

(2011) 02 AHC CK 0118

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65636 of 2010

Prof. Shiv Shankar Verma

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 229(1), 320(3), 367(1)
General Clauses Act, 1897 — Section 16
Prevention of Corruption Act, 1988 — Section 13(1), 2(18), 21, 31, 7
Uttar Pradesh State Universities Act, 1973 — Section 68
Constitution of India, 1950 — Article 226, 229(1), 320(3), 367(1)
General Clauses Act, 1897 — Section 16
Prevention of Corruption Act, 1988 — Section 13(1), 2(18), 21, 31, 7
Uttar Pradesh State Universities Act, 1973 — Section 68
Constitution of India, 1950 — Article 226, 229(1), 320(3), 367(1)
General Clauses Act, 1897 — Section 16
Prevention of Corruption Act, 1988 — Section 13(1), 2(18), 21, 31, 7
Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (2011) 3 ADJ 610

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri R.N. Singh assisted by Shri Saroj Yadav for the Petitioner. Shri B.D. Mandhyan assisted by Shri Satish Mandhyan appear for the Respondents-University.

2. The Petitioner is aggrieved by the order of his suspension dated 21.10.2010, passed by the Vice Chancellor of the University and the minutes of the meeting of the Executive Council dated 15.10.2010. He has also prayed for consequential reliefs.

3. The Petitioner is serving as a Professor and Head of Department of Geography in Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. While he was discharging duties of Registrar of the University in officiating capacity in absence

of regular Registrar he was appointed as Nodal Officer, for conducting Joint Entrance Examination of B. Ed 2010-11 and was thereafter appointed as State Coordinator of the Joint Entrance Examination to be conducted by the Lucknow University for B. Ed Examination 2010 11. On 2.6.2010 he handed over charge of the Registrar to Shri A.M. Ansari, Deputy Registrar. The State Coordinator, Joint Entrance Examination B. Ed 2010 on 07.6.2010 permitted him to continue as Nodal Officer.

4. The successful students in the Joint Entrance Examination B. Ed 2010 were called for appearing in the counselling to be held on 3.8.2010 onwards. About 7719 students appeared in the counselling and were provided confirmation letters after due verification of their certificates and testimonials for admission. The successful candidates were required to deposit counselling fees of Rs. 500/- and part payment of tuition fees of Rs. 5000/-by demand draft.

5. At that time Shri P.K. Mahanti, Divisional Commissioner, Gorakhpur Division was Vice Chancellor of the University. He was again appointed as officiating Vice Chancellor since 16.8.2010.

6. On 8.10.2010, a holiday in the University the Petitioner was called by the Personal Assistant of Shri P.K. Mahanti at his residence. The Petitioner visited with his two sons, who are also working as Lecturers in the Colleges.

7. It is alleged that on reaching the residence of the Commissioner, the Petitioner met with an exemplary unpleasant and harsh behaviour, accusing him for the bribe from the students for issuance of confirmation letters. Shri Mahanti called two girl students, who were already waiting inside the house. On his instructions the two girls students alleged that they had paid bribe of Rs. 500/-each to the Petitioner for issuing confirmation letters. Shri Mahanti directed the Petitioner to forthwith pay Rs. 500/-each to the girl students. In paragraph-27 of the writ petition, it is stated that the Petitioner protested and denied the allegation. The infuriated Shri Mahanti started shouting at the Petitioner. The Petitioner is a heart patient; started feeling uncomfortable and seeing his plight, his son took out Rs. 1000/-from his pocket and attempted to hand it over to Shri Mahanti. The Petitioner's son was insisted to pay the amount to the girls. The atmosphere became hostile and to the shock and disbelief of the Petitioner, certain photographers and members of media came out from inside his house and started taking photographs. Shri Neeraj Shahi-a student leader came out from within the house of Shri Mahanti. The incident was reported in daily newspapers alleging that the Petitioner had taken Rs. 500/-from each student as bribe for handing over confirmation letter.

8. A first information report in Case Crime No. 2078 of 2010 u/s 7/13(1) Prevention of Corruption Act by lodged by Shri Ajai Kumar Kushwaha, a student made to pay the bribe. In Criminal Misc. Writ Petition No. 19507 of 2010 the Petitioner's arrest has been stayed vide order dated 21.10.2010, with notices to Shri P.K. Mahanti and Shri Neeraj Shahi.

