

(2014) 01 AHC CK 0092

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 46705 of 2013

Dr. M.D. Tiwari

APPELLANT

Vs

Chancellor, I.I.I.T. and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 ADJ 769 : (2014) 103 ALR 491 : (2014) 2 ESC 681

Hon'ble Judges : Surya Prakash Kesarwani, J; Arun Tandon, J

Bench : Division Bench

Advocate : Shubham Agarwal and S.P. Gupta, Advocate for the Appellant; Fuzail Ahmad, Govind Saran, Ritvik Upadhyay and Shailendra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner Dr. M.D. Tiwari, Director, Indian Institute of Information and Technology, Allahabad (hereinafter referred to as IIIT, Alld) has filed this writ petition for quashing of the order passed by Chancellor, HIT, Allahabad dated 21.8.2013 (Annexure 1 to the present petition). Under the order impugned it has been intimated that the term of Dr. M.D. Tiwari of 5 years as Director had come to an end in December 2012. An extension was granted in his favour, which is with reference to Rule 6.2(ii) of the UGC Regulation 2010 and not as per amended Clause 13.1(ii) of Memorandum of Association & Rules of HIT, Allahabad for want of approval of the amendment by the Commission. The extension has to be determined in accordance with Rule 6.2(ii) of the UGC Regulation 2010, which is 6 months at the maximum. Dr. Tiwari has been asked to step-down and hand over the charge of Director, HIT, Allahabad to the person as per the provisions of UGC Regulation 2010. We have heard Sri S.P. Gupta, Senior Advocate assisted by Sri Shubham Agarwal, Advocate on behalf of the petitioner, Sri K.C. Kaushik, Additional Solicitor General of India on behalf of respondent Nos. 1, 2 and 3 and Sri Govind Saran, Advocate on behalf of

respondent No. 4.

2. We have also heard Sri Shailendra, Advocate on behalf of person seeking impleadment.

3. Facts leading to the present writ petition are as follows:

IIIT, Allahabad is administrated by a society registered in the same name in accordance with the provisions of Memorandum of Association & Rules framed for the purpose. The Institute has the status of Deemed University under the Provisions of University Grants Commission Act. The petitioner was selected as a Director for the first time in the year 2002. According to the provisions applicable the term of the Director is 5 years. This term came to an end in the year 2007. According to the petition, fresh advertisement was published for the post of Director. Petitioner applied and he was again selected for the post and was appointed in pursuance thereof in the year 2007. The term of appointment was 5 years.

4. It is not in dispute between the parties that this term of 5 years as Director came to an end on 26.12.2012. From the record it appears that an advertisement was published for appointment on the post of Director, IIIIT, Allahabad on 3.11.2011 but the process could not be completed for want of suitable candidate. Thereafter, another advertisement for appointment on the post of Director was published on 12.9.2012. In the advertisement, it was mentioned that all those applicants who have applied earlier, in response to the advertisement dated 3.11.2011 need not apply afresh. Dr. M- D. Tiwari claims that he was an applicant under the first advertisement and, therefore, included within the zone of consideration under the second advertisement also.

5. It is further his case that the Search-cum-Selection Committee (SCSC) constituted in terms of the 2nd advertisement also did not find any person suitable for the office.

6. In this background the Chancellor of the HIT, Allahabad forwarded a letter to the Ministry of Human Resources on 21.12.2012 suggesting that a notification be made in accordance with the provisions of Rule 13.1(ii) of Memorandum of Association & Rules of IIIT, Allahabad qua the extension of the term of Director Dr. M.D. Tiwari.

7. With reference to the said letter of the Chancellor, the Ministry of Human Resource Development forwarded a letter dated 24.12.2012 to the Deputy Registrar, HIT, Allahabad requiring him to issue a formal order for the term of Dr. Tiwari being extended in terms of the letter of the Chancellor dated 21.12.2012 referred to above. Accordingly, the Deputy Registrar, HIT, Allahabad issued a notification on 27.12.2012 notifying that Dr. Tiwari would continue as the Director of HIT, Allahabad till his successor is appointed and assumes office as per the provisions laid down under Rule 13.1(ii) of the Memorandum of Association & Rules of HIT Society, Allahabad.

