
(1967) 04 MP CK 0011
In the Madhya Pradesh High Court
Case No : M. No. 29 of 1967

Lalji Prasad Sahu

APPELLANT

Vs

Vice-Chancellor, Jabalpur University and Others

RESPONDENT

Date of Decision : 11-04-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) JLJ 626 : (1967) MPLJ 496

Hon'ble Judges : S.P. Bahrgava, J; R.J. Bhawe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Bhargava, J.

The Petitioner Shri Lalji Prasad Sahu has filed this petition under Article 226 of the Constitution of India against the Vice-Chancellor, Jabalpur University (respondent No. 1), Dr. Mahavir Sharan Jain, Lecturer in Hindi, Jabalpur University (respondent No. 2) and the Jabalpur University (respondent No. 3), praying; that the second Respondent may be restrained from functioning as the Lecturer of the University, that the extension granted by the first Respondent to him under annexures C, D and E, dated, respectively, 6-10-1966, 26-3-1966 and 4-10-1966, be quashed and declared to have been made by the first Respondent without powers, and that the post of the Lecturer in Hindi be declared vacant.

The facts are simple. On a recommendation of the Committee of Selection made on 7-8-1964, the Executive Council of the University in its meeting held on 14-8-1964 appointed the second Respondent as Lecturer in Hindi in the Institute of Languages and Research in the University of Jabalpur on a salary of Rs. 400 per month in the scale of pay of 400-30-640-E.B.-40-800 and the said appointment was made on a temporary basis up to the 31st March 1965 from the date on which the second Respondent joined his duties in the department. On 22-3-1965 the said Executive Council in its meeting decided to extend the term

of the second Respondent for a period of six months which was to expire on 30-9-1965. The first Respondent extended the term of the appointment of the second Respondent for a period of six months with effect from 1-10-1965 to 31-3-1966 and this fact was notified to the second Respondent through his letter dated 6-10-1965 (annexure C). Again, the first Respondent extended the term of the second Respondent for a further period of six months from 1-4-1966 to 30-9-1966 and the same was communicated to the second Respondent under letter dated 26-3-1966 (annexure D). Then for the third time the first Respondent on 4-10-1966 extended the term of the second Respondent for a further period of six months commencing from 1-10-1966 to 31-3-1967; This fact was communicated to the second Respondent under letter dated 4-10-1966 (annexure E).

In the common return filed by the Respondents it has been urged that the Petitioner has no *locus standi* to file the present petition, that in a special meeting of the executive council held on 17-1-1967 it resolved to extend the term of Respondent No. 2 from 1-4-1966 to 31-3-1967 and as a consequence of this resolution the petition has become infructuous. It was further urged that the action taken by the Vice-Chancellor on the three occasions specified above was justified as it was absolutely essential for running the Hindi Department of the University that a Lecturer should be there and therefore extensions were granted to the second Respondent as the staff of the University had negligently failed to place the relevant papers before the Vice-Chancellor to enable him to put those papers for getting the term of second Respondent extended by the Executive Council. It was urged that in these circumstances the action of the Vice-Chancellor was not *mala fide* and he did not usurp any powers of the Executive Council for exercising them u/s 12 (4) of the Act.

At the time of the hearing, the Learned Counsel for the Respondents has further filed a copy of extract from the minutes of the Executive Council held on 27-2-1967 which shows that a resolution has been passed by the Executive Council continuing the service of the second Respondent as Lecturer in Hindi beyond 31st March 1967 and authorising the Vice-Chancellor to confirm him in the post of Lecturer after considering the reports from the respective Heads of his department about his work.

Shri S.K. Pachori, on the other hand, has urged that the Executive Council on the second occasion had only extended the term of office of the second Respondent up to 30-9-1965 and therefore he ceased to be in the service of the University on 1-10-1965 and thereafter the first order extending his term was passed by the Vice-Chancellor on 6-10-1965. It is urged by him that that order could not be passed by the Vice-Chancellor even under his emergency powers as the appointment of the second Respondent had been terminated 5 days before he extended it. As he ceased to be in service on the expiry of 30-9-1968, it is contended that his term could not be extended. It is further urged that the resolution of the Executive Council passed on 17-1-1967 (annexure R-I) could

not be given retrospective effect from 1-10-1966 and even if it were assumed for the sake of argument that such retrospective effect could be given, the resolution purported to extend the term of the second Respondent only from 1-4-1966 still leaving a gap of six months between 1-10-1965 and 31-3-1966. He has further urged that as appointments to the teaching post of the University could only be made by the University Executive Council, the entire action of the Vice-Chancellor was utterly illegal and wholly unjustified.

