

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA (P) 55 of 2022

Reserved on: 12.07.2022
Pronounced on: 13.09.2022

Anindya Sundar Das

...Petitioner

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Billwadal Bhattacharyya,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Amrit Sinha, Advocates

... for the Petitioner

Mr. S.N. Mookherjee, AG
Mr. Anirban Ray, GP
Mr. T.M. Siddiqui,
Mr. D.Ghosh, Advocates

... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this public interest petition, the petitioner, who is an alumnus of the respondent, Calcutta University, and is also an advocate of this Court has prayed for the writ of quo warranto, questioning the appointment of the respondent no. 4 as Vice-Chancellor of the Calcutta University. He has also prayed for a writ of mandamus to initiate fresh process for appointment of the Vice-Chancellor.

2. Sans unnecessary details, the relevant brief facts are that the respondent no. 4, Smt. Sonali Chakravarti Banerjee was appointed as

Vice-Chancellor of the Calcutta University on 28th August, 2017 for a period of 4 years and her term had expired on 27th August, 2021. The Chancellor, in terms of Section 8(2)(b) of the Calcutta University Act, 1979 (for short, 'the Act') Act had extended the term of the Office of Vice-Chancellor for a period of 3 months with the rider that the selection process will commence and the Vice-Chancellor will be appointed by following the due process. Thereafter, the impugned notification dated 27th August, 2021 has been issued in the purported exercise of power conferred by Section 60 read with Section 8(2) of the Act under the signature of the Special Secretary to the Government of West Bengal, Higher Education Department, whereby the respondent no. 4 has been reappointed as Vice-Chancellor of the University of Calcutta with effect from 28th August, 2021 for a period of 4 years or till she attains the age of 70 years.

3. Submission of learned counsel for the petitioner is that the State Government has no power to reappoint the Vice-Chancellor as the power to appoint/reappoint lies with the Chancellor. His further submission is that in terms of Section 8(6) of the Act, the same procedure is required to be adopted for reappointment of the Vice-Chancellor as has been provided for initial appointment under Section 8(1) of the Act. He has further submitted that the amended Section 8(2) of the Act is not a complete code and entire Section is required to be looked into and that in any case, by invoking the provisions of Section 60 of the Act, the main provisions of the Act cannot be bypassed. He has further submitted that reappointment without following the procedure prescribed under Section 8(1) of the Act eliminates competition and is in contravention of Article 14 of the Constitution. He has also submitted that the appointment of Vice-Chancellor by the State is contrary to UGC Regulation, 2015. He has submitted that the violation of the UGC Regulation is a question of law which can be raised without pleading. In support of his submission that

only Chancellor is empowered to appoint the Vice-Chancellor, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Gambhirdan K. Gadhvi vs. State of Gujarat and Others** reported in **(2022) 5 SCC 179**, in the matter of **Mahesh Chandra Gupta vs. Union of India and Others** reported in **(2009) 8 SCC 273**, in the matter of **Raghavendra Rao and Others vs. State of Karnataka and Others** reported in **(2009) 4 SCC 635**. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **M.P. State Coop. Bank Ltd., Bhopal vs. Nanuram Yadav and Others** reported in **(2007) 8 SCC 264** in support of his plea that no back door entry can be permitted. He has also submitted that the judgments of the Rajasthan and Kerala High Court relied upon by learned Advocate General are distinguishable as in those cases, no such provision for reappointment was existing as it exists in Section 8(6) of the Act.

4. Learned Advocate General, appearing for the State, has referred to various amendments which have been made in Section 8 of the Act since inception and has submitted that earlier, under unamended Act, there was a provision to follow the procedure of Sub-section (1) of Section 8 of the Act for reappointment but the same has been deleted by way of amendment, therefore, the legislative intent of not to follow the provision of Section 8(1) of the Act for reappointment is clear and in support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of U.P. and Another vs. Malik Zarid Khalid** reported in **(1988) 1 SCC 145**. He has also submitted that appointment and reappointment stand on different footing and that the reappointing authority is the State and that even if the Chancellor is the reappointing authority, he has no discretion if the recommendation is sent by the State after satisfaction. He further submits that since the Chancellor was not taking any action in terms of Section 8(2)(a) of the Act, therefore, State had no option but to pass the order reappointing

