011 the appellant had written to the Director, G.B. Pant Hospital referring to the concurrence of the Ministry of Health and Family Welfare and of the Government of NCT of Delhi and relinquishing charge with effect from July 1, 2011 as the Head of the concerned department.

7. On July 1, 2011 the petitioner joined the post of the Vice Chancellor of the University by a joining letter submitted at the office of its Chancellor. This was received by the Officer on Special Duty and the Special Secretary to the Chancellor. The petitioner thereafter went to the University and assumed charges of the Vice Chancellor on that very date. The report containing the assumption of charge was forwarded by the Registrar of the University to different authorities.

8. The appellant's further case is that while acting as the Vice Chancellor on July

3, 2011 he received a communication from the Registrar of the University by e-mail which, inter alia, was to the effect that he had been directed by the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, to inform the appellant that his assumption of charge as the Vice Chancellor was not accepted. This left the appellant flabbergasted. He thereafter contacted the Additional Chief Secretary over his mobile phone when he was advised not to join the office of the Health University. The appellant had not received any official communication on this.

9. The grievances of the appellant is that he was never given any mandatory date or last date for joining his new assignment. The Executive Council of the University also did not discuss anything about the date of the appellant's assuming the charge of the Vice Chancellor of the University in its meeting held on June 23, 2011 nor was it put on the agenda of the proceedings. The appellant alleged that the communication dated July 3, 2012 by the Registrar is the result of extraneous considerations. According to him this non-speaking e-mail order was issued without any sanction of any provision of law, and was without jurisdiction and was not based on any rational ground and was violative of the Constitutional guarantees.

10. The University contested the writ petition but did not file any affidavit.

11. The State of West Bengal, however, used an affidavit. It has been mentioned in the said affidavit that the appellant was actually relieved on July 2, 2011 which will appear from an office order of that date issued by the Director, G.B. Pant Hospital and Government of NCT of Delhi. On July 2, 2011 the appellant wrote to the Director, G.B. Pant Hospital requesting him to defer his departure and joining of his new assignment on deputation. And it was further requested that the letter of relinquishment of charge dated June 30, 2011 might be treated as withdrawn. According to the State respondents he had made an incorrect disclosure of the fact that he had already stood relieved from his parent department on July 1, 2011 and he, in fact, had joined suo motu suddenly by reporting to the Secretary to the Chancellor on July 1, 2011 even before he was relieved.

12. The further case of the State was that on May 31, 2011 the appellant was informed on behalf of the University that he should join by June 15, 2011 and no further extension of time was granted to him. He failed to join within the deadline and as such the appointing authority could not be expected to wait further for the selected candidate to join.

13. It was further mentioned in the said affidavit that the Executive Council of the University in its meeting on July 8, 2011 discussed the subject. Upon consideration of the facts and circumstances it was resolved that the appellant did not timely join in a responsible post and, therefore, the Council resolved to refer the matter to the Chancellor for cancellation of appointment and for approval to constitute a Search Committee for selection of a new Vice Chancellor. It was pointed out further that the appellant could not have joined on his own

volition with effect from July 1, 2011 without being formally relieved from his parent department.

14. The appellant used an affidavit-in-reply to the said opposition wherein the statements made in the writ petition were repeated and reiterated. A point, however, was specifically taken that the State respondents had tried to make out a case which is not within their authority and jurisdiction under the West Bengal University of Health Sciences Act, 2002 ("the Act", for short). It was asserted that the e-mail dated July 3, 2011 was made without jurisdiction and authority and that there was no law in force or regulation which required acceptance of assumption of charge by the Vice Chancellor after the submission of the joining report. A more pointed attack by the appellant was that till August 12, 2011 no objection was raised by the Chancellor on the joining report submitted by the appellant and there was no order rejecting his joining report or assumption of charges. The appellant further repeated that the Deputy Secretary, Health and Family Welfare Department, Government of West Bengal had directed to relieve the appellant with effect from June 30, 2011 and not from July 2, 2011. There was no communication between June 14, 2011 and June 30, 2011, either by the University or the State of West Bengal that his joining would not be accepted after June 15, 2011.