9. It is submitted by Shri R.N. Singh that Shri P.K. Mahanti is officiating as Vice Chancellor of the University. He called upon an emergent meeting of the Executive Council on 15.10.2010 in which a decision to suspend the Petitioner was taken and on which the charge sheet dated 21.10.2010 has issued to the Petitioner with seven vague charges, based on surmises and conjectures and an order dated 21.10.2010 was passed suspending the Petitioner giving rise to this writ petition.

10. In the charge sheet, it is alleged; (1) that the Petitioner permitted M/s Annapurna Caterers & Decorators for running a stall within the premises of the University; (2) the Petitioner had purchased photocopier machines for counselling from Government funds; the machine was taken to his home after the counselling was closed; (3) ID numbers were allotted to the teachers and employees for the counselling, the same persons could lock the choice on the computer after opening the programme. Some of the teachers left the work and some employees did not come for counselling work. The Petitioner thereafter permitted some new persons without their approval in the counselling. They were allowed to work on separate I Ds. The Petitioner had taken commission from them for the payments made to such persons; (4) the Petitioner had committed gross irregularities in paying the amount to the teachers and employees for counselling. They were not paid the money for which the receipt was taken from them. Some of the teachers and employees had taken leave during counselling, their emoluments were kept by the Petitioner with himself. Dr. Sumitra Singh and Dr. N.K. Rana were on leave. They were shown to have worked and the amount was appropriated. The payments required to be paid by cheques, which were paid by cash; (5) the Petitioner kept all the confirmation letters to the students to be produced before the allotted colleges, with instructions that if the confirmation letter is not deposited with the Colleges, their admission shall be treated to be cancelled, thousand of students were called before the Petitioner as Coordinator for the confirmation letter. The Petitioner kept them waiting and thereafter asked them to pay Rs. 500/-each. Those students, who did not pay the money, were asked to return back after borrowing or arranging the money. The Petitioner Dr. Sanjeev Kumar Singh, and one student Ajay Kumar abused and humiliated those who could not arrange for money. The students leaders including Shri Neeraj Shahi protested to the illegal demand on which the money was returned to some students. The news was flashed by the media and daily newspapers on which the Commissioner called the Petitioner to his residence where he returned the money to the girls students present on his residence.

11. The sixth charge relates to a complaint made by Shri Ajay Kumar Gupta-a student, alleging that at 12.50 pm on 7.10.2010 when he went to receive his confirmation letter, he was abused and suffered undeserving comments against his father. When he requested for being treated respectfully, he was humiliated Dr. Sanjeev Kumar Singh to beat him up and threw him outside the room. The seventh charge relates to an FIR u/s 7/8(1) of the Prevention of Corruption Act on 13.10.2010 lodged against the Petitioner.

12. It is alleged that though the Petitioner has not been given the documents in support of charges he has filed a reply denying the charges. In paragraph 27 of the writ petition the Petitioner has denied the charge and has alleged malafides against Shri P.K. Mahanti purportedly on the ground that when the Petitioner was officiating as Registrar, he had reinstated one Shri C.N. Jha, Junior Engineer on the directions of the Vice Chancellor. Shri P.K. Mahanti as officiating Vice Chancellor had suspended Shri C.N. Jha and had expressed his displeasure on reinstating him.

13. Shri R.N. Singh submits that the Executive Council decided to suspend the Petitioner by the same resolution on 15.10.2010, in which it was resolved to hold departmental enquiry against him with recommendation to the Vice Chancellor to nominate a Disciplinary Committee including a retired Judge of the High Court. The Vice Chancellor did not wait for the recommendation of the Disciplinary Committee. Shri Singh has relied upon a Division Bench judgment of this Court in *Dr. Sushil Prakash Gupta v. Executive Council, University of Allahabad and Ors.* 2000 (2) E.S.C. 1387 (All.); and *Dr. Jonnada Ananda Vara Prasad Rao v. State of UP and Ors.* Civil Misc. Writ Petition No. 55579 of 2009 decided on 18.12.2009 in which it was held, considering the Statute 16.07 (1) of the First Statute of the University, that a teacher of the University can be suspended only on recommendation of the Disciplinary Committee. The Executive Council on its own without any recommendation of the Disciplinary Committee does not have power to suspend a teacher of the University. In *Dr. Sushil Prakash Gupta (supra)* the Court held as follows:

