
(1977) 08 AP CK 0024
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1467 of 1977

Mohd. Zaheer

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-08-1977

Acts Referred:

Citation : (1977) 08 AP CK 0024

Hon'ble Judges : Madhava Rao, J; Alladi Kuppuswami, J

Bench : Division Bench

Advocate : P. Babul Reddy, for the Appellant; K. Subramanya Reddy for Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

Alladi Kuppuswami, J.—The petitioner is the Dean of the National Institute of Community Development (referred to in the Judgment as Institute) which is the second respondent herein. He has filed this writ petition praying for the issue of a writ quashing the order of the first respondent, the Union of India dt. 28-7-1978 and for a declaration that he is entitled to function as the Dean until 31-7-1978. The second respondent institute was formed in 1962 by merging the Central Institute of Study and Research in Community Development, Mussoorie and the Institute for Instruction in Community Development, Dehra Dun and was shifted to Hyderabad in February 1954. The object of the institute is to promote the study of community development etc, as set forth in its memorandum of association. Art. 4 (i) provides that the institute may create administrative, technical ministerial and other posts in the society and make appointments thereto in accordance with the rules and regulations of the Society, provided that creation of and appointment to posts carrying a maximum pay of Rs. 2,000/- or more per month shall require the prior concurrence of the Government of India. Art. 4 (k) empowers the institute to make rules and bye-laws of the conduct of the affairs of the Society and add to, amend, vary or rescind them from time to time. Rules were accordingly made and the first set of rules were filed with the

Registrar of Societies along with the memorandum of association. Rule III deals with the Constitution of the institution. It consists of the president who is the Union Minister for Agriculture and Irrigation and two Vice-Presidents of the institute to be appointed by the President. It is unnecessary to refer in detail to the other members of the institute. It is sufficient to note that the total number of members is 45. The General Council of the Institute is composed of all the members of the institute. Under Rule X it has to elect the Executive Council and also the Standing Committees. The Executive Council is entrusted with the task of the management and administration of the affairs of the institute, subject to the general control and directions of the General Council. The Dean of the Institute is an ex-officio member of the Executive Council and one of the two Vice-Presidents to be nominated by the President is the Chairman of the Executive Council. Under Rule XII (ii)(b) the Executive Council has the power to create such posts, and appoint and control such staff other than those regarding whose appointment specific provision has been made elsewhere, as may be required for the efficient management of the affairs of the institute and to regulate the recruitment and conditions of their service. Specific provision is made under rule VIII for the appointment of the Dean. Under this rule the Dean shall be appointed by the Executive Council subject to the approval of the Government of India and his term of office and other conditions of service shall be such as the Executive Council may prescribe. The Government of India, will however appoint the first Dean of the Institute and fix the terms and conditions of his appointment and he shall hold office for a period not exceeding three years. The Dean is the principal executive officer of the institute responsible for the proper administration of the affairs of the institute and has to exercise powers under the direction and guidance of the Executive Council, vide Rule XI. Under Rule XVII it is stated that the General Council shall be guided by such directions on questions of policy as may be given to it by the Government of India, Rule XVIII provides for amendment of the rules and is as follows : With the previous concurrence of the Government of India the rules of the Society may be altered at anytime by a resolution passed by a majority of the total membership of the General Council and by a majority of not less than two-thirds of the members present and voting at any meeting of the General Council which shall have been convened for the specific purpose, after giving due notice of such resolution to the members of the General Council.

Clause X(vi) also states that the General Council shall have the power to add and amend with the prior approval of the institute. 2. In addition to the rules, different sets of bye-laws and regulations were also made. For the purpose of this writ petition it is sufficient to refer to the Service Bye-laws. Under bye-law No. 4 it is provided that the Executive Council may create any new class or category of posts provided that the creation of any new grade or category of posts carrying a maximum pay of Rs. 2,000/- or more per month shall require the prior concurrence of the Government of India.