In view of the fact that in this petition the right of the second Respondent to hold the post of a Lecturer in Hindi till 31-3-1967 was challenged and as the Executive Council has passed a resolution on 17-1-1967 extending his term upto 31-3-1967, this petition must be held to have become Infructuous. We are not concerned with the question as to whether the second Respondent continuously remained in the service of the University even when there is no resolution according extension to his service from 1-10-1965 to 31-3-1966 nor are we concerned in the present petition with the monetary implications which may result in case the Executive Council falls to pass any resolution in favour of the Respondent in future giving retrospective sanction to his remaining in service for the said period or if it is found to be outside the scope of the powers of the Executive Council on construction of Section 54-A of the University Act which lays, down:

Where, prior to the coming into force of the Madhya Pradesh Universities Laws (Amendment) Act, 1966 (8 of 1965), appointment of teachers were made by the Executive Council to any of the posts falling u/s 54 for any specified period, and such period expire" after the coming into force of the said Act. the Executive Council may, notwithstanding anything contained in Section 54, reappoint the same person to the same post or extend from time to time, the term of his appointment, for such further period as it may deem fit.

After 17-1-1967 till 31-3-1967 there can be no doubt that the second Respondent had been holding the post on a resolution made by the Executive Council which is the proper authority for appointing Professors, Readers, Assistant Professors and Lecturers and which has also the power u/s 54.-A to reappoint the same person to the same post or extend his term of appointment from time to time for such further period as it may deem fit.

Though we are dismissing the petition, we would like to say a word with regard to the three extensions granted to the second Respondent by the Vice-Chancellor (respondent No. 1) in this case. In our opinion, all the three orders made by the Vice-Chancellor cannot be justified merely by trying to allow that the University office did not bring the fact of the temporary nature of the appointment of the second Respondent limited to a particular date to him so that he could have moved the Executive Council in time. Admittedly the only power which the Vice-Chancellor possesses in the matter is u/s 12 (4) which reads thus:

If, in the opinion of the Vice-Chancellor, any emergency has arisen which

requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same at the next meeting to the authority which in the ordinary course would have dealt with the matter:

Provided that the action -taken by the Vice-Chancellor Shall not commit the University to any recurring expenditure for a period of more than three months.

The essential requirement for bringing Section 12 (4) into play is that there must have arisen an emergency and that emergency must require from its nature that the Vice-Chancellor should immediately act. The proviso to Section 12 (4) makes it clear that even if there is an emergency, the Vice-Chancellor cannot impose on the University a recurring liability which continues for a period of more than three months. The fact that the appointment of a Lecturer was of a limited nature limited to a term does not appear in itself to amount to a position which could be described as an emergency. It is not something which could not be foreseen. From the very moment of the appointment (the limitation was there, and therefore by paying due regard to the limitation of time in the appointment of Respondent No. 2 care could be taken to see that some orders are passed in the matter to keep the appointment alive by the Executive Council before the period of appointment expired, but that was not done, merely on the assertion that the University office did not bring the matter to the knowledge of the Vice-Chancellor. Assuming even for the sake of argument that the Vice-Chancellor was unaware of the limitation about the term of the appointment, he must have known and at least must be presumed to know that under the proviso to Section 12 (4) all that he could do was to take some action by which the University was not committed to any recurring expenditure for a period of more than three months. By extending the term for six months the Vice-Chancellor was putting the University to a recurring expenditure in excess of the said maximum period of three months. It is rather perplexing that the Vice-Chancellor should have forgotten his own limitations u/s 12 (4) and on no less than three occasions he should have acted beyond those limitations in the case of the same person, and on each occasion extended the term for three term B without realising that he had no power to act beyond three months. The University is an autonomous educational body. It enjoys only those powers which are conferred on it by law, statutes, ordinances or Regulations governing it. It cannot indulge into those acts which are not within its clear power. The three extensions granted in the instant case have been given in our view in utter disregard of the limitation of that power. If the Executive Council had not resolved to extend the term upto 31-3-1967, there can be little doubt that this petition would have been required to be allowed. But in the view we have taken, it is not necessary to pursue the matter further.

For these reasons, the petition fails and is dismissed.

The next question for consideration is the question of costs. The petition was moved on 16-1-1967. The resolution of the Executive Council extending the term

of the Respondent No. 2 was passed one day after, i.e. 17-1-1967, It is on account of that resolution that the petition in our opinion has become infructuous. In these circumstances, in our view, though the petition Is being dismissed, the Respondents cannot be awarded their costs. In the particular circumstances of the case, we leave the parties to bear their own costs. The outstanding security amount shall be refunded to the Petitioner.

Petitions dismissed as it became infructuous.