

(1991) 04 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 524 of 1990

R.N. Sehgal

APPELLANT

Vs

Dr. Y.S. Parmar University of Horticulture and Forestry and
Another

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Himachal Pradesh University of Agriculture Horticulture and Forestry Act, 1986 —
Section 18(5), 35, 35(5), 54

Citation : (1992) 1 ShimLC 251

Hon'ble Judges : Devinder Gupta, J;D.P. Sood, J

Bench : Division Bench

Advocate : K.D. Shreedhar, for the Appellant; D.C. Jistu, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—The petitioner in this writ petition filed Under Article 226/227 of the Constitution of India has prayed for quashing of order passed on September 3, 1990 by the Registrar of Respondent-University, copy of which is placed on record as Annexure P-2 The order has the effect of canceling his appointment as Head of Department of Forest Biology and Tree Improvement in the College of Forestry, Solan, by appointing Respondent No. 2 as Head of Department.

2. It is the case of the petitioner that he being the senior-most scientist equivalent to the rank of Associate Professor in the Department of Forest Biology and Tree Improvement in Respondent-University was appointed as Head of such Department vide an order passed by Respondent No. 1 on March 31, 1989, Annexure P-I and in pursuance thereto he assumed the charge as such and had been discharging his duties to the best of his capability and entire satisfaction of his superiors. There was no complaint against him in the discharge of his official functions and he was never communicated any adverse remarks/reports while

working as Head of Department. The grievance of the petitioner is that abruptly without any rhyme or reason and without affording him any opportunity of being heard and contrary to the provision of law, rules and regulations Respondent No. 1 on September 3, 1990, passed Annexure P-2 order in supersession of the earlier order Annexure P-I and appointed Respondent No. 2 as Head of Department. This action of the Respondent-University has been challenged by the petitioner in this writ petition by urging that provisions of Statute 14.3 of the University have been given a go-bye and the impugned order has been passed in utter violation of the principles of natural justice, fair play and good conscience. Respondent No. 2, who is junior to the petitioner as Scientist/Associate Professor, was not entitled to be posted as Head of Department when a senior was already positioned as such.

3. Respondents were called upon to file their reply. Respondent No. 1 filed its reply on the affidavit of Registrar while Respondent No. 2 filed the same on his own affidavit. Respondents have justified the action of Respondent No. 1 in appointing Respondent No. 2 as Head of Department in their respective replies.

4. We have considered the arguments advanced by the learned Counsel for the parties and the affidavits exchanged by the parties. One of the contentions of the petitioner is that he was appointed as Head of Department in accordance with the provisions of the statutes and was discharging his duties as such efficiently, the order Annexure P-2, removing him from such post, which carries with it various privileges, honour and status, in utter disregard of the principles of natural justice, is void and liable to be struck down by this Court. The contention of the Respondents is that the post of Head of Department is merely an assignment entrusted to a teacher of the University without any perks or extra pay and the impugned order Annexure P-2 entails no penal consequences and has no effect adverse to the rights of the petitioner. The Respondents have also contended that there was no need to follow the principles of natural justice before passing the impugned order. It has been alleged by the Respondent-University that the petitioner is guilty of supersession of material facts and his writ petition deserves dismissal on this score alone.

5. On merits, the contention of Respondent No. 1 is that the working and functioning of the petitioner as Head of Department was not being commended fair for some time past by the Director of Research and the work of the Department was reported not to be going on smoothly, therefore, it was desired to make alternative arrangement. The Vice-Chancellor of the University, after taking stock of the whole situation and after having gone through the relevant correspondence and records came to the conclusion that Respondent No. 2, who is the next senior most scientist in the Department be appointed in place of petitioner and this power was exercised by the Vice-Chancellor under Statute 14.3 (iv) in the interest of the Department.

6. Before proceeding further in the matter, we would like to deal with the preliminary objection raised by the Respondents that the petitioner has

suppressed material facts and his writ petition deserves dismissal on that ground alone. In para 8 of the writ petition the petitioner has averred that at the time of filing the writ petition he had not handed over the charge of the post as Head of Department but on the basis of the order impugned the Respondent-University might compel him to do so which would affect his academic status. The version of Respondents is that Respondent No. 2 assumed the charge of Head of Department on September 7, 1990 and right from that date he was discharging the functions of such post. The petition was filed by the petitioner on September 20, 1990 and on September 13, 1990 he addressed a communication to the Vice-Chancellor of Respondent-University the subject of which was "Charge of the Head of Department of Forest Biology and Tree Improvement" copy of which is placed as Annexure RR-2/G. Petitioner in the said communication had admitted that charge of the Head of Department had been taken from him. In spite of this, petitioner described himself not as Head of Department in the said communication which was sent by him to the Vice-Chancellor through proper channel, namely, Respondent No. 2, who was Head of Department at that time. According to the Respondents, the petitioner had in this way failed to disclose that the charge had already been taken from him by Respondent No. 2 and was, therefore, guilty of suppression of material facts. There is serious dispute amongst the parties on this issue, as we find from the various affidavits exchanged by them.

