
(2014) 12 MP CK 0096
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3572/2014

Rajendra Singh Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

University Grants Commission Act, 1956 — Section 12, 14, 26, 3

Citation : (2015) 1 JLJ 71 : (2015) 1 MPLJ 671

Hon'ble Judges : Sheel Nagu, J;S.K. Gangele, J

Bench : Division Bench

Advocate : M.P.S. Raghuvanshi and Ajay Bhargava, Advocate for the Appellant; Vivek Khedkar, Assistant Solicitor General and Anil Sharma, Advocate for the Respondent

Judgement

1. Heard.

2. In this PIL, the petitioner has challenged the order dt. 16.6.2014 (Annexure P/1).

3. Lakshmibai College of Physical Education, Gwalior was established on 17.8.1957 by the Government of India. In 1964 the College was affiliated to Jiwaji University, Gwalior. In 1976, it was granted National status and re-named as "Lakshmibai National College of Physical Education". Vide notification dt. 21.9.1995, the Government of India, Ministry of Human Resource Development granted "Deemed to be University" status to the College and again it was re-named as "Lakshmibai National Institute of Physical Education, Gwalior (LNIPE)." The LNIPE is governed by the Memorandum of Association registered with the Registrar, Firms and Societies under the M.P.Societies Registration Act 1973. The University Grants Commission granted "Deemed to be University" status under Section 3 of the University Grants Commission Act, 1956 (hereinafter referred to as the UGC Act). The University Grants Commission in exercise of powers conferred under clauses (f) and (g) of sub- section (1) of Section 26 of the Act of 1956, also framed the regulations named as UGC (Institutions Deemed to be

Universities) Regulations, 2010 (hereinafter referred to as the "Regulations of 2010") The objects of the aforesaid regulations are as under :-

"To regulate, in an orderly manner, the process of declaration of institutions as deemed to be universities; preventing institutions of dubious quality from being so declared; and, further to maintain quality of higher education imparted by institutions deemed to be universities consistent with the ideals of the concept of a university."

4. Clause 6.2 of the Regulations of 2010 prescribes Vice-Chancellor, which reads as under :-

"6.2 Vice-Chancellor

(i) The Vice-Chancellor shall be a whole time salaried officer of the institution deemed to be university and shall be appointed by the Chancellor from a panel of three names suggested by a Search-cum- Selection Committee. The composition of the Search-cum- Selection Committee shall be :-

1. A nominee of the Chancellor

2. A nominee of Central Government; who shall be an eminent academic nominated by the Government in consultation with the UGC.

3. A nominee of the Board of Management

(ii) The Vice-Chancellor shall hold office for a term of 5 years. He shall be eligible for a second term, provided that in no case shall he hold office beyond the age of 70 years.

Provided that notwithstanding the expiry of the period of 5 years, he/ she may continue in office for not more than six months or till his/her successor is appointed and the latter assumes office, whichever, is earlier."

5. Clause 6.2 (iii) of the Regulations of 2010 prescribes officiating Vice-Chancellor, which reads as under :-

"(iii) In case of the office of the Vice-Chancellor becoming vacant due to death, resignation or otherwise and in case of his/her absence due to illness or any other cause, the Pro Vice-Chancellor, and in his/her absence, the Senior most Dean or, if there is no Dean, the senior most Professor shall perform the duties of the Vice-Chancellor until a new Vice-Chancellor is appointed, or the existing Vice-Chancellor resumes duties, as the case may be."

6. From the aforesaid clause, it is clear that in case of the office of the Vice-Chancellor becoming vacant under certain circumstances, the Pro Vice-Chancellor and his/her absence, the Senior most Dean or, if there is no Dean, the senior most Professor shall perform the duties of the Vice- Chancellor.

