

**(1968) 05 CAL CK 0016**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 465 (W) of 1963**

Pulin Behari Bhattacharjee

APPELLANT

Vs

Jadavpur University

RESPONDENT

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**Date of Decision :** 23-05-1968

**Acts Referred:**

Jadavpur University Act — Section 12, 12(1), 14, 2, 5  
Jadavpur University Rules, 1956 — Rule 53

**Citation :** (1969) 1 ILR (Cal) 103

**Hon'ble Judges :** D. Basu, J

**Bench :** Single Bench

**Advocate :** Anil Kumar Sinha and Goutam Prasad Chatterjee, for the Appellant; Nani Coomar Chakraborty and Alok Kr. Dhar, for the Respondent

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## Judgement

D. Basu, J.—The Petitioner was appointed as a mechanical instructor under the College of Engineering and Technology in August 1941 at a pay of Rs. 60, and at that time he declared his age to be 18 years on August 29, 1924, when he had started his career as an apprentice under the Port Commissioners. At the time of appointment it was understood that the age of superannuation was 60 years.

2. In 1952, the Petitioner received two letters from Sri T. Sen, the then Principal of the College of Engineering and Technology, that his services as mechanical instructor would come to an end with effect from July 1, 1952, from which date he would be appointed as a drawing instructor at the Jadavpur Polytechnic under the National Council of Education in the grade of Rs. 230 with allowances.

3. The Petitioner's Case is that the Jadavpur University Act having been passed in 1955, the assets and employees of the Jadavpur-Polytechnic came to be transferred to the University and by a resolution of the National Council of Education on January 14, 1956, the maintenance and management of the Jadavpur Polytechnic was taken over by and became a part of the University in terms of the said Act and the Petitioner thereupon became an employee under the University.

4. On March 26, 1962, the Principal of the Jadavpur Polytechnic asked the Petitioner to produce his Matriculation certificate for opening a new service book, even through the Petitioner's age was declared by him at the time of his initial appointment and recorded in the service book maintained by the College of Engineering and Technology. By his letter of April 9, 1962, the Petitioner replied, that his original Matriculation certificate had been lost and that his age was correctly entered in his service book maintained by the College of Engineering from where he had come on transfer.

5. On November 19, 1962, Sri T. Sen, Rector of the University describing himself as the Vice-President of the Jadavpur Polytechnic asked the Petitioner to supply particulars relating to the school from which and the year in which he passed the Matriculation examination. The Petitioner supplied these particulars, but by a letter of November 16, 1962, he was asked to show cause why his services should not be terminated for not complying with, the orders for furnishing evidence as to his age, qualifications etc. The Petitioner referred to his letter of November 19, 1962, already addressed by him to the Rector. But he received a letter dated March 5, 1963, from the Principal of the Jadavpur Polytechnic, intimating that by a resolution of February 5, 1963, the Governing Body of the Jadavpur Polytechnic had resolved that if the Petitioner failed to submit his Matriculation certificate in original within 15 days from the receipt of the letter (annEx. A, p. 20 of the petition), his services would stand terminated with effect from that date, i.e., March 20, 1963. The Petitioner now challenges the validity of the said resolution on various grounds.

6. The Rule is opposed by an affidavit-in-opposition filed by Respondent No. 3, the Principal and Secretary of the Jadavpur Polytechnic. No affidavit has been filed by Respondent No. 1, the Jadavpur University or its Rector (Respondent No. 2).

7. The first point urged on behalf of the Petitioner is that the Governing Body of the Jadavpur Polytechnic has no jurisdiction to terminate the services of the Petitioners which are governed by the Jadavpur University Act (hereinafter referred to as "the Act").

8. The plea of the Respondent is that the Act does not apply to the Petitioner; that the Jadavpur Polytechnic was never under the control of the National Council of Education and it was never taken over by the University nor did its employees become employees of the University.

9. The Petitioner relies upon the provisions of Section 12 of the Act which says--

(1) When this Act comes into force the maintenance and management of any institution under the control of the National Council shall stand transferred to the University.

(2) When the maintenance and management of an Institution stands transferred to the University under Sub-section (1) or when the University takes over the maintenance and management of an existing institution under Clause

(2) of Section 5--

(a) there shall stand transferred to the University for the benefit of such institution all assets held for the benefit thereof....

(b) every person employed in that institution shall continue to be employed by the University on terms and conditions not less advantageous than those governing his employment by the institution.

10. The controversy between the parties centres round the question whether the Jadavpur Polytechnic, whose employee the Petitioner admittedly was at the date of the impugned resolution, was an institution under the control of the National Council. Unless the answer to this question be in the affirmative, the Petitioner's case that he is governed by the Act would fall to the ground. The expressions "institution" and "National Council" are defined in Section 2(b) & (c) of, the Act as follows:

"Institution" means a college, polytechnic, school or any other place, by whatever name called, for training, instruction, research or study;

"National Council" means the National Council of Education, Bengal, formed and registered on the 1st day of June, 1906, under the Societies Registration Act.