7. The contention of the petitioner is that apart from Annexure RR-2/G, there are various documents on record which would show that Respondents are still insisting upon him to hand over the charge and they are sufficient to warrant a conclusion that the charge is still with him and he was under a bona fide belief that till complete charge, including the charge of cash, is taken from him formally there would be no delivery of charge. On the other hand, the contention of the Respondents is that for this post there is no question of handing and taking over of charge but the same is merely assumed by the incumbent without performing any formalities. To decide this preliminary objection it would be necessary to see as to whether non-disclosure of the fact of having handed over the charge by the petitioner and assumption of the same by Respondent No. 2, before the filing of the writ petition, would disentitle the petitioner to seek extra-ordinary remedy in writ jurisdiction. In other words, what is the effect of suppression of this fact on the merits of the case. It is a well settled proposition of law that where a petitioner comes to the Court in writ jurisdiction under Article 226 of Constitution for seeking extra-ordinary relief and suppresses material facts, that alone would be sufficient reason for throwing out his petition for grant of such relief but when suppression is not of material effect and is not deliberate, the petition should not be thrown or the relief should not be refused on this simple ground. In the instant case, the main controversy is as to whether the impugned order Annexure P-2 is legal or not and the fact whether in pursuance thereto the charge had or had not been taken cannot be said to be a material fact constituting cause of action. Moreover, we find from the record that even after

September 7, 1990, petitioner was being asked to hand over the charge of cash books alongwith keys of the chest and such communications continued to be addressed to him till January 1991. The contention of the petitioner that he was under the impression that till complete charge is handed over there would be no delivery of charge cannot be said to be mala fide. In these circumstances, there is no suppression of material facts which may disentitle the petitioner to seek the relief from this Court in extra-ordinary writ jurisdiction.

8. Next is the question as to whether the principles of natural justice are attracted in case of removal of the incumbent from the office of Head of Department. Section 35 of the Himachal Pradesh Universities of Agriculture, Horticulture and Forestry Act, 1986 (Act No. 4 of 1987) (briefly the Act), inter alia, provides as under:

35. (1) The following shall be the constituent colleges:

(a) * * *

* * *

(2) Every college shall comprise of such departments as may be prescribed and each department shall be assigned such subjects of study as the Academic Council may deem fit.

(3) There shall be a Head of each Department who shall be responsible to the Dean for resident instructions to the Director of Research for the purposes of research and to the Director of Extension Education for the purposes of extension education.

(4) The Head of each Department shall be selected by the Vice-Chancellor and appointed by him with the approval of the Board.

(5) The duties, powers and functions of Head of Departments shall be such as may be prescribed.

Statute 14.3 of the Statutes, framed u/s 54 of the Act, known as Dr. Yashwant Singh Parmar University of Horticulture and Forestry Statutes, 1987, provides for the mode of appointment of the Head of Department and reads as under:

14.3 Mode of appointment of the Head of Department:--(i) Normally the senior-most teacher of the rank of Professor will be the Head of the Department. The Head of the Department shall be appointed by the Vice-Chancellor.

(ii) In case there is no position of Professor and equivalent in a Department, normally the Senior most Associate Professor or equivalent will be Head of the Department. The Head of the Department shall be appointed by the Vice-Chancellor.

(iii) In case there is no teacher of the rank of Professor or Associate Professor, the Dean of the College concerned shall act as the Head of the Department.

(iv) Notwithstanding anything contained above, the Vice-Chancellor for reasons to be recorded in writing may appoint a Professor/Associate Professor other than the senior-most as the Head of the Department.

Statute 14.4 deals with the duties, powers and functions of the Head of Department and reads as under:

14 4 Subject to the provision made in Section 18(5) and Section 35(5) of the Act, the Head of Department shall have the following duties, powers and functions:--(i) He shall supervise, guide and coordinate teaching, research and extension education work of the Department in consultation with the Dean of the College, Director of Research and Director of Extension Education, respectively.

(ii) He shall allocate teaching and other academic work among the teachers, research scientists and extension education workers:

(iii) He shall ensure proper distribution of post-graduate students among the staff members of his Department;

(iv) He shall suggest changes in the syllabus, methods of teaching and evaluation with a view to up-grading and modernising the programme of instruction in the Department;

(v) He shall suggest changes to the Directors for making improvement in research and extension education activities of the Department;

(vi) He shall ensure smooth working of the Department and discipline;

(vii) He shall submit to the concerned officers, on dates fixed by them a general report on the activities of the Department;

(viii) He shall submit to the concerned officers, on dates fixed by them an assessment of each staff member of the Department;

(ix) He shall prepare the budget of his Department;

(x) He shall be responsible for distribution and expenditure of departmental funds and for the care of departmental property; and

(xi) He shall perform such other duties as may be assigned to him from time to time by the Vice-Chancellor.

