Committee Of Management & Anr vs Vice Chancellor & Ors on 16 December, 2008

Equivalent citations: AIR 2009 SUPREME COURT 1159, 2009 AIR SCW 398, 2009 LAB. I. C. 860, 2009 (2) ALL LJ 43, 2009 (3) SERVLJ 57 SC, (2009) 3 SERVLJ 57, 2008 (16) SCALE 310, 2009 (2) SCC 630, (2009) 3 ALLMR 907 (SC), 2009 (75) ALL LR 109 SOC, (2009) 1 SCT 423, (2009) 121 FACLR 618, (2008) 16 SCALE 310, (2009) 1 ALL WC 437, (2009) 1 CURCC 138, (2009) 1 LAB LN 774, (2009) 3 MAD LJ 323, (2009) 1 SERVLR 698, (2009) 2 ESC 194

Author: S.B. Sinha

Bench: Cyriac Joseph, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7319 OF 2008
[Arising out of SLP (C) No.16716 of 2006]

Committee of Management & Anr. ... Appellants

Versus

Vice Chancellor & Ors. ... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellants run a Muslim Minority Post Graduate College, commonly known as Mumtaz Post Graduate College (for short, `the college') at Lucknow. It is affiliated with the University of Lucknow (for short, `the University'). Third respondent, viz., Dr. Mukhtar Nabi Khan was appointed as Principal of the said college. On an allegation that a prima facie case had been made out against the said respondent of having committed various acts of misconduct, a preliminary enquiry was held pursuant to a resolution adopted by the Managing Committee in a meeting held on 02nd May 2003.

For the said purpose a Committee of three senior members was constituted. The said Committee submitted its report on or about 30th May 2003.

3. Appellants, upon consideration of the said report, by a resolution adopted in a meeting held on 05th June 2003, took a decision to hold a proper disciplinary enquiry. He was placed under suspension. Vice- Chancellor of the University was also duly informed thereabout.

4. A charge-sheet containing eight charges was issued against the respondent no.3. He, however, did not file any show cause/reply thereto.

5. Upon recording evidence of some witnesses, the Enquiry Committee submitted its report on 03rd March 2004 opining that the respondent no.3 was prima facie guilty of gross misconduct, dereliction of duty, causing wrongful gain to himself and causing wrongful loss to the institution. Relevant portion of the report of the Enquiry Committee is quoted heretobelow :

> "In view of the aforesaid findings of the inquiry committee the charged employee can be said to be guilty of misconduct, dereliction of duty, acting with malafide intentions to obtain wrongful gain to himself and wrongful loss to the college and his unbecoming conduct has resulted in great loss of goodwill and reputation to the college and thus the college was being continuously mismanaged by him."

6. On or about 17th May 2004, a copy of the said Enquiry Report was sent to the 3rd respondent. He was also informed that a meeting of the Managing Committee would be held on 01st June 2004 wherein the said report shall be considered. Respondent no.3, pursuant to the said notice, appeared before the Managing Committee on the said date. He availed the opportunity of being personally heard. He also filed his written submissions.

7. By a resolution adopted by the Managing Committee of the appellant- institution in a meeting held on 05th June 2004, a decision was taken to issue a second show cause notice to respondent no.3 pursuant whereto a notice was issued to him on 15th June 2004. He submitted his reply on 23rd June 2004, inter alia, contending that he had not got an opportunity of cross- examining the witnesses. A fresh opportunity was, therefore, granted to him. The Enquiry Officer was also changed. A senior advocate of Lucknow Bench of Allahabad High Court was appointed as the Enquiry Officer. Respondent no.3, however, made allegations of bias against him whereupon another Enquiry Officer, viz., Aftab Ahmad Siddiqui, Advocate was appointed. The said Enquiry Officer submitted his report on 20th November 2005.

8. Respondent no.1, however, passed an order on 31st December 2005 staying the operation of the order of suspension. On or about 04th February 2006, the Managing Committee, upon hearing the respondent no.3 in person, passed a resolution that he be removed from service. A report thereabout, as envisaged under the proviso appended to sub-section (2) of Section 35 of the U.P. Universities Act, 1973 (for short, `the Act'), was sent to the 1st respondent. By reason of an order dated 07th/12th July 2006, the Vice-chancellor refused to grant approval to the proposal of the Managing Committee in regard to the removal of respondent no.3 stating :

