
(1993) 12 AHC CK 0032
In the Allahabad High Court
Case No : Second Appeal No. 4 of 1980

SHYAM BIHARI MISHRA

APPELLANT

Vs

UNIVERSITY OF ROORKEE and another

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Roorkee University Act, 1948 — Section 19(1)

Citation : (1993) 12 AHC CK 0032

Hon'ble Judges : H.N.Tilhari, J

Final Decision : Allowed

Judgement

H. N. Tilhari, J.—This is plaintiff's second appeal, arising out of judgment and decree dated 14th July, 1979/6th September, 1979 given in regular civil appeal no. 91 of 1977 Shyam Bihari Mishra v. Roorkee University, Saharanpur and another dismissing the plaintiff's first appeal and affirming the judgment and decree dated 26/2/1977 delivered in regular suit no. 503 of 1968, dismissing the plaintiff's suit for declaratory decree, declaring that the termination of the plaintiff's services from the post of Lecturer of Roorkee University was illegal and ultra vires and that he still continues to be in service as the Lecturer. The plaintiff further claimed that the decree for a sum of Rs. 744.83 on account of arrears of salary due to the plaintiff upto the date of termination which the plaintiff has described as the wrong termination of his service. In addition thereto the plaintiff has prayed for grant of such other further relief as the court deems fit and proper.

2. The plaintiff's case as per plaint allegation has been that he had been initially appointed as a Lecturer in Chemistry for a period of four months against an interim vacancy and he joined the post on 26/12/1961. Thereafter his appointment was extended till 31/5/1962. The plaintiff's case is that even after the said period his services were continued under the direction of the Incharge, Chemistry Department and he was required to appear for an interview on June 22, 1962 for the post of Lecturer in Chemistry in the grade of Rs. 40030640E.B.40800/ and that the plaintiff did appear before the Selection Committee which recommended

his claim and name in the second preference against leave vacancy of Dr. B. R. Agrawal, Reader in the Chemistry Department and on this appointment he was allowed to continue on the post till the joining of regularly selected candidate. The plaintiff has further stated in the plaint that on enquiry being made from the Registrar by letter dated 441963 about the nature of his appointment the plaintiff was informed by the Registrar vide the letter dated April 17, 1963 that he was working against the leave vacancy of Dr. B. R. Agrawal, Reader in Chemistry. The plaintiff further alleged that in terms of letter No. EST./3006/E85 Chemistry dated 2561963 the plaintiff was again required by the Registrar to appear before the Selection Committee to be held on July 22, 1963 for the post of Lecturer in Chemistry in the grade of Rs. 40030640E B. 40800 and the petitioner did appear before the Selection Committee but the result of that Selection Committee was not communicated to him. However, sometimes in April 1965 the plaintiff came to know that he had been appointed in the leave vacancy of Sri R. G. Goel by the Syndicate of University on the recommendation of the said Selection Committee. The plaintiff has further alleged that by another communication letter dated Est./2266/E85 Chemistry dated May 15, 1964 the Registrar again required the plaintiffappellant to appear before the Selection Committee to be held on May 30, 1964 for the post of Lecturer in Chemistry and the plaintiff did appear as a departmental candidate and during the interview the plaintiff was informed that the said post of Lecturer in Chemistry in the grade of Rs. 25025400E.B.30700E.B.50850 in connection with which he was required to appear before the Selection Committee on 30564 but as the selection departmental candidate was said to be restricted and confined to a candidate specialised in Organic Chemistry whereas the plaintiff had specialised in the Physical Chemistry and as such instead of the plaintiff Dr. V. K. Mahesh was selected for that post. Though as a matter of fact the said post was not restricted for a candidate who had specialised in Organic Chemistry and the plaintiff's claim for the said post was over?looked on that pretext. The plaintiff has further alleged in the plaint that on September 8, 1964 the plaintiff received a letter no. Chemistry/Opp/6404 from the head of the Chemistry Department enclosing a copy of the letter No. Est.7555/E1 122 dated September 4, 1964 from the Registrar informing the plaintiff that the plaintiff's services would no longer be required on the return of Dr. B. R. Agrawal from training abroad, in whose vacancy the plaintiff was alleged to be serving. It was by itself contrary to the Syndicate Resolution No. 58(1) dated August 22, 1963 (under the Supplementary Agenda Item No. 25 (1) under which the plaintiff was appointed to work in the leave vacancy of Sri R. G. Goel which was no longer a leave vacancy.

3. The plaintiff has further averred that subsequently by Office Memorandum dated January 30, 1965 the plaintiff was informed by the Registrar that his services would no longer be required by the University beyond 3131965 and the plaintiff should submit no dues certificate to the Accounts Section before his being relieved but later on vide the letter dated April 5, 1965 of Registrar,

addressed to the Professor and Head of the Chemistry Department that on his recommendation the services of plaintiff were extended upto April 14, 1965 when Dr. B. R. Agrawal would join. The plaintiff's further case is that while issuing above mentioned letters the Registrar overlooked that infact subsequently by the Selection Committee meeting dated July 22, 1963 the plaintiff had been selected on the post of Lecturer in the leave vacancy of Sri R. G. Goel and name of the plaintiff was recommended for the appointment in the leave vacancy of Sri R. G. Goel and those recommendations of the Selection Committee had been confirmed by the University Syndicate in its meeting held on August 22, 1963.

