

(1992) 08 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 175 (W) of 1991

Mrs. A.K. Augustine

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 13-08-1992

Acts Referred:

Calcutta University First Ordinance, 1979 — Ordinance 35, Ordinance 35(2)

Citation : (1992) 2 CALLT 308

Hon'ble Judges : Haridas Das, J

Bench : Single Bench

Advocate : P.N. Palit, S.N. Ghatak and C.R. Panda, for the Appellant; P.K. Chatterjee and Sandip Srimani for Respondent Nos. 1 and 2 and Pradip Tarafder, for the Respondent

Judgement

Haridas Das, J.—The petitioner Mrs. A. K. Augustine has in this application under Article 226 of the Constitution of India prayed for issue of a Writ in the nature of Quo Warranto commanding the respondent No. 3 Dr. Amit Sen to produce document to show by what authority he is continuing to hold the public office as Head of the Department of Law for Post Graduate Studies in Law, University of Calcutta and to quit the said office. The petitioner was temporarily appointed as a Lecturer against a substantive post in the Department of Law for Post Graduate Studies in Law in the University of Calcutta with effect from January 3, 1983 and such temporary appointment was renewed from year to year till June 1, 1989. Being selected by the Selection Committee for the Post of Reader in the said Department, the petitioner joined as Reader in the said post on June 2, 1989. On completion of the probationary period she was due to be confirmed to the said post of Reader with effect from June 1, 1990. The respondent No. 3 who was then holding the post of a Reader in the said Department of Law was appointed as the Head of the Department of Law, University of Calcutta by the Vice-Chancellor on and from May 22, 1986 in terms of Ordinance 35 of the Calcutta University First Ordinance 1979 (hereinafter referred to as the First Ordinance). According to the provision of Ordinance 35(2) of the first Ordinance, the Head of

the Department can hold office for a term of two years from the date of his appointment and accordingly the term of Office of Dr. Sen expired on May 21, 1988. But Dr. Sen in violation of the provision of Ordinance 35 of the first Ordinance is still continuing to hold the Office as Head of the Department of Law. The petitioner who is holding the Post of a Reader and is now the senior most Reader in the said department is eligible to be appointed as the Head of the Department on the basis of rotation system as contemplated in Ordinance 35 of the first Ordinance. She made representations verbally before the Vice Chancellor as also before the Registrar, University of Calcutta, but no action was taken by them to remove Dr. Sen from the Office as Head of the Department of Law. The Head of the Department of Law is a public office. The University cannot allow Dr. Sen to continue to hold such office in violation of the provisions of Ordinance 35(2) of the first Ordinance nor is Dr. Sen entitled to continue to hold the said office. On these allegations the petitioner has made this application for the relief indicated above.

2. In their affidavit-in-opposition the respondent Nos. 1 & 2 have contended that the petitioner has not yet been confirmed in her post as Reader in the Department of Law and therefore she has no right to claim to be considered for being appointed as Head of the Department of Law. Further case of the respondents is that Dr. Sen submitted a letter of resignation from the office as Head of the Department of Law. But in a meeting of the Departmental Committee held on November 23, 1990 the members including the petitioner unanimously expressed their full confidence in the continuation of Dr. Sen as Head of the Department and requested Dr. Sen to withdraw his letter of resignation. Pursuant to such request Dr. Sen withdrew his letter of resignation and continued to act as the Head of the Department. The petitioner after consenting to the continuation of Dr. Sen as Head of the Department of Law is now estopped from challenging the continuation of Dr. Sen as Head of the Department. The respondents have further contended that after Dr. I.G. Ahmed was confirmed to the Post of Reader in the Department of Law, Dr. Sen by a letter requested the Vice-Chancellor to appoint Dr. Ahmed as Head of the Department in his place. But Dr. Ahmed due to his vehicle physical disability did not accept the said post. Consequently, the University had no option but to ask Dr. Sen to hold the Office as Head of the Department. It has been alleged by the respondents that the present application by the petitioner is harassing, vexatious and malafide.