7. It is an admitted fact that there is no post of Pro Vice-Chancellor and Senior Most Dean in the LNIPE Gwalior. The then Vice-Chancellor had submitted

resignation in the year 2012 and since then no regular Vice Chancellor has been appointed in the LNIPE. Vide order dt. 16.6.2014 (Annexure P/1) Joint Secretary (Dev), Department of Sports, Dr.G.S.G.Ayyangar, has been appointed as officiating Vice-Chancellor of the LNIPE. The aforesaid order is under challenge in this petition on the ground that the order is contrary to the Regulation 6.2 (iii) of the Regulations of 2010.

8. Respondents-Union of India in its reply pleaded that the respondent No. 5 has been given the charge of Vice Chancellor as a time gape arrangement. He would hold the office up to the appointment of regular Vice-Chancellor. The additional charge has been given in public interest with the sole object to fast track the process of appointment of Vice Chancellor on regular basis. It is further pleaded that Regulations of 2010 has been amended by UGC (Institutions Deemed to be Universities) (Amendments) Regulations, 2014 (hereinafter referred to as the Regulations of 2014). The Regulations of 2014 have been notified in the gazette. In the aforesaid regulations, Clause 5.10 has been inserted after clause 5.9, which reads as under :-

"5.10. Notwithstanding anything contained in these Regulations, the governance system and management structure of a public funded institution Deemed to be University may be in accordance with the decision of the Central Government or the State Government, as the case may be."

9. It is further pleaded that under the aforesaid clause, the Union of India has power to take decision in the matter of governance system and management structure of a public funded institution Deemed to be University, hence, the appointment of respondent No. 5 is in accordance with law. It is further pleaded that the Memorandum of Association of the LNIPE has further been amended and in accordance with Clause 26 (iii) of the aforesaid Memorandum of Association, any officer not below the rank of Joint Secretary can perform the duties of Vice-Chancellor of the LNIPE. In this view of the matter, the appointment of respondent No. 5 can not be said to be illegal or arbitrary.

10. Regulations of 2010 have been framed by the University Grants Commission in exercise of powers conferred under clauses (f) & (g) of sub- section (1) of Section 26 of the UGC Act. The relevant provisions read as under :-

"(f) defining the minimum standards of instructions for the grant of any degree by any University;

(g) regulating the maintenance of standards and the co-ordination of work of facilities in Universities."

11. Supreme Court in University of Delhi Vs. Raj Singh and others, has considered the power of the University under the UGC Act and the status of the University in the Regulations framed by the University Grants Commission and held as under :-

"The UGC Act is enacted under the provisions of Entry 66 to carry out the

objective thereof. Section 12 of the UGC Act casts a duty on the UGC to take "all such steps as it may think fit... for the determination and maintenance of standards of teaching". These are very wide-ranging powers. Such powers would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the Commissioners and committees of educationists which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a postgraduate degree from one University is not necessarily of the same standard as the holder of the same postgraduate degree from another University. That is the rationale of the test prescribed by the said Regulations. It falls squarely within the scope of Entry 66 and the UGC Act inasmuch as it is intended to co-ordinate standards. Clauses (d) and (j) of Section 12 are also wide enough to empower the UGC to frame the said Regulations. Section 14 empowers the UGC to withhold its grant from a University for non-compliance with its recommendation albeit after taking into account the cause, if any, shown. Section 26 authorises the UGC to make regulations, inter alia, for defining qualifications of teachers of a University [See sub-section 1 (e)] and regulating the maintenance of standards and the coordination of work or facilities in Universities [See sub- section 1 (g)]."

12. From the aforesaid judgment of the Supreme Court, it is clear that a duty is cast on the University Grants Commission to take all the steps as it may think fit for determination and maintenance of standards in teaching. Keeping in mind the aforesaid object, the provision has been made in Clause 6.2(iii) of the Regulations of 2010 for officiating Vice Chancellor. By way of notification dt. 1st May 2014, after clause 5.9, new clause 5.10 was inserted as quoted above in the order.

