

कुलाधिपति

छ. .ते शाहू जी महाराज विश्वविद्यालय, कानपुर

CHANCELLOR

CHHATRAPATI SHAHU JI MAHARAJ UNIVERSITY, KANPUR



राजभवन, लखनऊ
RAJ BHAWAN, LUCKNOW

Ref. No.

Date

No. : E-9676 /G.S.

Dated: December 14, 2011

ORDER

The relevant facts in brief for the purposes of disposal of the above representation are that Feroz Gandhi (P.G. Degree) College, Rae-bareilly is an affiliated college to the Chhatrapati Sahu Ji Maharaj University, Kanpur as per the entry No. 39 of appendix 'E' and statute 13.01 of the First Statute of the University of Kanpur, 1977 and is governed by the UP State Universities Act, 1973 and the Statutes, Ordinances and Regulations issued thereunder. The petitioner/Committee of Management of the college named above appointed the opposite party Dr. Rama Shankar Rai as Principal of the above college on 25.06.2009 u/s 35 of the above Act, 1973 r/w Statute 17.17. The Principal named above submitted his Salary Bill for the month of July, 2009 at the inflated rate i.e. Rs. 82,709/- and on verification of the same from the Director, Higher Education, U.P., Allahabad the Committee of Management came to learn that the above Principal was entitled to a total salary of Rs. 64,771/- and not to Rs. 82,709/- as claimed by him. The Committee of Management issued a show cause notice to the Principal and finding his response as dissatisfactory, vide order dated 29-12-2010, placed him under suspension by instituting disciplinary enquiry against him in regard to the aforesaid matter and also in relation to some other alleged financial irregularity/bunglings committed by him. The Committee of Management referred the order of suspension of the Principal to the Vice-Chancellor of the Chhatrapati Sahu Ji Maharaj University, Kanpur vide its letter dated 23-12-2010 for approval. Feeling aggrieved with his aforesaid suspension order, the Principal Dr. R.S. Rai submitted a representation to the Vice-Chancellor of the above University and passing ex-parte order dated 07.01.2011 thereon, the Vice Chancellor stayed the operation of the suspension order of the Principal till the conclusion of the enquiry instituted against him. The Committee of Management then challenged the order dated 07.01.2011 passed by the Vice-Chancellor before the Hon'ble

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High Court in Writ Petition No. 2277 of 2011 and the Hon'ble Court, vide its order dated 17-01-2011, while setting aside the order dated 07-01-2011 passed by the Vice-Chancellor issued direction to him to pass a reasoned order under section 35(4) of the above Act, 1973 after hearing both the parties preferably within a period of four weeks from the date of receipt of a certified copy of the order of the Hon'ble Court.

The matter was then contested by both the parties before the Vice-Chancellor of the above University by filing their respective responses before the Vice-Chancellor who passed the impugned order dated 03-05-2011 directing revocation of the suspension order of the above Principal by a detailed order. The order dated 03-05-2011 was challenged by the Committee of Management of the above college before the Hon'ble High Court by filing a Writ petition No. A-28647/2011 but the same was dismissed by the Hon'ble Court on the ground that the petitioner/Committee of Management can avail alternative remedy by filing a representation u/s 68 of the UP State Universities Act, 1973 before the Chancellor. Pursuant to the order dated 31-05-2011 passed by the Hon'ble Court, the petitioner/Committee of Management of the college named above submitted its representation dated 14-06-2011 against the order dated 03-05-2011 passed by the Vice-Chancellor.

It is thus that the validity of order dated 03-05-2011 passed by the Vice-Chancellor came to be examined u/s 68 of the above UP Act, 1973.

The representation dated 14-06-2011 of the Committee of Management of the above college *is liable to be rejected for the reasons discussed below:*

1. The principal of the aforesaid college is covered within the definition of word "teacher" as defined u/s 2(19) of the UP State Universities Act, 1973 and as such the provisions of section 35(2) & 35(4) of the above UP Act apply in

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relation to the Principal of the aforesaid affiliated college. Sub-sections (2) & (4) to Section 35 of the aforesaid Act, 1973 read as under...

"(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:

(4) Nothing in sub-section (2) shall be deemed to apply to an order of suspension pending inquiry, but any such order may be stayed, revoked or modified by the Vice-Chancellor."

