

(1958) 04 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ No. 32 of 1957

S.B. Chaturvedi

APPELLANT

Vs

G.C. Chatterjee and Others

RESPONDENT

Date of Decision : 03-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Rajputana University Act, 1946 — Section 12, 12(1), 8A

Citation : AIR 1959 Raj 260

Hon'ble Judges : K.N. Wanchoo, C.J;D.M. Bhandari, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; C.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application under Article 226 of the Constitution for a writ of quo warranto against the appointment of Shri G. C. Chatterji as Vice Chancellor of the University of Rajputana in November, 1956.

The applicant's case is briefly this. Shri Chat-terji was appointed Vice Chancellor in 1953 and his term of office was to expire on the 31st of October, 1956. The procedure for the appointment of the Vice Chancellor is contained in section 12 of the University of Rajputana Act, 1946 as amended up to date (hereinafter called the Act). When the term of Shri Chatterji was to run for a few months more, a meeting of the Syndicate of the University was called and a resolution was passed recommending the reappointment of Shri Chatterji as Vice Chancellor for a second term of three years in continuation of his first term from 1st of November, 1956.

In pursuance of this resolution, the Chancellor of the University appointed Shri Chatterji as Vice Chancellor for a second term of three years from 1st of November, 1956. The contention of the applicant is that the reappointment without following the procedure prescribed in section 12(1) of the Act was invalid

and, therefore, this court should issue a writ of quo warranto after holding this appointment invalid.

2. The application has been opposed by the opposite parties, who are the Vice-Chancellor, the Chancellor and the Syndicate of the University and University itself. It is contended on their behalf that where a reappointment is being made u/s 12 (2) of the Act in continuation of the first appointment, all that is necessary is an order of reappointment by the Chancellor and the procedure provided by Section 12(1) of the Act need not be followed. It is also urged that the applicant has not exhausted all his remedies under the Act and, therefore, this court should not intervene in his favour at this stage. Lastly the motives of the applicant in impugning the appointment are also challenged and it is urged that if the motives are not clean, this court should not interfere.

3. We shall first consider the question whether the applicant has exhausted all his remedies under the Act. In this connection reference was made to section 8(A) of the Act which lays down that the President of India shall be the Visitor of the University. It is also laid down in that section that the Visitor shall have the right to cause an inquiry to be made in respect of any matter connected with the University. After such inquiry the Visitor may address the Vice-Chancellor with reference to the result of the inquiry and the Vice-Chancellor has to communicate to the Senate the views of the Visitor with such advice which the visitor may be pleased to offer upon the action to be taken thereon.

The Senate shall then communicate through the Vice Chancellor to the Visitor such action, if any, as is proposed to be taken upon the result of the inquiry. But where the Senate does not, within reasonable time, take action to the satisfaction of the Visitor he may after considering any explanation furnished or representation made by the Senate, issue such directions as he may think fit and the Senate shall comply with such directions. It is contended on behalf of the opposite parties that the applicant should have approached the Visitor under this provision and only after the Visitor had failed to give him satisfaction that he could come to this court.

Reliance in this connection is placed on *R. v. Dunsheath; Ex parte Meredith* 1950 2 ALLER 741. That" was a case relating to the University of London and the question there was about the summoning of an extra-ordinary meeting of the convocation by the Chairman. A requisition as required by the statutes was made to the Chairman of the convocation, but the latter refused to call the meeting. Thereupon the requisitionists approached the court for a writ of mandamus on the Chairman.

The application was refused on the ground that where an officer of the University had refused to perform a duty placed on him by the statutes of the University it was a domestic matter and, therefore, one essentially for the Visitor. In the course of the judgment it was observed that,

"If a Visitor refuses to act, a mandamus may go to the Visitor calling on him to

act, but that is an entirely different matter."

4. We have considered the powers conferred on the Visitor by section 8A of the Act and are of opinion that generally speaking, the Visitor should first be approached for redress before a question like this concerning the University is agitated before the courts and are in respectful agreement with the view taken in the above case. But it appears from the application that the applicant did approach the Visitor and that nothing came out of that. In the circumstances we are of opinion that the only remedy left to the applicant was to approach the court.

4a. This brings us to the main question in this case, namely whether the procedure provided in Section 12 (1) of the Act is necessary to be gone through when a person is reappointed Vice-Chancellor for a second term in continuation of his first term. The relevant provisions of Section 12 leaving out Sub-section (4), which is immaterial for present purposes, are these:--

"(1) The Vice-Chancellor shall be appointed by the Chancellor in the following manner:--

A Committee of three persons, two of whom shall be persons not connected with the University or any affiliated college, recognised school or approved institution, nominated by the Syndicate and one person nominated by the Chancellor, who shall also appoint one of the three as Chairman of the Committee shall select not less than three persons and shall report its selection to the Syndicate. The Syndicate shall make its recommendations on the persons so selected to the Chancellor, who shall appoint one of such persons as Vice-Chancellor.

(2) The Vice-Chancellor shall be a whole time officer of the University. He shall hold office for a term of three years, but may, subject to the provisions of Sub-section 3, be re-appointed for a second term of three years in continuation of the first term.

(3) No person shall hold the office of the Vice-Chancellor for more than two terms."