15. The learned single Judge had held that a "very crucially important letter" had been cleverly suppressed by the appellant. That was the letter dated July 2, 2011 which he had sent to the Director of the G.B. Pant Hospital and annexed to the affidavit-in-opposition as Annexure A-11. The learned single Judge had concluded that the appellant could not have joined the post at all on July 1, 2011 because he was relieved on July 2, 2011. The learned single Judge again thought that this was cleverly suppressed by him with the obvious intention of withholding such an information from the Court.

16. In the present appeal the appellant has assailed the judgment of the learned single Judge on various counts and the learned Advocate for the State as well as for the University have sought to justify the respective stands taken by them.

17. Since the University did not use any affidavit-in-opposition to the writ petition we gave them an opportunity to deal with the application for stay filed by the appellant in connection with the present appeal. The affidavit-in-opposition has been affirmed by the Deputy Registrar of the University. In the affidavit it was specifically stated that the Chancellor of the University had approved the proposal to constitute a new Search Committee for the appointment of a Vice Chancellor of the University. It was stated that no date of joining was mentioned in the notification appointing the appellant as the Vice Chancellor in view of the seniority and the importance of the post concerned but it was assumed that he would join within a reasonable time. According to the University the conduct of the appellant made it obvious that he was not interested to join the post from the very inception of his appointment and deferred his joining on one pretext or the other. It was only after June 28, 2011

when the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal had informed him over telephone not to join till the Executive Council of the University took a decision that he suddenly on July 1, 2011 came to the University and informed that he had submitted his joining to the Chancellor. The University has taken exception that there is no explanation forthcoming from the appellant as to the steps he had taken between February 3, 2011 and May 5, 2011 to expedite the joining to the new post. The appellant was aware that his date of joining had been extended till June 15, 2011. The office of the Director of G.B. Pant Hospital did not receive any letter relinquishing the charges even on July 5, 2011. The affidavit further noted that the Additional Chief Secretary, Department of Health and Family Welfare is the Secretary to the Chancellor in respect of the affairs of the University and is a member of the Executive Council of the University and he was duly authorised to issue directions on the Registrar to issue the impugned e-mail to the appellant. Since the petitioner was released on July 2, 2011 he could not have joined the post of the Vice Chancellor on July 1, 2011. Since the appellant did not join within a reasonable time the University had faced huge administrative difficulties and several major decisions could not be taken and the Additional Chief Secretary was constrained to ask him on June 28, 2011 not to join till the Executive Council took a decision. The letter dated July 2, 2011 has a material bearing on the facts of the writ petition as its contents are absolutely false and frivolous. The petitioner admittedly had joined the University on July 1, 2011. Accordingly, his statement in the letter dated July 2, 2011, even assuming that it is actually dated July 4, 2011 is wholly false and frivolous.

18. It may be mentioned that the State of West Bengal also used an affidavit-in-opposition to the application for stay wherein the stand taken by it was much the same as it was in the affidavit-in-opposition to the writ petition. The appellant in his turn had used affidavits-in-reply to the respective affidavits-in-opposition filed by the respondents.

19. It was submitted on behalf of the appellant that the post of Vice Chancellor is a statutory post and he is the administrative head of the University. Mr. Mukherjee, the learned Senior Counsel appearing for the appellant has submitted that the post of the Vice Chancellor by virtue of S. 32(3) of the Act is a tenure post and he cannot be removed before the completion of his tenure. The appellant relied on the cases of Dr. L.P. Agrawal Vs. Union of India and others, and P. Venugopal Vs. Union of India (UOI), in support of the contention that the tenure begins and becomes operative when the incumbent joins the post and remains effective till its expiry to ensure a security and certainty about the engagement made.

20. The appellant questioned the authority of either the Registrar or the Additional Chief Secretary to remove the appellant from the post of the Vice Chancellor before the expiry of the period.

21. The stand taken by the appellant was that he was relieved from his parent

department only on June 30, 2011 and he wasted no time in joining his new post and it may be borne in mind that there was no firm date ever fixed by the respondents.

