
(2011) 07 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11022 of 2010

Dr. Balbir Chand Josan

APPELLANT

Vs

Chandigarh Administration U.T. and Others

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

General Clauses Act, 1897 — Section 21

Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 — Section 11, 2, 7

Punjab University Act, 1947 — Section 31(2)

Citation : (2011) 07 P&H CK 0088

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Judgement

Augustine George Masih, J.—This order would cover CWP Nos.11022, 16917 and 17347 of 2010.

2. Facts in these cases are inter-twined and, therefore, are narrated in a sequence as the events have unfurled leading to the filing of these three writ petitions out of which the first two writ petitions i.e. CWP Nos. 11022 and 16917 of 2010 have been preferred by Dr. Balbir Chand Josan, Principal, DAV College, Sector 10, Chandigarh and CWP No. 17347 of 2010 filed by the Governing Body of the DAV College Sector 10, Chandigarh (hereinafter referred to as the Governing Body).

3. Dr. Josan was appointed as the Principal of the DAV College Sector 10, Chandigarh. Vide letter dated 1.4.2008, the decision was communicated that the Petitioner had been selected as Principal, DAV College, Sector 10, Chandigarh and was directed to join as such. In pursuance thereto, the Petitioner joined on 2.4.2008. Subsequently, appointment letter dated 1.7.2008 was issued by the Governing Body. The Petitioner continued to serve as Principal till resolution dated 19.5.2010 was passed by the Governing Body ordering his transfer. This decision of the Governing Body was challenged by the Petitioner through CWP

No. 11022 of 2010 on various grounds. On 18.6.2010, this Court while issuing notice of motion stayed the operation of the impugned resolution dated 19.5.2010. Replies stand filed by the Respondents. The interim order continues to operate.

4. During the pendency of the writ petition, the Governing Body in its meeting held on 14.9.2010 passed a resolution placing the Petitioner under suspension with immediate effect as disciplinary proceedings were contemplated against him. Order dated 15.9.2010 was served upon the Petitioner as per the decision. Dr. Josan moved an application dated 16.9.2010 before the Registrar, Panjab University, Chandigarh requesting for staying the order of suspension passed by the Governing Body on the ground that the Governing Body has not sent the suspension order to the Registrar along with the charge-sheet as required under Regulation 9.2 of Chapter VIII (E) of the Panjab University Calendar Volume-I (2007) and that he has not been supplied with the copy of the charge-sheet by the Governing Body till date and also that he had filed CWP No. 11022 of 2010 wherein his transfer had been stayed and the matter is sub-judice before this Court. Taking these facts into consideration, Registrar, exercising his powers under Regulation 9.2 stayed the order of suspension passed by the Governing Body till further orders on 16.9.2010 itself. Thereafter, on 17.9.2010, Registrar, kept the order dated 16.9.2010 in abeyance till further orders in view of Regulation 4.2 of Chapter III and Section 31 (2) (e) of the Panjab University Act, 1947 (hereinafter referred to as 1947 Act). This order is challenged by Dr. Josan by filing CWP No. 16917 of 2010 wherein this Court vide order dated 22.9.2010, allowed Dr. Josan to continue to function as Principal of DAV College, Sector 10, Chandigarh, but shall not take any policy decision with respect to the functioning of the College. Dr. Josan made a statement before the Court that he shall not undertake any financial transaction on behalf of the College and shall allow the existing financial arrangement to continue. This interim order continues till date.

5. Challenge to the order dated 17.9.2010 passed by the Registrar, Panjab University, Chandigarh is based on the ground that this order is a non-speaking order. The Registrar ceases to have an authority under Regulation 9.2 once an order is passed under this regulation staying the order of suspension. There is no power of review with the Registrar. The order dated 16.9.2010 was passed by the Registrar while exercising his powers under Regulation 9.2 under Chapter VIII (E) of the Panjab University Calendar Volume-I (2007) which chapter deals with conditions of service and conduct of teachers in non-government affiliated colleges whereas Chapter III is regarding appointment and duties of Registrar and other Administrative Officers and order dated 17.9.2010 has been passed under Regulation 4.2 of this Chapter III. These two chapters are distinct, conferring different powers on the Registrar, where the operation and sphere of the powers in jurisdiction are separate, therefore, the order is illegal. There is no mis-statement of facts by Dr. Josan which would call for exercise of power of review which although is not available under the statute/Regulations but could justify the passing of order dated 17.9.2010.

6. When CWP No. 16917 of 2010 was taken up for hearing by this Court on 22.9.2010, counsel for the Chandigarh Administration produced a photocopy of the letter dated 20.9.2010 addressed by the Registrar (Education) (C) for Education Secretary, Chandigarh Administration, informing the General Secretary of the Governing Body DAV College, Sector 10, Chandigarh that the decision dated 15.9.2010 is invalid in view of condition/para No. 3 of the order dated 26.11.1999 passed by the office of Education Secretary, Chandigarh Administration as the same had taken without associating the Director, Higher Education, U.T., Chandigarh (hereinafter referred to as Director).

