

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.2075/2010**

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Date of Decision: 08.04.2010

Prof.Ram Avtar Yadav
Through

.... Petitioner

Mr. V.K. Rao, Sr. Advocate with Mr. Ravi
Sikri, Mr. Om Prakash & Mr. Vaibhav
Kalra, Advocates for the petitioner.

Versus

Union of India & another
Through

.... Respondents

Mr. Rakesh Dwivedi, Sr. Advocate with
Ms. Reetika Dwivedi, Advocate for the
UOI.

Mr. Prag P. Tripathy, ASG with Mr.
Amitesh Kumar, Advocate for
AICTE/respondent No. 2

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG, J

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner, Chairman of All India Council of Technical Education (AICTE), had challenged his order of suspension dated 29th July, 2009 by filing an Original Application No.75/2010, titled as 'Professor Ram Avtar Yadav v. Union of India through Under Secretary, Department of Higher Education and another' which was dismissed by order dated 25.02.2010, which is impugned by the petitioner before us

in the present writ petition under Article 226 of the Constitution of India.

2. Brief facts to comprehend the controversies between the parties are that the petitioner was appointed by the Central Government as Chairman of AICTE in terms of Section 3(4)(a) of the All India Council for Technical Education Act, 1987 (hereinafter referred to as 'the Act, 1987) for a period of three years or until the petitioner attaining the age of 65 years. Though initially the order dated 21st April, 2008 was issued appointing the petitioner as the Chairman, however, on account of an error, in the order dated 21st April, 2008, another order dated 5th March, 2009 was issued under the Act, 1987. Before his appointment by the Government under the Act of 1987, the appointment was approved by the Appointment Committee of the Cabinet (ACC).

3. The petitioner alleged that he is highly respected and sought after in the field of education and he had been selected on the basis of a stringent criteria adopted for selection to the post of Chairman AICTE. A complaint had been filed by Echelon Institute of Technology against certain officials of AICTE in delaying the process of issuance of letter of intent by raising fake objection. The complaint was also made against constitution of the Inspection Committee and the committee delaying

the visit for inspection. Yet another complaint dated 29th August, 2008 was also submitted before the Additional Secretary, Higher Technical Education, Ministry of Human Resources & Development regarding stalling making crucial decision and transfer of vital documents relating to increase of seats for the Session 2008-09 and approval for extension for the Institute for 2009-10. It was alleged that money was demanded and the complainant was threatened that in case of non-payment of the amount demanded, increase in the seats would not be allowed. Complaint was also against the Chairman/petitioner. Consequent to the complaint the disciplinary actions were initiated against the Professor H.C.Rai, and Shri Om Dalal.

4. Yet another complaint was filed on 8th July, 2009 before the Central Bureau of Investigation alleging misconduct against the Professor H.C.Rai, Mrs. Romender Randhawa and Shri Om Dalal. It was categorically complained that without active support and convenience of the petitioner, they could not have indulged in the illegal and unlawful activities. Consequent to the complaint dated 8th July, 2009, a case was registered by the Central Bureau of Investigation (hereinafter referred to as 'the CBI) under Sections 7 & 8 of Preventions of Corruption Act, 1988 and by an order dated 29th July, 2009 the petitioner was placed under suspension. Another complaint dated 3rd September, 2009 was also received against the petitioner making various allegations including

bribery and misuse of his position resulting into a case registered by CBI being FIR No.MA/2009 A-0056 dated 30th October, 2009, under Section 120 B read with Section 420 I.P.C., and Section 13(2) read with Section 13(1)(d) of the Preventions of Corruption Act, 1988. Other case being F.I.R. No.RC0102009A0043 dated 8th December, 2009, under Section 13(2) read with Section 13 (1)(d) of the Act, 1988 and Section 120 B read with Section 420 I.P.C. for the suspected offense of criminal conspiracy, cheating and criminal misconduct was also registered.

