

Executive Committee Of Meerutcollege, ... vs Vice Chancellor, Meerut ... on 31 March, 1983

Equivalent citations: 1983 AIR 1146, 1983 SCR (2) 622, AIR 1983 SUPREME COURT 1146, 1983 ALL. L. J. 519, 1983 UJ (SC) 365, 1983 UPLBEC 418, (1983) 96 MAD LW 169, 1983 SCC (L&S) 337, (1983) 2 LAB LN 717, 1983 (2) SCC 397, (1983) 46 FACLR 344, (1983) 2 LABLJ 11, (1983) UPLBEC 418, (1983) ALL WC 373

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, V.D. Tulzapurkar, A. Varadarajan

PETITIONER:

EXECUTIVE COMMITTEE OF MEERUTCOLLEGE, MEERUT & ORS.

Vs.

RESPONDENT:

VICE CHANCELLOR, MEERUT UNIVERSITY, MEERUT & ANR.

DATE OF JUDGMENT 31/03/1983

BENCH:

CHANDRACHUD, Y.V. ((CJ)

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CHANDRACHUD, Y.V. ((CJ)

TULZAPURKAR, V.D.

VARADARAJAN, A. (J)

CITATION:

1983 AIR 1146

1983 SCR (2) 622

1983 SCC (2) 397

1983 SCALE (1) 312

ACT:

Uttar Pradesh State Universities Act, 1973 -Proviso to s. 39-Interpretation of-Proviso saves 'teachers' from disqualification contained in s. 39 but not 'relatives' of teachers.

HEADNOTE:

Under s. 39 of the Uttar Pradesh State Universities Act, 1973 a person is disqualified from being chosen as a member of the Management of an affiliated college if he or his relative accepts any remuneration for any work in such

college. However, the proviso to that section states that nothing in the section shall apply to the acceptance of any remuneration by a teacher as such. The expression 'relative' as defined in the explanation to the section includes within its meaning a 'brother'.

The election of appellant-3 as Honorary Secretary of the Executive Committee of an affiliated college was set aside by respondent-1 on the ground that he was disqualified from being chosen as such, as his brother was a lecturer in that college. The writ petition filed against the order of respondent-1 was dismissed by the High Court.

Counsel for appellants contended that cases in which remuneration is accepted by a relative in his capacity as a teacher are exempted from the operation of s. 39 by virtue of the proviso thereto and since appellant-3's brother was accepting remuneration as a teacher in the college, appellant-3 was not disqualified from being chosen as a member of the management of the college. It was further contended that s. 39 is prospective in operation in the sense that if a person was a teacher prior to the date when the Act came into force, his relative would not be disqualified even if he is elected after the coming into force of the Act.

Dismissing the appeal,

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HELD: By reason of the proviso, the disqualification provided for by s. 39 will not apply "to the acceptance of any remuneration by a teacher as such". What the proviso means is that a teacher shall not be disqualified for being chosen as a member of the Management of the college for the reason

623

that he accepts remuneration from the college in his capacity as a teacher. The object of the proviso is to enable the teachers of a college to become members of the management of the college. The exception carved out by the proviso cannot apply to cases in which the person elected to the Executive Committee of the college is not himself a teacher but whose relative is a teacher. The proviso, thus interpreted, will give meaning to the provision contained in cl. (b) of Statute 13.05 of the Meerut University First Statutes, 1977 which provides that 25 per cent of the Members of the Management of a college shall be teachers. Granting protection to relatives of teachers is foreign to the very object of the proviso, the reason being that such relatives should not become a handy medium for distributing favours and patronage to the teachers. [626 B-H; 627 A-C]

Judgment dated August 26, 1981 of the Allahabad High Court in Civil Misc. Writ No. 11147 of 1980, approved.

In the instant case, appellant-3 is not protected by the proviso; the disqualification is incurred by him because his brother, who is a teacher, accepts remuneration for the work done by him for the college. [626 E]

(b) The mere circumstance that s. 39 uses a verb in the present tense, namely, "accepts", will not justify the conclusion that the section will apply to those cases only wherein the remuneration is accepted by the teacher for the first time after the Act came into force. The section, on its terms, must apply even to those cases in which a teacher has been accepting remuneration prior to the date on which the Act came into force with the result that the relative of such a teacher cannot be chosen as a member of the Management of the college. While interpreting a statute one must have regard to the substance of the matter and hypertechnical considerations should be ruled out. The interpretation should, as far possible, further the object of the statute. [627 D-F]

Judgment dated August 12, 1981 of the Allahabad High Court in Civil Misc. Writ No. 8647 of 1980, overruled.

