

(1967) 04 MP CK 0001

In the Madhya Pradesh High Court

Case No : M. P. No. 133 of 1967

Dr. Shanker Dayal Chourishi, Principal, Dhamtari Science,
Arts and Commerce College, Dhamtari

APPELLANT

Vs

Administrator, Municipal Council, Dhamtari and another

RESPONDENT

Date of Decision : 25-04-1967

Acts Referred:

Ravishankar University Act, 1963 — Section 4(7)

Citation : (1970) JLJ 329 : (1970) MPLJ 300

Hon'ble Judges : S. P. Bhargava, J;R. J. Bhave, J

Bench : Division Bench

**Advocate : M. Adhikari, for the Appellant; J. V. Jakatdar, for Respondents No. 1,
Y. S. Dharmadhikari for Respondents No. 2, for the Respondent**

Final Decision : Dismissed

Judgement

R.L. Bhave, J.

The petitioner was appointed as a Principal of the Science, Arts and Commerce College, Dhamtari, run by the Municipal Council, Dhamtari, by the Administrator of the Council {respondent No. 1) by his order dated 1st September 1966. The appointment of the petitioner, to start with, was until the close of the College Session, that is, 30-4-1967, and was temporary. The other terms and conditions of the appointment were:

(1) His appointment will be temporary subject to the approval of the State Government until the close of the college session i. e. 30-4-1967.

(2) He will be considered for probation thereafter.

(3) He will be given two advance increments as he is Ph. D. and his basic pay will be fixed at Rs. 610 P. M.

(4) His services are liable to termination without assigning any cause with one month's previous notice.

(5) He will have to give one month's notice to the Council in case he wishes to relinquish his appointment at any time after he joins his duties.

The first respondent served on the petitioner a notice dated 5th December 1966 (Annexure D) by which in accordance with the terms of the appointment (clause 4) the services of the petitioner were terminated with a month's notice. This notice was, however, not acted upon and a fresh notice dated 7th March 1967 (Annexure G) was served by the first respondent on the petitioner by which he was informed that his services were terminated as no longer required with effect from the fore-noon of 1st April 1967. By this petition under Article 226 of the Constitution, the petitioner seeks a writ of certiorari for quashing the notice dated 7th March 1967 issued by the first respondent. The petitioner also seeks a writ of mandamus commanding the respondents to restrain from giving effect, to the notice dated 7th March 1967 in any manner whatsoever.

The petitioner holds a Degree of Doctor of Philosophy (Ph. D.) in Hindi. It, however, appears that he had passed his B. A. and M. A. Examinations in Third Division. The Dhamtari College is affiliated to the Ravishankar University, Raipur. The Administrator informed the University Authorities about the selection and appointment of the petitioner as a Principal and sought approval of the University. The Executive Council of the University, however, did not approve the appointment of the petitioner on the grounds that the petitioner had not the requisite experience of 7 years' teaching of Degree Classes and that he did not possess the Master's Degree in Second Division. It appears that the Administrator sought recognition of the appointment at least for a temporary period, that is, upto the end of the session. The Executive Council of the University did not accede to this request as well. [See Annexures B and C]. In these circumstances, the notice dated 5th December 1966 was issued by the first respondent. It further appears that the petitioner took initiative in the matter and filed representations against the decision of the Executive-Council before the Vice-Chancellor and the Chancellor of the University, and that appears to be the reason why the notice dated 5th December 1966 was not enforced by the first respondent. It appears that the representations sent by the petitioner were not forwarded to the Vice-Chancellor and the Chancellor for their consideration but they were put up before the Executive Council on 3rd January 1967 and the Executive Council expressed its inability to sanction approval to the appointment of the petitioner and the petitioner was accordingly informed by Memo dated 16th January 1967. After this it appears that the College Authorities took steps to invite fresh applications and after making a selection of another Principal served the notice dated 7th March 1967 on the petitioner which is under challenge before us.