4. The plaintiff has further alleged that he had submitted a representation dated April 8, 1965 to the Vice Chancellor of the University of Roorkee, inviting his attention to the above facts and requesting him that in view of the Syndicate Resolution No. 58 dated August 22, 1963 necessary orders may be passed for the rectification of the mistake. According to the plaintiff, while making the representation he wrote a letter to the Registrar to the effect that till the decision being taken by the Vice Chancellor on the representation dated 841965 the plaintiff's services might be continued and the Registrar vide letter no. Est./1651/E1422 addressed to the Professor and Head of Chemistry Department, a copy of which was forwarded to the plaintiff, the Registrar informed the plaintiff as per letter dated 1741965 that, "The term of temporary service of Shri S. B. Mishra is extended upto May 19, 1965, i. e., the end of the session and thereafter he should be allowed to avail of the summer vacation of 1965 and his services will not be required thereafter. This should be taken as formal notice of the termination of his service. This also disposes off his representation dated 841965 to the Vice Chancellor and his letter dated 3441965 to himself."

5. According to the plaintiff on 19, July 1965 the plaintiff submitted an appeal to the Chancellor of the University of Roorkee under Regulation 15 of the Roorkee University Services Classification, Control and Appeal Regulations against the penalty imposed on him in contravention of Regulation No. 12 (vi) by terminating his services, although the period of plaintiff's appointment had not expired, as neither the leave vacancy of Shri R. G. Goel had come to an end till then nor had he joined the University, till then and so the plaintiff submitted that the said termination being in contravention of the Syndicate Resolution No. 58(1) dated August 22, 1963 was absolutely illegal.

6. It was further submitted in the plaint that Vice Chancellor had no authority to terminate the plaintiff's services, as the plaintiff had been appointed by the University Syndicate. The plaintiff submitted his reminder on September 27, 1965 in respect of the representation dated 19th July, 1965 and the Chancellor as per letter no. 5306/G. S. dated June 20, 1966 addressed to the Vice Chancellor of the University and a copy of which has been sent to the plaintiff by the Secretary to the Governor. The plaintiff was informed of the decision of the Chancellor dated 1761966 which has been mentioned in paragraph 9 in detail and by which order the Chancellor had rejected the appeal of the plaintiff. The

Chancellor while rejecting the appeal invented a new excuse to the effect that the plaintiff was appointed temporary Lecturer in Chemistry and that he was not found suitable by Selection Committee and so there was no need to interfere with the order of termination. The plaintiff further submitted that he preferred a review application to the Chancellor on August 2, 1966.

7. The Assistant Secretary to the Governor vide letter No. 1545/G.S. dated January 20, 1969 informed the plaintiff that the Chancellor was pleased to order that there was no justification for a review of the Chancellor's order.

8. The plaintiff has challenged his termination order to be illegal, null and void on the ground, mentioned in detail in paragraph 20 of the plaint vide clauses A to H of that para.

9. The plaintiff's suit was contested by the defendant respondent no. 1 who filed the written statement.

10. According to the case of defendant it was an admitted fact that the plaintiff was appointed Lecturer in the Chemistry Department as purely temporary measure against the leave vacancy. The defendant further admitted that as per reply of the Registrar it was clearly mentioned to the plaintiff that the plaintiff was working against the leave vacancy of Dr. B. R. Agrawal, Reader in Chemistry as a temporary Lecturer in Chemistry. The defendant had admitted the allegation of para 6 of the plaint that in response to the University's advertisement the plaintiff applied for the post of Lecturer in the Chemistry and he was accordingly called for interview vide University's letter dated 25/6/63 and, that he was interviewed by the Selection Committee on July 22, 1963. The University has further alleged in paragraph 6 that under section 19(1) of the Roorkee University Act all appointments of teachers and Officers have been subject to approval of the State Government and the Governor authorised the Vice Chancellor to make appointment of teachers in anticipation of Government's approval on certain conditions. The defendant had further averred that services of the plaintiff were continued by the Vice Chancellor according to the needs of the University and assessment of merits of the plaintiff by the Selection Committees from time to time. The University further took the stand that the plaintiff was informed by the Registrar's letter dated 19/6/63 and 7/6/64 that he was working in the leave vacancy of Dr. B. R. Agrawal, Reader in Chemistry as purely temporary Lecturer in Chemistry,

11. The defendant further stated in paragraph 10 "that by appointing him in the leave vacancy of Sri R. G. Goel, the situation would have not changed as the University (the appointing authority) had a right to terminate the services of a temporary employee when his services were no longer required without assigning any reason and when the appointment of the employee was definitely for a definite period."

12. The defendant further alleged in the additional pleas that the plaintiff was never appointed in the leave vacancy of Sri R. G. Goel. In paragraph 34 of the

written statement the defendant stated that the plaintiff was not appointed in the leave vacancy of Sri R. G. Goel, It was further stated in particular "No appointment was made by the Syndicate, either and no appointment letter was issued to him even by the Syndicate. No reliance can be placed on the report of the Selection Committee or the Syndicate by the plaintiff and the inferences of the plaintiff that such report is tantamount to an appointment is also wrong and such reports by the way of recommendations and otherwise are confidential and privileged. The Provincial Govt is the final authority in the University Act for sanction of posts and approval of the appointments. Syndicate cannot act without the approval of the Provincial Government in this respect. The Vice Chancellor was invested with the authority from before.