7. On receipt of the said letter dated 20.9.2010, CWP No. 17347 of 2010 was preferred by the Governing Body challenging it on the ground that condition/para No. 3 of the letter dated 26.11.1999 only talks of inviting the nominee of the Director and the nominee of the Vice Chancellor, Panjab University, Chandigarh in every meeting of the Governing Body. In case no invitation is sent, any decision taken by the Governing Body may not be considered valid by the Director. It has been pleaded that letter dated 10.9.2010 was sent to the Director requesting him to attend the meeting which was fixed for 14.9.2010. The said letter was duly received by the Director and vide communication dated 13.9.2010, the Director showed his inability to attend the meeting due to pre-scheduled official assignments and stated that at least two weeks' notice may be given before scheduling the meeting of the Managing Committee. The nominee of the Vice Chancellor was also invited for the meeting and he did attend the meeting on 14.9.2010 whereas the Director chose neither to attend the meeting nor to send his nominee in the meeting nor any request was made for re-scheduling the meeting. It is further pleaded that as per the provisions of Chapter VIII (A) of the Panjab University Calendar Volume-I (2007), there is no requirement of the statute or law for the nominee of the Vice Chancellor or the nominees of the Director to be members of the Managing Committee/Governing Body or for calling them for every meeting. The presence of the Director or his nominee in each Governing Body meeting is not mandatory and in any case, the nominees are the members of the Governing Body like any other member with no extra privilege or authority and the decisions are taken by the majority.

8. Upon notice of motion issued in this case, reply has been filed by the Director wherein an objection has been raised with regard to the maintainability of the writ petition by questioning the locus of the alleged authorized signatory who had instituted the present writ petition. It has been stated that one Mrs. Madhu Bahl at the behest of an alleged authority letter dated 23.9.2010 has filed the writ petition in pursuance to a resolution passed by the Governing Body. The authority letter has been issued by the General Secretary of the Governing Body who has been delegated the powers of the Governing Body, who cannot under law further delegate his powers and thus, is not competent to issue any authority in favour of Mrs. Madhu Bahl. Further, as per resolution No. 5 passed in the Governing Body Meeting dated 14.9.2010, the Governing Body has bestowed all its powers upon its President/Secretary till further orders, which is not

permissible or legal, thereby usurping the authority and powers of the nominees of the Panjab University as well as the Director. It has been stated that the notice dated 10.9.2010 did not contain such an agenda whereby the powers of the Governing Body were to be delegated in a single individual like the President/General Secretary. The letter dated 20.9.2010 has been sought to be supported on the ground that the notice dated 10.9.2010 only stated that the meeting was called to discuss the case regarding Balbir Chand Josan, Principal, DAV College, Sector 10, Chandigarh. As the meeting was an emergent meeting, the Governing Body could not discuss the issue of disciplinary action, suspension, issuance of charge-sheet and vesting of powers of the Governing Body in a single individual without prior agenda and its due circulation to the answering Respondent and to the Panjab University. The decision of the Governing Body conveyed vide order dated 15.9.2010 which was taken without associating the Director was invalid in view of the express condition/para No. 3 of the letter dated 26.11.1999. The answering Respondent thereafter advised the Petitioner to reconvene a meeting of the Governing Body by giving 15 days due notice. By this action of the Governing Body, the Director and the Panjab University stand altogether excluded from the functioning of the Governing Body till further orders as per the decision. This is contrary to the spirit of the Punjab Grant-In-Aid Rules, 1979 (hereinafter referred to as Grant-in-Aid Rules) On this basis, dismissal of writ petition has been sought.

9. During the course of hearing, Mr. Rajiv Atma Ram, learned Senior Counsel appearing for the Governing Body, DAV College, Sector 10, Chandigarh, states that CWP No. 11022 of 2010 has been rendered in fructuous in view of stay granted by this Court of the resolution of the Governing Body dated 19.5.2010 whereby Dr. Josan was transferred from DAV College, Sector 10, Chandigarh and also in the light of the fact that the Governing Body has passed resolution to suspend him with his headquarters at Chandigarh which decision when conveyed vide order dated 15.9.2010 stand challenged in CWP No. 16917 of 2010 by Dr. Josan, rendering the order of transfer redundant. This statement of the counsel for the Governing Body could not be disputed by Mr. Akshay Bhan, learned Counsel for Dr. Josan. Accordingly, the writ petition is required to be disposed of as having been rendered in fructuous.

10. For deciding CWP No. 16917 of 2010 wherein challenge is to the order dated 17.9.2010 passed by the Registrar, Panjab University, Chandigarh keeping his earlier order dated 16.9.2010 in abeyance till further orders, the provisions under which orders dated 16.9.2010 i.e. Regulation 9 and 17.9.2010 i.e. Regulation 4.2 have been passed by the Registrar, Panjab University need to be looked into, which read as follows:

Chapter VIII (E) CONDITIONS OF SERVICE AND CONDUCT OF TEACHERS IN NON-GOVERNMENT AFFILIATED COLLEGES.

1. to 8 xxx

9.1 Subject to what is contained in Regulation Nos. 10, 11 and 12 the Governing Body of a non-Govt. College shall be entitled to determine the engagement of a permanent employee, for a sufficient cause, after giving him three months" notice in writing or on payment of three months" salary in lieu thereof. Provided that the Governing Body has the right to suspend an employee with immediate effect in case of gross misconduct or moral turpitude. In doing so he shall be served with a charge-sheet and informed in writing of the ground on which action is proposed to be taken.

