

**(2012) 04 MP CK 0048**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 21539 of 2011**

Rajendra Jain

APPELLANT

Vs

State Bar Council OF M.P. and Others

RESPONDENT

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**Date of Decision :** 18-04-2012

**Acts Referred:**

**Citation :** (2012) ILR (MP) 1196

**Hon'ble Judges :** Rajendra Menon, J

**Bench :** Single Bench

**Advocate :** Rajendra Tiwari and Imtiaz Hussain, for the Appellant; Siddhart Gulatee, for the respondents No. 1 and 28 and Brahmada Singh, for the respondent No. 2 Respondents No. 3 to 27 by their respective counsels, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajendra Menon, J.—Petitioner who was Secretary to the M.P. State Bar Council has filed this writ petition challenging the order Annexure P/1 passed by respondent No. 2 in his capacity as Chairman of the State Bar Council dispensing with the service of the petitioner. Challenge to the order is made mainly on the ground that the Chairman of the Council does not have any authority to take the impugned action and as the action taken without approval of the entire council through its general body, the same is illegal. The facts in brief indicates that the petitioner was initially appointed as a Secretary to the State Bar Council of M.P. in the year 1984. Prior to his appointment as Secretary, he was working as Assistant Secretary/ Public Relation Officer and his appointment as Secretary in the year 1984 was after due selection, interview and approval of the General Body of the State Bar Council of M.P. Petitioner was to retire on attaining the age of superannuation i.e. 60 years on 30th April, 2010. However, before his retirement petitioner was granted extension of service by the General Body of the Bar Council for a period of one year i.e. upto 30th April, 2011 in accordance to the provisions of Rule 5 of the State Bar Council M.P. Service Rules, 1975 filed

as Annexure R1/5. It is a case of the petitioner that the matter was placed before the General Body of the Council and the petitioner was granted extension of service for one year. This period for which extension was granted was to expire on 30th April, 2011. Before the period of extension could come to an end on 30th April, 2011, the Executive Committee of the State Bar Council passed a resolution Annexure P/2 on 2.1.2011 proposing to grant extension of service for a further period of one year and also suggested for continuing with the appointment after a period of two years extension is over. This resolution of the Executive Committee Annexure P/2 was to be placed before the General Body meeting to be held on 27.4.2011 but it is admitted position that in the meeting of the General Body which was to be held on 27.4.2011 the question of extension to the petitioner beyond 30.4.2011 was not considered and therefore, the then Chairman respondent No. 7 passed an order Annexure P/3 on 30.4.2011 granting extension of service by one year or until further directions of the General Body. This order Annexure P/3 dated 30.4.2011 was placed for consideration before the General Body in its 18th meeting held on 4.9.2011 and the General Body granted extension of service by one year. Accordingly, the minutes were drawn as is evident from Annexure P/4 dated 4.9.2011. It is a case of the petitioner that by virtue of this resolution dated 4.9.2011 petitioner's services were extended upto 30.4.2012. In the meanwhile, petitioner fell ill, applied for medical leave on 23.11.2011, went to Delhi for check-up and treatment. He had expected to come back upto 4 to 5 days but the petitioner was required to remain in Delhi for a further period and returned back only on 5.12.2011, when he was informed about the impugned action taken on 3.12.2011. It is a case of the petitioner that in the impugned order Annexure P/1 dated 3.12.2011 the Chairman, respondent No. 2, has terminated the extended service of the petitioner before 30.4.2012 without getting the approval of the General Body and on the reasons indicated therein i.e. ill health of the petitioner and his incapacity to work is also not correct, the same is unsustainable.