13. In alternative the defendant pleaded that if any reliance is to be placed on the resolution of the Syndicate dated 22863 it stood negated by the appearance of the plaintiff before the Selection Committee on May 30, 1964. In paragraph 42 it was further averred that all decisions of the Syndicate in matter of appointment of teachers are to be approved by the Provincial Government and the Provincial Government had delegated its power of appointment of teachers to the Vice Chancellor through Government Order which clearly confirms such powers upon Vice Chancellor. The pleas of jurisdiction and estoppel had also been raised in defence.

14. The trial court on the basis of the pleadings of the parties framed following issues ;

- (i) Whether the suit is under valued and the court fee paid insufficient ?
- (ii) Whether the Court has no jurisdiction to try the suit ?
- (iii) Whether the suit is bad for misjoinder of defendant no. 2 as alleged in para 27 of written statement of defendant no. 1 ?
- (iv) Whether the order of termination of services of the plaintiff is illegal, ultra vires and void ab initio as has been alleged in para 20 of the plaint?
- (v) Whether the plaintiff was appointed in the leave vacancy of Sri R. G. Goel ?
- (vi) Whether the suit is barred by the principles of estoppel as alleged in para 36 of written statement ?
- (vii) Whether the plaintiff is entitled to any arrears ? If so, to what extent ?
- (viii) Relief.

15. The learned trial court, i.e. the Munsif South, Lucknow by judgment and decree dated 26677 dismissed the plaintiff's suit after having recorded the following findings ;

- (a) That the suit is not bad for misjoinder of the parties,
- (b) That the impugned order of termination is not illegal, ultra vires or void. The

plaintiff was appointed on an interim vacancy on account of leave of Dr. B. R. Agrawal.

(c) "It appears to me that the plaintiff who was continuing against the leave vacancy of Dr. B. N. Agrawal was allowed to continue and as such the Vice Chancellor did not override the decision of the Syndicate. The Resolution No. 58 of the Syndicate approved the appointment of the plaintiff in the leave vacancy of R G. Goel but at that time the plaintiff was already working against the leave vacancy of Dr B. N Agrawal and was given extension from time to time. Vice Chancellor in my opinion allowed him to continue on initial appointment made earlier to the resolution no. 58 and in this way by not altering another appointment for leave vacancy he has not overridden the decision of the Syndicate.

(d) In the instant case when the plaintiff was working in the leave vacancy his services were no more required on the return of Dr. B. N. Agrawal from leave..... The plaintiff had no right to post when it was leave arrangement. As such the ground taken has no legs to stand. Thus he held that the order of termination was not illegal ultra vires or void.

(f) That the plaintiff was not appointed in the leave vacancy of Sri R. G. Goel even though approval of appointment vide resolution no. 58 was done and such approval does not amount to appointment.

(g) The suit is barred by estoppel in view of the fact that the plaintiff appeared before the Selection Committee held on 30/5/64. The plaintiff is not entitled to any arrears of salary and D. A.

16. Feeling aggrieved from the judgment and decree of the Trial Court the plaintiffappellant filed regular civil appeal no. 91 of 1977 in the Court of District Judge, Lucknow which has been dismissed by learned Civil Judge, Lucknow vide his judgment and decree dated 14/7/79/69/79.

17. The learned lower appellate court has held that the plaintiffappellant was appointed on temporary basis in leave vacancy of Sri B. R. Agrawal and not in the leave vacancy of Sri R. G. Goel and his services were continued from time to time in leave vacancy. The learned appellate court further took the view that the appointment of the plaintiffappellant was in leave vacancy and was not extended further and the plaintiff cannot assail non extension of his temporary services. The nonextension of service can no way be called termination.

18. Feeling aggrieved from the judgment and decree of the lower appellate court dated 14/7/79/69/79 the Plaintiffappellant has filed this second appeal in this Hon'ble Court.

19. I have heard Sri Umesh Chandra, Sr. Advocate, assisted by Sri Sandip Dikshit, Advocate on behalf of the plaintiffappellant and Sri P. N. Mathur, Sr. Advocate, assisted by Sri J. N. Mathur Advocate, appearing on behalf of the respondent at length.

20. Sri Umesh Chandra, learned counsel for the appellant submitted that the plaintiff's appointing authority under Roorkee University Act under Rules, framed thereunder on the Post of a teacher is and has been Syndicate of the University which acts by passing the resolution at its meeting. Sri Umesh Chandra submitted that a perusal of the scheme of the Act under Rules per se will show that the Vice Chancellor is not the appointing authority. He further submitted that vide Resolution No. 58 dated 22nd August of 1963, passed in the meeting of the University Syndicate dated 22/8/1963 appointing the plaintiff/appellant, after selection of the appellant, for the post of Lecturer in Chemistry in the leave vacancy of Sri R.G. Goel as confirmed by it by further resolution dated 12/13/10/1963 and the appellant stood appointed on the post of Lecturer in the leave vacancy of Sri R. G Goel and that no further action was required after the report of the Vice Chancellor that action on resolution has been taken. Sri Umesh Chandra further submitted that it was not open to the defendant/respondent to contend that the plaintiff/appellant was not appointed in leave vacancy of Sri R. G. Goel. He submitted that when the appointing authority under the provisions of the Act and the Rules framed thereunder is none else but the Syndicate of the University, the Vice Chancellor had no power to terminate his appointment. It could only be terminated by the Syndicate or it could come to an end on the return of Sri R. G. Goel" Sri Umesh Chandra further submitted that as no termination of plaintiff/appellant's services has been done by the Syndicate of University and as R. G. Goel has not returned after leave nor any regularly selected candidate has been appointed in place of Sri R. G. Goel, the plaintiff continued to be in service all through in the eye of law and the impugned order of termination dated 20/7/65 and 17/6/66 are illegal, null and void as the same have been passed by person unauthorised and not competent.