22. Mr. Mukherjee has further assailed the observations made by the learned single Judge that the petitioner is guilty of suppression of material facts. According to him there was no suppression, far less any material suppression to justify the dismissal of the writ petition. The letter dated July 2, 2011 is a formal office order which referred to the permission already granted on June 30, 2011 to relieve the appellant from his duties. There was no fault on the part of the petitioner in acting on the basis of the release order of the Government of India and of the Delhi Government. The Delhi authorities, it was submitted by the appellant, were not objecting to the relinquishment of charge and assumption of office of the petitioner. A more pointed attack to the communication made to him was that it does not disclose any authority on the basis of which the Additional Chief Secretary had really acted and was not a speaking order. The appellant has also assailed the stand of the respondents in justifying the action taken by the Additional Chief Secretary or the Registrar of the University and the absence of any decision by the Executive Council before the e-mail was sent by the Registrar was very seriously taken exception of by Mr. Mukherjee.

23. The University on the other hand had justified the judgment and order passed by the learned single Judge on the ground that the appellant had suppressed material facts and documents in the writ petition. Thus, according to the respondents the appellant had not approached the Court with clean hands and, therefore, he was not entitled to be heard on merits of his grievances. In support of this contention Mr. Bandyopadhyay, learned Senior Counsel appearing for the University has relied on the case of Ramjas Foundation and Another Vs. Union of India (UOI) and Others, It was further submitted by the learned advocate representing the University that the case sought to be made out by the appellant that the letter dated July 4, 2011 was written under panic after receiving the e-mail dated July 3, 2011, was an afterthought as no such case was made out by him before the learned single Judge and that his conduct of suppression of material facts cannot be condoned on the plea of the letter having been written under panic. It was submitted by the University that since the appellant had not been relieved before July 2, 2011 he could not hold two posts simultaneously. The University was without any Vice Chancellor for several months and that is why the Additional Chief Secretary asked the appellant on June 28, 2011 not to join the post until the Executive Council took a decision. The learned advocate for the University referred to the case of 2001 (2) AWC 1291 (SC) wherein it was held that the legal position is very well settled that an order of termination for a temporary employee or a probationer or even a tenure employee simpliciter without casting any stigma may not be interfered with by the Court. According to the University that since the Chancellor had approved the proposal to constitute a new Search Committee for the appointment of the Vice Chancellor the appeal has become infructuous and was liable to be dismissed by

this Court.

24. Mr. Bandyopadhyaya further submitted that in a petition under Article 226 of the Constitution of India the conduct of the petitioner is very important. This is all the more so as the appellant was appointed to the post of Vice Chancellor of a University and his conduct should be such that no person should have any occasion to criticize him or his conduct and he must bear himself with all dignity and his conduct should be entirely above board. According to him, the appellant was appointed on February 3, 2011 and he should have taken only a reasonable time to join the said post if he had really so intended. Mr. Bandyopadhyaya has referred to several documents annexed to the writ petition in support of his case that the appellant was necessarily dilly-dallying to join the post of Vice Chancellor and was really putting such questions about his official entitlement which were unbecoming of a person appointed to a post as high of that of the Vice Chancellor.

25. It will be obvious, Mr. Bandyopadhyaya submitted, that the University had asked him not to join only because of the delay made by him. The resolution of the Executive Council taken on July 8, 2011 will further make it clear that the real reason for asking him not to join was the inordinate delay made by the appellant and the e-mail sent by the Registrar intimating that his joining had not been accepted was just a natural corollary to the decision taken by the University.

26. According to the University there is a chronological inconsistency in the case made out by the appellant. If he had relinquished his charge on July 1, 2011 to his previous employer then he could not have joined the new post on that very date. The moment he was informed by the Registrar of the University that his joining had not been accepted he had written to the authorities of the previous employer that he was deferring his departure from Delhi which clearly goes to show that the petitioner had not really relinquished his charge on July 1, 2011. It was further submitted that in an administrative order no reason is required to be given.

27. The State of West Bengal has supported the stand of the University in opposing the appellant's case. The State also echoed that the appellant was guilty of suppression of material facts. The petitioner knew and was in possession of the documents pertaining to his release and relinquishment of charge at the G.B. Pant Hospital but he did not disclose the same. Mr. Talukdar, appearing for the State of West Bengal, submitted that the letter dated July 2, 2011 by which he was released by his former employer falsifies his claim that he was appointed with effect from July 1, 2011 (F.N.) "having been relieved on deputation." It is a settled law that nobody can be under two masters simultaneously. The appellant having joined the government service in 1977 was no stranger to this aspect of being relieved and relinquishment of charges. The question of relinquishing the charge cannot in any event precede the date on which one is actually relieved.