2. Shri Rajendra Tiwari, learned Senior Counsel assisted by Shri Imtiaz Hussain took me through the provisions of the Rules of State Bar Council, the powers and duties of Chairman and Vice Chairman as contained in Chapter 15 thereof and argued that the Chairman has no authority to take the impugned action. It is emphasized that the Secretary is appointed by the Council and therefore, it is only the Council which could terminate the contract of employment of the petitioner even during the extended period of service after the date of retirement. Contending that extension of service upto 30.4.2012 was granted vide resolution passed by the General Body of the Council on 4.9.2011 vide Item No. 17 and this resolution could not be brought to an end by the Chairman in the manner done. Challenge to the resolution is made mainly on the ground that the impugned action taken by the Chairman is unsustainable, contrary to law and beyond the jurisdiction vested with the Chairman. That apart, it is stated that the impugned order is a result of the arbitrary and malafides of respondent No. 2 who has exercised his power without authority of law. It is stated that in the

order ill health of the petitioner is raised as a ground for terminating the extended service but while doing so the medical fitness of the petitioner was not got examined by any Medical Board nor was any notice issued nor was the procedure contemplated for termination as per the service rules followed. Accordingly, contending that the termination is illegal challenge is made to the impugned action. It was also emphasized by Learned Counsel for the petitioner that in the order of termination, the only reason given for ending the extended service is the ill health of the petitioner but in the return filed various other grounds are raised which amounts to making allegations against the petitioner and as no show cause notice or opportunity of hearing is granted to explain these allegations the termination in violation of the principles of natural justice is said to be unsustainable.

3. Shri Siddharth Gulati, Learned Counsel appearing for the respondent Bar Council refuted the aforesaid contentions and raised three objections with regard to the claim made by the petitioner. The first objection raised by Shri Siddharth Gulati was that respondent No. 3 to 27 are individual elected Members of the State Bar Council and they have been unnecessarily impleaded as parties only with a malafide intention of soliciting their opinion into the matter which is not permissible. It is stated that State Bar Council is a body corporate, creation of statute, it does not mean the Members or the Chairman but it is the whole body and a individual entity like the Member has no locus and give his opinion in the matter in a judicial proceeding. Placing reliance on a judgment rendered by a Bench of this Court in the case of Radhelal Gupta Vs. State Bar Council of M.P. and Others, it was emphasized by Learned Counsel that an individual Member respondents No. 3 to 27 are unnecessary parties and they have no right to give their say in the matter in these proceedings. It is stated that the Bar Council respondent No. 1 is required to justify the action and for the said purpose the individual opinion of the each member is not required. Accordingly it is stated that the action of the petitioner in impleading respondents No. 3 to 27 is wholly uncalled for and therefore, the petition is liable to be dismissed on this count alone. The second ground canvassed by Learned Counsel was to the effect that under Rule 5 of the State Bar Council of M.P. Service Rules 1975 Annexure R1/5, the age of retirement of the Members of the Staff including the Secretary is 60 years. Thereafter it is provided under the Rules that the Council may extend the age of retirement, if it thinks fit for a total period of two years in a particular case. It is emphasized that petitioner attained the age of superannuation on 30.4.2010 but before he attained the age of superannuation, he was granted extension in service for a period of one year i.e. upto 30.4.2011. Thereafter on or before 30.4.2011 no extension of service was granted by the Bar Council. Shri Siddharth Gulati points out that the order passed by the Chairman of the Bar Council vide Annexure P/3 on 30.4.2011 is not a legal order of extension as this order was passed without approval of the Council nor was there any decision of the council to extend the service and it was only decided by the Bar Council vide Annexure P/4 on 4.9.2011. On 4.9.2011 when the Bar Council took a decision to