3. In addition to what has been stated by the respondent Nos. 1 & 2, Dr. Sen the respondent No. 3 has in his affidavit-in-opposition contended that he held the Office of the Head of the Department of Law till May 1989 and thereafter he was appointed as Professor. Therefore, he had a right to continue as Head of the Department for a term of another two years, since a Professor is always deemed to be senior to the Readers. However, when one of the two Readers on probation in the Department of Law was confirmed, he sent a note to the Vice-Chancellor expressing his desire to discontinue as Head of the Department. But in a meeting

of the Departmental Committee the members including the petitioner adopted a resolution requesting him to continue as Head of the Department. Various other allegations regarding the performance of the petitioner as a Reader of the Department of Law have been made in the affidavit-in-opposition.

4. Mr. P. N. Palit, the learned Advocate, appearing for the petitioner has submitted that in view of the provisions of Ordinance 35 of the first Ordinance Dr. Sen had no right to continue as Head of the Department after the expiry of two years from the date of his appointment to such office and accordingly Dr. Sen should be removed from such Office.

5. Mr. Pranab Kr. Chatterjee, the learned Advocate, appearing for the respondent Nos. 2 & 3 has submitted that Dr. Sen was requested by the University to continue as Head of the Department according to the wishes of all the members of the Departmental Committee including the petitioner, particularly in view of the fact that Dr. Ahmed declined to act as Head of the Department.

6. Mr. Pradip Tarafder, the learned Advocate appearing for Dr. Sen has contended that on the request of the University and of all the members of the Departmental Committee Dr. Sen continued to hold the Office of Head of the Department and had to withdraw the letter of resignation which he tendered. Accordingly, it cannot be said that Dr. Sen usurped the office or was illegally continuing to hold "the Office of Head of the Department.

7. The question for consideration is whether the respondent No. 3 is continuing to hold the Office of Head of the Department of Law in violation of the provisions of Ordinance 35 of the first Ordinance.

8. For convenience the provisions of Ordinance 35 of the first Ordinance may be quoted below :

35. (1)(a) In every teaching department of the University there shall be a head of the department who shall be appointed by the Vice Chancellor by rotation in order of seniority from amongst the wholetime permanent University teachers not below the rank of a Reader ;

Provided that in a teaching department where there are no Professors or Readers, the Head of the Department shall be appointed from amongst the Lecturers by rotation according to seniority.

(b) In a University teaching department where there are both Professors and Readers, all Professors shall be deemed to be senior in rank to Readers;

(c) The appointment of a Head of the Department by the Vice Chancellor shall be reported to the Syndicate.

(2) A Head of the Department shall hold office for the term of two years from the date of his appointment ;

(3) A Head of the Department may resign his office by writing under his hand to

the Vice-Chancellor;

(4) The principle of rotation as embodied in paragraph-(I) above shall apply equally in the case of a vacancy in the office of the Head of the Department caused by the resignation or release of an incumbent from the service of the University or by the grant of long term leave in his favour ;

(5) If there is a temporary vacancy in the office of the Head of the Department, the next seniormost teacher in a department shall be appointed to act as the Head of the Department for the period of such vacancy.

9. In the Writ application it has been alleged that the Head of the Department of Law for the Post Graduate Studies in Law in the University of Calcutta is a public office inasmuch as the holder of such office discharges important public functions of imparting legal education leading to enrolment as an Advocate under the Advocate's Act and Bar Council's Act and the said office is maintained by and out of the grants of money released by the State Govt. and or by the University-Grants-Commission to the Calcutta University. Having regard to the powers and functions and the duties entrusted to the Head of the Department, I am of the view that the office of the Head of the Department is a public office and I hold accordingly.