respondent no. 4 as Vice-Chancellor. He has also placed reliance upon the judgment of the Single Bench of the Kerala High Court in the matter of **Dr. Premachandran Keezhoth and Another vs. Chancellor and Others** reported in **2021 SCC OnLine Ker 5135**, as affirmed by the Division Bench in the matter of **Dr. Premachandran Keezhoth and Another vs. Chancellor** reported in **2022 SCC OnLine Ker 1001** and also the judgment of the Delhi High Court in the matter of **Dr. Harbhajan Singh Awla vs. Ministry of Food & Civil Supplies and Others** reported in **2005 SCC OnLine Del 605** (SB) in support of his submission that the elaborate procedure provided at the stage of appointment of the Vice-Chancellor is not required to be followed while making reappointment. He has further submitted that Section 60 of the Act has rightly been invoked in the present. He has also submitted that the UGC Regulations cannot be relied upon as there is no pleading in this regard.

5. Learned counsel for the respondent no. 4 has also opposed the petition by submitting that there is distinction between appointment and reappointment and in the case of reappointment, the zone of consideration is restricted to the person already holding the post and in such cases, the suitability need not be assessed as the same was already assessed at the stage of appointment. Referring to Section 8(2)(a), he has submitted that academic excellence and administrative success are the only factors which are to be seen for reappointment and that the procedure prescribed under Section 8(1) of the Act is not attracted in the case of reappointment. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Mahesh Chandra Gupta vs. Union of India and Others** reported in **(2009) 8 SCC 273** and has submitted that no writ of quo warranto can be issued on the issue of suitability. In respect of the limited scope of issuing the writ of quo warranto, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Central Electricity Supply Utility of**

Odisha vs. Dhobei Sahoo and Others reported in (2014) 1 SCC 161 and in the matter of **Bharati Reddy vs. State of Karnataka and Others** reported in (2018) 6 SCC 162. He has also referred to the Chancellor's note enclosed with the writ petition and has submitted that there is no comment on the suitability of the respondent no. 4, therefore, no ground is made out to issue the writ of quo warranto. He has also submitted that the decision taken by the State under Section 8(2)(a) of the Act is binding on the Governor, therefore, State has power to reappoint respondent no. 4 invoking provisions of Section 60 of the Act.

6. Learned counsel for the respondent no. 2 and 3 has adopted the argument of the learned Advocate General.

7. We have heard the learned counsel for the parties and perused the record.

8. In this petition, the petitioner has prayed for issuing a writ of quo warranto, which can be issued mainly in following circumstances:

- i. When the person is found to be holding public office without fulfilling eligibility criteria prescribed for such appointment,
- ii. When the appointment is made contrary to the statutory rule.

9. Hon'ble Supreme Court in the matter of **Central Electricity Supply Utility of Odisha (supra)** considering the scope of the jurisdiction to issue writ of quo warranto has held that:

"17. Before we advert to the aforesaid submissions and the legal substantiality of the order passed by the High Court, we may refer to certain authorities that throw light on the duty of the Court while dealing with a writ of quo warranto.

18. In *University of Mysore v. C.D. Govinda Rao* Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench, has stated thus: (AIR p. 494, para 7)

"7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the

said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. *It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.*"

(emphasis supplied)

19. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* S.B. Sinha, J., in his concurring opinion, while adverting to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has expressed thus: (SCC pp. 730-31, paras 22-23)

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. *The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari.* (See *R.K. Jain v. Union of India*, SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See *Mor Modern Coop. Transport Society Ltd. v. State of Haryana .*)”

(emphasis supplied)

20. In *Centre for PIL v. Union of a three-Judge Bench*, after referring to the decision in *R.K. Jain*, has ruled thus: (*Centre for PIL case*, SCC p. 29, para 64)

“64. Even in *R.K. Jain case*, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and *the manner in which the appointment came to be made* or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.”

(emphasis in original)

21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

22. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger

public interest and the basic concept pertaining to good governance are not thrown to the winds.”

10. In the subsequent judgment also Hon’ble Supreme Court in the matter of **Gambhirdan K. Gadhvi (supra)** has held that:

“**16.** When a writ of quo warranto will lie has been dealt with by this Court in *Rajesh Awasthi v. Nand Lal Jaiswal*. In para 19, it has been observed and held as under : (SCC p. 514)

“19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana* held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy*, this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bansh Lal* wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.”