5. The petitioner challenged his suspension by order dated 29th July, 2009 on the ground that the order of suspension is illegal purportedly issued in exercise of powers conferred by Rule 10(1) of the Rules of 1965 alleging that the said rules would only apply to Government servants, whereas petitioner holds statutory office under the Act, 1987. He asserted that he is not a Government servant within the meaning of Rule 10(1) read with Rule 2(h) of the Rules of 1965. The plea of the petitioner was that the Rules of 1965 have been framed under the proviso to Article 309 of the Constitution and they will not prevail over the Act, 1987. It was further pleaded that since the service conditions of the petitioner are governed by the Act, 1987, therefore, Rules 1965 would not be applicable, as the Act of 1987 would prevail over the Rules of 1965.

6. On behalf of the petitioner it had also been urged that if the Rules 1965 would be inapplicable, the Government could only act on the basis of provisions of Section 16 read with Section 21 of the General Clauses Act, 1897, but even in that event the suspension order would be invalid, as it has been passed without taking prior approval of the ACC. The contentions of the learned counsel for the petitioner is that the suspension order is without jurisdiction as ACC is the competent authority to pass the suspension order as the appointment was also made by ACC. Contending that the holder of a statutory office is not a Government servant, therefore, Rule 10(1) of CCS (CCA) Rules could not be applied as the same is applicable to a Government servant only and the CCS (CCA) Rule made under the proviso to Article 309 will not prevail over the AICTE Act, it is submitted that the suspension order is liable to be set aside.

7. The suspension order was also challenged on the ground that the subsistence allowances in case of petitioner would be full salary and allowances which have not been paid commencing from July 20th to October 30th and thereafter from 1st November till filing up the original application before the Tribunal. According to the petitioner, suspension without payment of subsistence allowances was violation of Article 14,

16 and 21 of the Constitution. In the circumstances, it was contended that the petitioner even though he is not allowed to work, would be entitled for full salary and allowances during the period, the investigation is to go on of the criminal cases against him.

8. The learned counsel for the petitioner also very emphatically contended that the suspension order amounts to changing the terms and conditions of the appointment and since the terms and conditions of appointment were approved and ratified by the ACC, therefore, by suspending the petitioner those terms and conditions have been modified and changed which could not be done and consequently the suspension order cannot be sustained.

9. The grounds raised against his suspension on behalf of the petitioner before the Tribunal were challenged and refuted by the respondents on the plea that the petitioner is a Government servant in terms of provisions of Rule 2 (h), 3 & 10 of the Rules of 1965, and a person holding a civil post under the Government would be government servant. It was further asserted that Rules of 1965 are still applicable as no rules have been framed under Section 22 of the Act, 1987. Relying on Article 309 of the Constitution, it was pleaded that Rules of 1965 would apply until Rules are framed under the Act, 1987. The

learned counsel for the respondent before the Tribunal had urged that Section 3(4) of the Act, 1987 alone would not displace the Rules of 1965 with respect to conditions of services.

10. In the alternative, it was contended that even if the petitioner is not a government servant, the power to suspend will still be available to the Government under Section 16 of General Clauses Act, 1897. Regarding Section 21 of the General Clauses Act, 1897, it was contended that same will not be applicable as 'order' in Section 21 is concerned, the same is mentioned along with 'rules', 'bye-laws' and 'notification' and the context are indicative of the subject and covers those orders which are general in nature like rules and bye-laws, that is, to say which are in the nature of delegated legislation. Therefore, the expression 'orders' will not apply to specific order with respect to individuals like orders of appointment are issued. It was urged that under suspension the petitioner has no right to ask for full salary, as it is clearly mentioned in the order of suspension that the order with regard to subsistence allowance was to be issued separately and in fact order dated 14th October, 2009 was passed providing payment of half leave salary as envisaged under the Rules. On behalf of the respondent regarding non-payment of subsistence allowance, it was contended that for some months if subsistence allowance has not been paid that will

not be a ground to set aside the suspension order as the same shall be paid positively, but the petitioner is not entitled for full salary.

