

(1991) 03 AHC CK 0137

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13997 of 1990

Professor Pratima Asthana

APPELLANT

Vs

The Chancellor, Gorakhpur University and Others

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 12(10), 12(12), 12(13), 12(7), 31

Citation : (1991) 1 AWC 493

Hon'ble Judges : R.K. Gulati, J;A.N. Verma, J

Bench : Division Bench

Advocate : A. Kumar, P.P. Srivastava and T.P. Singh, for the Appellant; Pradeep Kumar, for the Respondent

Final Decision : Allowed

Judgement

A.N. Verma, J.—This petition was initially filed challenging the order passed by the Chancellor on 17-5-1990 purporting to terminate the services of the Petitioner who was the Vice-Chancellor of the Gorakhpur University in exercise of the powers under U.P. Ordinance No. 11 of 1990 which enabled the Chancellor to terminate the services of any Vice-Chancellor of a State University at any time, by giving him three months" notice or three months" pay in lieu thereof, or by giving a shorter notice and pay for the period by which such notice falls short of three months. The validity of this Ordinance was also challenged on diverse grounds which it is not necessary to elaborate here in view of subsequent developments. The petition was admitted and various interim orders were passed from time to time. The Chancellor was restrained from making any fresh appointment of Vice-Chancellor for the Gorakhpur University till further orders of this Court. The Chancellor was, however, left free to make interim arrangement in terms, of Sub-section (10) of Section 12 of U.P. State Universities Act. Exercising the powers under that provision the Chancellor appointed one Professor Bhumitra Deo as an interim Vice- Chancellor for a period of six months which period has also expired on 22-2-1991. During the pendency of this

petition, however, another Ordinance was issued being U.P. Ordinance No. 19 of 1990. Sub-section (12) of Section 12 of U.P. State Universities Act made provision for removal of Vice-Chancellor by the Chancellor if in the opinion of the latter, the Vice-Chancellor wilfully omits or refuses to carry out the provisions of this Act or abuses the powers vested in him, or if it otherwise appears to the Chancellor that the continuance of the Vice-Chancellor in office is detrimental to the interests of the University after making such enquiry as he deems proper. Sub-Section 13 of Section 12 of the said Act after amendment by this latter Ordinance, provides that the Chancellor shall have the power to suspend the Vice-Chancellor during the pendency or in contemplation of any inquiry referred to in Sub-section (12) of Section 12. Another provision of U.P. Ordinance No. 19 of 1990 which has been the subject of main debate at the Bar is Clause 4 which reads thus:

4. (1) The Uttar Pradesh State Universities (Amendment) Ordinance, 1990 is hereby repealed.

(2) Notwithstanding such repeal-

(a) anything done or any action taken u/s 31 of the Principal Act as amended by the Ordinance referred to in Sub-section (1), shall be deemed to have been done or taken u/s 31 of the principal Act as amended by this Ordinance, as if the provisions of Section 3 of this Ordinance were in force at all material times;

(b) any order of termination of the appointment of any Vice-Chancellor passed by the Chancellor under the proviso to Sub-section (7) of Section 12 of the principal Act as substituted by the Ordinance referred to in Sub-section (1), shall be deemed to be, and shall be effective as, an order of suspension of the Vice-Chancellor in contemplation of enquiry, passed by the Chancellor under Sub-section (13) of Section 12 of the Principal Act as inserted by this Ordinance, as if the provisions of Section 2 of this Ordinance were in force at all material times.

2. The net effect of the two amendments brought about by U.P. Ordinances Nos. 11 and 19 of 1990 as well as the order passed by the Chancellor terminating the services of the Petitioner by giving her three months' notice is that the Petitioner stood suspended as a matter of legal fiction with effect from the date on which the Chancellor had earlier terminated her services in terms of Clause (b) of Sub-clause (2) of Clause 4 of U.P. Ordinance No. 19 of 1990. No separate order of suspension was admittedly passed against the Petitioner. The stand taken by the Respondents, however, is that as a matter of law the Petitioner stood suspended in contemplation of enquiry under Sub-section (13) of Section 12 of the U.P. State Universities Act as amended by U.P. Ordinance No. 19 of 1990.