> "It is clear from the decision of management committee of the College and related records/papers that removal from service of Dr. M.N. Khan, Principal Mumtaz Post Graduate Degree College, Lucknow is not in accordance with the procedures established by the governing/managing body/college. The said decision of removal from service of managing body of the college is not in accordance to the provisions of 35(2) of 1st Statute of Lucknow University and is therefore, liable to be struck down.
>
> Therefore, in exercising of the power conferred under Section 35(2) of U.P. State University Act 1973, to Vice Chancellor in this context, the Managing Committee, college is directed that Dr. M.N. Khan be allowed to work as Principal with all benefits because decision of the managing body for removal from service is ex-parte unsatisfactory and not as per law.
>
> In the matter under reference, since as per his representation dated 24.4.2006 Dr. M.N. Khan Principal has attained the age of superannuation on 3.1.2006 the Managing Committee of College is directed to consider and take steps for retirement of Dr. M.N. Khan in accordance with rules."

9. Challenging the legality and/or validity of the said order, the appellants filed writ petition before the High Court which, by reason of the impugned order, has been dismissed, stating :

> "Against the impugned order dated 7/12.7.2006 passed by the Vice Chancellor, Lucknow University, Lucknow, the petitioner has an alternative and efficacious remedy before the Chancellor under Section 68 of U.P. State Universities Act, 1973. The record reveals that opposite party No.3, has already attained the age of superannuation on 3.1.2006 and the academic session 2005-06 has also come to an end on 30.6.2006.
>
> We, therefore, dismiss the instant writ petition on the ground of alternative remedy available to the petitioner. The Vice Chancellor, Lucknow University, Lucknow, shall not insist for reinstatement of the opposite party No.3 in service as the opposite party No.3, has already attained the age of superannuation on 3.1.2006 and the academic session 2005-06 has also come to an end on 30.6.2006."

10. Appellants are thus before us.

11. By an order dated 12th November 2007, in view of the contention that the appellants intended to question the constitutionality of sub-section (2) of Section 35 of the Act as also the applicability of the University Statute in the light of clause (1) of Article 30 of the Constitution of India, they were permitted to raise additional grounds pursuant whereto additional grounds have been taken.

12. Mr. Anoop G. Choudhari, learned senior counsel appearing on behalf of the appellants would urge :

i) Sub-section (2) of Section 35 of the Act as also the proviso thereto is ultra vires clause (1) of Article 30 of the Constitution of India.

ii) The High Court, in a case of this nature, where the validity and/or interpretation of different provisions of the Act vis-`-vis the validity of the order of the 1st respondent dated 07th/12th July 2006 is required to be considered and/or the manner in which the same had been passed, must be held to have committed a serious error in dismissing the writ petition on the ground of existence of alternative remedy.

iii) In a case of this nature, Section 68 of the Act cannot be said to provide for any efficacious remedy in the hands of the Chancellor and in that view of the matter, the impugned order should be set aside.

13. Dr. R.G. Padia, learned senior counsel appearing on behalf of the 1st respondent on the other hand would contend :

(i) The Statute itself having provided for review of an order on the decision taken by the Chancellor of the University subject of course to the law of limitation, must be held to be an efficacious alternative remedy and in that view of the matter, the impugned order should not be interfered with; and

(ii) In view of the proviso appended to sub-section (2) of Section 35 of the Act as only a regulatory power has been conferred upon the Vice Chancellor and not a power to grant prior approval as envisaged under the main provision, the said Statute cannot be said to be ultra vires the provisions of the Constitution of India as such regulatory measures are permissible in law.

14. The U.P. State Universities Act, 1973 was enacted with a view to toning up the academic and financial administration of higher education in State of U.P. A comprehensive Bill applicable to all the State Universities (except the Roorkee University and Govind Ballabh Pant Agricultural University), was prepared in the light of the recommendations made by various Commissions and Committees appointed by the Government of India and the State Government and also the views of the Vice-Chancellors and other educationists.

15. Various officers have been named in the Act to perform their respective functions as conferred upon them either under the Act or the Statute. Section 35 of the Act, inter alia, regulates the conditions of service of an employee in an institution or a college affiliated to the University; sub-section (2) whereof reads as under :

"35. Conditions of service of teachers of affiliated or associated colleges other than those maintained by Government or local authority.

(1) .....

(2) Every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated to him, be reported to the Vice-

Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor:

Provided that in the case of colleges established and administered by a minority referred to in clause (1) of Article 30 of the Constitution of India, the decision of the management dismissing removing or reducing in rank or punishing in any other manner any teacher shall not require the approval of the Vice-Chancellor, but, shall be reported to him and unless he is satisfied that the procedure prescribed in this behalf has been followed, the decision shall not be given effect to."

