

(2006) 05 DEL CK 0135
In the Delhi High Court
Case No : Writ Petition (C) 1625 of 2006

Shardindu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311

National Council for Teacher Education Act, 1993 — Section 3(4), 4, 4(2), 4(3), 5

Citation : (2006) 05 DEL CK 0135

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunil Gupta, Yatish Mohan and Prantap Kalra, for the Appellant; Y.P. Narula Pushkar Sood, Mamta Chandra, Madhu Singh and Ruchika Rathi for respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

1.The writ petitioner in these proceedings under Article 226 of the Constitution of India, assails an order dated 18.11.2005 issued by the second respondent as Director, Elementary Education, Ministry of Human Resource Development (HRD), Central Government. For the sake of easy reference, the first two respondents are hereby referred to as "UOI".

2.The undisputed facts which has led to the controversy in these proceedings are that the petitioner was appointed in the junior scale of the Uttar Pradesh ("UP") Education Service on 1.10.1973. He was promoted to the post of Director, State Council for Educational Research and Training, UP in October 1997. He claims that in November 2001, the State Government conferred supervisory powers upon him, to oversee functioning of the Registrar, Department of Education. He further claims that while working as Director and supervising the work of Registrar, Department of Education, the petitioner had commented on the inefficiency and inaction of the incumbent Registrar by communications to the

State Government.

3. On 31.12.2003 the UOI wrote to the petitioner intimating his selection as Chairman of the National Council for Teacher Education (hereafter called "NCTE") for a period of four years or till he attained the age of 60 years, whichever was earlier. The petitioner assumed duties of Chairman on 22.1.2004 after he was relieved by the Govt. of UP as Director SCERT on 21.1.2004. The formal order in terms of Section 3(4)(a) of the National Council for Teacher Education Act, 1993 (hereafter called "NCTE Act") was issued by the Central Government on 15th December, 2004. The said order reads as follows:

No. 61-4/2003/D-(TE)EE-10

Government of India

Ministry of Human Resource Development

Department of Elementary Education and Literacy

December 15, 2004

In exercise of power conferred by Section 3(4)(a) of the National Council for Teacher Education Act, 1993, Central Government is pleased to appoint Shri Shardinu as Chairperson of the National Council for Teacher Education (NCTE) in the pay scale of Rs. 24050-650-26000 (revised) with effect from 22.1.2004 for a period of four years or till he attains the age of 60 years, whichever is earlier.

Sd/

(PRERNA GULATI)

Director"

4. It is averred that during his functioning as Director, SCERT when he supervised an examination, the petitioner had pointed out defects in the conduct of the examination. It is also averred that the petitioner had no role in the actual conduct of the examination and the declaration of the result except ensuring that the same was brought out within time. In this background sometime in 2004 the Government of UP issued an order directing enquiry by the State Vigilance Commission regarding the conduct of BTC examination in 2001. The said establishment submitted its report on 27.3.2005. Based on the report a first information report was lodged on 19.9.2005 implicating seven persons including the petitioner. On the same date, namely, 19.9.2005 the Government of UP issued a separate order placing the petitioner under suspension pending commencement of disciplinary proceedings. This was at a time when admittedly the petitioner had been relieved by the State Government and was working as Chairman, NCTE.

5. The petitioner approached the Allahabad High Court in writ proceedings. On 26.9.05 a Division Bench of the High Court stayed operation of the order till 8th November, 2005. The Court, inter alia stated as follows:

We have perused the charges in the suspension order as well as the document annexed to the supplementary affidavit. It appears to us that it is a matter of selection process, which was headed by the petitioner, but most of the charges are against the Registrar, however, we cannot interfere with the same, but we can surely hold that the selection process which had already taken effect in 2001 and when selectees are discharging their duties for about two years, at this stage without considering the pros and cons we cannot prima facie hold that the order or suspension is a case of suspension simplicitor, according to us, it is a matter of great importance, which requires further consideration by this Court.

In such circumstances, we stay the operation of the order dated 19th September, 2005 for a limited period till 8th November, 2005.

Counter affidavit filed by 17th October, 2005. Rejoinder affidavit, if any, will be filed by 28th October, 2005. The matter will appear on 7th November, 2005.

6. The said order was apparently extended on 7.11.05. In another proceeding, namely, Crl.W.P. No. 11382/05 the Division Bench of Allahabad High Court directed that the petitioner ought not to be arrested on the basis of the FIR.

7. On 18th November, 2005, the UOI issued an order, which had the effect of terminating the tenure of the petitioner as Chairman, NCTE. This was termed as repatriation of the petitioner's services. The said order reads as follows:

No. F.26-39/2005-EL-10

Government of India

Ministry of Human Resource Development

Department of Elementary Education and Literacy

November 18, 2005

The Central Government hereby terminates the deputation of Dr. Shardindu as Chairperson, NCTE appointed on 22.1.2004 vide Order No. 61-4/2003-D(TE)/EE.10 dated 15.12.2004 and prematurely repatriates him to his parent cadre, with immediate effect.

