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(2014) 05 P&H CK 0546

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 5283 of 2009 (O&M)

Shiv Kumar Suman APPELLANT

Vs

Chandigarh Administration and Others RESPONDENT

Date of Decision : 12-05-2014

Acts Referred:

Citation : (2014) 05 P&H CK 0546

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : R.S. Bains, Advocate for the Appellant; Harsimrat Singh Sethi, Advocate for Respondents No. 1 and 2 and Ms. Navendu P.K. Singh, Advocate for Respondents No. 3 and 4, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Tewari, J.—By this writ petition, the petitioner has challenged the action of the respondent-Chandigarh Administration in cancelling his appointment as Registrar of the PEC University of Technology on two grounds; first, that the Chandigarh Administration had no power to cancel the same, and second, that even if there was any such power, its exercise in the present case is illegal.

2. The Punjab Engineering College, which is a hoary institution of learning, was upgraded into Deemed University by notification dated 16.10.2003. As part thereof, it was registered as a Society under the Societies Registration Act and as per the Memorandum of Association, it has to be governed by a Board of Governors. The following clauses of Memorandum of Association are relevant:

4. Powers and Functions of the Institute

(a) To acquire, Punjab Engineering College, Chandigarh, from Chandigarh Administration, through a notification to be issued by the latter.

(b) (1) to (6) xxxx xxxx xxxx

(7) To create academic and other posts, with the prior approval of the

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Chandigarh Administration, and to make appointments thereto (except in the case of Director).

(8) To frame Bye-Laws of the Institute, including Bye-Laws for the terms and conditions of service of the existing employees of Punjab Engineering College, Chandigarh, for their transition to the Institute with the prior approval of the Chandigarh Administration.

(9) To frame, alter, modify or rescind Bye-Laws and Rules with the prior approval of the Chandigarh Administration and Ministry of Human Resource Development (Government of India).

(10) to (15b) xxxx xxxx xxxx

(c) The executive powers of the Institute shall vest in the Board of Governors. The Board may in turn delegate, any of its powers, to any of the Committee or Committees constituted by it or to any officer or officers of the Institute.

(d) Notwithstanding anything contained in this Article, the Institute shall not dispose of, in any manner, any immovable property without prior approval of the Chandigarh Administration.

(e) In the discharge of its functions, the Institute shall abide by such directions, on questions of policy, as may be given to it by the Chandigarh Administration. In case of any doubt as to whether a question is or is not a question of policy, the decision of the Chandigarh Administration shall be final.

(f) Any dispute, regarding interpretation of any of the Articles of this MOA or Bye-Laws of the Institute, shall be referred to the Chandigarh Administration whose decision shall be final and binding.

(7) Power to Review, Hold Enquiries and Issue Directions

(1) The Central Government/UGC/Chandigarh Administration may appoint one or more persons to review the work and progress of the Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as it may direct.

(2) During the pendency of an enquiry or otherwise, the Chandigarh Administration may, through a speaking order, suspend any resolution of the Board of Governors, Senate or any other Committee of the Institute.

(3) Upon receipt of any such report, the Chandigarh Administration may take such action and issue such directions (including annulment of any resolutions) as it considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions.

(8) Adjustment of Income and property on Dissolution of the Institute.

Any income or property, that shall remain after the satisfaction of all debts and liabilities on the winding up or dissolution of the Institute, shall be entirely

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transferred to the Chandigarh Administration.

3. Pursuant to the memorandum of association, the Bye-Laws were also framed. The following are the relevant Bye-Laws:

(4) Authorities of the Institute

The following shall be the Authorities of the Institute, namely:

(1) Board of Governors;

(2) Senate;

(3) Finance Committee;

(4) Such other authorities as may be declared by the Bye-Laws and/or Rules to be the authorities of the Institute.

5. Board of Governors

(A) Composition of BOG

(1) The Board of Governors of the Institute shall consist of the following persons, namely:

(a) An eminent educationist/industrialist to be selected by the Administration (Chairman).

(b) Secretary, Technical Education, Chandigarh Administration, ex-officio Vice Chairman.

(c) Finance Secretary, Chandigarh Administration, ex-officio.

(d) Vice Chancellor, Punjab University, Chandigarh or his nominee.

(e) Joint Secretary/Deputy Secretary, Technical Education, UT Chandigarh, ex-officio.

(f) Nominee of the Department of Secondary Education and Higher Education, MHRD, Government of India, ex-officio.

(g) Nominee of the Ministry of Home Affairs, Government of India, ex-officio,

(h) Director, IIT, Delhi or his nominee;

(i) Nominee of the Chairman, UGC.

(j) Chairman, CII, Northern Region.

(k) Director, CSIO, Chandigarh.

(l) Two Technologists/Engineers/Educationists to be nominated by the Chandigarh Administration.