28. Mr. Talukdar further submitted that the appellant while claiming status in

public employment had failed to act in discharge of his obligation required of him and proceeded to join in a tenure post without being actually relieved from his previous charge. Mr. Talukdar also relied on the case of West Bengal Electronics Industries Development Corporation Limited and others -Vs.- Dr. K.K. Chakraborty and others, reported in 2003 (4) CHN 446 in support of his contention that the writ petition and the present appeal are barred by Section 14 of the Specific Relief Act which debars specific performance of a contractual service. Mr. Talukdar also relied on the case of Satish Chandra Anand Vs. The Union of India (UOI), for a proposition that there was no compulsion on the petitioner to enter into the contract he did. Having accepted the offer he still had open to him all the rights and remedies available to other persons similarly situated to enforce his rights under the contract which had been denied to him, assuming there was need to pursue such remedies. The remedy of a writ is, therefore, misconceived.

29. Maintaining that late joining to the post was the real reason for the Registrar's impugned e-mail intimation Mr. Talukdar submitted that the appellant cannot have the luxury of being condoned of his illegal acts and the late joining by an incumbent cannot be accepted by his employer. He relied on the cases of Hariyana Vidyut Prasaran Nigam and another -Vs.- Mukesh Kumar, reported in (2004) 13 SCC 596 and Shyamalendu Nag Vs. State of Manipur and others, . In the first case as the incumbent could not join within the time extended twice by the employer the Supreme Court justified rejection of his request to grant him further time to join and to deny him the benefit of his selection. In the second case, i.e., that of Shyamalendu Nag, it was held that the appointing authority could not be expected to wait indefinitely for the selected candidate when the offer for appointment was revoked on the ground of the incumbent not being able to join the service as he was not relieved by the Central Government even two months after the request for release was made.

30. Mr. Talukdar further submitted that the Additional Chief Secretary being a member of the Executive Council should be presumed to have acted on the authority of the Executive Council through the Registrar and the decision making process adopted by the authorities was based on sound legal principles and appreciation of ground realities and no malice or mala fide has been pleaded by the petitioner.

31. A bare perusal of the competing cases of the respective parties leaves a very major grey area. The series of events does not precisely disclose the main reasons for the impugned e-mail communication by the Registrar of the University. There is no material placed on record that the Additional Chief Secretary had any authority to ask the appellant not to join the post of Vice Chancellor on June 28, 2011 over telephone. The respondents have relied on the resolution of the University dated July 8, 2011 in support of their contention that the delay made by the appellant was the real reason which prompted the Additional Chief Secretary to ask him not to join the post.

32. One thing is, however, very clear that the resolution of July 8, 2011 merely recorded what had happened in the past. In fitness of things which is expected in an administrative action, particularly one of such a serious nature, that an event must be justified by something happening before. There is no resolution of the Executive Council prior to the telephonic communication to the appellant on June 28, 2011 that the appellant should be asked not to join till the Executive Council had taken a decision in the matter. On July 8, 2011 the Executive Council had resolved to refer the matter to the Chancellor for cancellation of the appointment of the appellant and to request for approval for the formation of a Search Committee for selection of a new Vice Chancellor of the University. If this resolution had preceded the telephonic communication by the Additional Chief Secretary there might have been a valid communication or at least a justification for it. On the contrary, there is nothing on record to show that the Executive Council had considered this matter in any of its meetings prior to the communication made by the Additional Chief Secretary on June 28, 2011 or the impugned e-mail communication by the Registrar on July 3, 2011. We have been informed that on June 23, 2011 the Executive Council held a meeting and this was not on the agenda.