Sd/-

(PRERNA GULATI)

Director(E.E)

8. The petitioner had impugned the said order dated 18th November, 05 before the Allahabad High Court; in that writ petition (W.P. 72771/05), the Court had by its order dated 28.11.2005 stayed operation of the order impugned in these proceedings. The UOI carried the matter in Appeal by Special Leave, inter alias , contending that the Allahabad High Court had no territorial jurisdiction in the matter. The SLP was disposed off by the Supreme Court on 27.1.2006 recording

that the petitioner's writ petition before the Allahabad High Court stood dismissed as withdrawn with liberty to him to approach the appropriate Court for redressal of his grievance. In these circumstances, the petitioner approached this Court and filed the present writ petition.

9. It is alleged that the impugned order is contrary to provisions of the NCTE Act which occupies the field wholly and regulates the manner of appointment to and curtailment of tenure of various posts in the organization. It is also alleged that the petitioner was neither dismissed nor removed by the UP Government and was merely suspended, which was stayed by the Allahabad High Court. This implied that the alleged misconduct was under investigation and stay of suspension deprived the respondent of any power to take those facts into consideration. The impugned order is also attacked as a punitive non-speaking order and amounting to loss of confidence which is irrelevant as per provisions of Sections 5 and 6 of the NCTE Act.

10. The petitioner asserts that his appointment as Chairman, NCTE was pursuant to by Selection 4 by a search committee as per the tenure indicated in his appointment letter which in turn is based upon provisions of the NCTE Act. The UOI Therefore could not have gone outside the purview of the Act and sought to do something which was not recognized or sanctioned by its provisions.

11. The UOI in its return has alleged that the petitioner had been suspended and an arrest warrant issued against him; as result the competent authority felt that it would not be appropriate for him to head NCTE. It is also alleged that the petitioner's deputation was terminated and he was prematurely repatriated to his parent cadre. This action has been justified as falling within the scope of the Central Government's power.

12. The UOI also contends in its return that though the order appointing the petitioner did not specifically indicate his appointment to be on deputation, in truth and reality he was an official of the State Government appointed in an organization under the Central Government. The appointment is like being on deputation, as the petitioner has to revert to his parent cadre after the expiry of his term. It is also claimed that the Rajasthan High Court during the tenure of the petitioner as Chairman, issued structures against the organization and specifically against him for failing to discharge his duty and required him to deposit Rs. 25,000/-.

13. The UOI has also contended that in view of the seriousness of the allegations leveled against the petitioner which led to his suspension and also registration of the FIR it lost confidence in him and Therefore it was decided at the highest quarters to repatriate him to the parent cadre.

14. Mr. Sunil Gupta, learned senior counsel for the petitioner urged that the impugned order is without authority of law. He relied upon the provisions of Sections 4, 5 and 6 of the NCTE Act and submitted that the post of Chairperson is a full time position. As per Section 4(3) the conditions of service relating to the

post shall be as may be prescribed, under the rules. Counsel submitted that Section 5 prescribes dis-qualifications which applied to members. These it was submitted, come into play at the time of appointment of members including Chairperson. Once the member or Chairperson is appointed the only method prescribed by statute for termination of such official is by removal, in accordance with the procedure prescribed u/s 6 for the occurrence of events in the expressly enacted contingencies.

15. Counsel submitted that provisions of Section 6 have to be construed as statutory safeguards aimed at ensuring the independent functioning of the incumbent holding the post as well as the NCTE and also insulate it from unwarranted pressures. He also relied upon provisions of other enactments to submit that in specialized and technical bodies, Parliament had enacted similar safeguards to ensure protection of tenure.

16. Learned counsel also relied upon the judgments of the Supreme Court reported as Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and L. Michael and Another Vs. Johnson Pumps Ltd., . It was submitted that the Supreme Court, in these judgments ruled that where the stature intervened and regulated conditions of service or covered a subject matter, the executive authority is bound by the statutory conditions and cannot travel beyond the four corners of such provisions. Learned counsel also submitted that the ground of loss of confidence urged in support of the impugned order is untenable. He relied upon observation in L. Michal's case.

17. Learned counsel submitted that the impugned order, to the extent that it is based upon opinion formed on the basis of the suspension order and the FIR, is arbitrary because the suspension order has been stayed by the Allahabad High Court which continues to remain in force. It was also submitted that the High Court similarly stayed the arrest of the petitioner. Therefore, the action was not based on relevant considerations.