10. It has been contended on behalf of the respondents that the petitioner has not yet been confirmed in the Post of Reader and as such she is not eligible to be considered for appointment as the Head of the Department. It is accordingly submitted that the present Writ application at the instance of the Writ petitioner is not maintainable in law. In the present proceedings we are not at all concerned with the question whether the petitioner is herself eligible to be considered for such post of Head of the Department. That being so it is immaterial whether the petitioner has been confirmed in her post as Reader or not. But the fact remains that the petitioner is a Reader in the Department of Law and therefore she is entitled to maintain the present application and to ventilate her grievance that in violation of the provisions of the first Ordinance, Dr. Sen has been allowed to continue to hold the Office of the Head of the Department. I accordingly hold that the present application by the petitioner is maintainable in Law.

11. The Vice-Chancellor has been vested with the power to appoint a Head of the Department in every teaching department by rotation in order of seniority from amongst the permanent University teachers not below the rank of a Reader. There is no dispute that Dr. Sen who was holding the post of a Reader was eligible for appointment as Head of the Department and was legally appointed as Head of the Department with effect from May 22, 1986 in terms of the provisions of Ordinance 35(1) (a) of the first Ordinance. In view of the provision of Ordinance 35(2) of the first Ordinance, Dr. Sen was entitled to hold the Office as Head of the Department for a period of two years from the date of his appointment to such Office. Sub-section 3 of Section 9 of the Calcutta University

Act 1979 casts a duty upon the Vice Chancellor to ensure that the provisions of the Act and the statutes, the ordinances and the regulations are faithfully observed and to take such action as may be necessary for the purpose. From Annexure X-I, to the affidavit-in-opposition of the respondent No. 3 Dr. Sen, it appears that on July 27 1990 Dr. Sen wrote to the Vice-Chancellor to relieve him from the office of the Head of the Department of Law with immediate effect with a recommendation to appoint Dr. I.G. Ahmed, a confirmed Reader as Head of the Department.

12. It appears from Annexure "A" to the affidavit-in-opposition of the respondent Nos. 1 & 2 that the Departmental Committee of the Department of Law adopted a resolution on November 23, 1990 whereby the members expressed full confidence in Dr. Sen as Head of the Department and requested him to withdraw and not to press his letter of resignation from the headship. On behalf of the petitioner it has been denied that she agreed to such a resolution being passed. Be that as it may, when the Ordinance provides that a Head of the Department shall hold office for a term of two years from the date of appointment, a resolution adopted by the Departmental Committee cannot render nugatory such mandatory provision of the ordinance. A point was raised on behalf of Dr. Sen that after he was appointed as Professor he had a right to continue as Head of the Department for a period of further two years. Such contention would be acceptable if a fresh order would have been passed. In any event even after that more than two years already passed. It, however, appears that Dr. Sen was not to be blamed for his continuation as Head of the Department. He tendered his resignation which was not accepted and he was allowed or rather requested to continue to act as Head of the Department. If, therefore, anybody is to be blamed for allowing Dr. Sen to continue as Head of the Department and for not making any alternative arrangement, it was the University who is to be blamed for the same. In that view of the matter, it cannot be said that Dr. Sen has usurped the office. But at the sametime the statutory provision of the first Ordinance must also be followed. Having regard to the circumstances, it is not possible to issue any Writ of quo warranto but at the same time I must direct the University to relieve Dr. Sen of his Office as Head of the Department within a period of one month from this date. Be it noted that all actions taken by Dr. Sen as Head of the Department are all valid on the basis of defacto theory and such action shall not be challengeable in any future proceedings.

13. For the aforesaid reasons I dispose of this Writ application by making the following directions :

The respondent Nos. 1 & 2 shall take necessary action to relieve Dr. Sen from his office as Head of the Department within a period of one month from this date. It is needless to say that in accordance with the provision of Statute 35, the Vice-Chancellor is under an obligation to appoint a new Head of the Department in accordance with the provision of such statute when the office of Head of the Department falls vacant.

Let a Xerox copy of this order be given to the parties on payment of usual charges and subject to the condition that they shall apply for and obtain certified copy of this order.