

(2015) 07 MP CK 0066
In the Madhya Pradesh High Court
Case No : W.A. No. 214 of 2015

Hari Singh Gour Vishwavidyalaya	Vs	APPELLANT
Satya Prakash Upadhyay and Others		RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2015) 07 MP CK 0066

Hon'ble Judges : Rajendra Menon, J; S.K. Gupta, J

Bench : Division Bench

Advocate : Sobha Menon, Learned Senior Advocate and Rahul Choubey, Learned Counsel, for the Appellant; V.S. Shrotri, Learned Senior Advocate and Vikram Johri, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. There is a delay in filing of this appeal. I.A. No. 4519/2015 has been filed for condonation of delay. Keeping in view the reasons indicated in the application, the delay in filing of this appeal is condoned.
2. Heard learned counsel for the parties on the question of admission.
3. Seeking exemption to an order dated 3rd of December, 2014 passed by the learned Writ Court in W.P. No. 7468/2014(s), this appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005.
4. Facts, in brief, go to show that the respondent/ Shri Satya Prakash Upadhyay was substantively holding the post of Deputy Registrar in the University. When an advertisement was issued by the University seeking application from willing candidates for appointment on the post of Controller of Examination, respondent applied in pursuance to the said advertisement, his case was scrutinized and on being recommended for appointment by the selection committee, the matter was

placed before the executive council of the University and in its meeting held on 16th of September, 2013, the executive council vide Item No. 12.11 approved his appointment on the post of Controller of Examination. As the respondent was substantively holding the post of Deputy Registrar, the matter was processed and he was granted permission to join on the post of Controller of Examination after treating him to be on deputation to the said post and retaining his lien to the substantive post of Deputy Registrar.

5. Be it as it may be, after he had joined and was so working on the post of Controller of Examination, it was found that his appointment was not proper, he did not fulfil the requisite criteria and qualification for appointment on the post of Controller of Examination and, therefore, the Registrar of the University issued a show cause notice to him and finding his reply to be not satisfactory, the acting Vice Chancellor of the University terminated his appointment on the post of Controller of Examination vide order Annexure- P17 dated 5.5.2014.

6. Challenging this order, the writ petition in question was filed and before the Writ Court, it was argued on behalf of the respondent that under the provisions of First Statute (8), the Controller of Examination is appointed by the Executive Council on the basis of the recommendation of a selection committee constituted for the purpose, he is appointed as a whole time salaried officer of the University. It was indicated before the Writ Court that in the present case, as the appointment of the respondent on the post of Controller of Examination is brought to an end by the acting Vice Chancellor, who is not competent to do so under the statutory provision, the impugned action was in violation of the requirement of statute 8(1), the Writ Court found the same to be correct and holding that the Vice Chancellor has no authority and was not delegated with the powers of the executive council, nor was the action of the Vice Chancellor rectified by the Council, interfered into the matter. Challenging the aforesaid finding of the learned Writ Court, this appeal has been filed.

7. Smt. Sobha Menon, learned Senior Advocate appearing for the appellant invited our attention to the provisions of Section 11(3) of the Central Universities Act, 2000 and indicated that the Vice Chancellor can exercise any powers conferred on any authority of the University by or under this Act and, thereafter, shall report to such authority at a next meeting the action taken by him. Thereafter, referring to the authorities contemplated under Section 19 of the Act, she argues that under Clause-2 the Executive Council is one such authority and it was submitted that the action of the University through the Vice Chancellor is in pursuance to the powers available to the Vice Chancellor under these provisions and, therefore, the learned Writ Court has committed an error in not taking note of the aforesaid statutory provision.

8. Having considered this submission made by learned counsel for the parties, we are not inclined to accept the aforesaid contention. Admittedly, under the provisions of the statute 8, which is reproduced by the learned Writ Court in Paragraph-6 of the judgment, the authority competent to appoint a Controller of

Examination, the tenure for which such an appointment is provided and various other factors are indicated therein and it is beyond doubt that the executive council of the University is only empowered under this statute to appoint a Controller of Examination. Available on record from Page-80 onwards upto Page-89 are the proceedings, which go to show that the respondent was appointed as Controller of Examination after following the aforesaid procedure. Once the appointment of a person is controlled by the statutory provision and the powers of appointment is conferred on an authority by a statute, either it is the said authority who can take any action for dismissing or terminating the appointment so made to the post or there has to be proper delegation of powers as per law to some other authority to do so. In this case, neither the impugned action is taken by the executive council, nor is there any delegation by the executive council of its power to the acting Vice Chancellor or the Vice Chancellor.

