

(2018) 05 RAJ CK 0163

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 651 of 2018

Dr. Niranjana Narayan Singh @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 18-05-2018

Acts Referred:

University was established under Bhupal Nobles' University Act, 2015 — Section 18, 18(1)
Rajasthan High Court Rules, 1952 — Rule 134
Constitution of India, 1950 — Article 225, 226

Citation : (2018) 05 RAJ CK 0163

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : Kuldeep Mathur, Sandeep Shah

Final Decision : Allowed

Judgement

G.K. Vyas, J.

Â The instant special appeal has been filed by the Â appellant/writ-petitioner under Rule 134 of the Rajasthan High Court Rules and under Article 225 of the Constitution of India assailing the judgment/order dated 07th of March 2018 passed

by learned Single Judge in SBCWP No.7416/2017, whereby the learned Single Judge dismissed the writ petition filed by the writpetitioner.

Â Succinctly stated, the facts of the case are that the respondent University was established under Bhupal Nobles? University Act, 2015 (for brevity, hereinafter referred to as â??Act?). The appellant/writ-petitioner came to be appointed as

Registrar by the Chairperson of the respondent- Bhupal Nobles University Udaipur (for brevity, hereinafter referred to as â??University?) in exercise of power conferred under Section 18 (1) of the said Act on 24.04.2016 in the pay scale of

Rs.37,400-67,000 with AGP of Rs.10,000/- plus allowances as per University

Rules per month w.e.f. from the date he assumes the charge of Registrar. The appellant/writ petition assumed the charge on 27.04.2016 as Registrar of the respondent University and discharged his duties with sincerity and dedication.Â

Â According to appellant/writ-petitioner in the second meeting of the Board of Management, held onÂ 30.05.2016, Resolution No.2 was passed, whereby appointment of the appellant/writpetitioner was confirmed, which is placed on record as

Annex.3 to the writ petition. The appellant is possessing qualification of M.A. Archeology from Rajasthan Vidhyapeeth, Udaipur, Ph. D. in History and LL. B from M.L.S. University, Udaipur, and having total experience of fifteen years in administrative side in various institutions including Bhupal Noble Sansthan.Â

Â On 08.06.2017, an advertisement came to be issued by the respondent University which was published in daily newspaper viz. Rajasthan Patrika, whereby applications were invited for the post of Registrar in the respondent University. In

the notice, it was inter-alia stated that candidates must possess the requisite the qualification and also fulfill the norms of University Grants Commission (UGC) for the post of Registrar may apply for the said post. The appellant/writ petitioner

immediately after having come to know about the advertisement, met the Chairman and requested him that he is already serving on the post of Registrar and his services have been confirmed, thus publication of the advertisement is not

justified. On 07.06.2017 an information was published by the chairperson that if the selection process will not be completed and interviews will not be held on 22.06.2017, then he (chairperson) will assume the charge of Registrar.Â

Â The appellant/writ-petitioner preferred writ petition before the Single Bench against the advertisement (Annex.4) issued on 08.06.2017 inviting applications for recruitment on the post of Registrar as he was already appointed and confirmed

by the respondent University.Â

While issuing notice on 24.07.2017, the learned Single Judge passed an interim order for maintaining of status quo for appointment to the post of Registrar, Bhupal Nobles? University, Udaipur and thereafter upon filing application under Article

226 (3) of the Constitution of India, the said order was modified vide order dated 14.12.2017 by the learned Single Judge and it was clarified that till the next date of hearing the respondent shall not proceed further with selection for the post of

Registrar in pursuance to the advertisement dated 08.06.2017, but it was made

clear that the respondent University would be free to pass appropriate orders. During pendency of the writ petition, a communication was sent by the respondent

University on 19.01.2018 communicating to the writ-petitioner that you himself shown your inability to work on the post of Registrar and that you are not possessing the required qualification, therefore, you are hereby informed that your

services have been dispensed with, which was orally informed to you in past.Â

The respondent University filed its reply and in paragraph 4 of the reply it is stated that the appellant/writ-petitioner was appointed on 27.04.2016 as Registrar on temporary arrangement and thereafter he was reappointed on 12.05.2017,

however, the appointment of the appellant/writ petition is not outcome of regular selection, his appointment was temporary arrangement; and writ-petitioner is not fulfilling the qualification and norms as laid by the UGC, therefore, not applied

for the said post. Thus, his services were dispensed with. It is also stated in the reply that on 07/08.06.2017, applications were invited for the post of Registrar of the respondent University while exercising power under Section 18 of the Act.