(m) Two eminent Industrialists to be nominated by the Chandigarh Administration.

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(n) An eminent alumnus of the Institute to be nominated by the Chandigarh Administration.

(o) Two Professors of the Institute to be nominated by the Senate.

(p) Director of the Institute, ex-officio.

(q) Registrar of the Institute shall be ex-officio Member-Secretary.

(2) All the members of the Board of Governors other than ex-officio members and the members of the teaching staff shall hold office for a term of three years and shall be eligible for re-nomination.

(3) Members of teaching staff in the above body shall hold office for a period of 2 years or till such time as they continue to be members of the teaching staff, whichever is less.

(4) The Chairman of the Board shall preside over the meetings of the Board, the Finance Committee and convocations of the Institute.

(B) Powers of the BOG

(1) The Board of the Institute shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers of the Institute not otherwise provided for by this Memorandum of Association, the Bye-Laws and Rules, and shall have the power to review the decisions of the Senate.

(2) Without prejudice to the provisions of Sub-section (1), the Board of the Institute shall:

(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) institute courses of study at the Institute;

(c) make the Bye-Laws with the prior approval of the Chandigarh Administration and Ministry of Human Resource Development (Government of India).

(d) to create posts both, academic and non-academic, to determine their numbers, qualifications and cadres, with the prior approval of the Chandigarh Administration and to make appointments to such posts on the basis of the recommendations of the Selection Committee(s);

(e) to consider and modify or repeal Bye-Laws and Rules, subject to approval of the Chandigarh Administration and Ministry of Human Resource Development (Government of India);

(f) to consider and pass resolutions on the annual report, annual accounts and the budget;

(g) to make estimates of the Institute for the next financial year and submit

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them to the Chandigarh Administration together with a statement of its development plans;

(h) to exercise such other powers and perform such other duties as may be assigned to it and conferred upon it by this Memorandum of Association or the Bye-Laws/Rules.

(3) The Board shall have the power to appoint such committee(s) as it considers necessary for the exercise of its powers and performance of its duties as defined under this Memorandum of Association.

(C) Meetings of the BOG

(1) The Board of Governors shall meet at least four times a year. Not less than 15 days notice shall be given for a meeting. A copy of the proceedings of each meeting shall be furnished to the Chairman of the BOG as soon as possible after the meeting.

(2) Six persons shall constitute the quorum for the meeting of the Board.

(3) Each member of the Board of Governors, including its Chairman, shall have one vote and decisions at the meeting of the Board shall be taken by simple majority. In case of a tie the Chairman shall have a casting vote.

(4) Every meeting of the BOG shall be presided over by its Chairman.

In the absence of the Chairman, the Secretary Technical Education (Vice Chairman) may preside over the meetings of BOG. In case both, the Chairman and the Vice Chairman, are not present at a meeting of the BOG, the members present would elect a Chairman from amongst themselves.

(5) Any business, which may be necessary for the Board of Governors to conduct, may be carried out by circulating appropriate resolution thereon among its members and any resolution so circulated and approved by a simple majority shall be as effective and binding as it such resolution had been passed at a meeting of the Board.

(6) If a member other than the Director or those representing the teachers accepts a full time appointment in the Institute or he does not attend three consecutive meetings of the Board of Governors without proper leave of absence, he shall cease to be a member of the Board.

9. Director

(1) The Director shall be a whole time salaried officer of the Institute.

(2) The Director shall be an eminent person from the field of Technical Education, preferably from the IIT system. He shall be appointed by the Chandigarh Administration on contractual basis on recommendation of a Search cum Selection Committee shall be headed by the Advisor to the Administrator and shall consist of the Secretary Technical Education, the Finance Secretary and

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shall have a representative each of the Central Government and the UGC. The Director shall hold office for a term of 5 years. His term shall be subject to renewal for further periods provided that every such appointment and terms thereof shall be subject to prior approval of the Chandigarh Administration. (Emphasis supplied)

Provided that notwithstanding the expiry of the said period of 5 years, he can continue in office till his successor is appointed and assumes office, but not beyond six months.

Provided further that a person appointed as Director shall retire from office during the tenure of his office or of extension, if any, when he completes the age of 62 years.

11. Registrar

(A)

(1) The Registrar shall be a whole-time salaried officer of the Institute.

(2) The Registrar shall be appointed by the Board of Governors on contractual basis on the recommendation of the Selection Committee consisting of the following:

(a) Director Chairman

(b) One nominee of the Chandigarh Admn. Member

(c) One nominee of the Board of Governors Member

(3) The contractual appointment shall be for a period of 5 years. This term shall be subject to renewal for further periods provided that every such appointment and terms thereof shall be subject to prior approval of the Chandigarh Administration. (Emphasis supplied)

Provided that notwithstanding the expiry of the said period of 5 years, he can continue in office till his successor is appointed and assumes office, but not beyond six months.