9. Accordingly, the learned Writ Court, in our considered view, has not committed any error in applying the provisions of statute No. 8 and holding the termination to be illegal. If the contention of Smt. Sobha Menon, learned Senior Counsel with regard to powers available to Vice Chancellor under Section 11(3) are taken note of, no doubt, the Vice Chancellor may in certain cases exercise the powers conferred on any authority but the statutory provision in this regard contemplates that the Vice Chancellor may exercise the powers available to any other authority and, thereafter, he has to report to any authority and before doing so, he has to form an opinion as to why he has exercised the powers of some other authority under this provision. If the impugned action taken is perused in the backdrop of the requirement of this statutory provision, it would be seen that after the respondent was appointed, it seems that the University found that the his induction into the post in question is not in accordance with law, in as much as he does not fulfil certain qualification criteria and in that view of the above, the Registrar of the University issued show cause notice to him Vide Annexure-P15 dated 3rd of April, 2014 and, thereafter, his reply and material was placed before the acting Vice Chancellor of the University and the Vice Chancellor of the University vide Annexure-P17 dated 5.5.2014 terminated his appointment on the post of Controlled of Examination.

10. If the order passed by the Vice Chancellor, as is available in Annexure-P17 is scrutinized in the backdrop of requirement of Section 11(3), it would be seen that the Vice Chancellor does not say by expressing any opinion or reason why he is exercising the powers available to him under Section 11(3), nor does he record any reason as to why he is exercising the powers of the executive council in the matter, nor does he say that the order passed by him be placed before the executive council for its rectification in the next meeting. There is no iota of evidence on record to show that in this case, the Vice Chancellor exercised the powers as available to him under Section 11. Mere availability of powers cannot be a ground to rectify the illegal action. The Vice Chancellor before taking any action should have exercised the power available to him under Section 11(3) and

the Vice Chancellor having not done so, we cannot now permit the respondents to say that the action of the respondent which is per se found to be illegal be now regularized by this Court by holding that the Vice Chancellor has exercised the powers under Section 11. If the Vice Chancellor wanted to exercise the powers under Section 11(3), he could have done so by complying with the requirement of Section 11(3), which contemplates him to form an opinion as to why he is exercising the powers of the executive council, recording reasons for the same and conduct the proceedings in accordance with the requirement of Section 11(3), all this was not done. Accordingly, we are not impressed by the submission made by learned Senior Counsel in the matter by exercise of powers by the Vice Chancellor under Section 11(3) for the reasons as indicated herein above, we see no reason to interfere on such consideration.

11. Thereafter, learned counsel tried to indicate that the respondent does not hold even the basic minimum qualification for being appointed to the post in question and if he does not fulfil the qualification, his appointment is null and void and, therefore, the impugned action can be taken. In support of the aforesaid contention, she invited our attention to the judgment of the Supreme Court in the case of Santosh Kumar Singh Vs. State of U.P. and Others, (1996) 1 AD 519 : (1995) 9 JT 530 : (1996) LabIC 935 : (1995) 7 SCALE 281 : (1996) 2 SCC 45 : (1995) 6 SCR 568 Supp . We are of the considered view that if the University felt that the appointment of the respondent was not in accordance with the rule and if it was the considered opinion of the University that the selection committee has illegally appointed the respondent then the University could have issued show cause notice to the respondent/ employee, got his reply, placed the entire matter to the executive council i.e the appointing authority and it was for the executive council to take a decision in the matter. In this case, the impugned action has been taken by unauthorized person, as the Vice Chancellor of the University had no authority to take action in accordance with the statute.

12. We are of the considered view that when the executive council is authorized to make appointment on the recommendation of the selection committee and if any error was committed by the selection committee in recommending Respondent No. 1 for appointment then all these factors should have been brought to the notice of the executive council and it was for the executive council to take a decision in the matter. The Vice Chancellor in the facts and circumstances of the case could not usurp the power of the executive council, when under law he was not authorized to do so. The judgment rendered in the case of Santosh Kumar Singh (supra) will not apply in the facts and circumstances of the present case because it was not a case, where a statutory provision has been violated in the matter of taking action. In this case, the Writ Court in paragraph-7 of its order has dealt with the statutory provision available and has clearly held that when the statutory provision contemplates a procedure to be followed, everything has to be done strictly in accordance with the provision and anything done contrary to the provision, cannot be approved. In view of the same, we see no error in the order passed by the learned Writ Court.

13. Even though, learned counsel tried to indicate that the respondent was on lien, he has already joined on the original substantive post of Deputy Registrar, we see no reason to interfere on such consideration because we find that the appointment of the Controller of Examination under statute No. 8 is a appointment for a fixed term of five years and if the appointment was on a fixed tenure post in the University, there is no reason for the University not to permit such a person to be appointed to the post of Controller of Examination by retaining his lien on his substantive post. The fact that the appointment of Controller of Examination under the statute is on a tenure appointment for a fixed period, the contention about lien on the post of Dy. Registrar will not make any material difference simply for the reasons that we have indicated herein above that the impugned action taken for termination being contrary to the provision, the same cannot be approved by us.

14. Accordingly, we see no error committed by the Writ Court in passing the impugned order and the same does not warrant any consideration.

15. With the appeal is, therefore, dismissed.