11. The learned counsel for the respondent has justified the suspension order relying on Section 16 of the General Clauses Act, 1897 contending that the power of appointment shall include the power to suspend or dismiss. Regarding the applicability of Section 21 of General Clauses Act, it is asserted the expression “orders” in Section 21 of the General Clauses Act has to be understood in accordance with the doctrine of “noscitur a sociis”, which is a species of the doctrine of ejusdem generis that is every word in a legal provision takes color from the collection of words or context in which it occurs. Therefore, it is averred that the expression “orders” cannot be understood to be something widely different from the other expressions “Rules”, “bye-laws” and “notifications”. Regarding applicability of CCS/CCA Rules, it is asserted that wrong mentioning of correct source of power will not vitiate the order as the power of appointment would include the power of suspension and dismiss under Section 16 of the General Clauses Act and the power to make appointment is conferred on the Central Government under Section 3(4) of AICTE Act.

12. Relying on Section 16 of General Clauses Act it is further asserted that “the authority having for the time being power to make the appointment” shall also have power to suspend or dismiss any person appointed. Referring to Rule 5 of Business it is submitted that it indicates that the power to make appointments to the management level post in autonomous bodies/institutions vests with the Minister in-charge with the Ministry having Administrative control over such body/institution. Referring to sub Rule (2) it is contended that it further provides that where the composition of selection committee/selection procedure is determined as per Article of Association or regulation or bye-laws of the autonomous bodies, the appointment sought to be made should be made with the approval of the ACC only and, therefore, the power to appoint vests in Ministry of HRD. Therefore, it is asserted that from the rules of business it is apparent that the power to appoint vests in the Ministry of HRD and in certain cases of appointment of Chief executives in higher pays scales “prior approval of the ACC is required”. In the circumstances it is the pleaded that the authorities which are consulted or which recommend or which give prior approval do not become the appointing authority and the reliance has been placed on AIR 1967 SC 459, State of Assam v. Kripanath & (2003) 4 SCC 753, Kanta Devi v. UOI.

13. The learned Senior counsel for the respondents, Mr. Dwivedi also very emphatically contended that the suspension order does not put an end to the service and the lien of a person even holding a statutory office exist and consequently it could not be contended by the petitioner that the suspension order tantamount to change in the terms and conditions of appointment to a statutory position and relied on (1963) Supp. 1 SCR 229, Khemchand Vs Union of India; (1977) 2 SCC 288 State of M.P v. State of Maharashtra and (2003) 4 SCC 104 PST Bar Association Vs State of U.P.

14. The Tribunal had repelled all the plea and contentions of the petitioner and has upheld the suspension of the petitioner as the chairman of AICTE by the Government without prior approval or consent of the ACC. The Tribunal noticing that the FIR's are primarily against others and the name of the petitioner was added later on also observed that the Government shall see to it that the investigation is done expeditiously and if the petitioner is found innocent, immediate steps would be taken to consider revocation of the suspension of the petitioner.

15. This Court has heard the learned counsel for the parties in detail and has also perused the writ petition, the pleas and contentions raised

in the original application and the replies filed by the parties before the Tribunal. This cannot be disputed that the power to appoint Chairman, AICTE by virtue of provisions contained in Section 3(4) of the Act of 1987 vests with the Central Government. The powers of Central Government are exercised in accordance with the rules of business framed under Art. 77 of the Constitution. Art. 77(3) reads as follows:

“(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.”