21. Sri Umesh Chandra submitted that the learned Courts below erred in law in taking the view that although section 19 (i) (b) of the Roorkee University Act gives power to Syndicate to make appointment subject to approval by the State Government yet the recommendations for appointment or the appointment made by Syndicate shall not take effect unless the same is offered by some one and it further erred in taking the view that as the Vice Chancellor of the University did not offer any appointment to the plaintiff on the basis of the said resolution no. 58 the same could not take effect. Sri Umesh Chandra further submitted that the learned courts below erred in law in taking the view that the Syndicate of the University was a recommending body in the matter of appointment of the teachers and it is Vice Chancellor who is the appointing authority and who gives appointment to the teachers. The learned counsel for the appellant submitted that the entire approach of the Courts below in taking the view that the Vice Chancellor was appointing authority of the plaintiff as a teacher or Lecturer in the University and he could terminate the service of a teacher or Lecturer like the plaintiff is completely based on misinterpretation of the provisions of the Act and the Rules and that the learned Courts below committed substantial error of law in dismissing the plaintiff's suit on such

erroneous view of law and the erroneous findings arrived at by the Courts below on the basis thereof.

22. The above contentions of the plaintiffappellant have been refuted and challenged by the counsel for the defendantrespondent Sri. P. N. raathur the Senior Advocate. Sri P. N. Mathur submitted that initially the petitioner had been appointed in leave vacancy of Dr. B R. Agrawal. He was continued in that post on leave vacancy till Dr, B. R. Agrawal did not return. He further submitted that the plaintiff had been informed by the Registrar that he had been working in the leave vacancy of Dr. B. R. Agrawal and he continued to work so he is eftopped. Sri Mathur further submitted that appointment of the plaintiffappellant being purely of temporary nature and being a leave vacancy, appointment in place of Sri B. R. Agrawal did come to an end and had to be determined on Sri B R. Agrawal's joining post after his leave had come to an end. Sri Mathur further submitted that resolution of the Syndicate did not have the effect of appointing the plaintiffappellant unless it was approved by the Government as provided under section 19 of the Act, even if it be taken that the Syndicate is the appointing authority of the teachers. Sri P. N. Mathur further submitted that the plaintiff has not alleged nor proved that the Government had granted its approval to the plaintiff's appointment in the leave vacancy of Sri R. G. Goel, and unless the plaintiff had alleged and proved that, the plaintiff cannot claim that he had been appointed in the leave vacancy of Sri R. G. Goel though his appointment was extended from time to time till the return of Dr. B. R. Agrawal. Sri Mathur contended that the burden did lie on the plaintiff to assert and allege as well as to prove that the appointment of the plaintiff made by the Syndicate had been approved by the State Government which the plaintiff did not assert or prove. So the plaintiff is not entitled to claim any benefit of the Resolution No. 58 dated 22863, even if it had been passed by the Syndicate and particularly when no appointment letter had been issued to the plaintiff.

23. He lastly submitted that Vice Chancellor is appointing authority and he could terminate the appointment and in the circumstances of the case on the return of Sri B. R. Agrawal the plaintiff's appointment had come to an end and was terminated. There was nothing illegal in the order impugned. As such the learned trial court as well as appellate court did not commit any error of law or substantial error of law in dismissing the plaintiff's suit.

24. I have considered and weighed the respective contentions made before me by the learned counsels for the appellant and respondent. I have also perused the records of the Court below alongwith the counsels for the parties. The principal questions to be decided in this appeal are ;

(a) Whether the appointing authority for the post of a teacher is the Vice Chancellor or the Syndicate and if it is Syndicate whether the resolution no. 58 of the University Syndicate did have the legal effect or not even without a formal letter of appointment being issued to the plaintiff in pursuance of Syndicate Resolution particularly when the plaintiff was working in the University?

(b) Whether the order of termination issued by the Vice Chancellor is illegal, null and void? If ab initio in the absence of any resolution of the Syndicate, terminating the appellant's appointment and in particular when R. G. Goel did not return after leave?

25. As regards the first question whether the appointing authority for the post of a teacher or lecturer in the University of the Roorkee has been the Syndicate or the Vice Chancellor of the University and whether the plaintiff/appellant had been appointed by the Vice Chancellor and whether in view of Resolution No. 58 the petitioner had been appointed in place of Sri R. B. Goel can be answered and replied after having a perusal of the provisions of the Roorkee University Act as it had been applicable during the period 1961 to 1963 or thereafter.

26 Roorkee University had been established as a Corporate body under the Act known as "Roorkee University Act, 1948" hereinafter described as "U. P. Act No. 9 of 1948". Section 2 of the Act is the definition clause which defines expression "teacher" as used in the Act. Section 2(5) of U. P. Act No. 9 of 1948 reads as under :

2(5)"Teacher" includes a Professor, Reader, Lecturer and another person imparting instruction in the Roorkee University.

27. Section 8 of the Act provides for the Officers of the University as to who shall be the Officers of the University. According to Section 8 the following shall be the Officers of the University namely, the Chancellor, the Vice Chancellor, the Pro Vice Chancellor, the Registrar, such other officers as may be declared by the regulations to be officers of the University and shall exercise general control over the affairs of the University. It further provides that he shall be responsible for the discipline of the University in accordance with the provisions of the Act, Rules and Regulations. Subsection (6) further provides that he shall exercise such other powers and perform such other duties as may be prescribed by Rules and Regulations. Section 13 of the Act defines the powers and duties of the Registrar. According to subsection 13 the Registrar is to be the whole time officer of the University and he is required to act as the Secretary of the Senate and the Syndicate. Section 13 further provides that he shall exercise such other powers and perform such other duties as may be prescribed by the rules or regulations.