Shri Adhikari, learned counsel for the petitioner, urged before us that though under the terms of the order of appointment the appointment of the petitioner was temporary and was terminable by one month's notice, the action taken by the Administrator was not voluntary but the Administrator was coerced into

taking that action because of the unwarranted and illegal decision of the University Authorities. Shri Adhikari also urged that, in any case, the petitioner was entitled to continue upto 30th April 1967 and clause (4) could come into operation only after that date. It was also urged that the impugned notice was invalid inasmuch as it was not of the duration of one month.

Shri Jakatdar, learned counsel for the first respondent, urged that the petition under Article 220 of the Constitution was not tenable inasmuch as no breach of any statute or rules was committed by the Administrator in issuing the notice; at best, it was a breach of the contract, and no relief could be sought in these proceedings. Shri Jakatdar also urged that it was wrong to say that the Administrator was coerced into issuing the notice because of illegal decision of the University Authorities. Shri Dharmadhikari, learned counsel for the University, urged that the Executive Council acted within its authority and that the petitioner was not entitled to any relief.

Under section 4 (7) of the Ravishankar University Act, 1963, the University has power to admit to its privileges colleges not maintained by the University and to withdraw all or any of those privileges in the manner prescribed in the Statutes or Ordinances. Under clause (10) of that section the University has power to recognise teachers as qualified to give instructions in colleges. u/s 2 the definition clause), a "Principal" is defined to mean "the head of a college" while "Professors, Readers and Assistant Professors" are defined to mean "teachers of the University who have been appointed or recognised by the Executive Council as Professors, Readers and Assistant Professors respectively". "Teachers of the University" include all persons who, with the approval of the Academic Council, impart instructions or guide research in the University or in any college. Shri Adhikari, therefore, urged that there is a clear distinction between a "Principal" on the one hand and Professors, Readers and Assistant Professors" and "Teachers" on the other. The "Principal" is merely the head of the college and he need not be a teacher. He, therefore, urged that no power has been conferred on the University to recognise a Principal or give approval to his appointment and that the power under clause (10) of section 4 is only confined to giving recognition to teachers as qualified to give instructions in colleges. Shri Adhikari, therefore, urged that the Administrator was in error in asking for approval of the appointment of the Principal from the University Authorities and that the University Authorities were equally in error in usurping that jurisdiction. It is no doubt true that theoretically a Principal may be only an administrative head of the college and may have nothing to do with imparting instructions. It does not, however, appear that the petitioner was appointed as an administrative head only. This is dear from his application in which he has clearly stated that he has not only obtained his Ph. D. in Hindi but that he is also doing his D. Litt. in that subject. He has also stated that he has 18 years" teaching experience and has administrative experience of Degree Colleges for six years. The advertisement inviting applications in response to which the petitioner submitted his application (Annexure R-1) is not on record. But it is difficult to assume that the petitioner

was appointed merely as an administrative head and was not to impart any instructions. Apart from this, we are of the view that though a "Principal" has been defined separately as "the head of a college", it does not follow from the provision that the Principal is also not a teacher imparting instructions. We are, therefore, not inclined to agree with Shri Adhikari that the University Authorities had no power to grant or withhold recognition to the appointment of a Principal on the ground that he did not satisfy the requisite standards.