33. Mr. Roy, appearing for the University justified the authority of the Additional Chief Secretary to ask the appellant not to join as he was a member of the Executive Council. How a member of the Executive Council merely because he is a member of the Executive Council could have the authority to take a decision in such a vital and important matter when the Executive Council itself had not authorised him to make any such communication is not clear. A Vice Chancellor of the University is appointed by the Executive Council in consultation with the Chancellor. Thus, it was not competent on the part of the Additional Chief Secretary to take a unilateral decision in the matter. Mr. Roy submitted that this was already in the contemplation of the University. This alleged contemplation, however, is not reflected in any of the official documents placed before us. That apart, a collective body - the Executive Council in this case - speaks only through the resolution it adopts after due consideration of any given subject. Thus it logically follows that a decision which the Council may eventually take in a meeting to be held in future could neither be predicted nor contemplated. If any decision was contemplated, as submitted, it would have been vitiated by the vice of a decision taken with a closed mind and in a pre-mediated manner.

34. The Executive Council in its meeting dated July 8, 2011 had observed that the appellant had procrastinated his joining for a long time and the case of the respondents was that this was the real reason behind the impugned communication. We have already seen that by a letter dated May 31, 2011 the Registrar of the University had requested the Additional Director General, Health Services and Dean of Moulana Azad Medical College to release the appellant "so as to enable him" to join his new post by June 15, 2011. Thus, till June 15, 2011 his joining was an acceptable one. The Executive Council's resolution of July 8, 2011 also treated this as an extension of time to join the new post. But assuming

that delay in joining the post was the real reason for the decision a larger question still falls for consideration. The authority of the parent department of the appellant was requested to release him at an early date "so as to enable him" to join the new post by June 15, 2011. This was thus known to the respondents that unless the appellant was released by his parent department he would not be able to join his present posting. The position was made very clear by the use of the words "so as to enable him" to join. Delay alone cannot be a ground for canceling a lawful appointment unless the appointee is given clear notice that unless he joins by a certain date his appointment would stand cancelled.

35. Even if there was any initial delay after the University authorities had accepted June 15, 2011 to be a date within which his joining could be accepted they cannot make any grievance of the delay made by him in joining before that date. In other words, even if there was any delay that stood condoned by the University. From June 15, 2011 there was a further delay of 15 days and that the appellant has explained that he was not released before June 30, 2011. If he was not released before June 30, 2011 he was not responsible for that. He did not waste any further time after he received his release order.

36. The administrative inconvenience of the University could not be a just ground for not accepting his joining. After the appellant had joined the post delay became a matter of the past. By requesting the Chancellor to cancel his appointment and to constitute a fresh Search Committee for the appointment of a new Vice Chancellor the University was merely keeping the highest administrative post of the University vacant for a further indefinite period. The administrative inconvenience which has been put forth as the real reason for the impugned e-mail was sought to be further lengthened by its own action.

37. The appellant has raised a very important question and the respondents could not satisfy about the authority of the Additional Chief Secretary to direct the Registrar to issue the e-mail. In administrative law an authority can do only such things as he is authorised by law. Presumption of authority is an alien concept. As such, there was no question for the Additional Chief Secretary to act on any presumed authority when the Executive Council had not taken that decision till then. In the absence of any such decision by the Executive Council this direction by the Additional Chief Secretary must be deemed to be an unauthorised and unilateral one which the Registrar complied with. This must be deemed to be an individual decision and not the decision of the Executive Council. The Registrar in sending the e-mail had failed to appreciate that he was the ex-officio Secretary of the Executive Council as a body, and not an individual member of it. Thus, it was an improper communication by an inappropriate person on an unauthorised direction of an incompetent authority. The Additional Chief Secretary was incompetent in his individual capacity to issue the direction. There is still one more aspect to be considered. The effect of the e-mail communication followed by the resolution of the Executive Council on July 8,

2011 was that the appointment of the appellant was sought to be cancelled without giving him an opportunity of being heard. In the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, the Supreme Court held that the applicants should have been given an opportunity of hearing. No order to the detriment of the appellant could be passed without complying with the principles of natural justice. Here the respondents had taken a unilateral decision and the appellant was informed of that only after such decisions were taken. The impugned action on this count also is not supportable.

38. The learned single Judge had observed that the appellant had suppressed relevant materials and dismissed the writ petition. According to the learned single Judge the appellant could not have joined on July 1, 2011 as he was relieved only on July 2, 2011 and the letter dated July 2, 2011 was never brought on record.