28. Section 15 of the Act makes a provision for the authorities of the University and according to Section 15 there are to be the following authorities of the University, namely; the Senate, the Syndicate, such other authorities as may be declared by the regulations to be the authorities of the University. Section 18 of the Act further provides that the Syndicate shall be the executive as well as the Academic Body of the University and it shall consist of the Vice Chancellor, the Pro Vice Chancellor, the Professors, the Readers nominated by the Government, four members elected by the Senate. The President of the Institution of the Engineers U. P. Centre, one Engineer, nominated by the Government and two Educationist, nominated by the Government. Section 18 further provides that

the Registrar shall be the Secretary of the Syndicate. Subsection (3) of Section 18 further provides that for consideration of any particular question if any expert is required the Syndicate can coopt any other member as expert for that particular question. Section 19 of the Act describes/defines the powers and duties of the Syndicate and it would be just and proper to quote Section 19 from the Act. Section 19 of U. P. Act No. 9 of 1948 reads as under :

19(1). The Syndicate shall subject to the approval of the (State Government) (substituted by the A. O. 1950 (Provl. Govt.) in the case of (1) the appointment of officers and teachers, (2) the budget (3) extraordinary expenditure (4) extension of courses, and (5) any other matter ordered by the State Government.

(a) hold, control and administer the property and funds of the University,

(b) direct the form custody and use of the Common Seal of the University,

(c) subject to the powers conferred by this Act on the Vice-Chancellor, regulate and determine all matters concerning the University in accordance with this Act and rules and regulations.

(d) administer any funds placed at the disposal of the University for specific purposes,

(e) have power to accept transfer of any movable or immovable property on behalf of the University,

(f) save as otherwise provided by this Act and the Rules appoint the officers (other than the Chancellor and Vice-Chancellor) teachers and other servants of the University and specify their duties and the conditions of service and provide for filling in the temporary vacancies in their posts.

(g) appoint examiners,

(h) public the results of the University Examinations.

(i) exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act, the rules or the regulations, and

(j) exercise all other powers of the University not otherwise provided for by this Act, rules or the regulations.

(2) any regulation made for the purpose of clauses (b), (e), (f) and (g) of subsection (1) or such other regulations as may be so prescribed by the rules, shall be subject to the approval of the Senate.

(3) The Syndicate shall complete and undivided responsibility for all academic matter "

29. A perusal of Section 19 quoted above per se reveals that the power to make appointment of the officers and the teachers of the University has been vested in the Syndicate and it is subject to approval by the State Government. It is that

the Syndicate shall make appointments of Officers and teachers subject to the approval of the State Government vide subsection (1) of Section 19. Subsection (1)(f) further provides that save otherwise provided by the Act and the rules the Syndicate shall appoint (other than the Chancellor and Vice Chancellor) teachers and other servants of the University and shall specify the duties and conditions of service and shall provide for the filling in the temporary vacancies in their posts. The appointments made in the exercise of this power are to be subject to approval of the State Government. Section 20 of the Act confers the rule making power on the Syndicate and it provides that the Syndicate may frame rule with the approval of the Government to carry out the purposes of the Act and Section 21 confers the power on Syndicate to frame regulations to carry out the purpose of this Act and the rules and this power is subject to the provisions of the Act and the rules framed under the Act.

30. The Syndicate in exercise of powers conferred under Section 20 of the Act framed the Rules. Chapter 4 of the Rules deals with the Vice Chancellor. Chapter 6 of the Rules defines the position of the Registrar and his functions. Chapter 6 rule 2 provides that the Registrar shall act as the Secretary of the Senate and Syndicate and of such other authorities as may be declared by regulation to be the authorities of the University. Chapter 6 rule 3 provides that the Registrar shall among other things, vide clause (b) of Rule (3) conduct the official correspondence on behalf of the Senate and Syndicate and vide clause (g) shall perform such other duties as may from time to time be assigned to him by the Syndicate and generally render such assistance as may be desired by the Vice Chancellor or the ProVice Chancellor in performance of their official duties. Chapter 9 of the Act deals with the Syndicate. The material part of Rule 1 of Chapter 9 and specially Rule 9.1(b) may be quoted here which deals with the question of appointment, dismissal, termination or the like, of the services as of the teachers and officers and other employees of the University which further provides in what cases the Syndicate may delegate its powers and functions. According to Rule 1 of Chapter 9 the Syndicate may appoint, dismiss or terminate the service of a teacher or Officer or other employees of the University and Syndicate may delegate its powers of appointment and punishment in respect of Ministerial and inferior staff and such other nonacademic staff as it may consider proper to any other person or authority :

"The Syndicate

9.1. Subject to the provisions of the Act and any other rule, the Syndicate may :

(a) institute, abolish or suspend any professorship, associate Professorship, Readership, Lectureship or any other teaching or non teaching post required by the University :

(b) appoint, dismiss or otherwise punish, or terminate the services of teachers, officers and other employees of the University :

Provided that the Syndicate may delegate its power of appointment and

punishment in respect of the ministerial and inferior servants and such other nonacademic staff as it may deem proper, to any other person or authority."