9.2 A copy of the order of suspension together with a copy of the charge-sheet shall be sent within a week to the Registrar who may direct that the teacher shall not be placed under suspension.

9.3 The period of suspension shall not exceed three months within which the case must be decided."

"Chapter III

APPOINTMENT AND DUTIES OF REGISTRAR AND OTHER ADMINISTRATIVE OFFICERS

1 to 4.1 xxx

4.2 The Registrar shall exercise his powers and discharge his duties under immediate direction of the Vice-Chancellor and the Syndicate and the general control of the Senate.

11. A perusal of Regulation 9.1 would indicate that the Governing Body of a non-government college subject to Regulations 10, 11 and 12 is entitled to terminate the engagement of a permanent employee for a sufficient cause. This can be done after giving him three months" notice in writing or on payment of three months" salary in lieu thereof. The Governing Body has further been given the right to suspend an employee with immediate effect in case an employee commits an act of gross-misconduct or moral turpitude. When such an action is taken by the Governing Body, it shall have to serve a charge-sheet on the employee, informing him in writing the grounds on which action is proposed to be taken. Regulation 9.2 mandates that a copy of the order of suspension together with a copy of the charge-sheet shall be sent by the Governing Body to the Registrar within a week who may direct that the teacher shall not be placed under suspension. Regulation 9.3 provides the maximum period of suspension i.e. 3 months" within which the case must be decided.

12. A conjoint reading of the above Regulations, so that they blend harmoniously, when churned, would lead us to a conclusion that the right of the employer to suspend its employee and that too to its satisfaction stands recognized but with certain qualifications thereto have been provided. Although the Governing Body has a right to suspend an employee with immediate effect in case of gross misconduct or moral turpitude but charge-sheet will have to be served on the employee informing him in writing the grounds on which the action

is proposed to be taken. The mandate of Regulation 9.1 is not that the charge-sheet has to be served simultaneously along with the order of suspension as there may be situations where action cannot brook any delay and require immediate reaction from the employer. But that does not mean that the management can, after suspending its employee, take no further steps and sleep over it. When Regulation 9.1 is read along with Regulation 9.2, the mandate would be of serving the charge-sheet disclosing therein in writing the grounds on which the action is proposed to be taken within one week from the date of passing of the order of suspension by the Governing Body. The period from the date of passing of order of suspension and the serving of the charge-sheet cannot exceed one week as the Governing Body under Regulation 9.2 is mandated to send a copy of the suspension order together with a copy of the charge-sheet to the Registrar within this period. The Registrar under this Regulation is empowered to direct that the teacher shall not be placed under suspension. This obviously means that the Registrar would pass such an order on consideration of the order of suspension and the charge-sheet. Such an order can also be passed where charge-sheet is not served within one week of the order of suspension on the employee or where the Governing Body fails to send a copy of the order of suspension together with a copy of the charge-sheet to the Registrar within the time stipulated. This is a safeguard provided under the Regulations to save the employee from harassment and misuse of power of suspension by the Governing Body to put undue pressure on the employee by keeping him under suspension without further proceeding in the matter. Although this Regulation does not specify the charges for which the Registrar would exercise this power but the Registrar has been given the powers to decide whether the order of suspension in the given facts and circumstances is justified or not and also whether a case of gross-misconduct or moral turpitude is made out or not. However, the Registrar is not restrained from passing such an order when the order of suspension together with a copy of the charge-sheet is brought to his notice by the employee concerned which do not fall in these two categories. If in a case such a situation does not arise i.e. in the absence of the order of the suspension and/or the charge-sheet, the Registrar cannot pass an order directing that the teacher shall not be placed under suspension prior to expiry of one week from the date of passing of the suspension order. As per Regulation 1 (ii) of Chapter VIII (E) "teacher" includes Principal and, therefore, it would be applicable to the case in hand. It goes without saying that while passing final order in exercise of power under Regulation 9.2, staying the order of suspension, an opportunity of hearing be given to the management so that the principles of natural justice are duly complied with. This final order be passed expeditiously and within a reasonable time.

13. The order dated 16.9.2010 passed by the Registrar, Panjab University, Chandigarh in the light of the above, is not in accordance with Regulation 9.2. The order of suspension was passed on 15.9.2010 thus, the Governing Body had a week's time to serve a copy of the charge-sheet on Dr. Josan. The Registrar,

thus, could not have taken action on the application dated 16.9.2010 under Regulation 9.2 of Chapter VIII (E) staying the order of suspension passed by the Governing Body. He was required to wait for the mandatory period of one week for the Governing Body to send the order of suspension along with the charge-sheet to him. He could have proceeded to exercise his powers in case the charge-sheet, which had been served on Dr. Josan on 18.9.2010, had been brought to the notice of the Registrar and on consideration of the same, if he was satisfied that the allegations against him in the charge sheet did not disclose commission of an act of gross misconduct or moral turpitude, order could have been passed by the Registrar under Regulation 9.2 staying suspension. This could have been done on 18.9.2010 or thereafter but not before that. It would not be out of way to mention here that charge sheet was served on Dr. Josan on 18.9.2010 i.e. within one week of his order of suspension dated 15.9.2010.

