

(2018) 11 DEL CK 0271

In the Delhi High Court

Case No : Civil Writ Petitions No. 3279 Of 2018

Dr Hilaluddin

APPELLANT

Vs

Union Of India Throuh Secretary & Ors

RESPONDENT

Date of Decision : 22-11-2018

Acts Referred:

University Grants Commission Act, 1956 — Section 3

Citation : (2018) 11 DEL CK 0271

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Gyanant Kumar Singh, Abhisek Rai, Kunal Kohli, Suparna Srivastava, Sanjna Dua, Rama Subba Raju, Sanjay Katyal

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. The present writ petition has been filed by the petitioner with the following prayers:-

â??In view of the above enumerated facts and circumstances, it is most humbly prayed that this Honâ??ble Court may graciously be pleased to:

a) Issue a Writ in the nature of Quo Warranto or any other appropriate writ / order / direction setting aside / holding as void the appointment of Dr.

Savita to the post of Vice Chancellor of FRIDU.

b) Issue a Writ in the nature of mandamus or any other appropriate writ / order / direction for termination of appointment of Dr. Savita from the post

of VC of FRIDU and filling up this post in a time-bound manner in accordance with the UGC regulations.

c) Issue an appropriate writ / order / direction holding as void / quashing Resolution NO. 5/2016 dated 30.03.2016 by the Board of Management,

FRIDU diluting the eligibility / qualification for the post of Vice-Chancellor and giving a go by to UGC Regulations.

d) Issue an appropriate writ / order / direction for a probe and fixing responsibility for lapses which resulted in wrong facts being placed before the BoM, FRIDU during the 30.03.2016 meeting.

e) Issue or pass any writ, direction or order which this Honâ??ble Court may deem fit and proper in the facts and circumstances of the case.â??

2. It is the case of the petitioner and also contended by the learned counsel for the petitioner that the appointment of the respondent No. 5 as Vice-

Chancellor vide resolution dated March 30, 2016 by the Board of Management of the Forest Research Institute (Deemed to be University)/ FRIDU is

in violation of the UGC Regulations, 2010 (Clause 7.3.0) inasmuch as the Regulations contemplate that a Vice Chancellor should be a distinguished

Academician with minimum 10 years of experience as a Professor in a University system or 10 years of experience in an equivalent position in a

reputed research and/or academic administrative organization. He states that the respondent No. 5 is an Indian Forest Services Officer and did not

have the requisite qualification for being appointed as Vice Chancellor.

3. The learned counsel for the petitioner has drawn our attention to page 83 of the paper book in support of his contentions. According to him, the

resolution adopting a different practice, could not have validated the appointment nor such a resolution can override the Rules framed under an Act

made by the Parliament. In substance, it is his submission that the resolution dated March 30, 2016 being in violation of the UGC Regulations, stands

vitiated. He has relied upon a judgment of the Supreme Court reported as 2015 (3) SCALE 369 Kalyani Mathivanan Vs. K.V.Jeyaraj and Others, in

support of his contention that the UGC Regulations need to be adhered to.

4. On the other hand, Mr. Sanjay Katyal, learned counsel appearing for the respondent Nos. 4 and 5 submits that the present petition filed by the

petitioner is totally misconceived and untenable. According to him, the petitioner was, at the relevant time, working as Scientist-D in Indian Council of

Forestry Research & Education, Dehradun (ICFRE). The Forest Research Institute (FRI) is one of the Institute under the ICFRE. The petitioner

resigned from the post of Scientist-D vide letter dated June 13, 2013 and was relieved on July 10, 2013. Later on, the petitioner wanted to withdraw

