
(2008) 01 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 15 Of 2008 CMP No. 44 Of 2008

NGOs Coordination Fed.

APPELLANT

Vs

State & others

RESPONDENT

Date of Decision : 01-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Sher-I-Kashmir Universities of Agriculture Scientists and Technology Act, 1982 —
Section 25

Citation : (2008) 1 SriLJ 416

Hon'ble Judges : Nisar Ahmad Kakru, J and Virender Singh, J

Bench : Division Bench

Advocate : R.A.Jan, Advocates appearing for the Parties

Judgement

Kakru, J.—Being aggrieved of reappointment of the respondent No. 4 as Vice Chancellor of the SheriKashmir University of Agricultural

Science & Technology of Kashmir, interference of the Writ Court was sought by the Writ petitionerAppellant on the ground of non adherence to

the rules, prescribing the mode and method of appointment of the Vice Chancellor, enshrined in sub section (1) of section 25 of the SheriKashmir

Universities of Agriculture Scientists and Technology Act 1982 (Act hereinafter), but in the face of the interpretation, placed by the Writ Court,

that the procedure contained in sub section (1) is not applicable to

the reappointment of the Vice Chancellor, the attempt made by the writ petition to persuade the Writ Court, to quash the order of reappointment

of the Vice Chancellor, proved futile, resultantly, dismissal of writ petition in limine, hence this Letters Patent Appeal, alleging error of judgment to

the learned Single Judge, founded on irrefutable fact that the reappointment of

the vice Chancellor has been made without seeking the panel of eminent agricultural/ veterinary scientists from the Selection Committee in terms of sub section (1) of Section 25 of the Act, giving rise to a principal question before us which we would like to formulate hereunder.

Whether exercise of the power of reappointment vested in the Chancellor is impermissible without seeking a fresh panel of eminent Agricultural/

Veterinary scientists from the Selection Committee as per the procedure prescribing the mode and method of appointment of the Vice Chancellor,

enshrined in sub section (1) of section 25 of the Jammu and Kashmir Universities of Agriculture Scientists and Technology Act 1982?

2. To answer the question, reference to the relevant provision of the statute becomes imperative and for facility of reference it is extracted:

25. The ViceChancellor

(1) The ViceChancellor shall be a whole time officer of the University and he shall be appointed by the Chancellor from the panel of eminent

agricultural/veterinary scientists drawn by the Selection Committee. The Selection Committee shall consist of the following persons:

(i) Director General, ICAR.

(ii) Chairman, UGC or his nominee.

(iii) Chief Secretary/Additional Chief Secretary Jammu and Kashmir Government (nominee of the Jammu and Kashmir Government).

(iv) One nominee of the Chancellor.

Provided that one of the members shall be nominated by the Chancellor to act as Convenor:

Provided further that the project DirectorcumViceChancellor (designate) appointed by the Government shall be the first ViceChancellor of the

University.]

(2) The Vicechancellor shall hold office for a term of five years or until he attains the age of 65 years whichever is earlier. He shall be eligible for

reappointment for a second term of five years or until he attains the age of 65 years whichever is earlier. The emoluments and other conditions of

the service of the ViceChancellor shall be such as may be prescribed and shall not be varied to his disadvantage after his appointment.

3. Phraseology employed in the provision extracted above unveils vesting of the

power of appointment as also reappointment in"" the Chancellor

but the basic entry has to be made, out of the panel to be prepared by a committee, constitution whereof, is spelt out in sub section (1) itself. The

appointment of the respondent Vice Chancellor having come into being by due adherence to the procedure contained in the sub section (1),

therefore, no grievance was registered ever. The grouse originates from non adherence to the mandate of sub section (1) at the stage of

reappointment only. But does the scheme of the reappointment admit any requirement of drawing of a panel by the selection committee, sub

section (2) assumes significance so as to find out as to whether any such prohibition does exist therein, but its reading clearly shows that the

condition of drawing of a panel prescribed in sub section (1) has not been incorporated in sub section (2). Had it been the intention of the