7. In paragraph 40 of the petition Statute 16.07 (1) of the First Statute of the University has been quoted which is as follows:

16.07 (1) The Disciplinary Committee referred to in Statute 8.10 may recommend the suspension of a teacher during the pendency or in contemplation of an enquiry into charges against him, on the grounds mentioned in Sub-clauses (1) to (c) of Clause (1) of Statute 16.04. The order of suspension if passed in contemplation of an enquiry shall cease at the end of four weeks of its operation unless the teacher has in the meantime been communicated the charge of charges on which the enquiry was contemplated.

8. The Disciplinary Committee is constituted under Statute 8.10 which provides that the Executive Council shall constitute a Disciplinary Committee which shall consist of the Vice Chancellor and two other persons nominated by it. Sub-clause (c) of the aforesaid Statute provides that the disciplinary committee shall recommend the suspension of any employee referred to in Sub-clause (b) against whom enquiry is pending or in contemplation. Statute 8.11 (3) lays down that the decision or the report of the Disciplinary Committee shall be laid before the Executive Council as early as possible. Photostat copy of the relevant Statute has been annexed as Annexure 15 to the writ petition.

9. Section 2(18) of the Act defines teacher to include a Director.

10. It has been alleged in paragraph 48 of the petition that till today no Disciplinary Committee was constituted by the Executive Council, and this fact has not been disputed in paragraph 63 of the counter affidavit.

11. In our opinion no teacher, (which includes a Director) can be suspended without recommendation of the Disciplinary Committee. This is evident from the Statute 16.07 as well as Statute 8.11, which provides that the Disciplinary Committee shall recommend the suspension. It is settled law that when a manner of doing something is prescribed then that thing must be done only in that manner, vide *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*,

12. Learned Counsel for the Respondents submitted that since the Executive Council has power under Sections 21 and 31 of the Act to make appointment such power to appoint includes the power to suspend in view of the General Clauses Act. There is no dispute that it is only the Executive Council which can suspend a teacher which includes a Director vide Section 2(18). However, the question remains as to the manner in which this power of suspension is to be exercised. Since the Statute provides that suspension can be on recommendation of the Disciplinary Committee in our opinion no suspension order can be passed by the Executive Council without a recommendation from the Disciplinary Committee. Hence this point is sufficient to allow this writ petition and we are not going into the other points raised by the learned Counsel for the Petitioner.

14 The judgment in *Sushil Prakash Gupta* was followed by this Court in *Dr. Jonnada Ananda Vara Prasad Rao*.

15. Shri R.N. Singh submits that the entire action is actuated with malafides. Shri A.K. Mahanti, an IAS officer has acted in a bureaucratic manner in suspending a Professor of the University. The entire story of distributing confirmation letters on illegally accepting Rs. 500/-was cooked up at the instance of Shri Neeraj Shahi-a student leader. The Vice Chancellor has acted grossly illegally in exercising his powers without following mandatory procedure provided in Statutes 16.07 (1) of the First Statute of the University. He submits that the Executive Council has powers to suspend the Petitioner but that such powers cannot be exercised unless there is a recommendation of the Disciplinary Committee.

16. Shri B.D. Mandhyan appearing for the University submits that the Petitioner has effective alternative statutory remedy u/s 68 of the UP State Universities Act, 1973 to approach the Chancellor against the order of suspension. The allegations, on which malafides have been alleged, are absolutely baseless. Shri P.K. Mahanti has nothing to do with the Petitioner. When the reports were received of accepting illegal gratification of Rs. 500/-from thousand of students for handing over confirmation letter, the Vice Chancellor acted in defence of the University. He called an emergent meeting of the Executive Council, and that after a unanimous resolution was passed treating the act to be disgraceful, the