14. The contention of the counsel for the Petitioner that the Registrar becomes *functus officio* once he exercises his powers under Regulation 9.2 cannot be accepted. Although there is no specific power of review provided under the Regulations but in the light of the fact that once the powers have been exercised by the Registrar, he has the power to recall his order and this power is available to him u/s 21 of the General Clauses Act, 1897. In any case, the order dated 16.9.2010 was only an interim order as is apparent from the concluding words "till further orders" and not a final order as has been sought to be asserted by Dr. Josan.

15. Probably realizing his mistake, the Registrar, Panjab University, Chandigarh proceeded to pass an order dated 17.9.2010 but under Regulation 4.2 Chapter III Section 31 (2) (e) of the 1947 Act, keeping the earlier order dated 16.9.2010 in abeyance till further orders. Regulation 4.2, as reproduced above, would show that the Registrar shall exercise his powers or discharge his duties under immediate direction of the Vice Chancellor and the Syndicate and the general control of the Senate. The Registrar, Panjab University, Chandigarh has preferred not to file any reply to the writ petition. There is nothing on the record to suggest that there was any direction of the Vice Chancellor, the Syndicate or the Senate in this regard and, therefore, the order dated 17.9.2010 passed by the Registrar under Regulation 4.2 cannot be said to be in accordance with law.

16. Although the impugned order dated 17.9.2010 as challenged by Dr. Josan in this writ petition is not sustainable, however, the order dated 16.9.2010 of the Registrar is also not in accordance with law as has been held above and, therefore, cannot withstand the scrutiny of the Court. While deciding a case, the Court is not merely to proceed and decide the validity of the order under challenge but it has also to see as to whether the order which would come into operation after setting aside of the subsequent order is itself sustainable in law or not. By giving sanctity to an illegal order the Court would be putting a stamp of approval on an illegal order or act of an authority which would perpetuate injustice and encourage misuse of power and authority. The power conferred on

the High Court under Article 226 of the Constitution is to advance justice and not to thwart it. The very purpose of such constitutional powers would be frustrated if an Act of Court perpetuates injustice by passing an order in a mechanical manner which would render justice a by-product of error in the name of deciding a case. Therefore, no relief can be granted to Dr. Josan in this writ petition.

17. Mr. Rajiv Atma Ram had raised an objection with regard to maintainability of this writ petition in the light of Section 7-a of The Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred to as 1974 Act) and the judgment of the Supreme Court in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, on the ground of availability of an alternative remedy of approaching the Education Tribunal but the same has not been considered in the light of the fact that the counsel for the parties stated at the Bar that there was no earlier judgment of this Court on the Regulations in issue and on this aspect. The provisions required interpretation to clear doubts which has been attempted and done above.

18. Now moving on to CWP No. 17347 of 2010 filed by the Governing Body challenging the letter dated 20.9.2010 issued by the Registrar (Education) (C) for Education Secretary, Chandigarh Administration informing the Governing Body that its decision dated 15.9.2010 is invalid. Mr. Rajiv Atma Ram submits that the Governing Body of the College is a multi-member body where Director is having the same powers as any other member of the Governing Body. He does not dispute the fact that the Director is a member of the Governing Body but he states that there is no extraordinary power with the Director to veto the decisions taken by the Governing Body. There is no provision under the 1947 Act or the Grant-in-Aid Scheme or the 1974 Act which provides that in case the Director or his nominee is not present in a meeting, the decision taken therein would not be valid. Notice of the meeting dated 14.9.2010 was duly served on the Director vide letter dated 10.9.2010, who only expressed his inability to attend the meeting due to his pre-occupation. He did not make a request for deferring/postponement of the meeting. The only ground given in the letter dated 20.9.2010 (which is under challenge in the writ petition) is that the decision taken in the said meeting held on 14.9.2010 is invalid in view of condition/para No. 3 of the letter dated 26.11.1999. He contends that as per the provisions of the Panjab University Calendar Volume-I Chapter VIII (A) which deals with affiliated colleges and the conditions of affiliation, Regulation 1.2 (a) deals with the Governing Body of a non-government college wherein neither Director or his nominee nor the Vice Chancellor or his nominee is mandated to be included in the Governing Body. However, they have been included in the Governing Body of the College. Earlier thereto, in the year 2000, as per Regulation 1.2 as existing then, the nominee of the Vice Chancellor and the Director or his nominee were sought to be inducted as members of the Governing Body which was challenged in this Court in Civil Writ Petition No. 2367 of 2001 titled as Sanatan Dharam Parcharak Sabha (Regd.) and Ors. v. Union of India and Ors. and the challenge was upheld by this Court vide judgment dated

6.1.2003 and the amendment by inducting the nominees of the Vice Chancellor and the Director was held to be ultra vires the regulation making power of the University and violative of the fundamental rights guaranteed to the College under Article 19(1)(c) of the Constitution of India. In any case, he contends that condition No. 3 imposed in the letter dated 26.11.1999 by the Director has been duly complied with as according to the said condition, the nominee of the Director and the nominee of the Vice Chancellor are required to be invited to every meeting of the Governing Body which has been done and which fact has also been admitted by the Respondent in his reply to the writ petition. Letter dated 20.11.2010 is thus, unsustainable.

