

A

PUNJAB UNIVERSITY
v.
V.N. TRIPATHI AND ANR.

AUGUST 28, 2001

B

[S. RAJENDRA BABU AND BRIJESH KUMAR, JJ.]

Universities :

C

Punjab University Act, 1947 :

D

Section 21—Scope of—University—Registrar—Power to initiate legal proceeding—Held, decision to initiate legal proceeding should be taken by competent authority—Registrar cannot initiate proceedings of his own—Held action taken by Registrar was without authority—Action of Registrar subsequently ratified by Senate of University—Held ratification relates back to time when action was taken without authority—Refusal to examine the matter on merits despite the ratification would not serve the ends of justice—Hence matters remanded to First Appellate Court for decision on merits.

E

In legal proceedings between the Appellant-University and the Respondents, the Registrar of University preferred appeals against the judgments and decrees of Trial Court. The Respondent's objection that in the absence of any decision taken by the Senate of the University the Registrar was not competent to file the appeals was upheld by the Appellate Court. Appeals preferred by University were also dismissed by High Court which held that the Registrar was not competent to file appeals. In appeal to this

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Court it was contended on behalf of the Appellant-University that (i) in view of the provisions contained in Section 21 of the Punjab University Act, 1947 the Registrar was competent to file appeals and (ii) as a result of the Resolution passed on 29.2.1991 by the Senate of the University the action of the Registrar in filing the appeals stand ratified.

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Allowing the appeals, the Court

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HELD : 1. The courts below have rightly not accepted the contention of the Appellant-University that the Registrar as an in-charge of the Administration represents the University in all legal proceedings. The Registrar under Section 21 of the Punjab Universities Act, 1947 is authorised

to represent the University in all legal proceedings, except where there is a decision of the Senate to the contrary. It does not mean that he enjoys the authority to institute any suit or appeal or any other legal proceedings at his own. The decision to initiate any legal proceedings has to be taken by the authority competent to do so and thereafter in such proceedings, for or against the University, Registrar would represent the University. While representing the University, it would be open to the Registrar to take all incidental steps necessary for prosecution of the proceedings, but Section 21 cannot be relied upon by the University to contend that the Registrar would be entitled to initiate the legal proceedings at his own. [283-D, E, F]

2. The resolution dated 29.9.1991 passed by the Senate of the University is in two parts. The first part deals with the delegation of the powers to the Registrar/Vice-chancellor authorising them to sue or file an appeal under regulation 10.2 of the Regulations of the Punjab University. The other part pertains the suits or appeal which have already been filed by the Registrar/Vice-chancellor i.e. to say, the act of the filing of the appeals has been ratified. In this background if the Registrar filed the appeal, against the decision of the Trial Court, which had gone against the Punjab University though strictly speaking exceeded his authority, but his action in having filed the appeals was later on ratified by the competent authority by resolution dated 29.9.1991.

[285-B, C, E]

3. There is no substance in the submission made on behalf of the respondent that the ratification came very late. It would not have any material bearing on the fact of ratification of the action of the Registrar in filing the appeals. The ratification has the effect of relating back to the time when the action was taken without authority. Despite the ratification by the competent authority, refusal to examine the matter on merits, would in no way serve the ends of justice. Consequently, the matters are remanded to the respective First Appellate Courts for decision on merits. [285-G, H; 286-A]

Marathwada University v. Sesh Rao Balwant Rao Chauhan, [1989] 3 SCC page 132, distinguished.

Jugraj Singh v. Jawant Singh, AIR [1971] SCC 761, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9814 of 1996.

From the Judgment and Order dated 27.3.96 of the Punjab and Haryana

A High Court in R.S.A. No. 647 of 1996.

WITH

Civil Appeal Nos. 473-474 of 1998.

B Dhruv Mehta, S.K. Mehta, Ms. Shobha and Ms. Anu Mehta for the Appellant.

Ashok K. Pathania, Rajesh K. Sharma, Ms. K. Pathania and Goodwill Indeevar for the Respondents.

The Judgment of the Court was delivered by

C **BRIJESH KUMAR, J.** The above noted appeals since involve the same question for consideration, they have been together and they are being disposed of by this common judgment.