39. It may be mentioned that the Deputy Secretary to the Government of NCT of Delhi, Health and Family Welfare Department by a letter dated June 30, 2011 had forwarded a letter received from the Under Secretary, Government of India, Ministry of Health and Family Welfare with a request to relieve the appellant with immediate effect with a direction to take up the assignment of Vice Chancellor on deputation basis for a period of three years from the date of relieving. A copy of the same was sent to the Registrar of the University. This was, in fact, the order of release. The letter dated July 2, 2011 was a formal office order referring to the permission which was already granted on June 30, 2011. A careful reading of the earlier letter makes it very clear that the appropriate authority of the Government of India, Ministry of Health and Family Welfare had requested the Deputy Secretary to the Government of NCT of Delhi of the said department to relieve the appellant with immediate effect. The appellant had acted on the same and had joined his new post. His parent department has not raised any objection. It was an internal matter between the Central Government and the G.B. Pant Hospital. Moreover, if delay on the part of the appellant was the reason for the Executive Council to request the Chancellor to cancel his appointment, his joining to the post of the Vice Chancellor before being released by the parent department cannot be a valid ground for the impugned decision.

40. We cannot lose sight of the fact that the Executive Council in its resolution dated July 8, 2011 never mentioned the simultaneous appointment with the parent department and with the University as any reason for not accepting his appointment as the Vice Chancellor.

41. In fact, the resolution is silent on the letter dated July 2, 2011 which clearly shows that the subsequent discovery of that letter was not the real reason for sending the e-mail on July 3, 2011 and this has been sought to be built up as an afterthought as a justification for the action taken by the respondents.

42. Any omission to mention or to bring on record any document which has no material bearing cannot be considered to be a suppression. In the case of Sri.

Balaram Mukherjee -Vs.- State of West Bengal and others, reported in 1980 (II) CHN 371 a Division Bench of this Court had held that omission to state a fact which will not affect the decision of the Writ Court cannot be considered as a material suppression. Such non-disclosure of a fact which is not relevant for disposing of a writ application is not fatal. More recently in the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, the Supreme Court had held that the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for consideration of the Court, whatever view the Court may have taken. In the case of Sardar Associates and Others Vs. Punjab and Sind Bank and Others, the Supreme Court had quoted an observation from an earlier judgment in the case of Arunima Baruah Vs. Union of India (UOI) and Others, wherein it was held that material fact would mean material for the purpose of the determination of the lis, the logical corollary whereof would be that whether the same was material for the grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties the Court may not refuse to exercise its discretionary jurisdiction. Following this principle we hold that the omission to mention the letter dated July 2, 2011 by the appellant had no material bearing as we are of the considered opinion that this was not relevant for the purpose of the present adjudication. The learned single Judge had described the omission as a clever suppression on the part of the appellant. We respectfully disagree. There was no question of any suppression and applying the test laid down by the Supreme Court we are of the view that even if that letter had been disclosed in the writ petition it would not have made any material difference in the case of the petitioner. The learned single Judge before dismissing the writ petition did not discuss how the said letter was in any way relevant for the adjudication of the writ petition.

43. In support of his contention that the post of the Vice Chancellor being a tenure post and the same could not be terminated before the expiry of the tenure Mr. Mukherjee has placed very strong reliance on the case of Dr. L.P. Agarwal (Supra). Speaking about the post of the Director of Indian Institute of Medical Science the Supreme Court held it to be a tenure post and as such the question of superannuating or prematurely retiring the incumbent does not arise. A person holding a tenure post does not superannuate. He only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The Supreme Court further held that the appellant in that case could not have been prematurely retired and that of without being put on any notice whatsoever.

44. More recently in the case of P. Venugopal (Supra) the Supreme Court following the case of L.P. Agarwal (Supra) had held that there is no question of superannuating or prematurely retiring the incumbent of a tenure post. Once a person is appointed to a tenure post his appointment to the said post begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds.