19. As regards the objection taken by the Director with regard to the maintainability of the present writ petition through Mrs. Madhu Bahl, he contends that she had been duly authorized by the Governing Body in its meeting held on 14.9.2010. Vide the Governing Body Meeting dated 7.1.2011, the minutes of the meeting held on 14.9.2010 stand confirmed and the decision authorizing Mrs. Madhu Bahl to initiate proceedings in Court in relation to the matter of suspension of Dr. Josan by the Governing Body stood rectified as the writ petition was filed on 23.9.2010. Reliance has been placed on the judgment of the Supreme Court in the case of Jugraj Singh and Another Vs. Jaswant Singh and Others, as also on Punjab University Vs. V.N. Tripathi and Another, . He, on this basis prays for setting aside of the impugned order dated 20.11.2010.

20. Mr. Amar Vivek, Advocate, appearing for Respondent No. 1 has vehemently argued that the decisions taken in the meeting held on 14.9.2010 is illegal as the Director was not associated with the process of decision making. As per condition 3 of the letter dated 26.11.1999, the absence of the Director or his nominee in the meeting would result in the decision taken in the meeting as invalid. He further contends that as per condition 6 of the said letter, copy of the proceedings of every meeting of the Governing Body was required to be sent to the Director, which has not been done by the Governing Body which shows the mala fide on their part and an effort has been made to overreach the power and authority of the Director. Relying upon the communication dated 13.9.2010, he contends that the notice inviting the Respondent to the meeting was only served on him on 13.9.2010 at 3.00 p.m. Thereafter, a request was made for postponement of the meeting which was neither considered nor accepted and, therefore, the order passed by the Director is in accordance with law. He contends that the agenda for the meeting dated 14.9.2010 was not correctly drafted and the Governing Body has exceeded the agenda by proceeding to decide on the initiation of the departmental proceedings against Dr. Josan and further by approving the charge-sheet and putting him under suspension which was not a part of the agenda. Mrs. Madhu Bahl was also authorized to act on behalf of the Managing Committee/Governing Body to sign all documents including complaints and to engage advocate(s) in connection therewith. In this very meeting, the Governing Body delegated its powers to the President and/or the General Secretary of the Governing Body which encroaches upon and obliterated

the powers of the Director and that of the nominee of the Vice Chancellor which could not have been done by the Governing Body as the same was beyond the agenda circulated for the meeting. He contends that the delegatee cannot further delegate his powers and Mrs. Madhu Bahl was not authorized to file the present writ petition and if any authorization was there, it was to the President and/or General Secretary of the Governing Body. In support of his contention, he relies upon a Full Bench judgment of this Court in the case of Bhupinder Singh and Ors. v. State of Punjab and Ors. 1985 (3) SLR 643. He, on this basis, prays for dismissal of the writ petition.

21. On a candid question put to him by the Court, Mr. Amar Vivek, has very fairly stated that there are no statutory powers with the Director to interfere in the management of the private aided non-government colleges under the 1974 Act or the 1947 Act or under the Grant-in-Aid Scheme for the private colleges of the State of Punjab which stands adopted by the Chandigarh Administration.

22. Mr. Anupam Gupta, Advocate, appearing for the Panjab University has taken me through the various provisions of the 1947 Act with an intention to highlight the stature and status of the Director in the scheme of the Act wherein he is a member of the Senate and the Syndicate. Senate is the supreme authority of which the Director is an ex-officio member. He has also impressed upon the Court by referring to the role of the Principal and the importance of the post held by him. His contention primarily is that the Governing Body cannot, on its whims and fancies, proceed to take action against the Principal of the College and the Vice Chancellor of the University with which the college is affiliated as also the Director, who overlooks the disbursement of grant-in-aid to the colleges, cannot be mute spectators. Reference has been made by him to various judgments of the Supreme Court highlighting the jurisdiction of the University to which the College is affiliated to support his contention that the University has the power and jurisdiction to interfere in the management of the college and the affairs of the Governing Body. The judgments of the Supreme Court referred to are T.M.A. Pai's case (supra), P.A. Inamdar and Ors. v. State of Maharashtra and Ors. 2005 (6) SCC 537, The Gandhi Faiz-e-am College, The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another, , The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . He, on this basis, contends that the order passed by the Director, Higher Education, deserves to be upheld.

23. Counsel for Dr. Josan has also made his submissions on similar lines in support of the impugned letter dated 20.9.2010.

24. Counsel for the Governing Body has responded by submitting that the power of suspension has been provided under Regulation 9 of Chapter VIII (E) of the University Calendar Volume-I (2007). The Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 gives powers to the Governing Body of the college to place an employee under suspension as is apparent from Section 2(b) with the heading "suspension of employees". There is nothing under this

provision which would curtail the powers of the Governing Body to act in this regard. Referring to Section 11 of the 1974 Act, counsel contends that the provisions of this Act have an over-riding effect over the regulations or Statute of any University. He contends that the power of suspension having been conferred upon the Governing Body, it is the satisfaction of the employer which would determine whether an employee has to be placed under suspension or not. Reliance has been placed on a Full Bench judgment of this Court in the case of *Guru Nanak University Vs. Dr. (Mrs.) Iqbal Kaur Sandhu and Others*, . He contends that no objection was raised by the Director on receipt of the letter inviting him for the meeting to be held on 14.9.2010 nor had any objection been taken that no details in the agenda have been given or that the agenda is vague. He contends that an effort has been made by Respondent-Director to support the impugned letter by supplementing the same by further reasons and grounds which is impermissible in law. He contends that when an order based on certain grounds stands passed, its validity is to be judged by the reasons so mentioned and they cannot be supplemented by fresh reasons in the shape of affidavits or otherwise. Reliance has been placed on a judgment of the Supreme Court in the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

25. On consideration of the submissions as made by the counsel for the parties and going through the records of this case, I am of the considered view that the impugned letter dated 20.9.2010 cannot be sustained.