Executive Committee decided to suspend the Petitioner. The Vice Chancellor has exercised his statutory powers in compliance to the resolution of the Committee of Management. Shri B.D. Mandhyan has relied upon a Division Bench judgment of this Court in Ramesh Chandra and Others Vs. Vice Chancellor, University of Allahabad and Others, in which this Court held that though the Registrar is the appointing authority of employees of the University, the Executive Council as a higher body could take a decision to suspend in case of an act of indiscipline and violence committed. A higher authority and specially the authority competent to remove the person from service can take action to suspend the person. The power to remove can be exercised by an authority higher than the appointing authority. The Division Bench held that the suspension literally means the act of debarring for a time from a function or privilege. It is a temporary deprivation of office, but by reason of suspension the person suspended does not lose his office nor does he suffer any degradation. Relying upon R.P. Kapur Vs. Union of India (UOI) and Another, Sampuran Singh Vs. State of Punjab, it was held that the order can be passed by higher or appellate authority. The Court also considered the judgment in Taylor v. Taylor, 1836 LCHD 426 in which it was held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. The same view, it was held, was accepted in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, and several other decisions of the Supreme Court. The Division Bench explained the correct meaning of the Statute and held that the order of suspension with regard to the employees falling within the disciplinary control of the Registrar under Clause (1) of Statute 2.06, must necessarily be passed by the Registrar himself and not by any one else.

17. Shri B.D. Mandhyan has relied upon the judgments in R.P. Kapur Vs. Union of India (UOI) and Another, and T. Cajee Vs. U. Jormanik Siem and Another, In both these cases the object and purpose of the order of suspension was explained by the Constitution Benches of the Supreme Court.

18. In reply to the arguments, that this Court is bound by the decisions in Dr. Sushil Prakash Gupta (supra), and that the judicial discipline requires that the Court should follow a decision, rather than try to circumvent it by giving other reasons or grounds, it is submitted by Shri B.D. Mandhyan that the law is not static. The principles of law do not govern the circumstances prevailing for all times to come. In an exceptional situation the Executive Council as a superior authority can exercise the powers of suspension. The recommendation of the Disciplinary Committee is provided only by way of caution. It is not sine quo non for the purposes of exercising powers of suspension. The words "may recommend" in Statute 16.07 (1) does not put an embargo on the powers of the Executive Council, which is the highest executive body of the University to suspend an employee in an emergent situation. The Executive Council may, while recommending departmental enquiry to be held, decide to suspend an employee. The power of suspension of an employee is inherent in the powers of the

Executive Council u/s 2(18) of the Act. Shri Mandhyan submits that functions of the Executive Council exercising executive powers under the U.P. State Universities Act are not restricted and controlled by Statute, which is a subordinate legislation and that a body, which is empowered to make Statute, is not guided by it, in all its functions.

19. Shri Mandhyan submits that ordinarily the Executive Council should wait for the recommendation of the Disciplinary Committee but when, in a given circumstance the powers to suspend an employee are to be urgently exercised, the Executive Council is not required to wait for the recommendation of the Disciplinary Committee to suspend the teacher.

20. It is admitted to the Petitioner that the Executive Council is the disciplinary authority under the U.P. State Universities Act, 1973 vested with the powers to suspend a teacher of the University. The Executive Council is also empowered to make Statutes after the first statutes, which prescribe the exercise of powers of suspension. The caution to be used by the Executive Council in suspending the employees should not be treated as an impediment or a bar to exercise the powers in emergency, which it otherwise possess.

21. The principle, that when a manner of doing something is prescribed then that thing must be done only in that manner, is a sound principle of administrative law accepted in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, This principle is not an absolute rule to be followed in each case. It cannot be taken to be a principle, which may restrict the powers of the authority, which it otherwise possesses. The Executive Council is the only authority empowered to exercise the power in a given circumstances. It is not required in emergent situation, to wait for recommendation of the delegated authority. No opportunity is required to be given to the teacher before deciding to make the order of suspension. There is no purpose sought to be achieved in waiting for recommendation. Where the Executive Council, as the final disciplinary authority, finds that a teacher has disgraced the University by a corrupt act, its powers of suspension, even without any recommendation of Executive Council do not admit any doubt.