Provided further that a person appointed as Registrar shall retire from office during the tenure of his office or of extension, if any, when he completes the age of 62 years.

(4) The qualifications, emoluments and other terms and conditions of service of the Registrar shall be as may be determined by the Board of Governors with the approval of the Chandigarh Administration.

(5) When the office of the Registrar is vacant or when the Registrar is absent by reason of illness or any other reason, the duties and functions of the Registrar shall be performed by such other person as the Director may appoint for the purpose.

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19. Miscellaneous.

(5) No act or proceedings of any authority or any Committee of the Institute shall become invalid merely by reasons of:

(a) any vacancy therein or any defect in the constitution thereof; or

(b) any defect in the nomination or appointment of a person acting as a member thereof; or

(c) any irregularity in its procedure not affecting the merits of the case."

4. It is averred that on 11.9.2005, the post of Registrar was advertised for the first time for which the petitioner had not applied. The post was re-advertised on 17.2.2008 and interviews in pursuance held on 11.9.2008. However, no selection was made. The post was again advertised on 19.10.2008 in response to which the petitioner applied. On 12.03.2009, the petitioner was recommended for appointment after following the complete selection process and the minutes of the selection committee were sent to the Chairman, Board of Governors for approval. Due to some allegations, appointment letter to the petitioner was withheld and a summary inquiry was conducted. After due consideration, the Chairman instructed the Director to issue appointment letter to the petitioner and he joined as Registrar of the College on 13.03.2009. On the same day, a fax was received by the Director from respondent No. 2-Home Secretary (hereinafter referred to as respondent No. 2.) that the appointment letter to the petitioner be not issued till further orders. The Director replied that the appointment letter, on the direction of the Chairman, Board of Governors, had already been issued to the petitioner. On the same very day, another letter was received by the Director from respondent No. 2 by fax in which reference of some pending inquiry and certain irregularities in his appointment had been made and also invoking of the Model Code of Conduct issued by the Election Commission of India was made. The Director was required to file reply within 24 hours on violation of Model Code of Conduct in appointing the petitioner as Registrar. The Returning Officer was informed that the letter dated 5.3.2009 of the Election Commission of India regarding application of Model Code of Conduct was received by the college on 16.3.2009 through a circular dated 13.3.2009 of respondent No. 2 by when the appointment letter had already been issued to the candidate selected for the post of the Registrar PEC. There was no official communication received at that time that the matter was being inquired into by the Chandigarh Administration for any irregularities in the appointment of the petitioner and further that there has been no violation of the Model Code of Conduct as the process of selection was done with knowledge of the Chandigarh Administration, nominee of respondent No. 2 was also present during the Selection Committee meeting. The invitation/ information, regarding the interviews to be conducted on 12.3.2009 was sent to the members of the Selection Committee, including the nominee of the Chandigarh Administration well before the Model Code became operative. No objection was received from the Chandigarh Administration during the period on

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the issue of interviews being conducted during the period the Model Code was in operation.

5. It was thereafter that the impugned order was passed cancelling the appointment of the petitioner.

6. Learned counsel for the petitioner has argued that the ground that the Model Code was in operation is completely misconceived in view of the facts mentioned above and consequently, the selection of the petitioner could not have been set aside.

7. Learned counsel for the respondents has however argued that even apart from Mode Code of Conduct, the appointment of the petitioner cannot be operated for the reasons that no permission was obtained from the administration for appointing him and even the Board of Governors had not approved the appointment before it was given effect to.

8. Learned counsel for the petitioner has countered by arguing that as per the Memorandum of Association and Bye Laws, the PEC University is an autonomous self governing society and as per Clause 9 Sub-Clause 2 and Clause 11, Sub-Clause 3, it is only a renewal/subsequent appointment, which would be subjected to the prior approval of the Chandigarh Administration. As regards the objection that the Chairman unilaterally directed to issue the appointment letter without even getting the approval of the Board of Governors, learned counsel has relied on the minutes of meeting dated 10.6.2009, whereby it is recorded as under:-

9. As per learned counsel, this constitutes ratification as per judgments of Hon''ble Supreme Court in Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI), , wherein the services of the General Manager of a company had been terminated by the Chairman of the Board of Directors pursuant to a resolution taken by the Board at a meeting. It was not disputed that that meeting had been improperly held and consequently the resolution passed terminating the services of the General Manager was invalid. However, a subsequent meeting had been held by the Board of Directors affirming the earlier resolution. The subsequent meeting had been properly convened. The Court held:

Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953.

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10. I find weight in the argument of learned counsel for the petitioner. It is not disputed that the issue of Model Code of Conduct did not arise because even the letter informing about the imposition was received in the University after the selection process was completed. As regards the third argument also, it has to be held in view of the judgments cited above that even though the unilateral action of the Chairman was incorrect yet once the Board of Governors ratified the same, it would gain legal credibility.