31. Chapter 34 of the University Calender which contains regulations deals with the matter of appointments and conditions of service of the Staff. According to Chapter 34.4 all vacancies other than the short term leave vacancies, of officers and teachers, shall be advertised and the appointment against them are to be made by the Syndicate on the recommendations of the relevant Selection Committees. As regards short term vacancies for a period not exceeding six months it is provided under first proviso that such appointments may be made by the Syndicate without any reference to the Selection Committee and further that vacancies occurring in the category of a teacher after the commencement of a session upto the end of that session, it is provided that Syndicate may make such appointment as well without reference to the Selection Committee. Second proviso to Regulation 4 Chapter 34 provides that in emergent cases the ViceChancellor may make such officiating appointments and report the same to the Syndicate. It will be also just and proper to make a reference in this connection to the Roorkee University Services (Classification, control and appeal Regulations, contained in Chapter 35 of the Roorkee University Calender, 1968-69. That vide regulation 10 of the regulations, contained in Chapter 35 it has been provided that all first appointments shall be made by Syndicate with respect to University Services Class A. Appendix 1 to Regulations aforesaid and contained in Chapter 35 provides for classification of class A staff. In accordance with classification all teaching staffs from Lecturers and above have been included in class "A" staff. Thus a perusal of entire scheme of the provisions of the Roorkee University Act, rules and regulations, referred to above and framed under the Act per se show and establish that the appointing authority in respect of the teachers of the Roorkee University including the Lecturers, be it a regular appointment or a short term appointment even in leave vacancy of six months or more is none else but the Syndicate in the eye of law and not the ViceChancellor.

"32. The ViceChancellor under the Act is whole time Officer and the Principal Executive of the University and his duty amongst other is to give effect to the Orders of the Syndicate in regard to appointment, dismissal, termination or suspension of the Officers and the teachers of the University and the Registrar is the Secretary of the Syndicate and the Registrar as per Chapter 6 of the Rules is to conduct the official correspondence on behalf of the Syndicate and perform other duties assigned to him by the Syndicate. Thus it appears from the scheme as mentioned above that except for cases arising in emergency or in emergent situation; in ordinary course of things Syndicate is the appointing authority of the Teachers and the Officers. The finding recorded by the Courts below that the ViceChancellor is the appointing authority of the post of teachers or Lecturer suffers from substantial error of law emanating from the failure of the court below to apply its mind to the above mentioned provision of the, Act the rules and the regulations framed thereunder and referred to above.

33. It is well settled that when the relevant law and the Act or the Rules "specifically define the appointing authority for a particular post and confer power on that authority to make appointments then there can be no other authority which can be treated to be appointing authority. It is not the case of the respondent that the appointment of the appellant was made as a case of emergency or as an emergent case and even in a case of emergency if appointment is made under second proviso by the Vice-Chancellor the same is to be reported to the Syndicate and the Chancellor maybe acting as an Agent of the Syndicate but there is no such case, pleaded by the defendant.

34. A perusal of Ext. 13 Office Memorandum dated December 20, 1961 issued under the signatures of the Registrar only shows that the petitioner had been appointed in the temporary vacancy of Lecturer in Chemistry till the incumbent joins or for four months whichever is earlier. It does not indicate that the plaintiff had been appointed by the Vice-Chancellor as pleaded in defence. It is not the case of the University authorities that the Registrar has been the appointing authority or the Registrar made the appointment.

35. Keeping in view the state of law under the Act and the Rules and the regulations it can only be treated as a communication of the appointment of the plaintiff-appellant as a temporary measure, made by the Syndicate which the Registrar communicated. Ext. 17 only indicates that he was allowed to continue till May 31, 1962. This is also a communication from the Registrar and Ext. 17 is further a communication that the appellant's appointment was being continued till 15th July, 1962. Annexure 18 on record is again communication from the Registrar that the plaintiff-appellant had been allowed to continue beyond 15/7/1962 till regularly selected Lecturer did not join. This document again can be taken only as a communication of the decision of the authority, competent to make appointment and the communication was issued on behalf of that body, i.e., Syndicate by the Registrar of the University who is the Secretary of the Syndicate as provided under the Act and the Rules. Ext. 19 is also of the same nature and is dated April 19, 1963.

36. I have referred said documents to show that it is nowhere indicated in these documents or Exts. that the appointment of the plaintiff-appellant had been made by the Vice-Chancellor and not by the Syndicate. Nothing can be presumed which may be against law unless it is shown or established. Under the law the appointing authority of the teacher, i. e., Lecturer, Reader and Professor in the University is the Syndicate and not the Vice-Chancellor nor the Registrar. The Registrar is only communicating authority.

37. A perusal of Ext. 2 shows that before the Selection Committee held on 22/7/1963 for the post of Lecturer in Chemistry the plaintiff-appellant was called to appear in interview and the plaintiff-appellant did appear. The proceedings of the Selection Committee further revealed that the Selection Committee after interviewing the candidates who appeared before it considered that the plaintiff-appellant S. B. Mishra was found suitable for appointment in the leave

vacancy of Sri R. G. Goel, lecturer in Chemistry." The Selection Committee further observed "since he is working against a leave vacancy here his pay bill be fixed according to rules." Another material document which throws light on the question as to by whom the petitioner was appointed and whose appointments were approved by the Syndicate is revealed by Ext. 4 on record, i. e., resolution no. 58, passed by the Syndicate approving the selection of the appellant and appointing the appellant in the leave vacancy of Sri R G Goel and directing that his pay bill be fixed accordingly, i. e., in the leave vacancy of Sri R G. Goel. Ext. 5 further indicates that Syndicate confirmed the minutes of the meeting of the Syndicate held on August 22, 1963. This being the position as regards the facts revealed and established by evidence under law it cannot be deemed that the plaintiff-appellant had been appointed by the Vice-Chancellor instead the correct position comes out to be that the appointment of the appellant had been made by the Syndicate under and in accordance with the law.