3. The petitioner who was a member of the Indian Administrative Service was

appointed on deputation as the Dean of the Institute on 7-6-1973 in the scale of Rs. 2,500-3000 with an initial pay of Rs. 2000/- in that scale. He attained the age of superannuation on 10-7-1974 and therefore his deputation also came to an end. The Executive Council thereupon passed a resolution that he should be appointed as Dean till he attained the age of 60 years. By an order dt. 19-2-1975 his re-employment was approved by the Government of India for a period from 11-7-1974 to 6-6-1976. His pay was fixed at Rs. 2,800/- in the scale of Rs. 2,500-3000. Some time before the term of his appointment expired, the Executive Council passed a resolution on 14-3-1976 in the following terms :

The Executive Council unanimously resolves that in order to maintain continuity in the N.I.C.D. the present Dean of the Institute be given two years extension on the expiry of his present contract. The provisions of Service Bye-law 16 (1) (i) are also for this purpose related under the provisions of Bye-law 2 (2). This may be referred to the Government of India for their approval.....

4. On 26-3-1976 the Chairman of the Executive Council, Sri V. B. Raju addressed a letter to the Secretary to the Government of India, Ministry of Agriculture and Irrigation in which he set out the circumstances under which the resolution was passed and the advantages of giving extension of two years to the petitioner. The Government of India however by its order 28-7-1976 approved the extension of the re-employment of the petitioner only for a period of one year with effect from 7-6-1976 that is, till 6-6-1977. Accordingly the Chairman passed an order of re-appointment on 21-8-1976 for a term of one year with effect from 7-6-1976. The petitioner made a representation that he should be re-appointed for a period of two years as resolved by the Executive Council and not for a period of one year only. The Executive Council by its resolution dt. 10-5-1977 resolved that the period for which the Executive Council resolved to employ the petitioner deserves to be honoured. Only one member stated that he would refrain from expressing his views as the proposal was under consideration of the Government. This resolution was communicated to the Government of India. But by its letter dt. 4th June 1977 the Government of India informed the Council that in view of the latest policy of the Government it had been decided not to grant any further extension of re-employment to the Petitioner and in accordance with the Government of India's order dt. 21-8-1976 orders may be issued relieving the petitioner with effect from 6th June, 1977. Accordingly, the Chairman by his order dt. 4-6-1977 stated that on the expiry of his term of reappointment for one year with effect from 7-6-1976 (vide order dt. 21-8-1976) as Dean of the National Institute of Community Development, the petitioner would stand relieved of his post with effect from the afternoon of 6th June, 1977.

5. The petitioner has filed this Writ Petition contending that he is entitled to continue till 31-7-1978 in accordance with the decision of the Executive Council dt. 14th March, 1976 whereby he was granted two year's extension. According to him the Government was not competent in law to reduce the period from two years to one year. The only power and duty of the Government of India was to

accord or not to accord its approval for appointing the petitioner. Having accorded such approval it was not open to the Government of India to fix the term, which was a matter within the exclusive jurisdiction of the Executive Council.

6. A preliminary objection is taken by the counsel for the respondent that as the second respondent is a Society registered under the Societies Registration Act, the writ petition is not maintainable against the society for the relief which he is claiming viz., that he is entitled to continue until 31-7-78. In support of this contention reliance is placed upon the decision of the Supreme Court in *Sabhajit Tewary V. Union of India* AIR 1975 S.C. 1929 where it was held that the Council of Scientific and Industrial Research is not an authority within the meaning of Art. 12 and does not have a statutory character. Reliance was also placed on another decision of the Supreme Court *Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra*, . In that case a teacher in the basic section of *Colvin Taluqdars'* College, questioned the termination of her services. It was contended that the managing committee of the college was a statutory body constituted under the Intermediate Education Act and governed by the regulations framed thereunder. The Supreme Court observed that the basic section of a school is not a part of the Intermediate Education Act and though the main college was governed by the Act, it had extended its operation to fields beyond that covered by the Act and it could not extend the ambit of the Act to include in its sweep new fields of education which are outside its scope. In so far as the basic section of the college was concerned, it cannot be regarded as a statutory body and hence the writ petition was not maintainable. On behalf of the petitioner, it was submitted that the institute was practically in the position of instrumentality or agency of a State and hence the decision in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, was applicable and the institute would be an authority within the meaning of Art. 12. It was further contended that Writ Petition is in substance directed against the Government of India's communication dt. 28-7-1976. As a matter of fact the petitioner has no grievance against the governing body of the institute which had passed the resolution in his favour. The petitioner's real grievance was against the Government of India which directed that he should be appointed for a period of one year, in obedience of which order, the council was forced to direct that the petitioner stood relieved with effect from 6-6-1977. It was therefore submitted that as the petition was mainly directed against the Government of India, the Writ Petition was maintainable.