The main ground in the reply filed by the respondent University is that the appointment of the appellant/writ-petitioner was purely on temporary basis, therefore, no right is created in favour of appellant/writ-petitioner. It is also submitted that

the appellant went on leave w.e.f. 19.06.2017 till 22.06.2017 and thereafter on 23.06.2017, he had verbally informed the respondent No.3 that he would not be able to undertake the duties because the University has undertaken the interview in

pursuance of the advertisement, in which the he (appellant) did not apply. The crux of the reply of the respondent University is that the appointment of the appellant on the post of Registrar was not in consonance with law, therefore,

appellant/writ petitioner cannot claim continuance in the service on the post of Registrar because the respondent University is required to follow the rules and regulations and provisions of the Act for appointment on the post of Registrar,

therefore, vacancy was advertised, and it was specifically mentioned that the candidate must have possess the qualification as per norms of the UGC. According to respondent the appellant/writ petitioner is not possessing the qualification as

per UGC norms, therefore, he is not entitled for any relief sought for in the writ petition.

A rejoinder was filed by the writ-petitioner wherein it was categorically stated

that he was possessing the qualification for the post of Registrar, and thereafter after his appointment, his services were confirmed by the University itself,

therefore, it cannot be said that he is not entitled to remain as Registrar of the University. It is also stated in the rejoinder that the University had framed Statutes and sent the same for approval to the State Government, however, the approval

has not been granted by the State. It is, however, directed by the State Government that only person with requisite qualification as UGC guidelines/norms may be appointed as Registrar but this fact is not correct because the University is

created under the Statutes and all the regular appointments under the Act, are required to be made as per the Statutes. The appellant was initially appointed temporarily and subsequently confirmed vide Resolution dated 30.05.2016, therefore,

there is no question to re-advertise the vacancy of Registrar.Â Â

After hearing learned counsel for both the parties, the learned Single Judge dismissed the writ petition and held that the appellant/writ-petitioner's services have been terminated during pendency of this writ petition on 19.01.2018, therefore, he

will be entitled for his claim up till 19.01.2018 for which he will be free to initiate proceedings in accordance with law and further held that the action of the respondent in initiating proceedings for appointment of Registrar fulfilling the electricity

in accordance with UGC norms, does not require any interference by the court except the claim of the petitioner for benefit up to 19.01.2018. The writ petition was dismissed vide impugned order dated 17.03.2018.

First of all it is required to be observed that as per respondents, the advertisement in question has already been withdrawn by the respondent University and no selection as such took place in pursuance of the said advertisement. However,

learned counsel for the appellant/writ-petitioner vehemently argued that the respondent University is established under the Act known as 'Bhupal Nobles' University Act, 2015' promulgated by the State legislature. While inviting attention

towards Section 18 of the Act, it is stated that there is provision for regular appointment on the post of Registrar and the Registrar shall be appointed by the Chairperson in such a manner as may be prescribed by the Statutes of the University.

Admittedly, as per respondent's case, the draft Statutes were prepared and were

sent to the State Government, but still the State Government has not approved those Statutes, because a Committee has been constituted for the said purpose.

However, the State Govt. permitted the University to make recruitment as per UGC norms and this information was given by the State to the University vide Annex.3 on 30.05.2017. Meaning thereby, still the Statutes of the University has not

been approved and the respondent University is not disputing the fact that the appellant/writ-petitioner was appointed vide order dated 27.04.2016 by the Chairperson vide order Annex.2. It is also not disputed that the Board of Management in

its meeting dated 30.05.2016 took a decision vide Resolution No.2 as to confirm Dr. Mahendra Singh Rathore, as the President and Dr. Niranjan Narayan Singh as Registrar of Bhupal Nobles University Udaipur. Therefore, even if it is

presumed that after establishment of the University the recruitment was to be made as per the Statutes, there was power left with the Chairperson after establishment of the University to make appointment on the post of Registrar to run the