18. Counsel further commented on the un-viability of the UOI's contentions regarding the petitioner's repatriation. He submitted that the petitioner was appointed to a tenure in accordance with the Act. Neither the order nor any subsequent order of the Central Government indicated that he was on deputation; the Government of UP had not sought his repatriation. Hence the unilateral treatment of his service as a deputation, was a device, to get rid of his services, which was arbitrary.

19. Mr. Y.P. Narula, learned senior counsel for the UOI, submitted that there is no infirmity in the impugned order. He contended that the order impugned in these proceedings was neither punitive, nor did it cast a stigma on the petitioner. It was based upon a bona fide opinion that the petitioner's continuance in the office of Chairperson of NCTE was not in the best interests of the organization,

having regard to the nature and seriousness of the allegations against his conduct.

20. Learned counsel submitted that there was no question of following the procedure prescribed under Act because the petitioner was not removed as per provisions of Section 6. The counsel placed reliance upon the judgment of the Supreme Court reported as *Debash Chandra Das Vs. Union of India (UOI)*, and also *R.S. Sial Vs. The State of U.P. and Others*, It was submitted that the impugned order was pure and simple one of repatriation to the post to which the petitioner had a lien and he could not claim a vested right to continue as Chairperson of the NCTE in terms of the appointment letter and provisions of the Act. Counsel submitted that the UOI could, in terms of Article 310 of the Constitution of India, revoke the appointment, on invocation of the "pleasure" doctrine.

21. It was submitted that neither terms of the order nor any materials on record point out that the foundation of the order was alleged mis-conduct. In such cases, if the Government was bona fide of the view that the nature of allegations were serious enough to conclude that the petitioner's continuation was not desirable, such an opinion was neither arbitrary nor unreasonable.

22. The relevant provisions of the Act, namely, Sections 4, 5, and 6 reads as follows:

4. (1) The Chairperson, Vice-Chairperson and the Member-Secretary shall hold office on a full-time basis.

(2) The term of office of the Chairperson, the Vice-Chairperson and the Member-Secretary shall be four years, or till they complete the age of sixty years, whichever is earlier.

(3) The conditions of service of the Chairperson, the vice-Chairperson and the Member-Secretary shall be such as may be prescribed.

(4) The term of office of Members (other than the Members specified in Clauses (a) to (l) and Clauses (n) and (o) of Sub-section (4) of Section 3) shall be two years or till fresh appointments are made, whichever is later, and other conditions of service of such Members shall be such as may be prescribed.

(5) If a casual vacancy occurs in the office of Chairperson, whether by reason of death, resignation or inability to discharge the functions of a Chairperson owing to illness or other incapacity, the Vice-Chairperson holding office as such for the time being, shall act as the Chairperson and shall, unless any other person is appointed earlier as Chairperson, hold office of the Chairperson for the remainder of the term of office of the person in whose place the said person is to so act.

(6) If a casual vacancy occurs in the office of the Vice-Chairperson or any other Member, whether by reason of death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by

making fresh appointment and the person so appointed shall hold office for the remainder of the term of the office of the person in whose place such person is so appointed.

(7) The Chairperson shall, in addition to presiding over the meetings of the Council, exercise and discharge such powers and duties of the Council as may be delegated to him by the Council and such other powers and duties as may be prescribed.

(8) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

5. A Person shall be disqualified for being appointed as a Member if he--

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involved moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has in the opinion of the Central Government such financial or other interest in the Council as is likely to affect prejudicially the discharge by him of his functions as a Member.

6. The Central Government shall remove a Member if he-

(a) becomes subject to any of the disqualifications mentioned in Section 5;

Provided that no Member shall be removed on the ground that he has become subject to the disqualification mentioned in Clause (e) of that section, unless he has been given a reasonable opportunity of being heard in the matter; or

(b) refuses to act or becomes incapable of acting; or

(c) is, without obtaining leave of absence from the Council, absent from three consecutive meetings of the council; or

(d) in the opinion of the Central Government, has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no Member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

23. A combined reading of the above provisions show that the post of Chairman is a full time tenure appointment; in terms of Section 4(2) the tenure is for four years or till completion of 60 years whichever is earlier. A chairman, as per Section 3(4)(a), is a "member" of the council. As per Section 4(3) the conditions of service have to be prescribed under the Act. Section 5 spells out dis-

qualification which would disentitle a person for appointment as a member. These, in my opinion, relate to pre-appointment situations. However, once a member (which expression would inter alia include the Chairman) is appointed he can be removed upon the occurrence of the events spelt out in Section 6. Each one of them comprehends a distinct head or fact situation. In the event of the Central Government desiring to remove a Member, it is, by virtue of proviso of Section 6 under a duty to give reasonable opportunity of being heard in the matter.