The Act of 1987 does not specify particular authority of the Central Government who is to make the order of appointment. That being so, the rules of business shall govern the field. Rule 5 of the rules of business reads as under:

“APPOINTMENTS TO SENIOR POSITIONS IN
AUTONOMOUS BODIES

5. In accordance with the conclusions emerged during the deliberations of the Committee, the following recommendations are made in this regard:-

- (i) In respect of Autonomous Bodies/ Institutions/Societies where the Corporation of the Selection Committee and the selection procedures are provided statutorily, the powers to make appointments to the management level posts in such bodies/Institutions/Societies may vest with the Minister-in-Charge of the Ministry having administrative control over such Body/Institution/ Society.
- (ii) If the composition of the Selection Committee/the Selection procedure is determined from time to

time or is as per the provisions contained in Articles of Association or Regulations or Bye-laws of the Autonomous Body, the appointments sought to be made on the recommendations of such Selection Committees/ Search-cum-Selection Committees to the posts of Chief Executive should be made with the approval of the ACC only.”

16. This also cannot be disputed that under section 22 of the Act of 1987, the Central Government can make rules to carry out the purpose of the act. Insofar as, the terms and conditions of service of the officers and employees of the council are concerned, the power is vested with the council to make such regulations which shall not be inconsistent with the provisions of the act. This is not disputed that no regulations or service rules were framed under section 22 of the Act of 1987 till the petitioner was suspended. The Tribunal has not gone into the controversy of whether section 3 (4) of the Act, 1987 would displace the Rules of 1965 with respect to conditions of service as it could not be disputed that if the Rules 1965 may not apply and if the power to suspend is not specifically stipulated in the Act of 1987, the provision of section 16 of the General Clauses Act, 1897 can be resorted to. Section 16 of the Act of 1897 is as under:

“16. Power to appoint to include power to suspend or dismiss. - Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the

appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.”

The plea of the learned counsel for the petitioner is that section 16 of the Act of 1897 has to be read with section 21 of the said act which is under:

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. - Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

17. Perusal of the impugned order reveals that the tribunal has held that the appointing authority has inherent right to terminate the services of an employee, be it a Government servant or a statutory authority, it would have the right to suspend as well, as larger power would include the lesser power. It has been held that section 16 of 1897 act is specific and deals only with the power of appointing authority to suspend or dismiss. The Government has power under section 3 (4) (a) of the Act of 1987 to make appointment of the Chairman. Section 16 would not require the order of suspension or dismissal to be passed in the same manner and subject to the like sanction and condition required for appointment. Section 21 is general in nature and deals

with issuance of notifications, orders, rules or bye-laws. It has been further held that even if Section 21 may include suspension, however, as suspension has been specifically dealt with in Section 16, it would be excluded from the purview of Section 21. The tribunal has also held that the expression `orders' in section 21 of the Act of 1897 has to be understood in accordance with the doctrine of *noscitur a sociis*, which is a species of the doctrine of *eiusdem generis*, and that every word in the legal provision takes color from the collection words or context in which it occurs, and, therefore the expression `orders' cannot be understood to be something widely different from the other expressions `rules', bye laws and notifications. However, if a situation is especially envisaged in a provision, the same shall have to be dealt with as per the said specific provision, and resort to general provision would not be made. Since section 21 is general in nature, it would apply to issuance of notification, orders, rules and bye laws and may also include suspension but as it has been specifically dealt with in section 16, therefore, suspension would be excluded from the purview of section 21.

18. In view of section 16 of the Act of 1897 even if there was no statutory recognition to such a power, the same is inherent as an employer would have an inherent right to suspend or dismiss any employee or a statutory authority. As also noticed by the Tribunal in

S.R.Tewari Vs District Board, Agra & anr. (1963) 3 SCR 55, it was held by the Supreme Court that the power to appoint also included the power to terminate the appointment and consequently the appointing authority has inherent right to terminate the service of an employee and no distinction in this regard can be carved out between the Government servant or a statutory authority. Since the power to terminate is definitely larger than the power to suspend, the power to suspend will also vest with an authority which has the power to terminate. This reasoning of the Tribunal cannot be faulted. Consequently the power to terminate will be with the Government as under Section 16 of Act, 1897 a person holding whatever nature of post can be suspended or dismissed.