17. In *Armed Forces Medical Assn. v. Union of India*, it has been observed by this Court that strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further observed in the said decision that broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further observed that it will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry, as to, whether, the appointment of the alleged usurper has been made in accordance with law or not.

18. Thus, as per the law laid down in a catena of decisions, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can only be issued when a person is holding the public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary

to the statutory rules. Keeping in mind the law laid down by this Court in the aforesaid decisions on the jurisdiction of the Court while issuing a writ of quo warranto, the factual and legal controversy in the present petition is required to be considered.”

11. The judgments in the matter of **Central Electricity Supply Utility of Odisha (supra), Bharati Reddy (supra) and Mahesh Chandra Gupta (supra)** relied upon by the learned Counsel for the respondent No. 4 in respect of scope of issuance of writ of quo warranto also contain similar view.

12. The first issue which arises for consideration of this Court is whether the State Government is competent to appoint respondent no. 4 as Vice-Chancellor of the Calcutta University?

13. For deciding the above question, following provisions of the Act are relevant:

“7. (1) The Governor shall, by virtue of his office, be the Chancellor of the University. He shall be the head of the University and the President of the Senate and shall, when present, preside at the meetings of the Senate.

(2) ...

(3) The Chancellor shall exercise such powers as may be conferred on him by or under the provisions of this Act.

x x x

8. (1) (a) The Vice-Chancellor shall be a distinguished academic with proven competence and integrity, and having a minimum of ten years of experience in a University system of which at least five years shall be as professor or ten years of experience in a reputed research or academic administrative organization of which at least five years shall be in an equivalent position of professor.

(b) The Vice-Chancellor shall be appointed by the Chancellor out of the panel of three names recommended in order of preference by the Search Committee constituted by the State Government. While preparing the panel, the Search Committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad and adequate experience in academic and administrative governance and reflect the same in writing while submitting the panel to the Chancellor.

(c) The Search Committee shall be constituted in the following manner:-

(i) an academicians not below the rank of the Vice-Chancellor of a Central or State-aided University or the Director of a National institute of higher learning, to be nominated by the Chancellor in consultation with the Minister, and such nominee shall be the Chairperson of the Committee,

(ii) an academician, not below the rank of a Professor of a Central or State-aided University or national institute of higher learning, to be nominated by the State Government;

(iii) an academician, not below the rank of a Professor of a Central or State-aided University or National institute of higher learning, to be nominated by the Senate:

Provided that the nominees, as mentioned under sub-clauses (i), (ii) and (iii) shall not be the persons associated with the concerned University for which the Search Committee is constituted.

(2) (a) The Vice-Chancellor shall hold office for a period of four years appointed as such in terms of the provisions of sub-section (1), and shall be eligible for reappointment for another term of four years subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor, or till he attains the age of seventy years, whichever is earlier.

(b) The Chancellor may, notwithstanding the expiration of the term of office of the Vice-Chancellor, allow him to continue in office for a period not more than two years at a time in consultation with the Minister, which shall under no circumstances be extended beyond the age of seventy years, subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor.

(3) The Vice-Chancellor shall be a whole-time officer of the University and shall be paid from the University Fund such salary and allowances as the Chancellor may decide in consultation with the State Government.

(4) the Vice-Chancellor may resign his office by writing under his hand addressed to the Chancellor.

(5) If –

(a) the Vice-Chancellor is, by reasons of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, or

(b) a vacancy occurs in the office of the Vice-Chancellor by reason of death, resignation, removal, expiry of term of his office or otherwise,

then, during the period of such temporary inability or pending the appointment of a Vice-Chancellor, as the case may be, the Chancellor in consultation with the Minister may appoint a person to exercise the powers and perform the duties of the Vice-Chancellor.

(6) The vacancy in the office of the Vice-Chancellor occurring by reason of death, resignation or expiry of the term of his office, removal or otherwise shall be filled up by appointment of a Vice-Chancellor in accordance with the provisions of sub-section (1) within a period of six months from the date of occurrence of the vacancy, and such period shall be held to include any period for which a Vice-Chancellor is allowed to

continue in office under clause (b) of sub-section (2), or a person is appointed by the Chancellor in consultation with the Minister to exercise the powers and perform the duties of the Vice-Chancellor under sub-section (5).