University, therefore, the appointment order was issued on 27.04.2016 while considering the qualification of the appellant/writ-petitioner.Â

The learned Single Judge observed that on the date of filing the writ petition, the writ-petitioner was in service and working on the post of Registrar and after taking note of the fact that during pendency of the writ petition, his services were

dispensed with on 19.01.2018. Although there was an interim order passed by the Single Bench for maintaining the status quo on 24.04.2017, which was subsequently modified on 14.12.2017 to maintain status quo, but flouting both the orders, it

was communicated by the respondent University through Chairperson vide letter dated 19.01.2018 that the services of the petitioners have been terminated by verbal order and to you in past.Â

Learned counsel for the appellant vehemently argued that it is a case in which the present respondent University gave complete goby to the Rules and Regulations and settled principles of law and without providing an opportunity of hearing or

giving any notice, the services of the employee cannot be dispensed with. It is also submitted that as per Section 18 of the Act, the appointment on the post of Registrar is required to be made as per in such manner as may be prescribed by the

Statutes and admittedly the Statutes are not approved till today, therefore, it was not open for the respondent University to complete goby to Section 18, in

which mode of appointment is provided for the post of Registrar.Â

According to learned counsel for the appellant/writ-petitioner the learned Single Judge has committed grave error in dismissing the writ petition filed by the petitioner/appellant against the action of the respondent University for initiation of

process for selection on the post of Registrar. Therefore, the judgment impugned may kindly be quashed.Â

Per contra, learned counsel for the respondent submits that though the respondent- University is established under the Act, promulgated by the State legislature but appointments are to be made in accordance with law. As per learned counsel

for the respondent, the appellant/writ-petitioner was appointed on urgent temporary basis as a stopgap arrangement, that too at the time of establishment of the University and that the appointment order dated 27.04.2016 cannot be termed as

appointment on

substantive basis because as per the Statutes of the University, the regular appointment was to be made in the manner as prescribed in the Statutes. Therefore, it cannot be said that the appointment of the appellant/writ-petitioner was in

consonance with law. It is further argued that the appellant/writ-petitioner himself left the services and specifically shown his disability to perform the duties of Registrar and went on leave, therefore, the learned Single Judge while taking into

consideration the entire facts of the case held that the appellant/writ-petitioner is not entitled for any relief because as per directions of the State Govt. the appointments were to be made as per UGC norms, which is evident from Annex.R/3/3,

which is a communication dated 30.05.2017 sent by the Joint Secretary of the Higher Education Department (Group-4) of the Govt. of Rajasthan.Â

Learned counsel for the respondents vehemently argued that it is a case in which the learned Single Judge has considered each and every aspect of the matter so as to decide the controversy for appointment on the post of Registrar, therefore,

the instant special appeal may kindly be dismissed.Â

After hearing the learned counsel for the parties, it emerges from the facts that the University was established under the Act framed by the State legislature. It is also admitted position of the case that the appellant/writ-petitioner was

appointed vide order dated 24.04.2016 (Annex.2) in the pay scale of

perusal of Annex.3 (Resolution), it is nowhere stated that the appointment was temporary in nature or stopgap arrangement. Neither the appointment order speaks that the appointment was on temporary or on ad hoc basis, nor the resolution

for confirmation of the writpetitioner on the post of Registrar is disputed. Meaning thereby at the time of appointment, there was no dispute about qualification of the appellant/writ-petitioner, therefore, he was appointed and his services were

confirmed by resolution (Annex.3) dated 30.05.2016 by the Board of Management.Â

We have perused Section 18 of the Act, which provides for appointment on the post of Registrar. The Section 18 of the Act reads as infra: -

â??18. The Registrar: (1) The Registrar shall be appointed by the Chairperson, in such manner as may be prescribed by the Statutes.

(2)Â Â Â Â Â Â All contracts shall be signed and all documents and records shall be authenticated by the Registrar on behalf of the University.

(3)Â Â Â Â Â Â The Registrar shall be the Member-Secretary of the Board of Management and Academic Council but he shall not have a right to vote.

(4)Â Â Â Â Â Â The Registrar shall exercise such other powers and perform such other duties as may be prescribed by the Statutes.â??