extend the service of the petitioner, the contract of appointment had already come to an end on 30.4.2010 and therefore, a contract of appointment which had already been terminated could not be extended in the manner done by the Bar Council. In support of the aforesaid preposition, Learned Counsel invites my attention to the certain principles laid down by Constitution Bench of the Supreme Court in the case of State of Assam and Others Vs. Padma Ram Borah, to contend that when the retirement of the petitioner had already been effected on 30.4.2011 then on 4.9.2011 the Bar Council had no authority to grant extension as the petitioner ceased to be in service on 30.4.2011 and the order passed by the Bar Council for retaining him in service was in nullity and unsustainable. Finally it was argued that even if it is assumed that the petitioner was granted extension after due approval of the Council on 4.9.2011, then the resolution itself passed on 4.9.2011 is said to be illegal. It is argued that when the meeting of the Bar Council was held on 4.9.2011 even though the question of considering the extension of the petitioner's service was indicated as Item No. 17 in the resolution and the minutes Annexure P/4 and the resolution is said to have been passed. Shri Siddharth Gulati points out that the resolution passed by the Bar Council has to be approved in the next meeting of the Council that is to be held after 4.9.2011, the next meeting of the Bar Council was held on 12.11.2011 at Gwalior and on the said date i.e. on 12.11.2011 the resolution passed on 4.9.2011 is not confirmed or approved. Inviting my attention to the agenda for the meeting to be held on 12.11.2011 Annexure R1/3 and the minutes of the meeting held on that date vide Annexure R1/4, it is stated that due to paucity of time the resolution dated 4.9.2011 was not approved or confirmed and therefore, it is stated that resolution dated 4.9.2011 is not passed in accordance with law and cannot be considered to be a proper resolution. Learned Counsel invites my attention to the note sheet filed by the petitioner as contained in Annexure P/6 and points out that after the minutes of the meeting held on 4.9.2011 were recorded, one of the Member of the Bar Council submitted a complaint vide Annexure R1/6 on 11.11.2011 and in this complaint he pointed out that in the meeting held on 4.9.2011 at Jabalpur only matters upto item No. 16 were considered and discussed and thereafter the meeting was adjourned by the Chairman and all the Members left the hall, it was the complaint of this Member that petitioner who was discharging the duties of Secretary on 4.9.2011 himself got an illegal resolution prepared on 4.9.2011 as Item No. 17, interpolated it into the resolution was circulated it in November 2011, therefore, the Member made the complaint. It is emphasized that because of this complaint Annexure R1/6 and due to the fact that resolution dated 4.9.2011 was not taken up for discussion and confirmation on 22.11.2011 at Gwalior. The very claim of the petitioner that a resolution was passed on 4.9.2011 becomes doubtful as in the eyes of law this resolution is seen to have been not passed as per rules. Accordingly, on the aforesaid three grounds, Learned Counsel prays for dismissal of this writ petition. It is also pointed out by him that as appointment of the petitioner itself after his extended service came to an end on 30.4.2011 is illegal, no mandamus can be issued for continuing him in service, as a mandamus for

regularizing an illegality cannot be issued. That apart, it is stated that petitioner has already attained the age of superannuation. Grant of extension of service under Rule 5 cannot be claimed as a matter of right and therefore, petitioner does not have any legal right to seek his appointment/ extension of service. Placing reliance on the following two judgments in support of the aforesaid contention, Learned Counsel submits that the petitioner has no legal right to claim the benefit now from this Court. Judgment relied upon are a judgment of Supreme Court in the case of State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, and judgment of this Court in the case of Bhaskar Tiwari Vs. Jiwaji University and Another, .

4. In rebuttal, Shri Rajendra Tiwari, learned Senior Counsel emphasized that the President of the Council on 30.4.2011 vide Annexure P/3 granted extension of service to the petitioner for a period of one year based on the recommendations made by the Executive Committee and the order of Chairman Annexure P/3 dated 30.4.2011 was approved by the Bar Council on 4.9.2011, therefore, the extension of service would have retrospective effect w.e.f. 30.4.2011 and therefore, the contention advanced by Shri Siddharth Gulati is said to be unsustainable. Shri Rajendra Tiwari, learned Senior Counsel emphasized that when the Executive Committee made a recommendation to the Chairman and when the resolution could not be taken up for consideration in the meeting of the General body on 27.3.2011 then the Chairman had the authority to pass the order Annexure P/3 and when the action of the Chairman is approved by the Bar Council in September 2011, the action of the Chairman gets ratified by the Bar Council and therefore, it is stated that there is no illegality in the matter.