JUDGMENT:

CIVIL APPELLATE JURISCIPTION : Civil Appeal No. 3222 of 1982.

Appeal by Special leave from the Judgment and Order dated the 5th May, 1982 of the Allahabad High Court in C M. Writ No. Nil of 1982.

S.N. Kacker, E.C. Agrawala and V.K. Pandita for the Appellants.

M.C. Bhandare and Mrs. S. Dikshit for the Respondent.

M.N. Phadke, A.K. Gupta and Brij Bhushan Sharma for the Intervener.

The Judgment of the Court was delivered by CHANDRACHUD, C.J. This appeal arises out of a judgment dated May 5, 1982 of a learned Single Judge of the High Court of Allahabad, dismissing the Writ petition filed by the appellants against an order passed by Respondent 1, the Vice-Chancellor, Meerut University, Meerut. In an election held on May 10, 1981 to the Executive Committee of the Meerut College, Appellant 3, Shri J.D. Singhal, was elected as an Honorary Secretary. That election was set aside by the Vice-Chancellor on the ground that Shri J.D. Singhal's brother, Shri A.P Singhal, was a lecturer in the Law Department of the College and therefore the former was disqualified from being chosen as a member of the Executive Committee of the College. This disqualification is said to arise out of the provision of section 39 of the Uttar Pradesh State Universities Act, 10 of 1973, herein after referred to as "the Act". The High Court dismissed the writ petition mainly on the ground that the writ-petitioners had not exhausted their remedies, that is to say, that they had not asked for a reference to the Chancellor of the University against the decision of the Vice-Chancellor, under section 68 of the Act That point does not survive any longer as the Chancellor has confirmed the decision of the Vice-Chancellor.

The Meerut College, which is a post-graduate institution, is affiliated to the Meerut University. In the year 1973, the State Legislature passed the Uttar Pradesh State Universities Act, 10 of 1973, in order to consolidate the various statutes which applied to the different Universities in the State. The Act regulates the affairs of the University and its affiliated and constituent Colleges. It provides, inter alia, for the constitution of Committees of Management. Section 37 of the Act, which deals with the affiliation of Colleges, provides by sub-section (4) that the management of an affiliated college will have the power to manage and control the affairs of the college and will be responsible for its maintenance and upkeep. Section 39 of the Act, which is directly in point provides for 'disqualification for membership of management'. It reads thus:

"39. A person shall be disqualified for being chosen as, and for being, a member of the Management of an affiliated or associated college (other than a college maintained exclusively by the State Government or by local authority) if he or his relative accepts any remuneration for any work in or for such college or any contract for the supply of goods to or for the execution of any work for such college:

Provided that nothing in this section shall apply to the acceptance of any remuneration by a teacher as such or for any duties performed in connection with an examination conducted by the college or for any duties as Superintendent or Warden of a training unit or of a hall or hostel of the college or as proctor or tutor or for any duties of a similar nature in relation to the college.

Explanation - The term 'relative' shall have the meaning assigned to it in the Explanation to section

20."

According to the Explanation to section 20, "relative" means the relations defined in section 6 of the Companies Act, 1956, and includes the wife's (or husband's) brother, wife's (or husband's) father, wife's (or husband's) sister, brother's son and brother's daughter. Section 6 of the Companies Act, 1956 provides:

A person shall be deemed to be a relative of another if, and only if-(a) they are members of a Hindu undivided family; or (b) they are husband and wife; or

(c) the one is related to the other in the manner indicated in Schedule 1A."

Schedule 1A contains a list of twenty-two persons amongst whom the brother is mentioned at serial No. 19.

The provisions of section 39 of the Act seem to us quite clear and they do not admit of any doubt. By that section, no person can be chosen as a member of the management of an affiliated or associated college if either he or his relative accepts any remuneration for any work in such college. It is common ground that a brother of Appellant 3 has been working as a Lecturer in the Law

Department of the Meerut College since July 10, 1972 and has been drawing remuneration in that capacity. Whatever may be the resulting inconvenience to Appellant 3, the language of section 39 leaves no room for doubt that he is disqualified from being chosen as a member of the Management of the Meerut College, because his brother receives remuneration for the work done by him as a Lecturer in the Law Department of the College.