his resignation, which request not being permissible under the Rules, the same was declined. The petitioner thereafter approached the Central Administrative Tribunal, Principal Bench, New Delhi vide OA No. 26/2014 making various allegations against officers of the department. The Tribunal vide its judgment dated March 20, 2017, while finding that the resignation of the petitioner having been accepted by the competent authority, the same having been duly communicated to him, upon the receipt of the order of acceptance of the resignation, the petitioner having applied for no-dues certificates to various departments and that he was duly relieved in accordance with his request made in the resignation letter itself, the Tribunal did not find any merit in the O.A. It is the case of the respondent Nos. 4 and 5 and as submitted by Mr. Katyal, that the Ministry of Human Resource Development/respondent No. 1 on the recommendation of the University Grants Commission/respondent No. 3 had conferred the status of the Deemed to be University upon Forest Research Institute (FRI) in December, 1991 under Section 3 of the UGC Act, 1956. The ICFRE approved the proposal of declaration of Forest Research Institute as a Deemed to be University in the IIIrd meeting of the Board of Governors. Since the conferment of the status of Deemed to be University upon Forest Research Institute and on the approval of the ICFRE, the Director, Forest Research Institute has been acting as the Principal Academic and Executive officer of FRIDU and is exercising general supervision and control over the affairs of the University. Since the Ministry of HRD conferred the status of Deemed to be University upon FRI and the ICFRE/FRI has no sanctioned posts of Vice Chancellor and Faculty Members (Asstt. Professor, Associate Professor, Professor etc.), therefore, the Director, FRI appointed/selected as per the ICFRE and Ministry of Environment Forests & Climate Change/respondent No. 2, Govt. of India/DoPT rules and guidelines, while acting as Principal Academic and Executive Officer of the FRIDU as per the resolution of Board of Management dated June 12, 2000 has also been designated as Vice Chancellor, FRIDU in July 2011 by the Board of Management. The Scientists and Forest Officers posted in FRI and ICFRE are also working as faculty and have also been designated as Assistant Professor, Associate Professor, Professor without any financial liability in pursuance to the recommendation of the UGC in 2010. According to Mr. Katyal, the respondent No. 5 was never appointed as Vice Chancellor of the FRIDU as it is

only a designated position without any financial implication or extra remuneration. In other words, the respondent No. 5, by virtue of Director, Forest Research Institute, has been acting as Principal Academic and Executive Officer of the FRIDU in accordance with the Memorandum of Association

approved by the Board of Management, the Principal Executive body of the FRIDU on June 12, 2000. He also relies upon the clause 6.2 (i) of UGC

(Institutions Deemed to be University) (Amendment) Regulation 2014, which inter alia stipulates as under:

“The Vice-Chancellor shall be a whole time salaried officer of the Institution deemed to be University and shall be appointed in accordance with

the UGC Regulations on Minimum Qualification for appointment of Teachers and other Academic Staff in Universities and Colleges and Measures

for the Maintenance of Standards in Higher Education 2010 as amended from time to time.

Provided that in case of public funded deemed to be university the Vice Chancellor shall be appointed in accordance with the procedure laid down by

the Central Govt. or the State as the case may be.”

5. Mr. Katyal also states that in terms of clause 6.2 (I) of the notification issued by the UGC dated July 11, 2016, the following has been stipulated:-

“In case, where Management Control of an Institution Deemed to be University is with Central Government or the State Government, the vice

Chancellor shall be appointed in accordance with the procedure laid down by the Central Government or the State Government, as the case may be.

Notwithstanding anything contained in these Regulations, the governance system and management structure of a public funded institution Deemed to

be University may be in accordance with the decision of the Central Government or the State Government, as the case may be.

6. He also relies upon the clause 5.10 of the University Grant Commission (Institutions Deemed to be Universities) (Amendment) Regulations, 2014,

which inter alia provides as under:

“Notwithstanding anything contained in these Regulations, the governance system and management structure of a Government Controlled

institution Deemed to be University may be in accordance with the decision of the Central Government or the State Government, as the case may

be.”

7. According to Mr. Katyal, if the management, control of the Institution deemed to be University is under the Central Government, the Vice

Chancellor shall be appointed in accordance with the procedure laid down by the Central Government. He states, since the Ministry of

HRD/respondent No. 1 had conferred the status of Deemed to be University upon FRI, therefore, the Director of FRI, appointed/selected while acting

as Principal Academic & Executive officer of FRIDU as per the resolution of the Board of Management is designated as Vice Chancellor. In other

words, in the peculiar facts, where the FRI is also a Deemed University, the Director, FRI, who is also the Principal Academic and Executive Officer

of FRIDU, is designated as Vice Chancellor, and there is no illegality in such a designation. Mr. Katyal has drawn our attention to page 58 of the

paper book, which is an office order dated January 7, 2016, to show the appointment of the respondent No. 5 as Director of Forest Research Institute.