19. The legal proposition that wrong mention of the correct source of power or no mention of source of power would not vitiate the order, if the power exist and consequently stipulating in the suspension order rule 10(1) of the Rules of 1965 would not invalidate the order. Reliance can be placed on Union of India VS Tulsiram Patel, (1985) 3 SCC 398 holding that partial mention, wrong mention or even non mention of the provision under which order is made would not vitiate the order. The Supreme Court in para 126 at page 501 had observed as under:

126.....It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source

under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See *Dr Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740 and *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal*, (1983) 2 SCC 422.) The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Article 311(2) read with the relevant service rule.

20. Regarding non payment of subsistence allowance, it was asserted before the Tribunal by the respondents that if for some months it may not have been paid, the same shall be paid positively and on that count the order of suspension need not be set aside. Before this Court it has not been contended that the suspension allowance has not been paid. In case the suspension allowance has not been paid, the same be paid and on that count the order of the suspension is not liable to be set aside. This Court also does not agree with the plea of the petitioner that though he is under suspension, he is entitled for full salary. This plea has not been argued seriously by the learned counsel for the petitioner in view of the order dated 14.10.2009 passed making subsistence allowance made admissible to the petitioner. Before the Tribunal also a

chart was produced showing the payment of subsistence allowance month wise and the direction of the Tribunal to the respondents to pay the subsistence allowance during the period of suspension which has not been challenged by the respondents.

21. Whether suspension of petitioner amounts to change of service conditions of the petitioner. The plea of the petitioner is that the service conditions were approved by the ACC and therefore, suspension required approval from ACC and in absence of approval from ACC, the suspension order is bad in law and not sustainable. The plea of the petitioner is fallacious as the order of suspension does not put to an end to the service of an employee nor changes the service conditions but only suspends the entitlement of an employee to get full salary during the period of suspension. Real effect of the order of suspension is that though the employees continues to be a member of the service he is not permitted to work and he is also paid a part of the salary less than full salary. Reliance can be placed on *Public Services Tribunal Bar Assn. v. State of U.P.*, (2003) 4 SCC 104, holding that during the period of suspension, the relationship of employer and employee remains. The Supreme Court at page 125 of the said judgment had held as under :

“In the case of suspension, reduction in rank or reversion, the relationship of employer and employee remains. Normally, the suspension is made during a contemplated or a pending enquiry. During the suspension period the employee is entitled to the suspension allowance. If the

suspension continues for an indefinite period or an order of suspension is passed mala fide then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution of India. In case the order of reduction in rank or reversion is set aside then the employee can be compensated by adequately moulding the relief while giving the relief at the final stage. Power of the Tribunal to grant interim relief has been taken away qua certain matters not completely. The power has been taken away in matters where the grant of the said relief at the interim stage would result in giving the relief which would normally be given while disposing of the case finally. Simply because in rare cases of microscopic number a case is made out for stay of orders of suspension, transfer, reduction in rank, reversion or termination, dismissal and compulsory retirement and the employee is liable to approach the High Court for interim stay by itself is no ground to strike down a law enacted by the legislature which is within its competence to enact.”

Similarly in *State of M.P. v. State of Maharashtra*, (1977) 2 SCC 288, relying on *Khem Chand Vs Union of India*, (1963) 1 SCR 229 it was held that suspension merely suspends implementation of the some of the terms and conditions of service and in the circumstances it cannot be held that the suspension amounts to change of service conditions of an employee. The Supreme Court had held at page 297 as under:

“The order of suspension does not put an end to his service. Suspension merely suspends the claim to salary. During suspension there is suspension allowance. See *Khem Chand v. Union of India*, (1963) 1 SCR 229 where this Court said that the real effect of the order of suspension is that though he continues to be a member of the service he is not permitted to work and is paid only subsistence allowance which is less than his salary. Under Fundamental Rule 52 the pay and allowance of a government servant who is dismissed or removed from service, cease from the date of his dismissal or removal. Therefore, there would be no question of salary accruing or accruing due so long as orders of suspension and dismissal stand. The High Court was correct in the conclusion that the plaintiff’s claim for salary accrued due only on the order of dismissal dated February 23, 1956 being set aside.”