11. There is no apparent reason why the Jadavpur Polytechnic would not conform to the requirements of the definition of "institution" as given above. The point for determination is whether it was under the control of the National Council. On this point, the Petitioner has produced the following materials:

(i) A printed prospectus issued by the Principal of the Jadavpur Polytechnic, the year 1958-59. Its opening words are--

Jadavpur Polytechnic, sponsored by the Government of West Bengal and recognised by the All India Council for Technical Education, was established in the year 1952 in the present premises and is under the supervision of the Jadavpur University.

12. The names and designations of the President and the Vice-President of the Polytechnic printed on the cover are to be noticed:

President--Dr. B.C. Roy, President of the National Council of Education, Bengal.

Vice-President--Dr. T. Sen, Rector, Jadavpur University, Representative of the National Council of Education, Bengal.

13. The very fact that the National Council has sent its representatives to the Managing Committee of the Polytechnic who are at the head thereof suggests that the Polytechnic was under the control of the National Council.

(ii) On the other hand Is the Golden Jubilee Publication of the National Council itself, issued by its Secretary and published by the Registrar of the Jadavpur University. It also contains writings of some of the founders of the Council as well

as the University. Its connection with both the National Council and the University is thus established and the brochure cannot be thrown away as an unauthorised publication.

14. The history of the creation of the Jadavpur Polytechnic as narrated at different pages of this publication may be summarised thus:

The National Council of Education was registered in 1906 for the creation of a national University in different branches (pp.5, 62-3, 82).

The activities of the Council were accelerated by the Non-Co-operation movement and the Bengal Technical Institute was set up in 1922 (pp. 30, 55, 84).

In 1928, this Bengal Technical Institution was renamed the "College of Engineering and Technology, Bengal" (p. 31), and the Petitioner was initially appointed to this College.

Owing to the influx of refugees in 1950 the Government of West Bengal sponsored the establishment of polytechnic in different parts of the State. As a part of this move, the Jadavpur Polytechnic was established in 1952 "under the National Council" and incorporating the Overseer course appertaining to the College of Engineering since 1947 (p. 34).

15. Unless the preceding statements are explained away by proper materials produced by the Respondents, the Petitioner's case must be taken as established beyond doubt, namely, that the Jadavpur Polytechnic is a part of the activities of the National Council and managed under its control, though sponsored by the then Government.

16. The enactment of the Jadavpur University Act itself was due to the initiative of the National Council and its own proposal that it should be conferred the status of a University (p. 37). Though eventually the University was set up as a statutory corporation, the National Council was not abolished but was allowed to continue as the foundation of the organisation set up by the Act (p. 39).

17. The Development Plan of the Jadavpur University at the end of the said publication, which includes the various buildings and institutions appertaining to the University, also includes the Jadavpur Polytechnic (No. 21) in the same manner as the College of Arts & Science which indisputably belongs to the University.

18. In the counter-affidavit filed by Respondent No. 3, it is stated that the University never obtained grants for the Polytechnic nor paid the salary of its staff. But that is not the crucial test for the application of Section 12(1) of the Act. What is decisive is whether the Polytechnic was under the control of the National Council. For that the Petitioner has produced an authoritative publication of the Council itself which could not be counter-acted by the Respondent by any material even though an opportunity was given for this purpose. What is more

striking is that the University, which would be bound by the decision in the instant case, never came forward to oppose the Petitioner's case.

19. The evidence on the records is thus one-sided.

20. By a supplementary affidavit the Petitioner produced corroborative evidence to show that the Polytechnic is, as a fact, maintained as a part of the University, e.g.,

(a) A copy of a cheque to pay the salary of the Petitioner, which was signed not only by the Principal of the Polytechnic but also by the Registrar of the University. The only explanation that the Respondent could offer to this was that this was done for reasons of security. But there is no reason why the Registrar of the University should take upon himself the onerous task of making disbursements and signing cheques on behalf of an institution if it had no connection with the University.

(b) The financial estimates of the Jadavpur University itself, for the year 1956-57, as including not only the estimates for the College of Engineering and the College of Arts & Science but also the Jadavpur Polytechnic. Here also the only contention that the Respondent could make was that these entries in the estimates of 1956-57 were "wrong". But the only proper person to say that they were wrong is the University itself whom the Respondent No. 3 could not induce to file an affidavit in this behalf to support him, even though given such opportunity by the Court.

21. In my opinion, Section 12 of the Act is applicable to the Polytechnic, and its employees.

22. The result of the foregoing conclusion is that the matter of appointment and dismissal of such employees will be governed by Rules made u/s 14 of the Act. These Rules, as adopted in 1956, provides that the appointment and dismissal of an employee other than a member of the subordinate staff can be made only by the University and the procedure to be followed in the matter of termination of services of such employees is laid down in Rule 53 thereof.

23. The Governing Body of the Polytechnic had, therefore, no jurisdiction to make the impugned resolution, which is referred to at pp. 15 and 20 of annEx. A to the petition.

24. Since the preceding finding is sufficient to dispose of this Rule and the merits of the Petitioner's case as to age etc. are to be dealt with by the proper authority under the Act it would not be necessary nor proper for me to enter into the other questions besides that of jurisdiction.

25. In the result, this Rule is made absolute and the impugned resolution struck down, without any bar to the authorities competent under the Jadavpur University Act to proceed against the Petitioner on the same grounds as are referred to in the impugned resolution. Respondent No. 3 must pay the costs of

the Petitioner, assessed at three gold mohurs.