11. Coming to the second argument, it has to be remembered that essentially, Universities are autonomous self governing bodies, subject only to the limitations created either by statute under which they are created or by Memorandum of Association. Clause 4(7) specifically mentions that the institution has power to create academic and other posts with the prior approval of the Chandigarh Administration, and to make appointments thereto (except in the case of Director).

12. Clause 4(15)(c)(d) (e) & (f) of Memorandum of Association state that the executive powers of the institute shall vest in the Board of Governors. The Board of Governors is the highest decision making body of PEC whose Chairman is an eminent industrialist/educationist. The Home Secretary or any other Secretary of the Chandigarh Administration has no power to interfere or change the decision once taken by the Board of Governors and, thus, the College has been made totally autonomous in nature. On 8.7.2004, in pursuance to the Government of India notification dated 16.10.2003, a detailed notification regarding conferment of Deemed University status on PEC was issued by the Chandigarh Administration. Therefore, appointment of Registrar is not in violation of the Memorandum.

13. Clause 19(5)(c) of Memorandum of Association provides that no act or proceeding of any authority or any committee of the institute shall become invalid merely by reasons of any regularity in its procedure not effecting the merits of the case. Thus the act of appointing the petitioner is not an invalid act.

14. Mr. Sethi, counsel for respondents No. 1 and 2, has argued that Clauses 9 and 11 which deal with the appointment to the post of Director and Registrar both have a common provision as per which for every subsequent renewal of appointment prior approval of the Chandigarh Administration would be required. As per him the necessary implication would be that for the first appointment also approval would be required.

15. I find this argument to be misplaced. Clause 9 which deals with the appointment of Director clearly stipulates that the Director has to be appointed by the Chandigarh Administration on the recommendation of a Search-cum-Selection Committee headed by the Advisor to the Administrator. However for the purpose of Registrar Clause 11 specifies that he would be appointed by the Board of Governors on the recommendation of a separate Selection Committee. As regards the provision relating to the approval for subsequent renewal, in my

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considered opinion, for the post of Director this provision is otiose. Once it is only the Chandigarh Administration who is the appointing authority and, by necessary implication the renewing authority also, there is no question of seeking approval from itself. For the Registrar''s post, of course a safeguard has been given that if a person who has been appointed as a Registrar completes his term and, the appointing authority decides to grant him another contract without recourse to the method of open selection, previous approval of the Chandigarh Administration would be required. Consequently, it has to be held that no approval was required for the appointment of the petitioner since it was a first appointment. Further not only this, the powers exercisable by the Chandigarh Administration/UGC and Central Government have been specified in Clause 7. A perusal thereof shows that this is a kind of residual power to hold a specific inquiry into the affairs of the institute and then take action thereon. Sub-clause (e) of Clause 4 also stipulates that the institute would have to be abide to the directions of the Chandigarh Administration on question of policy. Clause 5 of the Memorandum of Association deals with the composition and powers of the Board of Governors. It can be seen that the Board of Governors consists of highly placed and qualified individuals. The powers of the Board of Governors clearly mandate that they would have the power to make appointment to posts which have been created on the basis of recommendation of the Selection Committee. In conclusion, it has to be held that the order cancelling the appointment of the petitioner was illegal.

16. This brings this Court to the vexed question of the relief, which can be granted to the petitioner. The petitioner was Assistant Professor and working as the Estate Officer of the Punjab Engineering College, Chandigarh. Had he served at the post of the Registrar his social status would have got a boost and also his prospects for future appointments in other institutes would have brightened. There are serious allegations of malafide against the Chandigarh Administration to the effect that the Chandigarh Administration not only acted illegally but also completely beyond its powers; however I would not go so far without a proper trial. It is not disputed that the original five years term for which the petitioner was appointed has come to an end by efflux of time. The circumstances now do not permit him to join as Registrar. In my opinion, it cannot even be directed that he be granted the pay and allowances for the period since he did not actually work on the post. He is also not shown to have not worked elsewhere in this interregnum.

17. Learned counsel for the petitioner has relied upon the judgment in the matter of Dipak Kumar Biswas v. Director of Punjab Instruction and others, reported as 1987 AIR (SC) 1422. In that case the Hon''ble Supreme Court held that the employee of a private body (even though covered by statutory rules) would only be entitled to damages for acts of unlawful termination of service.

18. Since the petitioner has been fighting this legal battle for the past five years and also he has lost the future benefits which could have accrued by working on

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this post for said period, I deem it appropriate to grant him damages of Rs. 5.00 lacs. Ordered accordingly. In case the amount of damages is not paid within three months from the date of receipt of a certified copy of the judgment, the petitioner would be entitled to interest @ 10% p.a. from the date of this judgment to the date of payment.

19. The petition is disposed of in the above terms.

20. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

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