7. We see no substance in the first submission of petition. It is true that affairs of the institute are to some extent controlled by the Government of India. The General Council consists of the President who is the Union Minister, two Vice-Presidents who are to be appointed by the President, the Secretaries in the Ministries of Education, Home Affairs and of the Planning Commission and five

secretaries of State Governments. It is also provided that the approval of the Government of India should be obtained for amending rules or framing the bye-laws. There is a general provision contained in rule XVII that the General Council will be guided by the directions of the Government of India on questions of policy. With reference to the appointment of Dean, the appointment shall be subject to the approval of the Government of India, Even in regard to the Standing Committees it is provided that several officials of the Government of India should be members. From this and other provisions it is no doubt seen that the Government of India exercise some control over the affairs of the institute. But the institute is not one created under a statute, nor are we of the view that the control of the Government of India is of such a nature that the institute can be described as an instrumentality or an agency of the State. We do not think that there is any similarity between this institute and the bodies like the Oil and Natural Gas Commission, Life Insurance Corporation or the Industrial Finance Corporation which were the subject of consideration in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, On the other hand, the position of the institute is similar to that of the Council of Scientific and Industrial Research which was considered in *Sabhajit Tewary vs. Union of India* AIR 1975 S.C. 1229. In that case also the Prime Minister was the President and the Government appointed nominees to the governing body, and it was found that the institution was financed by the Government. It was nevertheless held that the Council of Scientific and Industrial Research was not an authority within the meaning of Art. 12. We are, therefore not inclined to agree with the submission that the institute is a State within meaning of Art. 12 or is a body against which a writ is maintainable.

8. We are however inclined to agree with the second submission of the petitioner. It is clear that the grievance of the petitioner is against the order of the Government of India dt. 28-7-1976 restricting the period of his extension to one year as against the resolution of the Executive Council extending it for a period of two years. It is only because of the order of the Government of India that the Executive Council was compelled to direct that the petitioner should be relieved of his post on 6-6-1977. In this connection it would be useful to refer to the decision of the Supreme Court in *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, In that case the Registrar of Co-operative Societies passed an order disapproving the appointment of the petitioner as Secretary of a Co-operative Central Bank Ltd., and consequently his services were terminated by an order of the President of the Bank. The Supreme Court observed that the petitioner was asking for a relief not really against the co-operative society but in regard to an order which was parsed by the Registrar who was acting as a statutory authority in the purported exercise of the powers conferred on him by the Co-operative Societies Act and hence the writ petition was maintainable In this case also, the writ petition in substance is directed only

against the order of the Government of India dt. 28-7-1976. In the above circumstances we are not inclined to uphold the preliminary objection that the writ petition is not maintainable and is to be dismissed in limine. Turning to the merits, from the facts stated above, it is seen that the entire matter depends upon the construction to be placed upon rule VIII of the rules which says that the Dean shall be appointed by the Executive Council subject to the approval of the Government of India and his term of office and other conditions of service shall be such as the Executive Council may prescribe. According to the petitioner all that this rule says is that the appointment of the Dean is subject to the approval of the Government of India. In other words, the Government of India has to direct its attention only to the question whether the person to be appointed as Dean is a fit person and to express its approval to the person concerned. Once it approves the appointment of the person it has no jurisdiction to give further directions regarding the conditions of service, which is solely within the jurisdiction of the Executive Council.