Shri Adhikari further urged that even on the assumption that a Principal is also responsible for imparting instructions, the Executive Council was not justified in refusing approval to the appointment of the petitioner as a Principal. Shri Adhikari drew our attention to Additional Statute No. 2 which prescribes the qualifications of teachers in colleges. It prescribes the qualifications of Professors, Readers, Assistant Professors and Lecturers. In the case of Professors, Readers and Assistant Professors, a first class Master's degree in the subject in which he is to be appointed, with varied periods of experience, is prescribed as the minimum qualification; while in the case of a Lecturer, the minimum qualification is a second class Master's degree; but a person holding a third class Master's degree with a good previous academic career and Ph. D. may be appointed as a Lecturer with the approval of the Academic Council. In this Additional Statute the Principal nowhere figures, that is to say, the statute does not prescribe whether he should have the qualifications of a Professor or a Reader or an Assistant Professor or a Lecturer. Statute No. 22, clause (1), authorises the Executive Council to admit to the privileges of the University colleges and other institutions subject to the provisions of the Act and other Conditions laid down in the statute. Clause (3) of that statute provides that the appointment of the Principal and other members of the teaching staff shall be made after advertisement. Sub-clause (ii) further provides that the Principal of a college should possess the qualification and be in receipt of salary not lower than that laid down by the State Government for Principals of the Government Colleges or corresponding status, and sub-clause (iii) provides that the appointment of the Principal in such college shall be made by the Governing Body of a college after the approval of the Executive Council is obtained. This is the only provision which prescribes the qualifications of the Principal and confers authority on the Executive Council to accord approval to such an appointment. But here again the reference is made to the qualifications prescribed by the State Government for appointment of Principals of the Government colleges. What these qualifications are, is not made clear anywhere in the Act or the Statutes; nor was it brought to our notice by the respondents. Under the circumstances, Shri Adhikari urged that the decision of the Executive Council of not recognising the appointment of the petitioner for the reason that he had not seven years' teaching experience of Degree Classes or that he did not possess the Master's Degree in Second Division was arbitrary and without any justification whatsoever.

Shri Dharmadhikari, learned counsel for the second respondent, drew our attention to the Resolution dated 1st August 1966 of the Academic Council and

the Resolution dated 7th September 1966 of the Executive Council wherein the minimum qualifications for the appointment of a Principal were prescribed. From those resolutions it appears that the minimum qualification prescribed is 7 years' experience of teaching in Degree Colleges and a Master Degree at least, in Second Division. It is on the basis of these resolutions it appears that the Executive Council refused to accord approval to the appointment of the petitioner. Shri Adhikari, however, pointed out that in view of Statute No. 22 that the qualifications of the Principal should be those of the Principals of the Government Colleges, no resolutions contrary to the statute could have been passed either by the Academic Council or by the Executive Council of the University and that the resolutions are ultra vires of their powers. The Executive Council was not, therefore, entitled to withhold recognition. In our opinion, the contention of Shri Adhikari must be accepted. Shri Adhikari also made a grievance that the Executive Council had no authority to dispose of the representations made by the petitioner to the Vice-Chancellor and the Chancellor and the action of the Executive Council in rejecting the representations was without jurisdiction. Under clause (3) of section 11 of the University Act, the Chancellor is authorised to annul any proceedings of any officer or authority of the University which is not in conformity with the Act, the Statutes, the Ordinances or the Regulations. The Chancellor, therefore, had the obvious jurisdiction of annulling the resolution passed by the Executive Council by which approval to the appointment of the petitioner was refused, as that decision was based on the resolutions which were ultra vires of the statute. Similarly, under clause (2) of section 15, the Vice-Chancellor is duty bound to ensure that the Act, the Statutes, the Regulations and the Ordinances are faithfully observed and he has been conferred with all the powers to ensure this compliance. The representations of the petitioners should have, therefore, been transmitted to the Vice-Chancellor and the Chancellor and the Executive Council had no jurisdiction to withhold the representations. In rejecting the representations the Executive Council clearly acted without jurisdiction. We have, therefore, reached the conclusion that the Executive Council was not justified in refusing to accord approval to the appointment of the petitioner as a Principal on the grounds on which the approval was refused. The Executive Council was also in error in disposing of the representations sent by the petitioner to the Chancellor and the Vice-Chancellor of the University. In our view, the Executive Council had no jurisdiction to dispose of the representations and that they should have been transmitted to the Chancellor and the Vice-Chancellor of the University for appropriate action,