22. In *Ramchandra Keshav Adke's* case followed in *Morgan Stanley Mutual Fund Vs. Kartick Das, Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs., Arun Kumar Vs. State of Karnataka and Another, and Edukanti Kistamma (Dead) thr. Lrs. and Others Vs. S. Venkatareddy (Dead) thr. Lrs. and Others*, the question involved was whether the mamlatdar u/s 5(3) of the Bombay Tenancy Act, 1953 read with Rule 2-A was required to record his satisfaction, when verifying a surrender of a tenancy by a tenant in favour of the landlord. The Court held that the surrender of tenancy;

(i) must be in writing;

(ii) must be verified before the mamlatdar;

(iii) While making such verification the mamlatdar must satisfy himself in regard to two things namely,

(a) that the tenant understands the nature and consequence of the surrender and;

(b) that it is voluntary, and

(iv) The mamlatdar must endorse his finding as to such satisfaction upon the document of surrender.

23. It was thus held that since the mamlatdar did not record his satisfaction, the surrender of tenancy suffered for want of substantial compliance with the statutory requirement. The Supreme Court held that the requirement as to the recording of its satisfaction by the authority was the substance of the matter and not an empty formality.

24. The rule in *Taylor v. Taylor* adopted by Jassel M.R. applies where the whole aim and object of the legislature will be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other (Maxwell Interpretation of Statutes 11th Edition pp. 362.363).

25. We find substance in the contention of Shri B.D. Mandhyan that where the highest disciplinary authority, vested with the powers to dismiss the employee, has to exercise the powers of suspension, such authority is not required to wait until body constituted by it even if statutory makes a recommendation to it to do so. The delegation of powers to conduct departmental enquiry may be coupled with a power to make recommendation to suspend but that the executive authority as the final disciplinary authority can always exercise such powers even without such recommendation. In *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, the Supreme Court held in para-11 that no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implications. The exercise of the power to appoint or dismiss an officer is an administrative power. The opportunity to show cause and an enquiry simulating judicial standards precedes the exercise thereof. A statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. A functionary, who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material. It was further held that when Article 229(1) of Constitution of India vests the power of appointment in the Chief Justice the power is equally effective to vest in him the power of dismissal. This results from Section 16 of the General Clauses Act which by virtue of Article 367(1) applies to the constructions of the word "appointment" and necessarily includes the power to suspend or dismiss. The Supreme Court held that *Pradyat Kumar Bose* Appellant was not entitled to the

protection under Article 320(3)(c). The Chief Justice of the High Court was not required to have prior consultation with the Public Service Commission, for dismissing the High Court staff.

26. In the present case the Executive Council is the Disciplinary Authority and has power to dismiss the Petitioner. It is also a rule making authority for making statutes subject to approval of the State Government. The Executive Council has to ordinarily follow the statutes and wait for the recommendations of the Disciplinary Committee to exercise the powers of suspension, but that the recommendation of the Disciplinary Committee is not sine qua non in every case to exercise the power of suspension which is coupled with the power of disciplinary action. Each case has to depend on its own facts. In this case an emergent meeting of the Executive Council was called and taking into account the facts and circumstances in which it was alleged that the Petitioner was guilty of taking bribe from thousands of students to give them confirmation letters for admission, the Executive Council cannot be said to have acted without authority for want of recommendation of the Disciplinary Committee, to suspend the Petitioner.

27. We have given the aforesaid reasons, which may be a ground to disagree with the judgment in Dr. Sushil Prakash Gupta's case, and to refer a case to the larger bench, but that in the present case we do not find it necessary to refer the matter to a larger bench inasmuch the Petitioner has an alternative remedy of approaching the Chancellor of the University against the order of suspension u/s 68 of UP State Universities Act, 1973.

28. For exercising the powers under Article 226 of the Constitution of India the alternative remedy is not an absolute bar, and that on the grounds such as lack of authority, failure to observe principles of natural justice the Court may interfere. The powers under Article 226 of the Constitution of India, however, are discretionary and that where an alternative remedy is provided, even if the authority competent to dismiss the Petitioner resolved to suspend him, without the benefit of the recommendation of the Disciplinary Committee, in the given circumstances in which serious allegations of corruption has been raised against the Petitioner, we refuse to issue a writ of certiorari and relegate the Petitioner to the alternative remedies.

29. The writ petition is dismissed with liberty to the Petitioner to approach the Chancellor of the University u/s 68 of the UP State Universities Act, 1973. If the Petitioner makes a representation to the Chancellor, the same may be considered and decided expeditiously.