2. In view of the provisions contained under sub-section (4) to Section 35 of the above Act, it is amply clear that the suspension order passed by the Committee of Management under sub-section (2) to Section 35 r/w Statute 17.07 shall be effective only when the same is accorded approval by the Vice-Chancellor u/s 35(4) r/w Statute 17.06(4) of the First Statute of the University of Kanpur, 1977 and not otherwise.

3. The impugned order dated 03-05-2011 passed by the Vice-Chancellor revoking the suspension order dated 29-12-2010 of the Principal Dr. R.S. Rai reveals that the same has been passed on merits of the case after having afforded opportunity of being heard to both the parties i.e. the Management Committee and the Principal named above. The order impugned passed by the Vice-Chancellor further reflects that the Vice-Chancellor has passed quite speaking order by applying mind to the respective versions of both the parties and the documents placed by them before him and only thereafter the Vice-Chancellor had proceeded to revoke the suspension order by being satisfied that the suspension order dated 29-12-2010 was liable to be revoked.

4. The Principal Dr. R.S. Rai in his reply dated 29-08-2011 has contended that the representation of the petitioner/Committee of Management of the college named above is not maintainable as the tenure of the above Committee of Management has already expired on 15-03-2006 and presently there is no Management Committee into existence. The aforesaid contention is devoid of

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force of law. The term of Governing Body (Committee of Management) starts from the date when it gets charge of that Society. In a Society, if election takes place before expiry of its period, then its Committee of Management may get charge of the Society after the term of earlier one is over or on the same day and in any other case on the same day. It varies from case to case. The earlier Committee of Management does not become defunct after its term expires. It continues until the new Committee of Management takes over as has been ruled in the case of *Committee of Management, A.K. College, Shikohabad, Firozabad & others Versus State of U.P. and others (2000) 1 UPLBEC 777 (Allahabad High Court) (Paras 29 & 52)*.

5. In view of the powers conferred upon the Vice-Chancellor u/s 35(4) of the above Act, 1973 and Statute 17.06(4), it cannot be said that the Vice-Chancellor had passed the impugned order dated 03-05-2011 in excess of his jurisdiction and powers vested in him.

6. In the matter of suspension and subsequent dismissal of the Principal of the Mumtaz Post Graduate Degree College, Lucknow, which was an affiliated college to the university of Lucknow and was governed by the UP State Universities Act, 1973, the Hon'ble Supreme Court, while examining the scope of powers of the Chancellor u/s 68 of the above Act, 1973 has, in the matter of *Committee of Management and another Vs Vice-Chancellor and others, (2009) 2 SCC 630 (Para 20) ruled as under....*

"u/s 68 the Chancellor can consider whether the decision of an authority or Officer is in conformity with the Act or the Statute of a University or an Ordinance made thereunder but the Chancellor is not supposed to consider intricate questions requiring interpretation of the Act or Jurisdictional issues and for such matters, appropriate remedy is filing a writ petition in the High Court."

7. Similarly in the case of *Committee of Management, Bhawans Mehta Mahavidyalaya and others Vs Vice-Chancellor, Sri Shahu ji Maharaj Vishvavidyalaya, Kanpur, 1996 (2) UPLBEC 1093 (Allahabad High Court...DB)*,

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a Division Bench has held that the order of the Vice Chancellor passed u/s 35(4) of the UP State Universities Act, 1973 staying the suspension of the Principal of the affiliated college is not beyond the jurisdiction of the Vice-Chancellor u/s 35(4) of the above Act, 1973 and the Hon'ble Court declined to stay the operation of the order of the Vice-Chancellor. The aforesaid case is in *pari materia* i.e. based on identical facts as that of the case of the Principal Sri R.S. Rai of the case in hand and, therefore, the impugned order 03-05-2011 passed by the Vice-Chancellor needs no interference u/s 68 of the UP Act, 1973.

8. Since the Vice-Chancellor, while passing the impugned order dated 03-05-2011 u/s 35(4) of the Act, 1973 r/w Statute 17.06(4) has not exceeded his jurisdiction and powers and has passed the above order well within his jurisdiction, the same does not need to be interfered with u/s 68 of the UP Act, 1973 as laid down by the Hon'ble Supreme Court and the Allahabad High Court in the cases noted above.