Legislature, nothing prevented it to prescribe so and in absence of having provided for selection for reappointment by selection committee, anything

said to the contrary would amount to rewriting the statute by imposition of fetters of procedure on the discretion of the Chancellor requiring him to

seek a fresh panel for reappointment of a Vice Chancellor, notwithstanding the fact that he virtually owes his appointment to the post of Vice

Chancellor by strict adherence to the procedure stipulated in sub section (1). Viewed thus, we are of the opinion that reappointment is the

discretion of the Chancellor, provided basic entry of the person to be reappointed is through a mode prescribed by sub section (1) of section 25 of

the Act which is not disputed in the case on hand. Situated thus, we answer the question in the negative.

4. We would now like to advert to the contention of the learned counsel for the appellant about the lack of power of the Court to dismiss the writ

petition in limine. To bring home the point, reference is made to century Spinning and Manufacturing Company Ltd. and another vs. The

Ulhasnagar Municipal Council and another reported in 1970(J) Supreme Court Cases 582. The judgment relates to a case where the Court had

not given the reasons for dismissal of the writ petition, conversely in the case on hand, the writ Court has given the reasons which have prevailed on

it for dismissal of the petition in limine. Reliance is also placed on sh. Ganesh Prasad Dube vs. State of Bihar and others reported in 1971 (1)

Supreme Court Cases 691. The judgment deals with a case where concurrence to the appointment of the appellant therein, was declined by the Public Service Commission and the Government and denial of such concurrence was challenged on the ground of mala fides which according to the apex court, deserved to be dealt with in the light of the returns to be filed, therefore, dismissal in limine was not approved of. The case urged before us is reappointment by violation of the statute. The facts being dissimilar, the judgments referred to above are of no advantage to the appellant.

5. We would now like to deal with the locus of the appellant in questioning the reappointment. Sight cannot be lost of the settled legal position that a writ of Quo Warranto is essentially in the nature of Public Interest Litigation, therefore, the person who moves it, is required to be clear in his pleadings to rule out probabilities of bias. The appellant being conscious of the legal position that he has no right whatsoever to plead the cause of someone else on the post in question, laid a claim through writ petition on the basis of being a NonGovernmental Organization. To justify the stand reliance is placed by the learned counsel for the appellant on a few judgments of the High Courts of the country to canvass that a writ of Quo Warranto at the instance of any member of the public is maintainable. We are not at variance on the principle of law that the strict rules of locus stand! have to be relaxed in a writ of Quo Warranto but locus has not to be dispensed with altogether and writ cannot be issued on mere asking. A writ of quo warranto may be issued subject to the satisfaction of the Court, provided appointment is contrary to the statutory rules. In such kind of writs, conduct of the petitioner/ appellant who approaches the Court is a most relevant factor to be taken into account and the Court will be within its powers to refuse the writ if its institution is the outcome of malice or ill will and in the writs of the kind, a person must come with bonafide approach. Thus petitioner has to satisfy the Court about his credentials.

6. The learned counsel for the appellant was apprised of this legal requirement. He was told that unless the Court is satisfied about the bona fides of the appellant in institution of the writ, it may result in imposition of costs on the appellant but instead of assisting the Court and replying the query, he said ""Please do it"". The query was made because in our perception no

foundation is laid in the writ petition which could lead us, even remotely, to an inference of bona fides. Omission of the learned counsel for the appellant to assist the Court furnishes a cause to believe that the writ petition is sponsored one and aimed at personal gain.

7. Considering the matter in totality of the circumstances, we find no reason to interfere with the judgment of the learned Single Judge, However, it

calls for a mention that failure of the learned counsel to establish the bona fides of the writ petitioner had persuaded us to impose costs upon the

appellant but being had to the fact that the writ petition has been dismissed without putting the other side on notice and same being true of this

LPA, we choose not to impose costs. LPA is dismissed along with CMP without any order as to costs.