26. As per the Panjab University Calendar Volume-I 2007, Chapter VIII (A) which deals with the affiliated colleges, Regulation 1.2 (a) thereunder provides for the constitution of the Governing Body of a non-government college which reads as follows:

1.2. (a) The Governing Body of a non-Government college shall include on its management, in addition to the Principal who shall be ex-officio member, two representatives of teachers in case of Governing Bodies consisting of 15 members and three representatives of teachers in case of Governing Bodies consisting of more than 15 members, elected by all confirmed teachers provided that

- (1) two/three teachers so elected shall be of not less than five years" standing;
- (2) if two/three teachers of five years" standing are not available on the staff of the colleges, two/three teachers who happen to be the senior most on the staff shall be invited by the Governing Body to serve on it; and
- (3) the term of office of such representatives shall be the same as for the remaining members of the Governing Body provided that in no case it shall exceed three years.

Provided further than a casual vacancy shall be filled by the election within three months of the vacancy occurring and the members so elected shall continue for

the rest of the term of the outgoing member.

27. A perusal of the above would show that the Director or his nominee or the nominee of the Vice Chancellor are not mandated to be the part of the Governing Body. There is no such statutory requirement to have them on the Governing Body as members.

28. Counsel for the Petitioner has conceded that the Director or his nominee and the nominee of the Vice Chancellor are members of the Governing Body but that does not confer any extra privilege/right upon them. They are members of the Governing Body like any other member. It is a multi-membered body and the Director or his nominee as also the nominee of the Vice Chancellor are required to be informed of the holding of meeting of the Governing Body. It has been stated by the counsel for the Director that neither under the 1947 Act, nor 1974 Act, or the Grant-in-Aid Scheme, the Director has the power or jurisdiction to interfere with the working of the Governing Body of the college. The decisions are taken by the Governing Body as per majority and the nominee of the Vice Chancellor or the Director or his nominee has no veto power or power to overrule the decision taken by the Managing Committee by a majority.

29. The only reason assigned vide letter dated 20.9.2010 for not accepting the decision of the Governing Body suspending Dr. Josan is that the condition imposed in para 3 of the letter dated 26.11.1999 vide which approval was granted to the Governing Body stands violated as the decisions taken in the meeting dated 14.9.2010 were taken without associating the Director with the process of decision making i.e. in his absence as he did not attend this meeting. At this stage, condition No. 3 as imposed by the Department of Education while approving the Governing Body of the College requires reproduction which reads as follows:

3. The nominee of Director Public Instruction (C) UT, Chandigarh and the nominee of Vice Chancellor, Punjab University, Chandigarh shall be invited in every meeting of the Governing Body without which any decision taken by the Governing Body may not be considered valid by the Director Public Instruction (C) UT, Chandigarh.

30. Condition 6 also may be reproduced herein as this is one of the additional grounds which have been pressed into service by the counsel for Respondent No. 1-Director which reads as follows:

6. A copy of proceedings of every meeting of Governing Body shall be sent to the Director Public Instructions (C) UT, Chd. for his information.

31. A perusal of condition No. 3 would leave no manner of doubt that what is mandated therein is that the nominee of the Director and the nominee of the Vice Chancellor shall be invited in every meeting of the Governing Body. Upon failure to do so, any decision taken by the Governing Body may not be considered valid by the Director. Here again, it is to be noted that not all the

decisions which are taken by the Governing Body without inviting the nominees is/are to be invalid but only that/those which the Director considers to be invalid. Further, Condition No. 3 does not speak that if the nominees are not present in the meeting it would be an illegal one but what is required is an invitation to the nominees in every meeting of the Governing Body. In case the nominees fail to attend the meeting or remain absent that would not give discretion to the Director to declare a decision invalid merely because he/they did not attend the meeting of the Governing Body. If the contention of the counsel for the Director is accepted, the nominees would virtually stall and hijack the Management of the College leaving the Governing Body at the mercy of these nominees. If one or both the nominees choose to abstain from the meeting, no decision would be final and the Director can annul any decision of the Governing Body. This would be against the principles on the basis of which the amendment made in the University Calendar in 2000 was quashed by this Court in CWP No. 2367 of 2001 in *Sanatan Dharam Parcharak Sabha (Regd.)* case (*supra*) decided on 6.1.2003, which cannot be allowed. The exercise of powers by the Director while communicating letter dated 20.9.2010 is usurping and abrogating to him all such powers which are not vested in him by law. It can by no stretch of interpretation be led to conclude that the Director was not associated with the decision taken by the Governing Body of the College in its meeting held on 14.9.2010 which was conveyed to him vide order dated 15.9.2010 by the Governing Body. That apart, it is not in dispute that the Director was invited to the meeting of the Governing Body to be held on 14.9.2010. This is a naked abuse of power and misuse of Authority by the Director. What had failed through Amendment of Regulation 1.2 in the University Calendar in the year 2000, the Director has attempted to enforce through his executive fiat. In absence of any power under any statute which could invalidate any decision taken by the Governing Body or to interfere with the management of the college, except by participating in the decision making process by attending the meetings of the Governing Body, the letter under challenge leaves no option to this Court but to hold that it is without any jurisdiction.

32. The additional grounds which have now been taken to support the letter dated 20.9.2010 also do not cut much ice. One of the grounds which has been pressed into service is that the agenda for the meeting dated 14.9.2010 was vague and that postponement of the meeting was requested by the Director. To test this ground, reference needs to be made to the letter dated 13.9.2010 written by the Director to the General Secretary of the Governing Body in response to the invitation to attend the meeting fixed for 14.9.2010. The same reads as follows:

Sub: Meeting of Governing Body of DAV College. Reference your notice No. 17637 dated 10.9.2010 on the subject noted above which has been received at 3.00 p.m. on 13.9.2010.

Due to pre-scheduled official assignments, I am not in position to attend the

above said meeting. It is further intimated that at least two weeks notice may be given before scheduling the meeting of Managing Committee.

Sd/ Director Higher Education Deptt. of Education, Chandigarh Administration.

33. A perusal of the above would indicate that what was communicated was that the Director was unable to attend the meeting due to his pre-scheduled official assignments and a further request was made that at least two weeks' notice may be given before scheduling the meeting of the Managing Committee. No question was asked about the agenda or its vagueness nor was there any request for postponement of the meeting. The ground which has now been urged is an afterthought and without any basis as the same is not forthcoming from the documents on record.

34. As regards the contention that the agenda did not spell out the disciplinary action to be taken against Dr. Josan and further the authorization to file court cases is concerned, suffice it to say that as per the letter dated 10.9.2010 which was an invitation to the Director to attend the meeting on 14.9.2010, it clearly spells out that the meeting was being convened to discuss the case regarding "Dr. Josan, Principal, DAV College, Chandigarh". This obviously meant taking appropriate decision on the said agenda item as required as per the discussion. A perusal of the minutes of the meeting dated 14.9.2010 (duly attested photocopy of which has been produced in Court), would show that the decisions vide Resolutions 1 to 4 taken therein were directly connected with the agenda. Resolution No. 1 pertains to placing Dr. Josan under suspension with immediate effect. Resolution No. 2 related to the approval of article of charges and the decision to serve them upon Dr. Josan. Resolution No. 3 was that Dr. Josan be directed to hand over charge to Sh. Shashi Kumar Gupta, the next senior-most Professor of the College with immediate effect. Resolution No. 4 dealt with authorization of Mrs. Madhu Bahl to file caveat in this Court on behalf of the Governing Body/Managing Committee on suspension of Dr. Josan. She was further authorized to assign all documents including plaint(s), suit (s), replication(s), rejoinder(s), affidavit(s) as well as to engage advocate(s) in connection therewith. Resolution No. 5 was general in nature delegating the powers to the Governing Body/Managing Committee to the President and/or General Secretary relating to the various matters dealing with the employees of the college. It cannot, thus, be said that the decision taken in the meeting dated 14.9.2010 was not related to or beyond the agenda circulated for the meeting. In any case, this was not a ground which was taken for holding the order of suspension of Dr. Josan dated 15.9.2010 as invalid in the impugned letter dated 20.9.2010 and, therefore, cannot be taken into consideration.

35. The ground which has been taken that the minutes of the meeting dated 14.9.2010 had not been sent to the Director Higher Education as per condition 6 of the letter dated 26.11.1999, suffice it to say that letter dated 20.9.2010 which is under challenge in the present case is not based upon non-supply of the proceedings of the Governing Body Meeting dated 14.9.2010, nor does it

influence or has any bearing on the decision communicated vide letter dated 20.9.2010. This is also not a ground mentioned in the said letter for declaring the decision taken in the meeting dated 14.9.2010 as illegal which was communicated vide order dated 15.9.2010 by the Governing Body. In any case, as per condition 6, copy of the proceedings of every meeting of the Governing Body was required to be sent to the Director only for his information. It would not be out of way to mention here that after the meeting dated 14.9.2010, the next meeting of the Governing Body was held on 7.1.2011 which was attended by the Director. A perusal of the minutes of the same would show that the minutes of the meeting dated 14.9.2010 were duly circulated to all the members of the Governing Body and various objections raised by the Director against confirmation of the minutes were duly considered in the meeting. There was no objection raised by him with regard to the non-supply of the proceedings of the meeting held on 14.9.2010. This reason as has been urged now to support letter dated 20.9.2010 is again an afterthought.

36. The principles as laid down in the judgment of the Supreme Court in Mohinder Singh Gill's case (supra) would be applicable to this case, according to which when an Authority makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise to justify it. Orders passed by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Otherwise an order bad in the beginning may by the time it comes to Court on account of challenge, may get validated by additional grounds later brought out. Otherwise also, the additional grounds pressed into service by the Director as dealt with above have failed to justify the impugned letter dated 20.9.2010.

37. The submissions as made by Mr. Anupam Gupta, relying upon the judgments of the Supreme Court which have been referred to above, emphasize the eminent position and important role which has been assigned to the Director in the scheme of the 1947 Act as also of the Principal of a College and thus, importance attached to the said post. There can be no doubt or dispute on the said aspect. However, an Authority when exercising its powers cannot act arbitrarily, without any jurisdiction or authority conferred by/under any statute or law. In the case in hand, the Acts and the Rules/Regulations, which are applicable, do not confer the power and authority which has been exercised by the Director, while communicating the letter dated 20.9.2010. Simply because the scheme of the Act and Rules/Regulations assign an important role to an Authority, does not confer any jurisdiction unto him unless so provided under such Act, Rule or Regulation. If this principle is to be accepted, as has been contended by Mr. Gupta, it would lead to total chaos and give unfettered, unbridled and unregulated powers to the Authorities to proceed in the manner at their whims and fancies, which cannot be approved.

38. The only aspect which now needs to be considered and decided is with regard to the authorization given to Mrs. Madhu Bahl for filing the present writ petition. Various submissions have been made as has been referred to above but it should not detain the Court for long in the light of Resolution No. 4 passed by the Governing Body in its meeting dated 14.9.2010. Reference to the said resolution would follow: be beneficial to decide this aspect and the same reads as follows:

4. Resolved that a caveat be filed in the Punjab and Haryana High Court, Chandigarh and that Mrs. Madhu Bahl, Principal, Kailash Bahl DAV Centenary Public School, Sector-7-B, Chandigarh, be authorized to file a caveat in the Punjab & Haryana High Court at Chandigarh on behalf of the Governing Body/Managing Committee, DAV College, Sector-10, Chandigarh/DAV College Managing Committee, Chitra Gupta Road, New Delhi on the suspension of Dr. Josan, Principal DAV College, Sector-10, Chandigarh who has been placed under suspension by the Governing Body/Managing Committee, DAV College, Sector-10, Chandigarh. She be further authorized to sign all documents including plaint(s), suit(s), replication(s), rejoinder(s), affidavit(s), as well as to engage Advocate(s) in connection therewith.

39. It is not in dispute that the present writ petition is related to and in connection with suspension of Dr. Josan and the authorization as reproduced above would cover the authorization to file this writ petition as well for the reason that Mrs. Madhu Bahl has been given Authority to sign all documents including plaint(s), suit(s), replication(s), rejoinder(s), affidavit(s) as well as to engage advocate(s) in connection with a matter relating to suspension of Dr. Josan. The objection as raised by Respondent No. 1-Director, with regard to the maintainability of the writ petition is thus, without any basis and is hereby rejected. In the light of this, there is no necessity to go into the aspect of ratification of filing writ petition by the Governing Body in its meeting dated 14.1.2011.

In view of above;

(i) CWP No. 11022 of 2010 Dr. Balbir Chand Josan v. Chandigarh Administration, U.T., Chandigarh and Ors. is disposed of as infructuous.

(ii) Order dated 17.9.2010 passed by the Registrar, Panjab University, Chandigarh, which is under challenge in CWP No. 16917 of 2010 Dr. Balbir Chand Josan v. Chandigarh Administration, U.T., Chandigarh and Ors. is hereby set aside. However, no relief is granted to the Petitioner in this writ petition on the ground that the earlier order dated 16.9.2010 passed by the Registrar, Panjab University, Chandigarh is also not in accordance with law as held above. However, in the light of the fact that now the order of suspension and the charge sheet have been duly conveyed to the Registrar, Panjab University and are in his knowledge, it would be open to him to pass appropriate orders in accordance with law. It shall also be open to Dr. Josan to move a fresh application to the

Registrar, if so advised, to claim relief under Regulation 9.2.

(iii) C.W.P. No. 17347 of 2010 The Governing Body, DAV College, Sector 10, Chandigarh v. Chandigarh Administration and Ors. is allowed. The impugned order dated 20.9.2010 is hereby quashed. Costs of Rs. 20,000/-is imposed on Respondent No. 1, to be deposited with the Legal Services Authority, U.T., Chandigarh, within a period of four weeks from today, failing which the Secretary, Legal Services Authority, U.T., Chandigarh, shall initiate process for recovery of the same.

40. This Court while exercising its powers as conferred by the Constitution under Article 226 is mandated to do justice and in furtherance thereto to pass such orders and/or directions as necessary. While adjudicating over a dispute or issue not only a decision has to be pronounced thereon but efforts should be made to resolve and conclude the matter at the earliest so that complete justice is done. The Court must see to it that the matter reaches its logical conclusion leaving nothing to confusion or uncertainty so that the cause of justice or justice itself is not a casualty. It is rather unfortunate as to what has happened in DAV College, Sector 10, an educational institution of high repute of Chandigarh. No one would dispute that this has not only harmed its image and reputation but the studies and interest of students have suffered immensely because of this tussle. The charge sheet was issued to Dr. Josan on 18.9.2010 and the consequential proceedings are pending which need to be finalized at the earliest so that the mist of uncertainty is cleared. This would not only be in the interest of the parties but the institution also. Accordingly, direction is issued to the concerned parties to finalize the departmental proceedings initiated against Dr. Josan within a period of two months from today so that the education and students are not made to suffer any more because of the friction between the Management, its employee and others.