9. As regard the power and necessity to place the Principal of the above college under suspension by its Committee of Management in exercise of its powers u/s 35 (2) of the Act, 1973 r/w Statute 17.07 of the First Statute of the University of Kanpur, 1977, the observations of the Hon'ble Supreme Court made under para 29 of the case reported in *M. Paul Anthony Vs Bharat Gold Mines Ltd and another* (1999) 3 SCC 679 may be usefully quoted here as under....

"Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension."

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10. The learned Vice-Chancellor in his order dated 03.05.2011 has observed that the Management of the above college has not allowed to function properly to any of the principals on regular basis during the last 25 years and they themselves are exercising dual powers i.e. both of the principal and the Committee of Management for ulterior motives for the last 25 years.

11. The impugned order dated 03.05.2011 of the learned Vice-Chancellor passed in compliance with the order dated 31.05.2011 of the Hon'ble High Court passed in Writ Petition No. 28647/2011 is well within the jurisdiction and the powers of the Vice-Chancellor conferred on him by Section 35(4) of the U.P. State Universities Act, 1973 and the Statute 17.06(4) of the First Statute of the University of Kanpur, 1977 and the Vice-Chancellor has overriding, superseding and superior powers under the above provisions in comparison to the powers of suspension etc. of the Committee of Management u/s. 35(2) of the above U.P. Act, 1973.

12. The impugned order dated 03.05.2011 passed by the learned Vice-Chancellor u/s 35(4) and the relevant Statute 17.06 (4) is a reasoned and speaking order passed on merits after giving adequate opportunity of objections etc. and hearing to both sides.

13. The learned Vice-Chancellor, while revoking the suspension order of the principal and limiting his financial powers vide his impugned order dated 03.05.2011, has not stepped out of his jurisdiction and powers u/s 35(4) and the relevant Statute 17.06(4) which are being quoted here as under....

"Section 35(4).....Nothing in sub-section(2) shall be deemed to apply to an order of suspension pending inquiry, but any such order may be stayed, revoked or modified by the Vice-Chancellor"

"17.06(4).... The management may instead of dismissing, removing, or terminating the services of the teacher pass a resolution inflicting one or more of the following lesser punishments, namely:

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- (i) *reduction of pay for a specified period;*
- (ii) *stoppage of annual increments for a specified period not exceeding three years;*
- (iii) *deprivation of his pay not including subsistence allowance during the period of his suspension, if any,*
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."

14. As is clear from Section 35(4) of the above UP Act, 1973 that the Vice-Chancellor has power to stay, revoke or modify the order of suspension passed by the management of the college. The above Statute 17.06(4) further empowers the Vice-Chancellor to approve the order of suspension to the extent (he deems proper). The words "revoke" and "modify" used in Section 35(4) of the above Act empower the Vice-Chancellor to not only revoke the entire suspension order but also to modify the same and by limiting the financial powers of the principal by way of modification of the suspension order and the Vice-Chancellor has not gone beyond his powers and jurisdiction u/s 35(4) and the Statute 17.06(4).

15. The inevitable consequence of the revocation of the suspension order of the principal by the Vice-Chancellor u/s. 35(4) was that the principal had to discharge his duties of his office within the limitations as modified by the Vice-Chancellor vide his impugned order dated 03.05.2011. The principal, after revocation of his order of suspension, could/can not be supposed to discharge the duties of his office unless he was given by the Vice-Chancellor limited financial powers to run the day-to-day affairs of the college and the disbursement of salary etc. of the teaching and other staff. Had the Vice-Chancellor, vide his aforesaid order dated 03.05.2011, not authorized and enabled the Principal to discharge his day-to-day duties of his office by limiting his financial powers, the order of revocation of suspension passed by

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him u/s 35(4) r/w Statute 17.06(4) would have become infructuous and no authority can be supposed to pass an order which has no objectives and purpose.

16. Since the Vice-Chancellor, vide his order of revocation/modification of the order of suspension of the principal, had not authorized the principal to take any major financial or administrative or policy decisions and had also recommended to the State Government to institute an enquiry comprising experts to enquire into the allegations against the principal and, therefore, impugned order dated 03.05.2011 passed by the Vice-Chancellor does not show any bias or favour on his part in favour of the principal and against the management and the above order appears to be just, proper and reasonable.