9. It was sought to be contended by the respondents that this rule was amended on 25-9-1975 and the amended rule is as follows:

The dean shall be appointed by the Executive Council with the prior approval of the Government of India. He shall, receive such salary and emoluments and shall be governed by such terms and conditions of service as the Executive Council may determine from time to time with the prior approval of the Government of India.

10. It was argued that the terms of the amended rule are clear that even the terms and conditions of service of the Dean are subject to the prior approval of the Government of India. It appears however that this amendment was affected in proceedings of the General Council held on 25th September 1975 at which only 15 members of the institute out of 45 were present. Under Rule XXIII the rules of the Society may be altered at any time with the previous concurrence of the Government of India by a resolution passed by a majority of not less than two-thirds of the members present and voting at the meeting. In this case it is not clear whether the previous concurrence of the Government of India was obtained for amending the rule. At any rate the resolution was passed at a meeting in which only 15 members were present. Under the rule, one of the necessary conditions is that the resolution should be passed by majority of the total membership of the council, that is in this case, not less than 23. As only 15 members were present at the meeting there cannot be any doubt that the amendment is contrary to the rules and hence invalid. The learned Advocate General drew our attention to a statement in the resolution that one of the members Sri R. Jaganmohan Reddy was of the view that the council should not go into the technicalities of the quorum, while the President felt that the majority of the members present could form quorum for the present agenda. It does not appear from that the requirement of Rule XXIII which states that the resolution should be passed by a majority of the total membership of the General Council

was specifically brought to the notice of the members by Sri. P. Jaganmohan Reddy. The learned Advocate General rightly did not seriously press the contention that the amendment was valid, in view of the clear terms of Rule XXIII.

11. We have therefore to proceed only on the footing that the rule as unamended would apply and consider whether the interpretation put upon the rule by the petitioner in contract.

12. It is argued by Sri. Babul Reddy on behalf of the petitioner that rule VIII consists of two parts. The first part says that the Dean should be appointed by the Executive Council subject to the approval of the Government of India. The second part states that his term of office and other conditions of service shall be such as the Executive Council may prescribe. The rule itself makes a clear cut distinction between the appointment of the Dean which shall be subject to the approval of the Government of India and the term of office and other conditions of service which are left to the Executive Council to prescribe. He therefore, argued that the approval of the Government of India is only necessary with regard to the person to be appointed and they had agreed to the appointment of the petitioner. They had no further jurisdiction to prescribe the conditions of service or his term and reduce it to one year. At first sight on a plain reading of the rule it would appear that there is some force in the submission of the petitioner, but on a closer examination we are inclined to take the view that when the rule says that the Dean shall be appointed subject to the approval of the Government it means the approval not only to the person, but to the other conditions of service. The approval cannot be confined merely to the person, but to the appointment which would include not only a consideration of who is to be appointed but would also include a consideration of his term and other conditions of service. Whether a particular person could be considered to be fit for appointment to an office would also to a large extent upon the term and conditions of his service. A person may be considered fit if it is for a particular term, but the same person by reason of age or other circumstances may not be considered fit for a longer term of office. Similarly, it is possible an approval may be given to a particular person if the office carries a particular pay, but if the pay is much higher the authority concerned may not approve of that person as it may take the view that other persons more qualified may be available for being appointed on a higher pay. It is therefore, seen that the term and conditions of service are closely linked with the question as to whether a particular person is to be approved for appointment or not. Therefore, notwithstanding the fact that rule VIII is unhappily worded and the expression "subject to approval" appears only in the first part of the sentence, we are of the view that the approval should be to the appointment taken as a whole which would include consideration of the terms and conditions of service. In this connection it is important to note that Art 4 (i) of the memorandum of association states that the institute may create administrative, technical, ministerial and other posts in the society and make appointments thereto in accordance with the rules and regulations of the society,