D The respondent Dr. V.N. Tripathi, filed a Civil Suit No. 148/13.8.1986 against the Punjab University, Chandigarh, through its Registrar and Shri R.P. Bumba, the Vice-Chancellor of Punjab University, as the defendant. The Suit was decreed on 22.2.1991, declaring that the decision of the Punjab University saying that the post of the Plaintiff in the Department of Mathematics as Lecturer was vacant w.e.f. 28.11.1985, was wrong and bad in law. The plaintiff was to continue in service with consequential benefits.

E The Senate of the University was however, left with the option to take any action in the matter afresh in accordance with law. So far, the respondent Smt. Shimla Devi is concerned, she had also filed a Civil Suit No. 220 of 1984 which was decreed by Sub-Judge 1st Class, Chandigarh on 27.3.1985 quashing the order of dismissal of her services and she was to be deemed to be in service of the Punjab University with all consequential benefits.

F Punjab University through Registrar was impleaded as the defendant in the Suit.

G In both the matters/aforesaid, appeals against the judgments and decrees of the Trial Courts were preferred by the Punjab University. The respondents took an objection against the filing of the appeal on the ground that the Registrar of the Punjab University was not authorised or competent to file the appeals, in absence of any decision taken by the Senate of the University. The objections, as raised by the respondents had been upheld in both the appeals, by the First Appellate Court. The appeals were therefore, dismissed on the same ground. The Punjab University thereafter preferred Regular Second Appeals before the High Court, they also met the same fate. The appeals

H have been dismissed on the ground that they had been filed by the Registrar,

who was not competent to file the same, hence, the merits were not considered by the Appellate Courts. Regular Second Appeal No. 647 of 1996 was filed by the Punjab University in the case of Dr. V.N. Tripathy which was dismissed on 27.03.1996. The appeal namely (RSA) Regular Second Appeal No. 646 of 1996 in the case of Shimla Devi was dismissed on 05.09.1997 *inter alia* referring to the judgment dated 27.03.1996 in the case of Dr. V.N. Tripathi. The point for consideration before us is as to whether the Registrar was competent to file the appeals without any decision of the Senate of the University to that effect; or not.

Learned Counsel for the appellant relied upon the provisions contained under Section 21 of the Punjab University Act 1947, it reads as follows:-

“Registrar:- The Registrar shall be whole-time paid officer of the University appointed by the Senate. He shall be in charge of the administration of the University acting under the immediate control of the vice-chancellor and shall represent the University in all legal proceedings except where the Senate otherwise resolves to the contrary.”

On the basis of the above provision, it is submitted that the Registrar is in-charge of the Administration of the University and represents the University in all legal proceedings. This right of the Registrar is ever available except in cases where there is a resolution to the contrary passed by the Senate. It entitles him to even file an appeal. The High Court and the Courts below have not accepted this contention of the appellant and rightly. The Registrar no doubt represents the University in all legal proceedings, but it does not mean that he enjoys the authority to institute any suit or appeal or any other legal proceeding at his own. The decision to initiate any legal proceeding has to be taken by the authority competent to do so and thereafter in such proceedings, for or against the University, Registrar would represent the University. While representing the University, it would be open to the Registrar to take all incidental steps necessary for prosecution of the proceedings, but Section 21 can not be relied upon by the appellant to contend that the Registrar would be entitled to initiate the legal proceedings at his own. This contention raised before us, thus fails.

It has next been submitted on behalf of the appellant that on the recommendation of the Syndicate, the Senate of the University passed a resolution on 29.09.1991 which reads as follows:-

A “The recommendations of the Syndicate contained in Item No. 23 on the agenda were read out and unanimously approved, i.e.:-

23. That the Registrar/Vice-Chancellor be authorised to sue or file an appeal in the court (under Regulation 10.2 at page 32 of the P.U. Cal Vol.I, 1989)

B That the action taken by the Registrar/Vice-Chancellor in cases where suits had already been filed or appeals preferred by them stood ratified.”