38. The learned counsel for the respondent Sri P. N. Mathur submitted that final authority in the matter of appointment is not the Syndicate but the Government of the State as according to section 19 the Syndicate makes appointment subject to approval thereof by the Government. Sri P. N. Mathur submitted that the plaintiff has neither alleged nor proved that his appointment had been approved by the State Government. Sri Mathur submitted that when the plaintiff had not proved or shown that his appointment was approved by the Government the plaintiff-appellant cannot claim that he was appointed in place of Sri R. G. Goel on the ground of resolution no. 58 and the documents Exts. 2, 4 and 5. He further submitted that until the Syndicate's Resolution was acted upon it cannot be said that the appellant had been appointed and all these two things had to be established by the plaintiff himself.

39. I have given due consideration to these contentions of Sri P. N. Mathur, counsel for the respondent. In my opinion there is no substance in this contention of the learned counsel. The reason for this conclusion is that firstly Ext. 12 on record, paper no. 80 Ga which is an extract of Appendix 3 Syndicate meeting dated 12/10/63 shows that actions had been taken on resolutions of the Syndicate adopted at its meeting held on 22/8/63 and in particular in relation to resolution no. 58. This document proves that resolution no. 58 appointing the plaintiff-appellant in the leave vacancy of Sri R. G. Goel was implemented.

40. As regards the second argument of Sri P. N. Mathur regarding the approval of the State Government to the effect that the plaintiff has failed to prove that his appointment was approved by the State Government so far as the appellant's appointment in leave vacancy of Sri R. G. Goel is concerned I find no substance therein. Whether approval had been granted by the Government or not is a matter which is in the special knowledge of the defendant. Whether the appointment of the plaintiff-appellant as a Lecturer in the leave vacancy of Sri R. G. Goel had been approved or disapproved being a matter of fact within the special knowledge of the defendant the burden did lie on the

defendant respondent to assert the same if in accordance with the defendant the approval had been refused and the burden further did lie on the defendant to prove that fact in view of the provisions of section 106 of the Indian Evidence Act. Section 106 of the Evidence Act provides that "when any fact is specially within the knowledge of any person burden of proving that fact is upon him." In this connection it may also be mentioned here that the documents on record, filed by the defendant and the communication from Under Secretary to the Government of U. P. to the Vice-Chancellor, Reorkee University dated 26/1/1962 onward including the letter dated December 28, 1964 show and prove that the Governor had been pleased to authorise the making of appointment of teachers in anticipation of the Government's approval. The defendant in his written statement has nowhere pleaded that the Government had not granted the approval or the Government had refused to give approval to the appointment of the plaintiff-appellant on the post of Lecturer in Chemistry in the leave vacancy of Sri R. G. Goel and when no such plea has ever been taken by the defendant at this stage it is not open to them to raise it and in particular when there is nothing on record to show that the approval sought had been rejected. Thus considered I am of the opinion that the plaintiff-appellant had been appointed the Lecturer in Chemistry in leave vacancy of Sri R. G. Goel. The finding of the trial court is "That resolution No. 58 of the Syndicate approved the appointment of plaintiff in leave vacancy of Sri R. G. Goel but at that time the plaintiff was already working against the leave vacancy of Dr. B. R. Agrawal and was given extension from time to time. The Vice-Chancellor, in my opinion, allowed him to continue on initial appointment made earlier to the Resolution No. 58 and in this way by not altering another appointment for leave vacancy he has not overridden the decision of the Syndicate". The lower appellate Court in this regard has observed that "The first reason for this is that the appellant was appointed as temporary hand for a period of four months in the leave vacancy of Sri B. R. Agrawal initially as admitted by himself and his services were subsequently extended from time to time by giving periodical extension. No doubt there was a resolution of Syndicate as referred to above but as per admission of the appellant himself it was never communicated to him and there was no offer or acceptance regarding post. Therefore when there was no offer or acceptance the aforesaid resolution did not have the effect of appellant's appointment in the leave vacancy of Sri R. G. Goel. The lower appellate court has further observed "That resolutions relied by appellants were nothing but internal affairs of the respondent and that is why the appellant was not intimated about all these...such internal affairs did not clothe the appellant with any power or right of service in the leave vacancy of Sri R. G. Goel unless and until he was offered such appointment in pursuance to such resolution." The appellate court took the view that the resolution of the Syndicate was nothing but a paper transaction and it was not actually carried out by the Vice-Chancellor. So on this basis the lower appellate court took the view that it cannot be said that the appellant was ever appointed in the leave vacancy of Sri R. G. Goel. The learned appellate court observed "further if a thing was a must it cannot be imagined without any evidence that it was actually done by the