24. In Sukhdev Singh's case (supra) a Constitution Bench of the Supreme Court underscored the necessity of following statutorily ordained procedures, in dispensing with a public employee's services. The lead judgment, delivered by the Chief Justice, and subscribed to by two learned judges, observed, inter alia, as follows:

(33) There is no substantial difference between a rule and a regulation in as much as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of some ground or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

Justice Mathew, who wrote a separate and concurring opinion, held as follows:

(122) That apart, the regulations framed by these corporations were intended to be binding upon them and were the bases on which the employments were made. As the employments were under corporations created by statutes for

carrying on business of public importance, they were public employment. And even if the regulations have not got the force of law, I think the principle laid down by Justice Frankfurter in *Vitarelli v. Seaton* should govern the situation. He said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

25. The effect of the declaration of law in the above decision is that at least in public employment the relationship between the employer and employee is one of status, regulated by the terms of statute, or the conditions of service, stipulated by the public employer. The existence of rules and regulations in a statute is aimed at ensuring regular conduct with a distinctive attitude to that conduct, as a standard. In such cases, statutory regulations give the employees a statutory status and impose restrictions on the employer and the employee with no option to vary the conditions.

26. In this case, the petitioner was appointed, in January 2004, as Chairperson of NCTE. The tenure was in terms of Section 4, a definite one, viz 4 years, or till he attained the age of 60 years, whichever was earlier. No material was produced to support the submission that the appointment to the post of Chairperson, NCTE was a presidential appointment, falling within the class described under Article 310 as to empower the Central Government, or the President, to revoke the appointment, by invoking the "pleasure" doctrine. The post is not a civil post, nor does it relate to the affairs of the Union, or is it a part of the civil service under the Union. In the background of these circumstances, the bland contention, unsupported by any materials, that the pleasure doctrine could be invoked, ignoring the procedural steps or safeguards prescribed under the Act, have to be rejected. As a necessary and logical corollary, it follows that the appointment is regulated by the provisions of the NCTE Act, and if the UOI was of the opinion that the services of the petitioner was not conducive, or that he had comported himself in an undesirable manner, it should have followed the procedure prescribed by law, i.e by giving notice, and granting reasonable opportunity to him to meet the allegations which the UOI admits, are of a serious nature. I am Therefore of the opinion that the conditions of service of the Chairperson, particularly the petitioner in this case, are regulated by statute; he acquired a "status" and had to be dealt with exclusively in terms of the provisions.

27. Parliament, by deliberate design created NCTE and prescribed a tenure for its members; it also prescribed a mode for removal of its members. These offices are and cannot be viewed as sinecures, or largesse to be distributed at whims

and caprices, and withdrawn, without a rationale. The bodies created by such statutes, are meant to sub-serve a social objective. If this were to be kept in mind, the object behind prescribing a procedure for removal, of members and other officials, is to insulate it, and the body, itself from various pressures, within the administrative, and political set up, and assure a certain degree of stability, and independence.

28. I am of the opinion that the decisions cited by the respondent UOI have no application, for the reason that in both the cases, the officials before the court were part of encoder services of the Union, or were serving in relation to affairs of the Union, or in civil posts/ services. They were entitled to protection of Article 311 of the Constitution of India, and had served in relation to posts under the Union. In this case, the petitioner's appointment as Chairman, NCTE, can not be called as a post under the Union, falling within the rubric of either Article 310, or subject to rules/ law under Article 309 of the Constitution of India.

29. The argument of "loss of confidence" as a residual catch-all contention, is not available, for the same reason that the post in question is not subject to the "pleasure" doctrine. The conditions of service of the employee, to wit, the petitioner, are fully regulated by statute, and the respondent could not have traveled beyond it. A salutary rule of our Constitutional jurisprudence is that every valid state or executive action should be relatable or referable to a statutory provision, or power. Absent that ingredient, the action loses its veneer of legality. (Ref Wazir Chand Vs. The State of Himachal Pradesh, ; State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, Another well settled principle of law is that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all; all other modes of performance are forbidden. AIR 1936 253 (Privy Council) In this case, the impugned order is neither relatable to any statutory power or provision; nor does it conform to the only mode prescribed for removal of members and Chairperson, viz Section 6 of the NCTE Act.

30. In view of the foregoing discussion, the writ petition has to be allowed. It is however, made clear that nothing said in the course of this judgment shall be construed as an expression on the merits of the opinion formed by the Central Government. It is open to the Central Government to proceed, if it deems expedient, in accordance with provisions of the NCTE Act. The impugned order is hereby quashed, subject to the observations made earlier. The respondents shall issue a consequential order, permitting the petitioner to report back to his duties, within a period of 8 weeks from today.