From a bare perusal of Section 18 of the Act, it is obvious that there was power left with the Chairperson to appoint Registrar but only rider is that in such manner as may be prescribed by the Statutes, therefore, it can be presumed that first

appointment was made to run University while exercising power conferred u/s 18 of the Act by the Chairperson, but at the same time, we cannot lose sight of the fact that for regular appointment, Statutes were to be followed and admittedly

the draft of Statutes sent by the respondent University to the State Government as per provisions of the Act for approval has not been granted by the State Government. However, information was sent to the University by State Government

that a Committee has been constituted for approval of the Statutes and till finalization of the

Statutes, the University may proceed with appointment as per UGC norms/regulations. Meaning thereby once the appellant/writpetitioner was appointed by the Chairperson, as per Section 18 of the Act and allowed to work as Registrar till

regular selection takes place in accordance with Statutes as per the provisions of Section 18 of the Act. There was no occasion for the University to proceed with

initiation of process of selection before formation/approval of the Statutes by the State as per mandatory provision under Section 18 of the Act, but the selection process was initiated for recruitment on the post of Registrar contrary to the provisions of the Act. It is very strange that without any formal order or providing

of opportunity of hearing to the writ-petitioner, his services were dispensed with by verbal order, and communicated to him vide communication dated 19.01.2018 by the Chairperson of Bhupal Nobles University Udaipur. In our opinion, every

University is under obligation to follow provisions of the Act for the purpose of recruitment and admittedly in this case, till today no selection on the post of Registrar has been made as per the Statutes of the University because the Statutes has

not been not approved/finalized by the State Government.

We are unable to accept the contention of the learned counsel for the respondent University that the University had initiated the process of selection as per UGC norms in pursuance of communication dated 30.05.2017 (Annex.R/3/3) because

as per provisions of Act, recruitment of the post of Registrar is to be made as per the Statutes of the University, which is not approved/finalized till today. Admittedly, without providing opportunity of hearing during pendency of the writ petition

by verbal order, the services of the appellant/writ-petitioner was dispensed with and information was given to the petitioner vide communication dated 19.01.2018 (Annex.A/1). The communication dated 19.01.2018 filed along with 2nd stay

application, reads as under: -

â??No.BNU/C/207-18/3752 Â Dated 19.1.2018 vksj ls xq.koUr flag >kyk pS;jilZu Hkwiky ukscYl foâ??ofo|ky;]mn;iqj okLrsÂ

MkW- fujatu ukjk;.k flag] [kkSM+ gkml] 4 ch] fâ??kokth uxj] mn;iqj jktLFkkuAÂ Â vkidks mDr iathd`r lwpuk i= }kjk fuEukuqlkj lwfpr fd;k tkrk gS fdÂ

&;g fdvki Hkwiky ukscYl foâ??ofo|ky; easvxys vknsâ?k rd jftLVÂ^akj dk dk;Z dj jgs Fks mDr dk;Z iw.kZr;k vLFkbbZ Fkk rFkk LFkbbZ vkSj lqpk: O;oLFkk gksus rd vkidks mDr in ij dk;Z djuk Fkka vkus fnukad 2206-2017 ls foâ??ofo|ky; eas

jftLVÂ^akj ds in ij dk;Z djus es bl vk/kkj ij vleFkZrk trk nh Fkh fd vki bl in gsrq fu/kkZfjr ;ksX;rk,a ugha j[krs gSA

& ;g fd jktLFkku ljdkj }kjk fnukad 30-05-2017 dks izsfâ??kr i= Ã?ekad i-3 Â¼23Â½ fâ?k{kk&4@2011 ikVZ fnuakd 30-05-2017 ds vuqlkj Hkwiky ukscYl foâ??ofo|ky; dks bl ckcr funsZfâ??kr fd;k x;k fd futh foâ??ofo|+ky;kas ds fy, Common