13. This clause does not speak about the contingency when the office of Vice-Chancellor becomes vacant due to death or resignation. Clause 6.2 (iii) of the Regulations 2010 has not been amended by Regulations of 2014 vide notification dt.1st May 2014. The aforesaid clause specifically provides contingency in case of office of regular Vice Chancellor becoming vacant. Hence, the specific provision would prevail over the general provisions.

14. In this view of the matter, the arguments advanced by the learned Assistant Solicitor General appearing on behalf of the Union of India that in view of the Regulations of 2014 Union of India has power to appoint a person having the status of Joint Secretary as Officiating Vice Chancellor of the University is hereby rejected.

15. It is further contended by the learned Assistant Solicitor General that the Memorandum of Association of the LNIPE has specifically been amended and in accordance with the amended Memorandum of Association, any officer not below

the rank of Joint Secretary shall perform the duties of Vice-Chancellor until a new Vice-Chancellor is appointed. This Memorandum of Association can not substitute the statutory regulations of Clause 6.2 (iii) of the Regulations of 2010, which is still in force.

16. Apart from this, Memorandum of Association came into existence w.e.f. 28.7.2014 after appointment of respondent No. 5, hence, the appointment of respondent No. 5 could not be saved because the amendment in Memorandum of Association is not retrospective in nature.

17. The UGC has framed the Regulations of 2010 to maintain the quality of higher education imparted by institutes deemed to be universities. UGC also cast a duty on the deemed to be universities to maintain standard of teaching and looking to the aforesaid, clause 6.2(iii) of the Regulations of 2010 prescribes a specific provision in case the office of Vice-Chancellor becomes vacant and that has to be followed strictly in accordance with the regulations, which is statutory in nature. In this view of the matter, the order dt. 16.6.2014 (Annexure P/1) is contrary to law and is liable to be quashed.

18. It is also a fact that since October 2012, no regular Vice-Chancellor has been appointed in the LNIPE. This is contrary to the Regulations of 2010 as amended by Regulations of 2014. The officiating person can not be a substitute of a regular person. Keeping the post vacant for such a long period near about two years is contrary to the object of the UGC Act and Regulations of 2010. It would adversely affect the standard of education. LNIPE was established with an object to provide excellence in imparting sports education. It is necessary for development of the country. Hence, a duty is cast on the – respondents Union of India to appoint a regular Vice Chancellor.

19. Looking to the nature of the case and facts of the case as discussed above in the order, the petitioner, who is a doctor, in our opinion, has locus standi to file the PIL and the present petition is maintainable as Public Interest Litigation in view of the judgment of the Supreme Court in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , wherein Supreme Court has held as under in regard to maintainability of the public interest litigation :-

"25. Public interest litigation has been defined in Black's Law Dictionary (6th Edn.) as under:

"Public interest. —Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

26. Advanced Law Lexicon has defined "public interest litigation" as under:

"... the expression 'PIL' means a legal action initiated in a court of law for the

enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.”

27. The Council for Public Interest Law set up by the Ford Foundation in USA defined “public interest litigation” in its Report of Public Interest Law, USA, 1976 as follows:

“10. ... Public interest law is the name that has recently been given to efforts providing legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.” (Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others,)

(emphasis supplied)

28. This Court in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , defined “public interest litigation” and observed that (SCC p.242, para 2) the public interest litigation is a cooperative or collaborative effort by the petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon the poor, downtrodden and vulnerable sections of the society.”

20. Consequently, the petition is allowed with the following directions :-

(i) Impugned order dt. 16.6.2014 (Annexure P/1) is hereby quashed.

(ii) Respondents No. 1, 2 and 3 are directed to complete the process of appointment of regular Vice Chancellor of respondent No. 4 – LNIPE within a period of three months from the date of receipt of copy of the order.

(iii) Up to the regular appointment of the Vice Chancellor of respondent No. 4 – LNIPE, the competent authority is at liberty to appoint or designate the officiating Vice Chancellor in accordance with law.

(iv) We have not considered the other grounds raised by the petitioner in this petition, hence, those grounds would not operate as res judicata.

No order as to costs.