17. As regard the allegations against the principal, the Department Enquiry is already instituted and the same is on and unless the same are found substantiated by the Enquiry Officer, it cannot be observed under section 68 of the above U.P. Act, 1973 whether the allegations against the principal are truthful or false as it is for the Enquiry Officer to arrive at such conclusions after the completion of the Enquiry.

18. As regard the allegations of the Committee of Management of the above college against its Principal regarding his indulgence into bungling of funds of the college, forging of false documents, submitting his salary Bill to the Management Committee at inflated rates, these are factual aspects for which a Departmental Enquiry has already been instituted against the Principal and the same has yet not been concluded nor the allegations of the Management Committee of the nature as above have so far been substantiated. The impugned order dated 03-05-2011 passed by the Vice-Chancellor shows that, as regards the apprehended financial irregularities by the Principal after revocation of his suspension, the powers of the principal in the matter of finances of the college have been restricted by the Vice-Chancellor to the

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extent of disbursement of the salary etc. of the teaching and non-teaching staff and the urgent expenses required for day-to-day business of the college. It further transpires from the aforesaid order dated 03-05-2011 that while passing the above order, the Vice-Chancellor has himself recommended enquiry into the alleged financial bungling by the Principal named above to the Government of UP u/s 40(1) of the UP State Universities Act, 1973 and the same is said to be on and as such it cannot be inferred that the above order of the Vice-Chancellor has imposed any restrictions upon the powers the Management Committee vested in it u/s 60-D of the above UP Act, 1973. There appear to be no justifiable reasons u/s 68 of the above UP Act, 1973 to interfere with the ongoing enquiry against the aforesaid Principal.

19. As regards the allegations of the Committee of Management in its representation that the delinquent Principal has been delaying the conclusion of the enquiry by not submitting his written statement to the charge sheet supplied to him by the Enquiry Officer and the counter allegations in his reply thereto by the Principal that the necessary documents asked for by him are not being provided to him by the Management Committee to enable him to prepare and submit his response to the Charge-sheet, it is noted here that this is a matter to be looked into by the Enquiry Officer concerned and pass appropriate order in this respect and this matter, not being impugned u/s 68 of the above Act, 1973, need not be examined here in this Secretariat by assuming the role of that of the Enquiry Officer already nominated to enquire into the aforesaid allegations against the Principal and, therefore, the impugned order dated 03-05-2011 passed by the Vice-Chancellor u/s 35(4) of the above Act, 1973 again requires no interference u/s 68 for the reasons as above.

20. The representation dated 14-06-2011 of the Committee of Management of the above college made against the order dated 03-05-2011 passed by the Vice-Chancellor in exercise of his powers u/s 35(4) of the above

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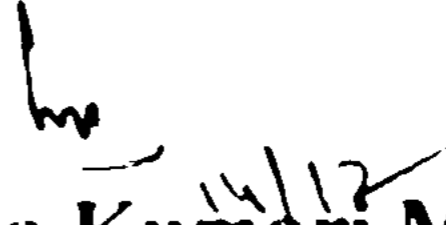
UP Act, 1973 r/w Statute 17.06(4) of the First Statute of the University of Kanpur, 1977 is devoid of force and the same is, therefore, rejected accordingly.

It is, however, directed that the Vice-Chancellor shall ensure to issue necessary instructions at his end to expedite the Departmental Enquiry pending against the delinquent Principal of the above College and get the same concluded without any unreasonable loss of time so as to enable the appropriate authorities to take the final decision in the matter of aforesaid enquiry against the Principal named above.


(B.L. Joshi) 14/12/11
Chancellor

Copy to:

1. Sri O.N. Bhargava, Managing Secretary, Feroz Gandhi College, Residence : Prabhu Town, Rae-bareilly (U.P.).
2. Dr. Rama Shanker Rai, Principal, Feroz Gandhi College, Rae-bareilly.
3. Vice-Chancellor, Chhatrapati Shahu Ji Maharaj University, Kanpur.


(Veena Kumari Meena)
Secretary to the Chancellor

Issue for Ramesh
14/12/2011
फोन मूल काम के
जांच विभाग
अध्यक्ष
14/12/2011


14/12/11