C On the basis of the above resolution, it is submitted that the action of the Registrar in filing the appeal stands ratified, hence, the plea of the respondents that the appeals are incompetent has no force. Learned Counsel for the respondent submits that the Senate of the University is the main body invested with powers of entire management of the affairs of the University in accordance with Statutes, Rules & Regulations in force. This would also include powers to initiate legal proceedings as well. It is further submitted that

D under Regulation 10.2 of the Regulation of the Punjab University, the Senate can delegate its function to those authorities as mentioned in the said regulation and the Registrar is not one of the authorities to whom the delegation could be made. Therefore, it is submitted that the High Court was right in holding that the action of the Registrar in filing the appeal was void and that being

E the petition his action in filing the appeal could not be ratified. In support of the above contentions, he has relied upon the decision reported in [1989] 3 SCC page 132. *Marathwada University v. Sesh Rao Balwant Rao Chauhan*. This case in our view will not help the respondent. The Executive Council was competent to dismiss an officer of the University. On receipt of an inquiry report against the officer, the Executive Council resolved to give full power

F to the vice-chancellor to take the decision on the report. The vice chancellor instead of acting on the basis of the inquiry report, appointed another Inquiry Officer and on the basis of the second inquiry report, dismisses the officer, of the University. The Executive Council sought to ratify the action of the vice-chancellor in passing the order of dismissal but the Court did not accept the same mainly on two grounds that the vice-chancellor could pass any order on

G the basis of the report supplied by the Executive Council but he could not appoint another Inquiry Officer and act on the basis of second report. And secondly, the delegation of the power, under the statute was subject to approval by the Chancellor which was lacking in the case, hence, the action of the vice chancellor was held to be void ab-initio and no amount of ratification could

H validate the order. The case pertains to the realm of disciplinary proceedings

and dismissal of an officer of the University by the authority competent under the enactment. The case stands on a different footing. The learned counsel for the appellant places reliance upon a case reported in *Jugraj Singh v. Jawant Singh*, AIR [1971] SCC 761; in this case the act of the holder of power of attorney in transaction of sale, including presentation of the deed before the Registrar, at a time when power of attorney did not authorise him to present the deed for registration but the act was ratified in the subsequent power of attorney. It was held that the ratification was valid and relates back to the date of original act.

The resolution dated 29.9.1991 is in two parts. The first part deals with the delegation of the powers to the Registrar/vice-chancellor authorising them to sue or file an appeal under the regulation 10.2 of the Regulations of the Punjab University. The other part pertains the suits or appeals which have already been filed by the Registrar/vice-chancellor that act of filing of the appeals has been ratified. The first part deals with delegations of the power for acts to be done in future. The other part is not delegation of power, but ratifying the action, which has already been taken by the authorities mentioned therein by act of filing the appeals. It has already been noticed that the Registrar under Section 21 of the Punjab Universities Act 1947 is authorised to represent the University in all legal proceedings, except where there is a decision of the Senate to the contrary. While representing the University, in view of the provisions under Section 21 of the Punjab University Act, the Registrar would obviously be taking several steps in prosecution of the legal proceedings. The Registrar would not be totally a stranger in the matters relating to legal proceedings in the Court. In this background if the Registrar filed the appeal, against the decision of the Trial Court which had gone against the Punjab University though strictly speaking exceeded his authority, but his action in having filed the appeals was later on ratified by the competent authority by resolution dated 29.9.1991. The Registrar is a responsible officer of the University and has statutory powers under Section 21 of the Act to represent the University in legal proceedings. Had the Senate not ratified the act of the filing of the appeal, it would of course have been a different matter, but not thereafter. We also find no substance in the submission made on behalf of the respondent that the ratification came very late. In our view, it would not have any material bearing on the fact of ratification of the action of the Registrar in filing the appeals. The ratification has the effect of relating back to the time when the action was taken without authority. Despite the ratification by the competent authority, refusal to examine the matter on merits, would in no way serve the ends of justice. It would only be hankering to the technicalities rather

A than to be concerned with the intent and the substance. In view of the discussion held above, we allow the appeals and set aside the judgment passed by the High Court and Appellate Courts below and remand the matters to the respective First Appellate Courts for decisions on merits. Since the appeals have become old they shall be disposed of expeditiously. There would however, be no order as to costs.

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T.N.A.

Appeals allowed.