9. In view of the aforementioned, no doubt the appointment of a Professor as the Head of Department is an administrative function. His functions are neither judicial nor quasi-judicial but when an incumbent has already been appointed as Head of Department and is vested with various duties, powers and functions as enumerated in the statute, his removal from such post by an order passed by Respondent No. 1 cannot be termed purely an administrative function but a quasi-judicial function. The decision taken by Respondent No. 1 to remove the petitioner as Head of Department has undoubtedly adversely affected his position and status. This position and status cannot be termed as merely a privilege or

honour but a status with a right keeping in view the nature of duties and responsibilities. In such a case the decision to remove the Head should normally be treated as quasi-judicial in nature subject to the requirements of natural justice. The reason to fortify this view is that a decision by an administrative agency, which affects private rights or obligations, is seen to have the same effect as a decision of the Court and such a decision cannot be termed as valid unless the party likely to be affected has been afforded a fair opportunity of being heard. It is immaterial whether the post of Head of Department carries with it any extra emoluments or not but surely it carries with it various privileges, honour and status. As Head of Department, the incumbent has to attend various seminars and represent the Department in various spheres in and outside the University.

10. The question as to whether a particular order of removal of an incumbent from the post of Head of Department is quasi judicial or administrative has to be determined in the context of each case. When duties, powers and functions enumerated in the statute are seen, there is no manner of doubt that the petitioner was performing multifarious duties and was enjoying the privileges attaches to the post for a considerable long period. In normal circumstances, he had a legitimate expectation that he would have continued to hold such a post with the control of the department in academic sphere and in other allied matters which naturally would have entitled him to continue performing his duties, exercising the powers and discharging the functions enumerated in the statutes, which power includes the power to assign work to each member of the staff, allocating teaching and other academic work preparing the budget and expending the amount. Respondent No. 1 in the matter of selecting and appointing Head of Department is guided by Statute 14.3 which requires that normally senior most teacher be appointed as Head of the Department but in case a departure has to be made, a duty is enjoined upon Respondent No. 1 before appointing any junior person to record reasons therefor. There is no express power of removal of Head of Department or the grounds on which Head of Department could be removed. Such a power can be presumed to be vesting in Respondent No. 1 but while arriving at such a decision, which affects the right of a person to continue to hold the said post, it certainly affects the rights of an individual and such a decision must necessarily be taken by acting fairly and judiciously. The authority taking such a decision must not be guided by extraneous or irrelevant considerations and must not act illegally, irrationally or arbitrarily. Any such decision or action whether in the nature of legislative, administrative or quasi judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution. "Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch". See *E.P. Royappa Vs. State of Tamil Nadu and Another*, The principle of equality enshrined in Article 14 must guide every state action, whether it be legislative, executive, or quasi-judicial. See *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Ajay Hasia and Others*

Vs. Khalid Mujib Sehravardi and Others,

11. Though the Act and the Statute nowhere provide expressly for the action which has been taken by Respondent No. 1 in the present, nor do they provide for such a power but the power so exercised is implied in it and there is no provision of the requirement of providing any hearing before an action of removal is taken but keeping in view the nature of duties, powers and functions, definitely, the petitioner had a right to continue to hold the post as Head of Department and the least which was required to be done was a fair treatment of providing an opportunity of being heard which is one of the essential requirements of principles of natural justice. We find that Respondent No. 1 had merely acted on the report of one of the functionaries mentioned in Clause (1) of Statute 14.4, whereas the petitioner has relied upon certificate of good standing issued by the other two functionaries. While taking this view we are supported by the decision of the Andhra Pradesh High Court in *D. Ramandha Sastry v. Governing Council of Sri C.S.R Sarma College Committee, Ongole* and Ors. 1969 LIC 1562.

12. In these circumstances, we find that the petitioner was entitled, atleast, to an opportunity of being heard before passing of the impugned order, which opportunity was not afforded to him and, as such, the impugned order is unsustainable being violative of principles of natural justice.

13. During the course of hearing of the writ petition, learned Counsel for the Respondent-University urged that liberty may be reserved to Respondent-University to pass order in the matter. We may state that in case it still decides to take any action against the petitioner in the matter, the same be done only after affording a reasonable opportunity to the petitioner of being heard.

14. In the result, the writ petition is allowed. The impugned order Annexure P-2 is quashed and set aside. No costs.