In the view we have taken it is not necessary for us to decide as to whether the provision in sub-clause (iii) of clause (3) of Statute No. 22, which provides that the appointment of the Principal shall be made by the Governing Body of the College after the approval of the Executive Council is obtained, is mandatory or directory. We are, however, of the view that the provision is mandatory. Justice Subba Rao (as then was) has laid down the following tests in *The State of Uttar*

Pradesh and Others Vs. Babu Ram Upadhya, at p. 765:

For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

With a view to maintain high standard and efficiency in the colleges that are not under the direct supervision of the University, it is necessary that the University must possess some control over the appointment of the teaching staff including the Principal. The Act and the Statutes, therefore, provide the qualifications for such appointments and the necessity of obtaining the approval of the University Authorities to such appointments. The failure on the part of the College Authorities to appoint qualified staff and to secure the approval of the University Authorities results in withdrawal of recognition of the colleges. It is thus clear that the penalty prescribed for non-compliance with the provision is quite serious and is imposed with a view to achieve the objective of the Act, namely, imparting of uniform standard of education. The provision in question, therefore, must be treated as mandatory and not directory.

The conclusions reached by us on the above-said submissions made by Shri Adhikari are, however, not sufficient to give any relief to the petitioner. It is no doubt true that the Municipal Council is a statutory body; and if that authority commits any breach of any statute or rules framed thereunder, an appropriate relief under Article 226 of the Constitution can be granted. But the petitioner must show that the Municipal Council has committed some such breach. The establishment of the college is not one of the statutory duties of the Municipal Council. u/s 124 of the M. P. Municipalities Act, 1961, certain discretionary powers have no doubt been conferred on the Municipal Council. Any matter likely to promote education is included in the discretionary powers of the Council and for that purpose a Council may, at its discretion, provide either wholly or partly out of the Municipal property and fund. u/s 125 of the Act it is further provided that the management, control and administration of every institution maintained out of the Municipal fund shall vest in the Council and that the management of such public institution shall be regulated by rules framed by the State Government in this behalf. No rules have been framed by the State Government for the management of such public institutions, like the colleges, which are run by some of the Municipal Councils. The petitioner was appointed by the Administrator, presumably in his capacity as a Manager of the College. The appointment was temporary in nature and created a contractual obligation between the parties. It is not urged in the petition, nor was it brought to our

notice during the arguments, that any service conditions prescribed under the rules framed under the Act were violated by the Administrator in terminating the services of the petitioner. What is urged before us is that the decision taken by the Administrator to terminate the services of the petitioner was not voluntary and that it was reached because of the illegal decision of the Executive Council of the University in not granting recognition to the appointment of the petitioner. Even if it is assumed that the decision was not voluntary, the result would be that the contract of service was wrongly terminated by the respondent No. 1. In other words, it would result in a breach of the contract. The remedy of the petitioner would, therefore, be in a civil Court for damages, and no relief can be granted under Article 226 of the Constitution. The Municipal Committee, Dhamtari, could have asked for a writ of mandamus compelling the University Authorities to revise their decision and to act within the Act and the Statute. But the Council has not chosen to do so.

In *Dr. Rai Shivendra Bahadur v. Governing Body of the Nalanda College, Bihar Sharif and others* AIR 1963 S C 1210 at p. 1211 their Lordships of the Supreme Court held:

In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance.....assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus. According to the Statutes, all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any article in the statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to Court and ask for a writ to issue.

In that case also, the petitioner was appointed as a Principal by the Governing Body of the College and by a subsequent resolution of the Governing Body the petitioner's appointment was cancelled. The same principle applies in this case also. It has not been brought to our notice as to what statutory rights, apart from the contractual rights, the petitioner had for the appointment and to the continuance thereof under the Ravishankar University Act or under the M. P. Municipalities Act, 1961. In fact, the petitioner has no such rights and is not, therefore, entitled to any relief under Article 226 of the Constitution.

For the above-said reasons, the petition fails and is dismissed. In the circumstances of the case, we make no order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioner.