

**(2013) 06 CHH CK 0013**

**In the Chhattisgarh High Court**

**Case No : Writ Appeal No's. 190 and 249 of 2007**

Dr. Bhagwant Singh

APPELLANT

Vs

Pt. Ravi Shankar Shukla University and Another <BR> Dr.  
P.V. Chandrakar Vs State of Chhattisgarh and Others

RESPONDENT

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**Date of Decision : 25-06-2013**

**Acts Referred:**

Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2  
Constitution of India, 1950 — Article 12, 226, 227

**Citation : (2013) 4 CGLJ 171 : (2013) 5 MPHT 1**

**Hon'ble Judges : Yatindra Singh, C.J;Pritinker Diwaker, J**

**Bench : Full Bench**

**Advocate : P.S. Koshy and Mr. Manoj Paranjape, for the Appellant; Janakram Verma, Counsel for the University and Shri Sanjay K. Agrawal, Advocate General for the State, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

1. The main question involved in these cases is,

Whether the power exercised by the Kuladhipati under sub-section (4) of section 12 {12(4)} of Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 (the Act) is quasi-judicial or administrative in nature.

It arises in these writ appeals against the order of the single judge dated 04.07.2007 dismissing the Writ Petition-1097 of 2005, filed by Dr. Bhagwant Singh (Dr. Singh) and Writ Petition-22 of 2005 filed by Dr. PV Chandrakar (Dr. Chandrakar), against the order of the Kuladhipati dated 24.12.2004.

### **THE FACTS**

Pt Ravi Shankar Shukla University (the University) advertised for the post of Professor in the Department of Comparative Religion and Philosophy on 24.09.2002. The Appellants were candidates in the selection.

2. The selection committee recommended the names of Dr. Chandrakar and Dr. Singh, placing them at serial No-1 and 2 respectively in order of merit.
3. The Executive Council approved the recommendation of selection committee and as Dr. Chandrakar was at serial No. 1, he was appointed on 20.09.2003.
4. Against the appointment of Dr. Chandrakar, Dr. Singh filed a representation before the Kuladhipati of the University u/s 12(4) of the Act challenging his (Dr. Chandrakar's) appointment. In the representation it was also prayed that he should be appointed in his place.
5. On the representation of Dr. Singh, initially, the Kuladhipati asked the University to file its reply and after considering the same, referred the matter to the Commissioner, Higher Education Department (the Commissioner) for conducting an enquiry.
6. The Commissioner issued a notice to Dr. Chandrakar to file his reply. After considering the reply of Dr. Chandrakar and the University, the Commissioner submitted his report on 22.07.2004.
7. Dr. Chandrakar filed an additional reply before the Kuladhipati on 08.11.2004. The Kuladhipati after considering the additional reply as well as the report of the Commissioner, held the selection to be vitiated on 01.01.2005 on the ground that all relevant materials were not placed before the selection committee and some were suppressed by Dr. Chandrakar.
8. On the aforesaid finding, the representation of Dr. Singh was partly allowed. The appointment of Dr. Chandrakar was set aside and the Executive Council was directed to hold fresh interview in accordance with law on 24.12.2004. In pursuance of the aforesaid order passed by the Kuladhipati, the Registrar cancelled the appointment of Dr. Chandrakar.
9. Dr. Chandrakar filed Writ Petition-22 of 2005 challenging the order of the Kuladhipati cancelling his appointment. Dr. Singh also filed Writ Petition-1097 of 2005 for a direction to appoint him as he was at serial number-2.
10. Both the writ petitions were heard together and were dismissed by the single judge on 04.07.2007.
11. Aggrieved by the aforesaid order, Dr. Chandrakar and Dr. Singh filed Writ Appeals-249 of 2007 and 190 of 2007.

#### POINTS FOR DETERMINATION

12. We have heard counsel for the parties and the Advocate General<sup>1</sup> as friend of the Court. The following points arise for determination in these appeals:

- (i) Whether the power exercised by the Kuladhipati under section 12(4) of the Act is quasi-judicial or administrative in nature;

- (ii) Whether the Kuladhipati, While exercising power u/s 12(4) of the Act is a Tribunal under supervisory jurisdiction under article 227 of the Constitution;
- (iii) Whether the writ petitions were under article 226 or 227 of the Constitution;
- (iv) Whether the writ appeal is maintainable or not.

#### 1ST POINT: KULADHIPATI'S POWER IS QUASI-JUDICIAL

13. Section 12 of the Act is titled "Kuladhipati and his powers". Section 12(4) of the Act empowers the Kuladhipati to annul any proceedings of any officer, authority, committee or body of the University constituted by or under the Act by an order in writing if it is not in conformity with the Act, Statute, Ordinances or the Regulations.

14. The proviso to section 12(4) also mandates that the Kuladhipati is required to afford opportunity to the officer, authority, committee or the body concerned before passing an order.

15. Sub-section (4-A) of section 12 of the Act {12(4-A)} also provides that in case any order has been passed annulling the proceedings u/s 12(4), then, the Kuladhipati can also pass any such order that he may deem fit in conformity with the Act, rules, Statutes, Ordinances or Regulations.

16. The proviso of section 12(4) of the Act does specifically state that the Kuladhipati is required to afford opportunity to the officer, authority, committee or body whose proceeding or orders is in question but it does not specifically provide to afford opportunity to any person who may also be effected by the order. However, this does not matter.

17. The order of the Kuladhipati has civil consequences. In the event, it has adverse effects on any individual then opportunity has to be given. The principles of natural justice are to be read in section 12(4) of the Act.

18. In this case, the Commissioner, before submitting his reply had issued notice to Dr. Chandrakar and thereafter he (Dr. Chandrakar) filed further reply before Kuladhipati. Dr. Chandrakar was afforded opportunity before adverse order was passed against him.

19. u/s 12(4) of the Act, the order passed by Kuladhipati is final. It is only subject to writ jurisdiction of the High Court.

20. Durga Das Basu-Shorter Constitution of India (14th Edition 2009-Volume-2) Page No. 1487 and 1488 succinctly sums up what makes a decision judicial or quasi judicial:

(i) If a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim by one party under the statute which is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis prima facie* and in the absence of anything in the statute to the contrary it is the duty of the

authority to act judicially and the decision of the authority is a quasi-judicial act<sup>2</sup> and

(ii) If a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act, provided the authority is required by the statute to act judicially.<sup>3</sup> In other words, while the presence of the two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially.<sup>4</sup>

...

(iii) The duty to proceed may be laid down by a statute either expressly or by necessary implication.<sup>5</sup> Thus, it may be inferred from the scheme of the statute and its material provisions,<sup>6</sup> e.g., where it requires the authority to record reasons for its order.<sup>7</sup> Hence, even where the statute is silent as to any duty to act judicially, such obligation may be inferred from the provisions of the statute and the nature of the rights affected;<sup>8</sup> the nature of the power,<sup>9</sup> and other relevant factors.<sup>10</sup>

21. In the present case, there is lis between the parties. The order is to be passed after affording opportunity to the parties. The order is to be in writing. This satisfies the first interest as laid down above.

22. *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, (the *Neelima-Misra* case) cited by the Appellants is not applicable. It was a case u/s 31(8) of the UP Universities Act, 1973 (the UP-Act). It is not similar to section 12(4) of the Act. In the UP-Act, section 68 is similar to section 12(4) of the Act.

23. u/s 31(8) of the UP-Act, in case the executive council disagrees with the recommendation of the selection committee or it fails to take any decision, then the matter of appointment is referred to the Chancellor. This was the power that was being exercised by the Chancellor.

24. In the *Neelima Misra* case, the Supreme Court held that the Chancellor was exercising the power of appointment, as there was no dispute between the two parties; and it was for this reason it was held that the Chancellor had exercised administrative powers. This is clear from the following observation:

It may be noted that the Chancellor is one of the three authorities in the statutory scheme for selecting and appointing the best among the eligible candidates in the academic field. The Chancellor is not an appellate authority in matters of appointment. He is asked to take a decision, because the Executive Council who is the appointing authority has no power to reject the recommendation of the Selection Committee and take a decision deviating

therefrom. The Chancellor's decision is called for when the Executive Council disagrees with the recommendation of the Selection Committee. What is referred to the Chancellor u/s 31(8)(a) of the Act, is therefore, not a dispute between the Selection Committee and the Executive Council on any issue. Nor it is a dispute between two rival candidates on any controversy.

... It is indeed a decision with regard to appointment of a particular person or persons in the light of the recommendation and opinion if any, of the two statutory authorities. Such a decision appears to be of an administrative character much the same way as the decision of the Executive Council with regard to appointment.

But this is not a case here. The Neelima Misra case is distinguishable.

25. In our opinion, the Kuladhipati is required to act judicially u/s 12(4) of the Act and he exercises judicial powers. The power u/s 12(4) of the Act is not administrative in nature.

## 2nd POINT: TRIBUNAL UNDER SUPERVISORY JURISDICTION OF THE HIGH COURT

26. In Durga Das Basu's Shorter Constitution of India 14th edition (page 864-865), the basic tests for determining whether an authority is a tribunal or not, have been rightly summarised as follows:

(a) That the power of adjudication has been conferred on the authority in question by statute;

(b) That such adjudicating power is a part of the State's inherent power exercised in discharging its judicial function;

(c) If there is a lis and the decision of the authority is binding and final.