Shri S.N. Kacker, who appears on behalf of the appellants, relies on the Proviso to section 39 and argues that cases in which remuneration is accepted by a relative in his capacity as a teacher are exempted from the operation of section 39 and since, Appellant 3's brother accepts remuneration from the college for the work which he does as a teacher in that College. Appellant 3 is not disqualified for being chosen as a member of the Management of the College. This submission is only superficially attractive. By reason of the Proviso, the disqualification provided for by section 39 will not apply "to the acceptance of any remuneration by a teacher as such". What the proviso means is that a teacher shall not be disqualified for being chosen as a member of the Management of the College for the reason that he accepts remuneration from the College in his capacity as a teacher. The object of the proviso is to enable the teachers of a college to become members of the Management of the college. The exception carved out by the proviso cannot apply to cases like the present one in which the person elected to the Executive Committee of the college is not himself a teacher but whose relative is a teacher. Teachers are saved from the disqualification, not their relatives. In this case, Appellant 3's brother will not incur the disqualification merely because he accepts remuneration as a teacher. He is protected by the Proviso. The disqualification is incurred by Appellant 3 because his brother, who is a teacher, accepts remuneration for the work done by him for the College. Appellant 3 is not protected by the proviso.

The proviso, thus interpreted, will give meaning to the provisions of Statute 13.05 of the Meerut University First Statutes, 1977, which were Published by a Notification dated April 20, 1977. Those statutes were framed by the Government of U.P. in exercise of the powers conferred by sub-section (1) of section 50 of the Act. Statute 13.05 provides by clause (b) that the constitution of the Management of every college shall provide that "Twenty-five per-centum of the members of the Management are teachers (including the Principal)". The Statutes were framed after the Act was passed and must reasonably be assumed to have been framed in furtherance of the provisions of the Act. The object of the proviso to section 39 is to exclude teachers as a class from the operation of the provision under which persons, who accept remuneration for the work done for a college, are disqualified from being chosen as members of the Management of that college. Clause (b) of Statute 13.05 effectuates that purpose by providing that 25 percent of the members of the Management of a college shall be teachers. Recent reforms in the sphere of education lay considerable emphasis on the association of teachers with the management of institutions whose success depends largely upon their performance. That is why the proviso to section 39 gives protection to the teachers and Statute 13.05 makes it obligatory that 25 percent of the members of Management of a College shall be teachers. Granting protection to relatives of teachers, as canvassed by the appellants, is foreign to the very object of the proviso. Teachers can and ought to be on the management bodies of educational institutions. Their 'relatives' are disqualified from being so chosen or appointed, the reason being that such relatives should not become a handy medium for distributing favours and patronage to the teachers.

We find that by a judgment dated August 26, 1981 given in Civil Misc. Writ No. 11147 of 1980, N D. Ojha, J. of the Allahabad High Court has taken the same view as we have, of the proviso to s.39. We affirm that view.

We do not also see any substance in the appellants' submission that section 39 of the Act is prospective in its operation in the sense that if a person was a teacher prior to the date when the Act came into force, his relative will not be disqualified even if he is elected after the coming into force of the Act. While interpreting a statute, we must have regard to the substance of the matter and hypertechnical considerations should be ruled out. Then again, the interpretation should, as far as possible, further the object of the statute. The mere circumstance that section 39 uses a verb in the present tense, namely, "accepts", will not justify the conclusion that the section will apply to those cases only wherein the remuneration is accepted by the teacher for the first time after the Act came into force. The section, on its terms, must apply even to those cases in which a teacher has been accepting remuneration prior to the date on which the Act came into force, with the result that the relative of such a teacher cannot be chosen as a member of the management of the college. The judgment dated August 12, 1981 rendered by a Division Bench of the Allahabad High Court in Civil Misc. Writ No. 8647 of 1980 which takes the view that section 39 is prospective in operation in the sense projected by the learned counsel for the appellants is, with respect, not correct.

We are informed by Shri Kacker that a Division Bench of the Allahabad High Court has taken a view of the proviso to section 39 contrary to that of Ojha J. Counsel urges that the Vice-Chancellor and Chancellor of the University were bound by the ruling of the Division Bench. We are not sure that there is any contrary judgment of the High Court on the interpretation of the Proviso. If there is any such judgment, it is not good law.

For these reasons we dismiss the appeal. Parties will bear their own costs We hope that the vacancy caused by the disqualification incurred by appellant 3, Shri J.D. Singhal, will be filled at an early date in accordance with the provisions of the Act and the Statutes.

H.L.C

Appeal dismissed.