45. The University has relied on the case of A.P. State Federation of Co-op Spinning Mills and another (Supra) as a reply to the appellant's stand that a tenure post cannot be terminated or cancelled. While the two judgments mentioned earlier clearly lay down that the holder of a tenure post cannot be terminated or superannuated the one relied on by the University does not lay down the law contrary to what had been specifically held in the case of L.P. Agarwal (Supra) or P. Venugopal (Supra). The case of Ramjas Foundation and another (Supra) has been relied on for a proposition that a person who does not come to Court with clean hands is not entitled to be heard on the merits of his grievances and is not entitled to any relief. This is a very well settled principle of law, but has no application to the facts of the present case. Why the appellant should be condemned to have come with unclean hands has not been established by the respondents.

46. The stand of the State of West Bengal is equally not sustainable. The bar of S. 14 of the Specific Relief Act is not applicable to the present case as was made in the case of West Bengal Electronics Industries Development Corporation Limited and others (Supra). In that case the respondent was already holding a post from which he was terminated. The writ petition was filed claiming reinstatement in service and the terms of the employment clearly stipulated termination of service at any point of time by the employer in lieu of three months' salary. It was in this context that this Court invoked the bar contained in S. 14 of this Specific Relief Act in respect of enforcing a contractual service.

47. The case of Shyamalendu Nag (Supra) is also distinguishable on the facts. There the offer for appointment was revoked for delayed joining by the appellant. Here the appointment was neither cancelled nor revoked. The Executive Council had taken no decision whatsoever to that effect when the impugned e-mail was sent to the appellant. Again in the case of Hariyana Vidyut Prasaran Nigam and another (Supra) the employer had rejected the request of the incumbent to grant further time to join and to deny him the benefit of his selection. This makes the case very different from the one in hand. Here in this case no such extension of time was requested by the appellant and the subject-matter of the writ petition is not the rejection of any such request. That case also, therefore, does not apply.

48. The respondents in trying to project the illegality of the appellant's joining the post of Vice Chancellor before he was formally released was clearly trying to go against their own case of alleged procrastination by the appellant. In other words, delay in joining and hasty joining cannot go together as the reason for not accepting his joining to the post of Vice Chancellor.

49. The stand taken by the University that an administrative order need not contain reasons cannot be accepted without qualification. In the case of The State of Punjab and Others Vs. Bakhtawar Singh and Others, the Supreme Court struck down an order of removal as it was not a speaking order and held the order as arbitrary to its core. Again in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the Supreme Court relying on a large number

of decisions had unequivocally held that every state action must be informed by reason and an act uninformed by reason is arbitrary. Although in some cases, as in *Union of India and others Vs. E.G. Nambudiri*, it has been held that in the absence of any statutory or administrative provision requiring the authority to record or communicate reasons no exception can be taken to the order on the ground of absence of reasons if, however, the order is challenged in a Court it is open to the authority to place the reasons before the Court which may have persuaded it to pass the order and to produce evidence aliunde to justify its action. Such reasons must already exist on record as it is not permissible to the authority to support the order not contained in the record.

50. In the present case records of the respondents authorities do not disclose the reasons for the impugned action on their part. The resolution of July 8, 2011 of the Executive Council is a post-facto recording of chronological events and cannot be taken to be a substitute for the reasons of the impugned communication of the respondents in the form of an e-mail.

51. Thus, it is clear that the communication made by the Registrar at the instance of the Additional Chief Secretary was unauthorised and bad in law. The same is hereby set aside and quashed. We direct the respondents authorities to allow the appellant to continue his work as the Vice Chancellor. With this any further action taken by the respondents authorities pursuant to their impugned e-mail need not be given effect to by the respondents.

52. For the reasons stated above we find sufficient merit in the appeal. Accordingly the judgment and order of the learned single Judge is set aside and the appeal is allowed. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

J.N. Patel, C.J.

I agree.

LATER:

After delivery of judgement, Mr. Roy, learned Advocate appearing for the University and Mr. Talukdar, learned Advocate for the State prayed for stay of the operation of the judgment and order.

Mr. Chatterjee, learned Advocate appearing for the appellant opposes such prayer for stay.

Heard the learned Advocates for the respective parties and their submissions.

We are staying the effect of the operation of the judgment and order for four weeks.

J.N. Patel, C.J.

I agree.