8. The Additional Secretary to the Ministry of Human Resource Development issued a letter dated 8.8.2013 to the Chancellor, IIIT, Allahabad clarifying that the extended term of the Director IIIT, Allahabad is to be as per Rule 6.2(ii) of the UGC Regulation 2010 and not under the amended Rule 13.1(ii) of Memorandum of Association & Rules, as no duly validated amendment has been made.

9. On receipt of the said letter, the Chancellor of the University has issued the impugned order notifying Dr. Tiwari to step-down from the Office of the Director as the extended term in accordance with the provisions of Rule 6.2(ii) of UGC Regulation 2010 has expired. Dr. Tiwari has been directed to hand over the charge to the eligible person in accordance with the provisions of UGC Regulation 2010.

10. Challenging the order on behalf of the petitioner it is submitted that the UGC Regulation 2010 were adopted by the Board of Governors of IIIT, Allahabad under resolution dated 15 October 2011 and registered on 26 November 2011 with the necessary modification.

11. The Clause 6.2(ii) of the UGC Regulation 2010 provides that the term of Director of IIIT, Allahabad shall be 5 years and that extension can be granted under its Clause (ii), which reads as follows:

(ii) The Director shall hold office for a term of 5 years. He shall be eligible for a second term, provided that in no case shall he hold office beyond the age of 70 years.

Provided that notwithstanding the expiry of the period of 5 years, he/she may continue in office for not more than six months or till his/her successor is appointed and the latter assumes office, whichever is earlier.

12. According to the petitioner an amendment was made and approved by the Board of Governors on 15.10.2011 and the last word "later" to the proviso quoted above was substituted by the word "earlier". These amended bye laws were registered on 26.11.2011. This clause of bye-law is numbered as 13.1(ii). It is his case that in view of the word "later" being inserted in the proviso to the clause, Dr. Tiwari is entitled to continue as Director even after expiry of the period of 6 months, till the regularly selected candidate is appointed in accordance with law on the post of the Director and assumes charge-reference in that regard is made to the document annexed as Annexure "8" to the writ petition. He, therefore, submits that the order impugned passed by the Chancellor is patently illegal and based on non-consideration of the existing amended provisions of the bye-laws of the HIT Society, Allahabad.

13. On behalf of respondent Nos. 1, 2 and 3 it is contended before us that the amendment made for the substitution of the word "earlier" by the word "later" in Rule 13.1(ii) of the Memorandum of Association & Rules of IIIT, Allahabad has not been approved by the Commission i.e. the University Grants Commission.

The amendment can take effect only after receipt of concurrence of the UGC, reference page 171 of the paper book. Reference is also made to Rule 25 of the UGC Regulation of 2010, which also requires that any amendment or addition by the Board of Management of Deemed University or any other competent authority to take effect in case of conflict with or to the detriment of the provisions of the Regulations only with the prior approval of the Commission. It is, therefore, their case that the substitution of the word "earlier" by the word "later" is inoperative in the eyes of law for want of approval from the Commission.

14. It is further stated that even if the case pleaded by the petitioner is accepted on its face value namely that the word "earlier" has been substituted by word "later" in the proviso then the same would lead to absurd results. For example, if the term of Director is extended under the sub clause 13.1(ii) of the Memorandum of Association & Rules after he has completed 5 years, and a regularly selected candidate is appointed within 2 months of such extension then on simple reading of the clause with the word "later" would mean that the earlier Director would continue for 6 months even when regular Director has been appointed after fresh selection. This according to him cannot be the interpretation. All such interpretations which lead to absurd results, have to be avoided.

15. Sri Shailendra on behalf of person seeking impleadment made an attempt to take the Court through various provisions and methods of amendments etc. for suggesting that in fact no amendment has been made and even otherwise, the amendment is inoperative in the eyes of law.