Section 68 of the Act reads as under :

"68. Reference to the Chancellor.-If any question arises whether any person has been duly elected or appointed as, or is entitled to be, member of any authority or other body of the University, or whether any decision of any authority or officer of the University (including any question as to the validity of a Statute, Ordinance or Regulation, not being a Statute or Ordinance made or approved by the State Government or by the Chancellor) is in conformity with this Act or the Statutes or the Ordinance made thereunder, the matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final:

Provided that no reference under this section shall be made-

(a) more than three months after the date when the question could been raised for the first time;

(b) by any person other than an authority or officer of the University or a person aggrieved :

Provided further that the Chancellor may in exceptional circumstances-

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso;

(b) where the matter referred relates to a dispute about the election, and the eligibility of the person so elected is in doubt, pass such orders of stay as he thinks just and expedient;

(c) * * * * *"

Statute 17.06, which is relevant for our purpose, is reproduced below :

"17.06.(1) No order dismissing, removing or terminating the services of a teacher on any ground mentioned in clause (1) or clause (2) of Statute 17.04 (except in the case of a conviction for an offence involving moral turpitude or of abolition of post) shall be passed unless a charge has been framed against the teacher and communicated to him with a statement of the grounds on which it is proposed to take action and he has been given adequate opportunity:-

(i) of submitting a written statement of his defence;

(ii) of being heard in person, if he so chooses, and

(iii) of calling and examining such witness in his defence as he may wish;

Provided that the Management or the officer authorized by it to conduct the inquiry may, for sufficient reasons to be recorded in writing, refuse to call any witness.

(2) The management may, at any time ordinarily within two months from the date of the Inquiry Officer's report pass a resolution dismissing or removing the teacher concerned from service, or terminating his services mentioning the grounds of such dismissal, removal or termination.

(3) The resolution shall forthwith be communicated to the teacher concerned and also be reported to the Vice-Chancellor for approval and shall not be operative unless so approved by the Vice-Chancellor.

(4) The Management may, instead of dismissing, removing or terminating the services of the teacher, pass a resolution inflicting a lesser punishment by reducing the pay of the teacher for a specified period or by stopping increments of his salary for a specified period, not exceeding three years and/or may deprive the teacher of his pay during the period, if any, of his suspension. The resolution by the Management inflicting such punishment shall be reported to the Vice-Chancellor and shall be operative only when and to the extent approved by the Vice-Chancellor."

16. Chancellor of the University has been conferred a wide power. Howsoever wide the power may be, the Chancellor, in terms of the provisions of the Act being a creature of the statute itself cannot consider the validity thereof. Constitutionality of a statute, keeping in view the fact that the power of judicial review has been conferred by the Constitution of India only in superior courts of the country, cannot be determined by any other authority howsoever high it may be.

17. The Chancellor, in terms of the said provision, may consider a matter relating to a decision of any authority or officer of the University as to whether the same is in conformity with the Act or the Statute or the ordinance made thereunder. Prima facie, the Chancellor is not supposed to consider an intricate question of law involving interpretation of the Statute vis-`-vis the jurisdictional fact of an authority. The matter might have been different if the Chancellor was required to go into only the factual aspect of the matter. Appellants, apart from questioning the validity of the Act and/or the Statute also allege commission of jurisdictional error on the part of the Vice Chancellor in

implementing the provisions of a Statute.

18. Dr. Padia placed strong reliance upon a decision of this Court in the case of Management Committee, Atarra Post Graduate College v. Vice Chancellor, Bundelkhand University, Jhansi & Anr. 1990 (Supp.) SCC 773 to contend that the power of the Chancellor is wide in nature. In that case, the question which arose for consideration was as to whether the Vice Chancellor had properly appreciated the circumstances of the case or whether his decision was totally perverse and passed in ignorance of the mass of evidence of the Committee of Management as also several witnesses examined before him regarding the conduct of the meetings. It was in the aforementioned situation, this Court observed :

> "…. In our opinion it is not for this Court to appraise the factual circumstances and come to a conclusion whether the order of the Vice Chancellor is correct or not, particularly when it is open to the aggrieved party, under Section 68 of the U.P. State University Act, to have a reference made to the Chancellor of the University who has ample powers to decide whether any decision taken by any authority or officer is in conformity with the statutes and ordinances of the University. In view of this provision it is open to the Committee of Management to make a reference to the Chancellor to decide the issue regarding the validity of the termination of the services of Dr. Gaur and of the order of the Vice Chancellor. …."