In the circumstances the plea of the petitioner that suspension results into modification or change of terms and conditions of appointment is not sustainable and cannot be accepted. In the circumstances, the plea of the petitioner that the approval of ACC was required is not correct nor on this ground the suspension order against the petitioner can be revoked.

22. Under Rule 5 the power to appoint Chairman AICTE vests with the Minister in Charge having administrative Control. Though prior approval of ACC for appointment is required, but that would not make ACC the appointing authority. There is no provision in the Act of 1987 making ACC the appointing authority of the Chairman or even the prior approval of ACC for the appointment as the Chairman of AICTE. If prior approval is required under rules framed under Article 77 of the Constitution only for appointment, then in absence of any rule for prior approval for suspension, it cannot be held that for suspension prior approval of ACC was required and a suspension order without prior approval of the ACC will not be sustainable and will be liable to be quashed. The plea of the petitioner for setting aside the order of suspension on this ground is thus rejected. In *State of Assam VS Kripanath Sharma & ors*, (1967) 1 SCR 499=AIR 1967 SC 459, as also noticed by the Tribunal, it was held that where there is power of appointment with an authority under statute, even though such power

has to be exercised in accordance with the advice of the committee and even if such recommendations may be necessary before making appointment, the fact still remains that it is not the committee which appoints. Necessity of prior recommendation from a body or an authority does not make such a body or an authority as appointing authority as was held by the Supreme Court in Kanta Devi Vs Union of India, (2003) 4 SCC 753 which has also been noticed and relied on by the Tribunal in the order impugned before this Court by the petitioner. In State of Assam (supra) at page 506 in para 13 the Supreme Court had held as under:

“13. Now as we read Section 14(3)(iii) of the Act, it is obvious that the power of appointment is only in the Assistant Secretary, though that power has to be exercised on the advice of the committee constituted under Section 16 of the Act. Even assuming that the recommendation of the committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the committee which appoints, and the appointment is made only by the Assistant Secretary. Even if the word “advice” in this provision is equated to the word “recommendation”, it is still clear that the committee only recommends and it is the Assistant Secretary who is the appointing authority on the recommendation of the committee. It may be that the Assistant Secretary cannot make the appointment without the advice or recommendation of the committee. Even so, in law, the appointing authority is only the Assistant Secretary, though this power is to be exercised on the advice or recommendation of the committee. In these circumstances, it cannot be said that there is any different intention appearing from the fact that the appointment has to be made on the recommendation or advice of the Committee. The appointing authority would still be the Assistant Secretary and no one else, and there is no reason why, if he is the appointing authority, he cannot dismiss those appointed by him with the aid of Section 18 of the 1915-Act. We cannot therefore agree with this view of the High Court.”

This plea of the petitioner, therefore, for the foregoing reasons cannot be accepted and the decision of the Tribunal on this plea cannot be faulted and the impugned order is not required to be interfered with.

23. For the forgoing reasons, this Court does not find any illegality, irregularity or perversity in the order of the Tribunal dated 25.02.2010 so as to necessitate any interference in exercise of power under Article 226 of the Constitution of India. The Government had the power to pass suspension order against the petitioner and no illegality has been committed in suspending the petitioner in the facts and circumstances of the case. There are no grounds to interfere with the suspension of the petitioner and writ petition is without any merit. The writ petition is therefore, dismissed and the parties are left to bear their own costs.

ANIL KUMAR, J.

APRIL 8th , 2010

‘VK’

MOOL CHAND GARG, J