provided that creation of and appointment to posts carrying a maximum pay of Rs. 2,000 or more per month shall require the prior concurrence of the Government of India. The proviso clearly lays down that in the case of appointment to posts carrying a maximum pay of Rs. 2000 or more the prior concurrence of the Government of India should be obtained. Rule VIII is to be read with the Memorandum of Association and cannot override the Memorandum. Sri Babul Reddy sought to argue that Art. 4 (i) gives power to create and make appointments and the proviso is with regard to the creation of and appointment to posts carrying a pay of Rs. 2000. He submitted that "appointment" in that article would only refer to posts created for the first time after the institute was formed: Whereas this post was created even at the time when the institute was registered, as the rules were presented to the Registrar of Societies along with the Memorandum. We do not see any force in this submission. Art. 4 (i) refers to creation of and appointment to posts. There is nothing to indicate that it deals only with appointment to posts created subsequent to the articles of Association or Memorandum of association or rules. It is general in nature and applies to all appointments. Reading rule VIII along with the Memorandum of Association, we hold that the terms and conditions of service are also subject to the approval of the Government of India.

13. Sri. Subrahmanya Reddy further contended that though rule VIII states that the appointment shall be "subject to the approval", Art. 4 (i) of the Memorandum of Association expressly provides that the appointment to posts carrying a maximum of Rs. 2,000/- p. m. or more shall require "prior concurrence". He submitted that in this case there is no prior concurrence at all. It was only after the resolution was passed that the approval of the Government of India was sought to be obtained. He submitted that even if such approval had been given, it would not be "prior concurrence, within the meaning of Art. 4 (i) of the Memorandum of Association He also drew our attention to bye law 4 of the Service Bye-laws which says that the creation of new grade or category of posts carrying a maximum pay of Rs. 2,000/- or more p. m. shall require the prior-concurrence of the Government of India. It may however be noticed that this bye law refers only to the creation of a post and does not refer to the appointment to a post. But apart from this bye-law Art. 4 (i) of the Memorandum of Association clearly requires that even with regard to the appointment to the post prior concurrence of the Government of India is necessary. It was faintly argued that this is not a case of appointment but the extension of the term. There is no substance in this contention, as in law every extension of a term would mean a fresh appointment. Sri Babul Reddy submitted that this contention was not raised in the counter-affidavit and as it involves a question of fact, namely, whether the prior concurrence of the Government of India was obtained or not, the respondent should not be allowed to raise this contention. We find however that from a perusal of the counter affidavit of the first respondent this contention has been raised though it is mixed up with other contentions. It stated in paragraph 10" The prior concurrence of the Government of India is necessary also under

Service Bye-law 6 (ii) and Art, 4 (i) of the Memorandum of Association of the institute". In paragraph 9 of the counter of the second respondent the same contention is raised.

14. The learned Advocate General attempted to argue that the order of appointment was made on 21-8-1976 after the receipt of the approval of the Government of India. This order of re-appointment is issued by the Chairman and it is stated that "the petitioner is hereby re-appointed as Dean of the Institute for a terra of one year with effect from 7-6-1976". He therefore submitted that as the order was passed after the approval of the Government of India, the order was made with the prior concurrence and hence the order is valid. He submitted that the resolution of the Executive Council dt. 14-3-1976 was only in the nature of recommendation and would not amount to an order of appointment. The order of appointment is that issued by the Chairman on 21-8-1976 We are not inclined to agree to this submission. Under rule VIII the Dean is to be appointed by the Executive Council and hence the order of appointment is to be made by the Executive Council and not by the Chairman. In fact, in exercise of that power the Executive Council passed a resolution on 14-3-1976 in the following terms:

The Executive Council unanimously resolves that.....The present Dean of the Institute be given two years extension on the expiry of his present contract.