19. This Court, therefore, having regard to the factual matrix obtaining therein, refused to exercise its discretionary jurisdiction.

20. Apart from the fact that a statutory authority cannot consider the validity of a Statute, as has been urged before us by Mr. Choudhari, it is beyond any doubt or dispute that availability of an alternative remedy by itself may not be a ground for the High Court to refuse to exercise its jurisdiction. It may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one.

21. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior courts shall not refuse to exercise their jurisdiction although there exists an alternative remedy. In this context, it is appropriate to refer to the observations made by this Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors. (1998) 8 SCC 1 :

> "15. …. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. …."

[See also Guruvayoor Devaswom Managing Committee & Anr. v. C.K. Rajan & Ors. (2003) 7 SCC 546] In this case, albeit, before us for the first time, the vires of the proviso appended to Section 16

of the Act is in question, besides other points noticed by us hereinbefore.

22. Dr. Padia relied upon a Division Bench decision of the Allahabad High Court in the case of Manvendra Misra (Dr.) v. Gorakhpur University, Gorakhpur & Ors. (2000) 1 UPLBEC 702 wherein Hon'ble Katju, J. (as His Lordship then was), speaking for a Division Bench of the said Court, opined that refusal to entertain a writ application on the ground of existence of an alternative remedy is entirely a matter of discretion though, of course, the discretion should not be exercised arbitrarily. It was held :

> "…. Since writ jurisdiction is discretionary jurisdiction hence if there is an alternative remedy the petitioner should ordinarily be relegated to his alternative remedy. This is specially necessary now because of the heavy arrears in the High Court and this Court can no longer afford the luxury of entertaining writ petitions even when there is an alternative remedy in existence. No doubt alternative remedy is not an absolute bar, but ordinarily a writ petition should not be entertained if there is an alternative remedy."

[Emphasis supplied]

23. Thus, even therein no legal principle has been laid down that in all situations, the High Court would refuse to exercise its discretionary jurisdiction only on the ground that an alternative remedy is available. We may notice that Dr. Padia himself, in his usual fairness, has brought to our notice several decisions which upheld the validity of the regulatory power on the part of the University or affiliating bodies in the matter of order of dismissal, removal or suspension of an employee, viz., Frank Anthony Public School Employees' Association v. Union of India & Ors. (1986) 4 SCC 707; Mrs. Y. Theclamma v. Union of India & Ors. (1987) 2 SCC 516 and Christian Medical College Hospital Employees' Union & Anr. etc. v. Christian Medical College Vellore Association & Ors. etc. (1987) 4 SCC 691, on the one hand, and the decisions opining that such a wide power cannot be conferred on a university, institution and minority institution being Yunus Ali Sha v. Mohamed Abdul Kalam & Ors. (1999) 3 SCC 676 and Committee of Management, St. John Inter College v. Girdhari Singh & Ors. (2001) 4 SCC 296. Our attention has also been drawn to a recent decision of this Court in the case of Secy., Malankara Syrian Catholic College v. T. Jose & Ors. (2007) 1 SCC 386 wherein it was held :

> "19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus :
>
> (i) .....
> (ii) .....
>
> (iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister.

There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure

that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) .....
(v) .....

20. Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of the State funds. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well-qualified professional teachers. An institution can have the services of good qualified professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff.

21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallized in T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481. The State can prescribe :

(i) .....

(ii) the service conditions of employees without interfering with the overall administrative control by the management over the staff,

(iii) .....

(iv) ... ..."

24. Whether in a case of this nature such a power has properly been exercised or not, in our opinion, being an intricate question should ordinarily fall for determination by the High Court itself. Our attention has also been drawn to a decision of a Seven-Judge Bench of this court in the case of P.A. Inamdar & Ors. v. State of Maharashtra & Ors. (2005) 6 SCC 537 wherein it has been held :

> "126. The observations in para 68 of the majority opinion in T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481 on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in

> certain paragraphs of the judgment in Pai Foundation if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in Pai Foundation) in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society."

25. Keeping in view the legal questions arising in the matter, we are of the opinion that it was not a fit case where the High Court should have refused to exercise its discretionary jurisdiction to entertain the writ application.

26. For the aforementioned reasons, the impugned order cannot be sustained and is set aside accordingly. The appeal is allowed accordingly. The High Court is requested to consider the matter on merits. No costs.

.....J. [S.B. Sinha] .....J. [Cyriac Joseph] New Delhi.

December 16, 2008