5. The reappointment, as will be clear, is provided for in Sub-section 2. On first flush it does appear as if the Act contemplated that the procedure provided in sub-section 1 would have to be gone through even when there is a reappointment of a person in continuation of his first term. But a close examination of the three sub-sections dealing with the matter has convinced us that in the case of reappointment in continuation of the first term, it is not necessary that the procedure provided by Subsection 1 should be gone through and it would be enough if the order of reappointment is made, by the Chancellor.

6. Let us examine the three sub-sections closely and see what they exactly provide. Sub-section 1 provides for the appointment of the Vice-Chancellor by the Chancellor and the procedure prescribed is this. At the first stage, a committee of three members, whose qualifications are laid down in the sub-

section has to select not less than three name and report its selection to the Syndicate. At the second stage, the Syndicate has to make its recommendations about the three persons so selected to the Chancellor. Lastly the Chancellor appoints one of such persons as Vice-Chancellor. Thus the procedure is (1) selection of three names by the committee, (2) recommendation on these names by the Syndicate and (3) appointment of one of these by the Chancellor.

7. Sub-section 2 prescribes the terms of office of the Vice Chancellor and lays down that subject to the provisions of Sub-section 3, the Vice-Chancellor may be reappointed for a second term of three years in continuation of the first term. Then follows Sub-section 3 which lays down that no person shall hold the office of the Vice-Chancellor for more than two terms.

8. Now if it was the intention of the legislature that in the case of a reappointment under Sub-section 2, the same procedure should be followed as provided in Sub-section (1) we do not see what necessity there was for the following words in subsection 2 "but may, subject to the provisions of Sub-section 3, be re-appointed for a second term of three years in continuation of the first term." These words would, in our opinion, be completely unnecessary if the intention of the legislature was that such reappointment is in continuation of the first Term shall also be according to the provisions of Sub-section 1. If we omit these words from subsection (2) then, in our opinion, the contention on behalf of the applicant would be correct. With the omission of these words, Sub-section 1 will provide the procedure for appointment, Sub-section. 2 will provide the nature of the Vice-Chancellor's duty and the term of his office and Sub-section 3 would provide that no one shall be Vice-Chancellor for more than two terms.

The addition therefore, of these words in subsection 2 must have some significance and that significance, in our opinion only is that a reappointment in continuation of the first term may be made under Sub-section 2 by the Chancellor without going through the procedure prescribed in Sub-section 1, for such reappointment is merely an extension of the services of the Vice-Chancellor for a second term. The matter would be different if the second term was not in continuation of the first term and there was a gap between the two terms.

In that case, of course, the procedure under Sub-section 1 must be followed. But where the second term is in continuation of the first term and is thus an extension in effect, Sub-section 2 comes into play. The only lacuna in Sub-section 2 is that after the words "be reappointed", the person making the reappointment is not specified. But it seems to us that the Chancellor who is the appointing authority under Sub-section 1 must be clearly understood to be the person reappointing for a second term in continuation of the first term. The reason for this interpretation of Sub-section 2 is this. Where a fresh appointment is to be made, Sub-section 1 provides for a selection committee and the recommendation of the Syndicate.

But where the term of the same person is being extended in continuation of the

first term, there does not appear to us any necessity for a selection committee and also for the recommendation of the Syndicate, for the person whose term is to be extended has already gone through these two stages, namely selection by a committee and recommendation by the Syndicate. It was pointed out that in this case the recommendation of the Syndicate was made and thereafter the Chancellor made the reappointment.

That may be so. But as we read Sub-section 2, the recommendation of the Syndicate is not necessary, though of course it is open to the Chancellor to consult any University authority before making the reappointment. The mere fact that the Chancellor in this case consulted the Syndicate or acted On its recommendation would not make any difference to the interpretation of Sub-section 2.

We are of opinion that the last words of subsection 2 which we have quoted above really mean that a Vice-Chancellor can be reappointed for a second term in continuation of the first term by the Chancellor and no other formality is necessary. We have no hesitation in coming to the conclusion that the words "by the Chancellor" have been left out after the words "be reappointed" and before the words "for a second term" in this part of Subsection 2. But that is because the appointing authority is the Chancellor and he must also be understood to be the reappointing authority under Sub-section 2.

The conclusion, therefore, at which we arrive is this. Where the appointment is to be made for the first time or where the same person is being appointed a second time, but not in continuation of the first term, the procedure provided under Sub-section 1 must be gone through. But where the appointment is in continuation of the first term, Section 12 (2) comes into play and it is remarkable that it is only subject to the provisions of Sub-section 3 and not of Sub-section 1. If it was to be subject to the provisions of Sub-section 1 also, there was no reason why the words should not have been "subject to the provisions of Sub-sections 1 and 3." The omission of Sub-section 1 at this place in Sub-section 2 also confirms the view that we take, namely that where it is a case of reappointment in continuation of the first appointment, all that is necessary is an order of reappointment by the Chancellor, provided of course Sub-section 3 is not violated.

8. In this view of the matter, we need not go into the third point, namely the motives of the applicant in making the present application. We, therefore, dismiss the application; but as the interpretation of Sub-section 2 was not quite clear, we order parties to bear their own costs.