Status ykxw gksus rd foâ?ofok; dks Hkwiky ukscYl foâ?ofok; vf/kfu;e 2015 ds izko/kkukas o fu;qfDr;kas ls IEcfU/kr ;wthlh jsxqysâ?ku ds izko/kkukas ds vuqlkj fofHkUu inkas ij fu;qfDr;ka djuh gSA foâ?ofok; ,oa ;wthlh }kjk fu/kkZfjr

jftLVÂ^{akj} gsrq U;wure ;ksX;rk dks vki iwjk ugha djrs gS ftldh tkudkjh vki}kjk Lo;a dks Hkh Hkyh&Hkkaarh gS blh dkj.k vkus foâ?ofok; }kjk ekaxs tkus ij dksbZ vkosnu jftLVÂ^{akj} gsrq ugha fd;k] blh dkj.k foâ?ofok; vkidh Isok,a tkjh j[kus

eas dkuwuh :i ls l{ke ugha gSA

& ;g fd foâ?ofok; }kjk fnukad 08-06-2017 dks jktLFkku if=dk esa foKkiu izdkfâ? kr dj foâ?ofok; eas jftLVÂ^{akj} in gsrq fu/kkZfjr ;ksX;rk j[kus okys vH;kfFkZ;kas ls vkosnu vkeaf=r fd;s x;s gS ftleas vki }kjk fu/kkZfjr U;wure ;ksX;rk iwjk

ughâ gksus ds dkj.k dksbZ vkosnu isâ?k ugha fd;kA foâ?ofok; us izkIr vkosnuksa esa ls ;ksX; vH;kfFkZ;kas ds fnukad 2206-2017 dks lk{kRdkj vk;ksftr dj Short Listed vH;kfFkZ;kas dh lwph cukdj mls desVh InL;kas dh mifLFkfr eas

fyQkQs eas flycUn dj fn;k x;kA

& ;g fd vki }kjk fu/kkZfjr ;ksX;rk ugha gksus ds dkj.k vLFkbbZ jftLVÂ^{akj} dk in LosfPNd ,oa ekSf[kd :i ls NksM+ fn;k fti ij foâ?ofok; us izks- j?kqohj flag pkSgku] Mhu ih-th- LVsfMt dks jftLVÂ^{akj} dk vfrfjDr dk;ZHkkj fnukad 24-06-2017

dks lqiqnZ fd;k rc ls izks* j?kqohj flag pkSgku jftLVÂ^{akj} ds :i eas foâ?ofok; ds dk;Z dk lapkyu dj jgs gSA bl IEcu/k eas foLr`r lwpuk vkidks fnukad 08-08-2017 dks izsfâ?kr i= }kjk nh tk pdw gSA

& fdvki jftLVÂ^{akj} ds in gsrq U;wure;ksX;rkvkas dh ikyuk ugha djrs gS ,oa UGC Regulations ds vuqlkj flQZ ;ksX;rk /kkjd O;fDr gh jftLVÂ^{akj} ds in ij dk;Z dj ldrk gS vr% fnukad 19-01-2018 ls vkidh Isok,a foâ?ofok; ls lekIr dh tkrh gSA bl

IEcu/k eas iwoZ eas Hkh vkidks ekSf[kd :i ls lwfpr dj fn;k x;k Fkka Â Â fygktk bl iaftd`r lwpuk i= }kjk vkidh Isok,a lekIr djus ds ckjs eas lwfpr fd;k tk jgk gSA d`Ik;k bl IEcu/k eas vkxs i= O;ogkj ugha djsA

Sd/- Chairperson

Bhupal Nobleâ??s University

Udaipur (Raj.)â??

It is very important to observe that in the aforesaid letter it is stated that the Chairperson of the respondent University observed that the writ-petitioner is not possessing the requisite qualification as per UGC norms and regulations, whereas on

27.05.2017, the Chairperson (Mr. Gunwant Singh Jhala) himself got published a press-release that Dr. Niranjana Narayan Singh (appellant) was appointed on the

post of Registrar in accordance with Bhupal Noble's University Act, 2015 and he is having experience and also possessing the qualification for the post of Registrar. This press-release is placed on record as Annex.A/2 filed along with rejoinder to reply, in which following press-release was made by the Chairperson (Mr.

Gunwant Singh Jhala), which reads as under: -

â??