15. This clearly shows that the order of extension, which is equivalent to a fresh appointment was made by the Executive Council in its resolution. No doubt, the resolution further stated that may be referred to the Government for their approval, but that was because Rule VIII requires the approval of the Government of India. We cannot regard this resolution as in any sense a mere recommendation of the Executive Council. If this was merely a recommendation there must be another resolution of the Executive Council appointing the petitioner as Dean for a further period. No such resolution was brought to our notice. The purported order of appointment dt. 21-8-1976 by the Chairman cannot in law be regarded as an order of appointment as the Chairman has no power of appointment. It is only a communication of the order of appointment which was made by the Executive Council on 14-3-76 which being subject to the approval of the Government of India was approved in a modified form by the Government of India by its order dt. 28-7-1976. We are therefore of the view that the learned counsel for the second respondent is right in his submission that as the prior concurrence of the Government of India was not obtained as required by Art. 4 (i) of the Memorandum of Assertion the order of appointment is not valid. In this connection he drew our attention to the decision in Mohammed Ali vs. State of U.P. 1958 All. 681 where the distinction between an appointment which is made subject to the approval of higher authority and an appointment with the permission of the higher authority is clearly brought out. In the first case, the appointment holds good until disapproved ; whereas in the second it does not become effective until permission is obtained. Sri Babul Reddy

pointed out that the Institute as well as the Government of India throughout proceeded on the footing that there was no need for prior concurrence and that what was required was approval. He drew our attention to the fact that even on the prior occasion the resolution appointing the petitioner for a period of two years was passed by the Executive Council on 19-9-74 whereas the approval of the Government of India was obtained on 19-2-1975. But when the terms of the article are clear the fact that it was understood in a different manner will not in our view affect the true legal position.

16. In the result it is seen that the prior concurrence of the Government of India was not obtained for fresh appointment and hence the requirement of Art. 4 (1) was not complied with. Even if the appointment is to be tested, in the light of rule VIII and is only subject to the approval of the Government. We have already indicated our view that the Government of India is entitled while approving the appointment not only to consider the fitness of the person but also the terms and other conditions of service. The Government of India acted well within rule VIII in expressing its approval for the appointment only for a period of one year.

17. In this view it is not necessary for us to consider the further contention raised on behalf of the respondents that if the order of the Government dt. 28 7-76 is contrary to Rule VIII, then the entire order is to be quashed and this Court can only direct the Government of India to consider the approval afresh only with regard to the person. It was contended that if the true position is that the Government can consider only the fitness of the person and cannot interfere with the term the Government might not have passed the order approving the petitioner as Dean at all. As the court is not in a position to say what the Government would have done if it was aware of the true legal position, the court can only direct the Government to consider the matter afresh, even if the court is inclined to agree with the petitioner's contention that the Government has no power under the rules to alter the term while approving the candidate. On the other hand, Sri Babul Reddy contended that as the power of the Government is only to express its approval to the candidate, that part of the order which restricts the terms to one year which is contrary to the rule is to be quashed and it must be deemed that the Government has approved appointment for two years as recommended by the council. He drew our attention to the decision of the Supreme Court in *Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore State Transport Authority, Bangalore and Others*, where the Regional Transport Authority renewed a permit under Sec. 58 (2) of the Motor Vehicles Act for a period of one year, whereas Sec. 58 (1) (a), provides that the authority should specify a person which is not less than 3 years and not more than 5 years. In those circumstances the Supreme Court directed the authority, to carry out the duty laid on it by Sec. 58 (1) (a) and directed the authority to renew it for a period of 3 years, Sri Subramanya Reddy contended that this decision is not applicable to the facts of the case. We do not wish to go into the merits of the respective submissions as we have held that the order of the Government of India is in accordance with Rule VIII as construed by

US.

18. It is also unnecessary to consider the further contention of the learned counsel for the respondents that even if the order of the Government of India of is struck down, the petitioner would not be entitled to a direction for against Judgment in this writ petition and this Court must in that event, while merely declaring that the order is vitiated, leave the petitioner to work out his rights under the ordinary law as against the society. For the above reasons we dismiss the writ petition, but in the circumstances without costs.