27. In the present case, the power of adjudication is conferred upon the Kuladhipati by statute; he exercises judicial powers u/s 12(4) of the Act as held under the first point; there is lis between the parties; and his decision is final. Thus, all three parameters are satisfied.

28. The fact that the Kuladhipati, while exercising power u/s 12(4) of the Act, is a Tribunal under supervisory jurisdiction of Article 227 of the Constitution, is also clear from the Supreme Court decision in Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others,

29. In the Jaitla case, the facts were as follows:

? The services of a Headmaster or Teacher of the schools governed by Punjab Aided Schools (Security of Services) Act, 1969 (the Punjab Act) could not be dispensed with, without taking approval of the Deputy Commissioner. Thereafter, an appeal lay to the Commissioner;

? The services of a Headmaster and a Teacher were terminated and they filed the

appeals, that were dismissed. They filed writ petitions before the Punjab and Haryana High Court challenging the orders;

? The High Court dismissed the writ petitions on the ground that they were not "other authorities" under article 12 of the Constitution though it was admitted that the Deputy Commissioner and the Commissioner were exercising quasi judicial functions.

30. The Supreme Court allowed the appeals in the Jaitla case and observed:

The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969 Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression "Tribunal" as used in Article 227 of the Constitution which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Article 227 of the Constitution.

31. In our opinion, the Kuladhipati, while deciding proceeding u/s 12(4) of the Act, acts as tribunal under supervisory jurisdiction of this Court.

3rd & 4th POINTS: WRIT APPEAL NOT MAINTAINABLE

32. Dr. Chandrakar has filed the writ petition for quashment of the order passed on 01.01.2005. The writ petition filed by Dr. Chandrakar is essentially in substance a writ petition to set aside order passed by the Kuladhipati.

33. Dr. Singh had filed a representation before the Kuladhipati for cancellation of the appointment of Dr. Chandrakar and for a direction to appoint him on the said post. The first prayer of Dr. Singh was granted by the University but the second prayer was declined and the University was directed to hold fresh selection for appointment on the post of Professor in accordance with law. Unless this finding is set aside, Dr. Singh cannot be appointed as the Professor.

34. In the writ petition filed by Dr. Singh, no relief for setting aside the order of Kuladhipati is claimed, however, considering the aforesaid aspect, Shri PS Koshy, counsel for Dr. Singh submits that the writ petition should be treated as for setting aside the order of the Kuladhipati.

35. The main relief in Dr. Singh's writ petition is also, for setting aside the order of the Kuladhipati as he cannot be appointed as a Professor in the University unless the order passed by the Chancellor is set aside.

36. Thus, in substance, the main relief in both the writ petitions (filed by Dr. Chandrakar and Dr. Singh) is for setting aside the order of the Kuladhipati.

37. In the present case, The writ petitions were filed for quashing/setting aside

the order passed by a Tribunal. It was essentially under supervisory jurisdiction of the High Court under article 227 of the Constitution.

38. In *SKS Ispat Limited Vs. Union of India and others* (Writ Appeal-1006 of 2012, decided on 12.12.2012), it has been held that it is not the heading of the writ petition, but substance of the order passed by the single judge is material. It is substance of the order passed that determines whether the order was passed under Article 226 or 227 of the Constitution.

39. In the present case, the single judge after considering the submissions of the parties has dismissed the writ petitions. The substance of the order is under Article 227 and no power under Article 226 of the Constitution has been exercised.

40. In view of above and the proviso to sub-section (1) of section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, the writ appeal is not maintainable.

## CONCLUSIONS

41. Our conclusions are as follows:

(a) The Kuladhipati while exercising the power u/s 12(4) of Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 exercises quasi-judicial power. His order is an order of a quasi-judicial authority and is not an administrative order;

(b) The writ appeals are against the order of the single judge in writ petitions to quash the order of a quasi-judicial authority. It is in substance under article 227 of the Constitution;

(c) The writ appeals are not maintainable.

In view of our conclusions, the writ appeals are dismissed as not maintainable.

## HEADLINES

Kuladhipati exercises quasi-judicial power u/s 12(4) of Chhattisgarh Vishwavidyalaya Adhiniyam.

1We would like to record our appreciation for the Advocate General for assisting the Court. 2 *P.L. Lakhanpal Vs. The Union of India (UOI) and Another, Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, see also *Subba Rao, J.*, for the majority in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, ; adopted by the Court in *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, . 5 *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, ; *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, 6 *Shri Bhagwan and Another Vs. Ram Chand and*

Another, 7 Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, 8 Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, 9 Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmichand and Others, 10 State of Assam and Another Vs. Bharat Kala Bhandar Ltd. and Others,