[illegible][illegible]

izsl foKfIr

Â Hkwiky ukscYl foâ?ofok|ky; ds jftLVÂakj ds in MkW- fujatu ukjk;.k flag dh fu;qfDr Hkwiky ukscYl foâ?ofok|ky; vf/kfu;e] 2015 dsvuqlkjgh dh xbZ gSA MkW- fujatu ukjk;.kflag jkBkSM+] vuqHkkoh ,oa jftLVÂakj in dh iw.kZ ;ksX;rk j[krs

qSA

Â fnukad 27-5-2017 dks mn;iqj laLdj.k eas Hkwiky ukscYl foâ??ofo|ky; ds IECU/k
eas izdkfâ??kr lekpkj dk eSa [kaMu djrk qawA

Â Hkwiky ukscYl foâ?ofolky; ds eq[; }kj ij fd;k tk jgk /kukZ iznâ?kZu vâ?
kksHkuh; gSA bl le; foâ?ofolky; dh izosâ?k izfÃ?;k izkjEHk gks xbZ gS ,oa f}rh;
lsesLVj dh ijh{kk,a Hkh vk;ksftr dh tk jgh gSAÂ vr% vkils vugjks/k gS fd Hkfoâ??;

eas dksbZ [kcj izdkfâ??kr djus ls igys lEcU/kr i{kukas ls ppkZ djus dk dâ??V
djkosA

Â /kU:oknA

Hkonh;

 $S_d / -\hat{A}$

Â¼xq.koUr flag >kykÂ½ pS;jilZuâ??

Upon consideration of entire material available on record, we have no hesitation to hold that the respondent University has acted completely in contravention of provisions of the Act, so also, their action to dispense with the services of the writ-

petitioner is contrary to the basic principle of law because the respondent University is not disputing the fact that the appellant was appointed on the post of Registrar by the competent authority; and subsequently a resolution was passed to

confirm his services on the said post. Even if the contention of the respondent University is accepted that the appellant/writ-petitioner was appointed on urgent temporary basis so as to run the University, then also, it was not open for the

respondent University to dispense with his services in illegal manner by verbal order because the post of Registrar is very important post in the University and for regular appointment, the provisions of Section 18 of the Act were to be

followed.Â

It is also worthwhile to observe that once the resolution was passed by the respondent University for confirmation of services of the appellant/writ-petitioner by the Board of Management, then decision for regular appointment and to dispense

with his services was to be taken by the Board of Management only. It emerges from the facts that without any decision of the competent authority or taking resolution, the services of the appellant/writpetitioner were dispensed with and post

was advertized without finalization of the Statutes by the State Government. It is settled principles of law that provisions of the Act for recruitment is required to be followed strictly but here in this case, for regular appointment there is

provision that appointment should be made as per Statutes, then obviously it was not open for the respondent University to issue advertisement for appointment on the post of Registrar. On the one hand the respondents in the communication

dated 19.01.2018 observed that the writ-petitioner is not possessing the qualification for the post of Registrar, whereas before the said communication, a press-release was issued by the Chairperson of the respondent University (Mr. Gunwant

Singh Jhala) vide Annex.A/2 filed along with rejoinder, and accepted that the writ-petitioner is possessing the qualification for the post of Registrar as per provisions of the Act and is most experience person. Once the appellant/writ-petitioner

was provided appointment on the post of Registrar by the competent authority of the University, then the University was under obligation to allow him to work till regularly selected candidates are recruited. In this case, the case of the

appellant/writ-petitioner is on better footings, inasmuch as after taking into consideration the first appointment, a resolution was passed by the Board of Management of the respondent University on 30.05.2016 and the services of the writ-

petitioner were confirmed on the post of Registrar, and thereafter there is no resolution so as to withdraw the earlier resolution whereby the services of the

appellant were confirmed. Therefore, it is a case in which the respondent University

has given complete go-by the provisions of the Act and the principles of natural justice.Â

In view of above, the instant special appeal is allowed, the order dated 07th of March 2018 passed by learned Single Judge is hereby quashed and set aside. The communication dated 19.01.2018 communicated to the appellant/writ-petitioner

informing him that his services have been dispensed with, is also quashed and the respondent-University is directed to reinstate the appellant/writ-petitioner forthwith with all consequential benefits. However, if respondent-University is still desirous to make regular selection on the post of Registrar, then the respondent University will be at liberty to make selection after approval of the Statutes by the State Government.Â Â Â