5. I have heard Learned Counsel for the parties and perused the record. As far as preliminary objection raised by Shri Siddhart Gulati with regard to dismissing the petition on the ground that respondents No. 3 to 27 have been impleaded unnecessarily as party are concerned, it is not appropriate for this Court to dismiss the writ petition on such ground, even though Shri Siddhart Gulati is right in contending that the individual Members of the Bar Council are not to be impleaded as party but on the said ground the petition cannot be dismissed. On the basis of notice issued by this Court, some of the Members i.e. from 3 to 27 appeared and have filed their reply which indicates that some are supporting the cause of the petitioner and some are opposing the same. However, the individual Member as canvassed by Shri Siddhart Gulati, have no right either to support or to oppose the claim of the petitioner in these proceeding. The legal questions are to be considered by this Court based on the assertion made by the Bar Council, a body corporate and not on the basis of individual opinion of its Members. Respondents No. 3 to 27 may place their opinion and grievance if any before the appropriate forum in the Council but not in these proceedings before this Court. If the individual members are permitted to voice their opinion in these proceedings and if based on their individual opinion any decision is to be taken, the same may run contrary to the submissions of the Bar Council, a body corporate and a legal entity and may also have the effect of converting this

petition into the proceeding held for considering the majority view of the Bar Council, this is not permissible. Under such circumstances, finding respondents No. 3 to 27 to be not necessary parties, their affidavits and pleadings are ignored and matter is being decided on the basis of legal ground canvased and submissions made by the petitioner and respondent No. 1 Bar Council.

6. The main contention of the petitioner is to the effect that extension of service was granted to the petitioner by the resolution passed by the State Bar Council and the Chairman, respondent No. 1 has no authority to cancel the extension granted without due concurrence or approval of the Council. From the records it is seen that the Executive Committee of the Bar Council in its meeting held on 19.9.2009 Annexure R1/2 made a recommendation for granting extension of service to the petitioner in accordance to Rule 5 of the Service Rules of 1975. This recommendation of the Executive Council was placed in the General Body Meeting of the State Bar Council held on 30.1.2010 and resolution was passed on 30.1.2011 granting extension of service for a period of one year from the date of retirement. The extension was granted under Rule 5 of the Service Rules, 1975. Accordingly, even before the retirement of the petitioner on 30.4.2010 i.e. before the contract of appointment could come to an end, the Bar Council resolved on 30.1.2010 to extend the service of the petitioner upto 30.4.2011. However, when the question of extending the service beyond 30.4.2011 was to be considered, the meeting of the General body of the Committee which was held on 20.3.2011 could not be held to take up the matter for consideration and on 30.4.2011 there was no resolution of the Bar Council extending the service of the petitioner. Accordingly, the extended service of the petitioner came to an end on 30.4.2011. It is a case of the petitioner that the extension of the petitioner on 30.4.2011 is by the Chairman vide Annexure P/3 and the decision of the Chairman was ratified by the Bar Council in its General Body Meeting held on 4.9.2011. The question is as to whether the Chairman could extend the service on 30.4.2011 and whether the extension granted by the Chairman on 30.4.2011 could be ratified by the Bar Council on 4.9.2011, thereby having the effect of granting extension retrospectively w.e.f. 30.4.2011. Admittedly, it is a case of the petitioner himself that the Chairman of the Bar Council is not authorized to take any action against the petitioner either for terminating the service or for appointment or extension. That being so, the order passed by the Chairman of the Bar Council on 30.4.2011 vide Annexure P/3 is beyond the powers vested with the Chairman. Once it is so held, the consequential question would be as to whether the resolution passed on 4.9.2011 will have the effect of extending the service retrospectively. At this point of time it would be appropriate to take note of the principles laid down in the case of Padma Ram Borah (*supra*) by the Constitution Bench. In the said case Padma Ram Borah was an employee working in the office of Registrar, Joint Stock Companies, Assam. While he was in service he was suspended. However, he was to retire in January 1961 on attaining the age of superannuation but before his retirement, his services were suspended for conducting an enquiry. It was assumed that he continues in service by virtue of provisions of Fundamental