3. The provisions of the subsequent Ordinance No. 19 of 1990 were also assailed on a large number of grounds which again it is unnecessary to elaborate in view of the facts which we will immediately refer to. The Petitioner was appointed as Vice-Chancellor on 20-2-1989 for a term of three years and as mentioned above under U.P. Ordinance No. 11 of 1990 her services were terminated by the

Chancellor by an order dated 17-5-1990 and as a consequence of the provisions of Clause 4(2)(b) of U.P. Ordinance No. 19 of 1990 the order of termination stood converted into an order of suspension with effect from the same date, i.e., 17-5-1990. While this may be so, i.e., the Petitioner may be treated as having been placed under suspension as a matter of legal fiction even though no express order was passed in that behalf, it is indisputable that the order of suspension cannot continue indefinitely. The Ordinance was promulgated on 26-7-1990 and the petition was presented in this Court on 25-5-1990 and though several interim orders were passed by this Court, there was no bar express or implied to the Chancellor proceeding with the enquiry contemplated under Sub-section (12) of Section 12 of the Act. The fact, however, remains that till date it appears that even the charges have not been framed against the Petitioner. The learned Advocate General has brought to our notice a letter dated 20-2-1991 addressed by the Commissioner of Gorakhpur Division to the Secretary of the Chancellor stating that the complaints against the Petitioner are being investigated according to the information received by him from the present Vice-Chancellor and that effort is being made to complete this investigation. It is apparent from this letter that the enquiry into the complaints are still at a preliminary stage apparently with a view to collecting material for framing charges against the Petitioner. Be that as it may, there is no doubt that no charges have been framed as yet against the Petitioner.

4. The learned Advocate General appearing for the State has very fairly stated before us that while the law deems the order of termination passed against a Vice-Chancellor as one under suspension, it is always open to the Chancellor to withdraw the same in case suspension of the Vice-Chancellor becomes unnecessary or it is otherwise not warranted to continue for the purpose of carrying out or concluding the enquiry. The Chancellor has, however, chosen not to withdraw the order of suspension so far. At the same time this Court cannot countenance the suspension to continue indefinitely. The suspension was deemed to have been made in contemplation of an enquiry and the position is that even though more than nearly ten months have elapsed since the promulgation of the Ordinance, even the charges have not yet been framed. We are not satisfied that any good ground exists for allowing the suspension order to continue indefinitely. The suspension of Vice-Chancellor cannot be utilised as a measure of punishment. The action of suspending an officer is intended to facilitate a disciplinary enquiry or enquiry into the charges and if no action is taken pursuant to an order of suspension within a reasonable time, the same cannot be allowed to continue indefinitely as in that event it ceases to serve any valid purpose.

5. Sri K.N. Tripathi representing the Chancellor, however, submitted in the first place that there has not been any such undue delay so as to justify quashing the order of suspension on the ground of undue delay. Secondly, even if this Court is inclined to quash the order of suspension on the ground of delay, it should be open to the Chancellor to exercise his power to place the Petitioner under suspension in the future in case of discovery of further material and facts which

may make it necessary to re-suspend the Petitioner, so to say, for proper conduct of the enquiry into the charges against the Petitioner.

6. As already notice above, the delay in the present case is wholly inexplicable. The Petitioner's services were terminated in May 1990. The order of suspension will, therefore, be deemed to be in operation since that time. Even after the promulgation of the second Ordinance, more than seven months have elapsed and yet we find that the complaints against the Petitioner are still at the stage of some kind of preliminary investigation prior to the framing of formal charges. The Petitioner's term itself would expire on 20-2-1992. One should therefore have thought that the concerned authority would act with greater dispatch and would not allow things to drift in this manner. The authority does not seem to be in a position even to frame the charges even after the expiry of seven months from the promulgation of the second Ordinance. After all the suspension of a Vice-Chancellor-a high academic dignity-is a serious matter. The delay in these circumstances cannot be over looked. If, however, the Chancellor finds after the material has been collected that it would not be possible to proceed with the enquiry without suspending the Petitioner, there will be no lack of power to do so.

7. In the view that we are taking with regard to the propriety of the continuance of the order of suspension, we are not pronouncing on other correctness of the contentions raised by learned Counsel for the parties on the validity of the Ordinances and other legal submissions made in that connection.

8. In the result, the petition succeeds and is allowed. The deemed order of suspension is quashed. The Petitioner shall stand re-instated as Vice-Chancellor with immediate effect subject to the observations made above.