University. It may be must for the University to act upon the resolution of the Syndicate but what is before me to show that it was actually acted upon, obviously there is nothing on record to show that the Syndicate resolution was acted upon." In my opinion this finding of the Courts below is completely based on nonconsideration of Ext. 12 on record relating to resolution no. 58 which shows and proves that the resolution approving the report of the Selection Committee and giving appointment to the plaintiffappellant and one another person had been acted upon and action had been taken in pursuance of Syndicate's resolution no. 58, passed in its meeting dated 22863. The finding of the courts below that the resolution dated 22863 was not acted upon is vitiated by substantial error of law as the same has been arrived at after having ignored the own document of defendantrespondent that is Ext. 12. According to the Syndicate's resolution his pay had to be fixed with reference to leave vacancy of Sri R. G. Goel in pursuance of resolution dated 22863 and that having been done in pursuance of the resolution there can be no doubt in holding that the plaintiffappellant had been appointed by the resolution dated 22863 of the Syndicate. The finding to the contrary, recorded by the Courts below as such is set aside as the finding of the court below had been arrived at by committing substantial error of law arising from failure of courts below to consider the material provisions of law, that is, the Act, rules and regulations as well as the failure of the court below to consider and to apply its mind to resolution no. 58 alongwith Ext. 12.

41. I, therefore, hold that the plaintiffappellant had been appointed by the Syndicate in accordance with law with effect from 22863 in the leave vacancy of Sri R. G. Goel.

42. That the Syndicate being the appointing authority and the plaintiffappellant having been appointed in the leave vacancy of Sri R. G. Goel until and unless R. G. Goel had returned after leave or in its place a fresh appointment had been made after regular selection and the same had been pleaded and proved, the appointment of the plaintiffappellant did not come to an end automatically and it did not automatically stand determined As I have mentioned earlier vide Chapter 9 of the University Calander and Rule 9.1 the power to dismiss or terminate the service of a teacher of the University is vested in the Syndicate, i. e. the appointing authority & it had not been delegated by Syndicate nor it could be delegated by Syndicate in view of the provisions of the Act and the Rules except in relation to the Ministerial or inferior staff.

43. Regulation 16 contained in Chapter 34 throws light on this subject. It reads as under :

34.16 (a). The Syndicate shall have the power to terminate the appointment of an officer, a teacher or any other servant of the University, on grounds of gross inefficiency, dishonesty or serious misconduct involving moral turpitude, in the manner provided in the regulations or the individual contract, as the case may be.

(b) The Syndicate shall have the power to terminate the appointment of an officer, a teacher or any other servant of the University in case of abolition of his post by giving six months' notice in writing."

44. In accordance with this regulation the appointment can be terminated by the Syndicate. The power to terminate the appointment of a teacher has been conferred on the Syndicate and the grounds on which it can be done has been indicated therein and in case where it is to be done on the ground of abolition of post it is provided that a six months' notice is to be given. That being the position the termination of the plaintiff's services either by the ViceChancellor or the Registrar as quoted in paragraph 12 of the plaint as exhibited by document Ext. 26 issued under the signatures of Registrar which had been issued in continuation of Office Memorandum dated April 5, 1965, i. e. Ext. 24 on record is hereby held and found to be illegal, null and void It is further held that the termination order issued vide Exts. 24 and 26 dated 5465 and 17465 issued under the signatures of the Registrar is illegal, null and void as neither the Registrar nor the ViceChancellor could terminate or determine the appointment of the plaintiffappellant.

45. Having thus considered and found that the plaintiffappellant had been appointed by the Syndicate of Roorkee University vide its resolution no. 58 passed in the meeting of the Syndicate held on 2281963 on the post of Lecturer in Chemistry in the vacancy of Sri R. G. Goel and that under the law, i. e. the Act, Rules and the Regulations framed under the Act the appointing authority in respect of the post of a teacher be it the post of Lecturer or higher one none else but syndicate and it is Syndicate legally appointing authority, statutorily prescribed and under the provisions of the Act and the Rules as well as regulation it is the Syndicate of the University which has been conferred power to dismiss, remove or to terminate the appointment of a teacher. I hereby hold that the finding to the contrary, recorded by courts below that the ViceChancellor has been the appointing authority of the appellant is illegal and erroneous in law and the decision of the Courts below that the termination order is not illegal or bad is also erroneous in the eye of law as well as on facts and as such the said findings are hereby set aside and the judgment and decree, dismissing the plaintiff's suit are set aside. The order of termination of the plaintiff's services as referred to above from the post of Lecturer in Chemistry in leave vacancy of Sri R. G. Goel having been found by me to have been illegal, null and void in my opinion the plaintiffappellant continued to be in services of the defendantrespondent on the post of Lecturer in Chemistry in the leave vacancy of Sri R. G. Goel and as such is entitled to the grant of decree as claimed as well as is entitled to be paid the entire salary with all allowances and increments and consequential benefit given from time to time to a Lecturer similarly placed during this period. The plaintiff is entitled to all consequential benefits in view of the above findings and declarations. The plaintiffappellant has also claimed that such other and further relief as the Court deems or considers fit and proper in the circumstances of the case may be granted. In view of the residuary relief clause, contained in the

plaint the interest of the justice requires that in order to avoid multiplicity of legal proceedings the decree for mandatory injunction be also granted in favour of the plaintiff-appellant and against the defendant-respondent, directing the respondents to allow the plaintiff to work on the post of Lecturer in Chemistry as well as to pay his entire emoluments with all benefits, the allowances and increments granted time to time, to the persons similarly placed and same should also granted to the plaintiff-appellant within a period of three months from the date of production of a copy of this judgment by the appellant before the opposite party concerned.

46. The second appeal is allowed herewith after having set aside the judgment and decree of the Courts below and the plaintiff's suit and claim are hereby decreed as has been mentioned above with costs throughout.

(Appeal allowed.)