Rule 56, therefore, his service tenure was extended upto 30.3.61. The extension was for a period of three months and the three months period was to come to an end on 31.3.1961. According to the State Government the extended period of service came to an end on 30th March, 1961 but it was again extended subsequently i.e. on 9.5.1961, by giving retrospective effect by passing an order on 9th May, 1961 for extending the period of service by a further period of three months w.e.f. 1st April 1961. The question before the Supreme Court was as to whether the retrospective extension of service after the first extended period of service came to an end on 31.3.1961 was proper and by an order passed on 9.5.1961 retrospectively extension could be granted or not. After taking note of certain principles laid down by the Privy Council in the case of AIR 1937 27 (Privy Council) and Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal, , the Supreme Court came to the conclusion that the employee concerned seized to be in service on 31.3.1961 as the first extended period of service came to an end on that date and therefore, an order passed by the State Government after a period of more than one month thereafter extending the service retrospectively is a nullity and cannot be sustained. It is therefore, a case where the Supreme Court has found that when a contract of service of an employee came to an end on 31.3.1961 then it could not be extended retrospectively by order passed on 9th May, 1961. In the present case also exactly similar factual scenario exists. As per Rule 5 of Service Rules of 1975, the petitioner attained the age of superannuation on 30th April, 2010. However, in January 2010 he was granted extension upto 30.4.2011. On 30.4.2011 his extended service also came to an end and between 30th April, 2011 upto 4.9.2011 i.e. for a period of more than 4 months, there was no order continuing him in service i.e. there was no contract of service subsisting as per law. The resolution of the Bar Council dated 4.9.2011 therefore could not extend the service of the petitioner once the contract of employment came to an end on 30.4.2011 in the light of principles laid down by the Supreme Court in the case of Padma Ram Borah (supra). The decision of the Council taken on 4.9.2011 is a nullity and is unsustainable and therefore, by virtue of the said illegality committed by the Bar Council the petitioner cannot be deemed to be in service after 30.4.2011. There could not be extension of a service which had already come to an end on 30.4.2011. Petitioner's services came to an end on 30.4.2011 and therefore, in the light of the legal principles as laid down by the Supreme Court by operation of law the petitioner's extended period of service came to an end on 30.4.2011, now this Court cannot issue any mandamus for treating the petitioner to be in service and permit him to work upto 30.4.2012, once by operation of law as indicated herein above the service of the petitioner had come to an end on 30.4.2011. A mandamus of the nature prayed for can be granted only to enforce a legal right of the petitioner, it cannot be issued to perpetuate a illegality. Grounds raised by the petitioner with regard to the powers of the Chairman to terminate his services need not to be looked into now as continuance of petitioner's service after 30.4.2011 is found to be a nullity and non existing in the eyes of the law.

7. Contention of Shri Rajendra Tiwari, learned Senior Counsel to the effect that the order passed by the Chairman vide Annexure P/3 on 30.4.2011 is ratified retrospectively by the Bar Council cannot be accepted for the simple reason that on 30.4.2011 by operation of law and the statutory rules i.e. Rule 5 of the Rules of 1975, petitioner's services came to an end and when the Chairman of the Bar Council on petitioner's own showing had no right to pass an order continuing the petitioner in service after 30.4.2011, the order Annexure P/3 dated 30.4.2011 is an order which is held illegal, is a nullity and cannot be taken cognizance of for granting any benefit to the petitioner. Once the services of the petitioner came to an end on 30.4.2011 by efflux of time and by operation of law then in the light of the principles laid down in the case of Padma Ram Borah (supra) the State Bar Council had no jurisdiction or authority to extend the service which already stood terminated on 30.4.2011. Accordingly, petitioner cannot now claim any benefit for continuing in service after 30.4.2011 when this Court is of the considered view that his services came to an end on 30.4.2011 by virtue of provisions of law.