16. Sri S.P. Gupta, Senior Advocate in rejoinder submits that the client of Sri Shailendra is neither a necessary nor a proper party to the present petition and, therefore, submissions made by Sri Shailendra may not be taken note of by this Court.

17. Having heard the learned counsel for the parties and having examined the records of the present petition, we find that the UGC Regulation of 2010 had been adopted by HIT, Allahabad and further that extension has been granted in favour of Dr. Tiwari after expiry of his original term of 5 years in December 2012, is with reference to the UGC Regulation of 2010 as adopted by the HIT, Allahabad Society.

18. The only issue before this Court is as to whether the word "earlier" in Clause 6.2(ii) of UGC Regulation 2010 has been substituted by the word "later" by any valid amendment in the relevant bye-laws and whether it is in fact operative in the eyes of law or not.

19. There is absolutely no material on record before this Court to support that the amendment, which is stated to have been made in the meeting of the Board of Governors of HIT, Allahabad dated 15.10.2011 for substitution of word "later" by the word "earlier" in Clause 6.2(ii) proviso of the UGC Regulation 2010, had ever been approved by the Commission. At least there is no such pleading in the

present petition.

20. On the contrary, on record is the letter of the University Grants Commission dated 29.7.2013 (reference page 213 of the paper book) categorically stating that amendments as suggested are not being approved by the UGC. A specific direction has been issued to replace the word "later" with the word "earlier" in Clause 13.1(ii) in the amendments proposed. Rule 25 of the UGC Regulation 2010 specifically provides that no alteration, amendment or addition shall be made in the rules and bye laws governing the functioning of an institution which is deemed to be university if they are in conflict with or to the detriment of the provisions of these regulations and further that no amendments, alterations and addition to the rules shall be given effect to without prior approval of the commission. Rule 25 of the UGC Regulation 2010 reads as follows:

Alteration, Amendments, and Additions to the rules governing the functioning of the institution deemed to be university.

No Rule and Bye law governing the functioning of the institution deemed to be university may be altered, amended and added to by the Board of Management or such other competent body to the effect that it is in conflict with or to the detriment of the provisions of these Regulations; and, no alteration, amendment or addition to the Rules and bye laws shall be given effect to without the prior approval of the Commission in accordance with the provision of the Societies Registration Act, 1860, or the relevant Public Trust Act as in force for the time being.

21. It is admitted on record that the substitution of word "earlier" by the word "later" is in conflict with the provisions of the UGC Regulation 2010 and further that the amendment/alteration has been made without the prior approval of the Commission. In view of the specific language of Rule 25 of the UGC Regulation 2010 quoted above such alterations/amendments are not only illegal but even otherwise, cannot be given effect to for want of prior approval of the Commission.

22. Even assuming for the sake of argument that the word "earlier" has been substituted by word "later" as suggested by the counsel for the petitioner, we find that in that circumstance the clause would lead to absurd results, which can be demonstrated by one simple example namely,

23. Mr. X, who after completing his term of 5 years as Director is issued an order for extension under Clause 13.1(ii) and within a period of 2 months of such extension, a regularly selected candidate is appointed on the post of Director then the word "later" would suggest that Mr. X, who has been granted extension, would continue for a period of 6 months irrespective of the appointment of regular Director, the period of 2 months as the period of 6 months would be later in that point of time vis-à-vis the date of appointment of the regular Director.

24. In view of the aforesaid, we have no hesitation to record that Dr. M.D. Tiwari on completing 5 years and thereafter 6 months of extended period, has no right

to continue any further as Director of HIT, Allahabad. The order of the Chancellor requiring Dr. Tiwari to step-down and hand over the charge to the senior most Dean of HIT, Allahabad needs no interference under Article 226 of the Constitution of India.

25. The writ petition is dismissed. Interim order, if any, stands discharged. Petitioner shall hand over charge of the Office of the Director, HIT, Allahabad as aforesaid henceforth.