He submits that the petitioner has not challenged the appointment of the respondent No. 5 as Director of the Forest Research Institute. If there is no

challenge to the Directorship of the respondent No. 5 of FRI, surely, the petitioner is precluded from challenging the designation of the respondent No.

5 as Vice Chancellor.

8. The UGC has also filed a short counter affidavit, wherein, in para 9, they have stated that there is nothing on record to show that the respondent

No. 4 has followed the Regulations prescribed by the UGC for appointment of Vice Chancellor. They have also filed an additional counter affidavit

wherein, a reference has been made by the UGC to Clause 6.2 of the 2016 Amendment Regulations (as reproduced above), which inter alia, states

that if the management control of an Institution Deemed to be University is with the Central Government, the Vice Chancellor shall be appointed in

accordance with the procedure laid down by the Central Government. We may state here, the UGC has noted the stand taken by the respondent No.

4 in the counter affidavit and is of the view that the petition is liable to be rejected. Mr. Rama Subba Raju, learned counsel appearing for the UGC has

justified the action of the respondent No. 4 in designating the respondent No. 5 as Vice Chancellor.

9. Having heard the learned counsel for the parties, we are of the view that the present petition filed by the petitioner is totally misconceived and liable

to be dismissed. This we say so for the reason that the Forest Research Institute is an Institute under the ICFRE and is a Deemed to be University in

terms of the declaration of the respondent No. 1 under Section 3 of the UGC Act, 1956. In other words, apart from being an Institute under the

Central Government, it is a Deemed University as well. There is no dispute that the respondent No. 5 was appointed as Director of the Forest

Research Institute. As stated by the respondent No. 4, the respondent No.5 as a Director of the Forest Research Institute, is also a Principal

Academic/Executive Officer of the FRIDU. A Deemed to be University status having been given, surely, the person exercising the functions of

Principal Academic and Executive Officer of the FRIDU, can be designated as Vice Chancellor. In other words, the Director, FRI having the

concurrent function as Principal Academic and Executive Officer of the FRIDU, the designation of the Vice Chancellor without any financial benefits,

is justified. Such an appointment is at variance with an appointment of a Vice Chancellor of a full-fledged University, for which, the Regulations of the

UGC as noted above, need to be strictly followed. In the case in hand, it is the Clause 6.2 of the Regulations of 2016 as noted above, in terms of

which, the Vice Chancellor is appointed, that is in accordance with the procedure laid down by the Central Government. We may at this stage,

reproduce the relevant Minutes of the decision dated March 30, 2016 of the Board of Management of FRIDU, which is reproduced as under:-

“Forest Research Institute (FRI), Dehradun is a reputed organization under the ambit of Indian Council of Forestry Research & Education

(ICFRE), an autonomous organization of the Ministry of Environment Forests and Climate Change, Govt. of India and registered as society under

Society Act, 1860. The Director FRI is a full time salaried, Government Office appointed by MoEF, Govt. of India and has been designated as Vice

Chancellor of FRI (Deemed University. The Board of Management has resolved to continue with the existing practice.”

10. The minutes are very clear, the Director, FRI has been designated as Vice Chancellor of FRIDU and not appointed. We do not see any illegality.

In so far as the judgment relied upon by the counsel for the petitioner in the case of Kalyani Mathivanan (supra), is concerned, the same is not

applicable to the facts of this case inasmuch as the issue in that case was with regard to the eligibility of the petitioner/appellant before the Supreme

Court, for appointment as Vice Chancellor. Suffice it to state that the High Court had set aside the order of appointment of the petitioner/appellant, being ineligible. The Supreme Court, even though set aside the judgment of the High Court, the reliance is placed by the learned counsel for the petitioner on the Judgment only to drive his point that the UGC Regulations, need to be followed, which proposition cannot be disputed. The said judgment relates more to the issue of conflict between provisions of Central subordinate legislation and state legislation on the same subject. It has also been held therein that UGC Regulations, 2010 would be applicable mandatorily to teachers and other academic staff in all Central Universities and Colleges thereunder, and the Institutions deemed to be University, whose maintenance expenditure is met by the UGC. FRI, being managed and controlled by the Central Govt., would not be covered by the aforesaid finding, more so in view of Proviso to Clause 6.2 of the UGC Regulations. The judgment is therefore distinguishable.

11. In view of our discussion above, we do not see any merit in the writ petition. The same is dismissed.