8. Having held so, it may not be necessary to go into any other question but the third ground advanced by Shri Siddhart Gulati is also to be taken note of as it has some force. According to the petitioner the resolution was passed on 4.9.2011 vide Annexure P/4 as Item No. 17 by the General Body of the Bar Council proposing to grant him extension for a period of one year. From the material available on record, it is seen that whenever a resolution is passed by the Bar Council the same is ratified in the subsequent meeting of the Bar Council and therefore, after 4.9.2011 the next meeting of the Bar Council was to be held at Gwalior on 12.11.2011 and when the agenda of this meeting was circulated on 21.3.2011, agenda No. 1 was with regard to approval and confirmation of the minutes of the 18th General Body Meeting held on 12.11.2011. Minutes of the meeting held at Gwalior on 4.9.2011 Annexure R1/4 indicates that the minutes of 4.9.2011 with regard to extension of petitioner's service was never discussed or confirmed. What was discussed and confirmed was the decision taken on 4.9.2011 with regard to various other items and not the minutes with regard to extending the service of the petitioner. It is therefore, clear that decision taken on 4.9.2011 to extend the service of the petitioner was not confirmed in the subsequent meeting held on 12.11.2011 and in between in the light of objection raised by one of the Members as contained in Annexure R1/8 on 11.11.2011 the fact as to whether the resolution with regard to extension of service itself was passed on 4.9.2011 becomes doubtful. It may be taken note of that on 4.9.2011 petitioner had discharged the functions of Secretary and the Minutes of the meetings were drawn by the petitioner and he was present in the meeting as Secretary of the Council. According to the complaint Annexure R1/8 on 4.9.2011 only matters upto item No. 16 were discussed and thereafter, the meeting was adjourned and it is alleged that the petitioner misused his powers as Secretary and manipulated the minutes of the meeting by incorporating Item No. 17 in the resolution even though no such resolution was passed by the Bar Council. In the light of this complaint confirmation of the minutes held on 4.9.2011 in the

subsequent meeting held at Gwalior on 12.11.2011 becomes necessary and therefore, a serious doubt arises with regard to contention of the petitioner to the effect that his services was extended by the General Body of the Bar Council on 4.9.2011 vide resolution at Item No. 17. There is a serious dispute in this regard and once such a dispute is found to be existing, then on the ground that the petitioner was granted extension of service on 4.9.2011, this Court does not deem it appropriate to issue any mandamus. Even though Learned Counsel for some of the Members tried to emphasize that they have filed an affidavit to show that the meeting was held on 24.9.2011 and question of petitioner's extension was granted, rival affidavits in this regard filed by the members cannot be taken cognizance of to arrive at a decision in this regard. This is the matter to be discussed in the meeting or in the floor of the Council and not in these proceeding. In the present case once prima facie material available indicates that the fact of passing of resolution on 24.9.11 becomes doubtful, it is not a fit case where the discretionary jurisdiction of interfering into the matter in a petition under Article 226 of the Constitution is called for.

9. Accordingly in the light of findings as are recorded herein above, no interference is called for. Petitioner has already attained the age of superannuation and was working on the basis of extension of service granted and as the extension of service itself is found to be not in accordance to law, indulgence into the matter is not called for.

10. Accordingly, in the facts and circumstances of the case and based on the totality of the circumstances, this Court does not find any ground to interfere in the matter. Petition is therefore, dismissed.

No order as to costs.