(7) the Vice-Chancellor may be removed from his office by the Chancellor if he is satisfied that the incumbent, -

(a) has become insane and adjudged by a competent court to be of unsound mind; or

(b) has become an undischarged insolvent and stands so declared by a competent Court; or

(c) has been physically unfit and incapable of discharging function due to protracted illness or physical disability; or

(d) has willfully omitted or refused to carry out the provisions of this Act or has committed breach of any of the terms and conditions of the service contract or has abused or misused the powers vested in him or if the continuance in the office of the Vice Chancellor is detrimental to the interest of the University; or

(e) has been proved to be guilty of criminal breach of trust or criminal negligence or gross financial irregularity or impropriety or gross negligence of duty; or

(f) has shown incompetence to perform or has persistently made default in the performance of the duties imposed on him by or under this Act; or

(g) has been convicted by a court for any offence within the concept and meaning of the Code of Criminal Procedure, 1973; or

(h) is a member of, or otherwise associated with, any political party or acts in any partisan manner while in office.

Explanation. – For the purpose of this sub-clause, whether any party is a political party or any association is a political association or any act of the Vice-Chancellor is partisan, decision of the Chancellor thereon shall be final:

Provided that the Vice-Chancellor shall be given a reasonable opportunity to show cause by the Chancellor before taking recourse for his removal under clauses (d), (e), (f), (g) and (h).

x x x

- 60.** If on account of any lacuna or omission in the provisions of this Act, or for any other reason whatsoever, any difficulty arises as to the first constitution of any authority of the University under this Act, or otherwise in giving effect to the provisions of this Act, the State Government, as occasion may require, may by order do anything which appears to it to be necessary for the purpose of removing the difficulty notwithstanding anything to the contrary contained elsewhere in this Act or in any other law.”

14. Section 2(10) of the Act defines ‘Governor’ to mean the Governor of the State of West Bengal. Section 2(20)(a) of the Act defines State

Government to mean the Government of West Bengal in the High Education Department. In terms of Section 7(1) of the Act, the Governor is the Chancellor of the University by virtue of his office. Section 7(3) of the Act empowers the Chancellor to exercise the powers that are conferred on him by or under the provisions of the Act.

15. Section 8(1)(b) of the Act, in clear terms, provides that the Vice-Chancellor will be appointed by the Chancellor. Under Section 8(2)(b) of the Act, the Chancellor has the power to continue Vice-Chancellor after expiration of the term of his office in office up to a period of 2 years or 70 years of age whichever is earlier. In terms of Section 8(5) of the Act, the temporary appointment of the Vice-Chancellor is made by the Chancellor and Sub-section 7 of Section 8 of the Act empowers the Chancellor to remove the Vice-Chancellor on the satisfaction of the prescribed conditions. Thus, the scheme of Section 8 of the Act makes it clear that it is only the Chancellor who has the power to appoint, reappoint or temporarily appoint or to remove the Vice-Chancellor. Section 8 of the Act does not confer any power to the State Government to appoint or reappoint the Vice-Chancellor.

16. In the present case, the original term of respondent no. 4 as Vice-Chancellor of the Calcutta University expired on 28th of August, 2021 and the State Government by order dated 27th of August, 2021 has reappointed the respondent no. 4 as Vice-Chancellor of the Calcutta University with effect from 28th of August, 2021 for a period of 4 years or till she attains the age of 70 years, whichever is earlier. Section 8 of the Act does not empower the State to issue such an order of reappointment.

17. While issuing the reappointment order dated 27th of August, 2021, the State Government had invoked the provisions of Section 60 of the Act. Section 60 of the Act provides for removal of difficulties arising in giving effect to the provisions of the Act and empowers the State Government to pass necessary order for the purpose of removing the difficulties. In the

facts of the present case, taking shelter of Section 60 of the Act, the State could not have usurp the power of the Governor and appointed the Vice-Chancellor. The communication of the Hon'ble Governor dated 17.08.2021 indicates that he was not agreeable to such an appointment. In that communication, while turning down the proposal to reappoint respondent no. 4, Hon'ble Governor had clearly expressed that:

“The proposal dated 4.6.2021 emanating from the State Government seeking reappointment of Prof. Sonali Chakravarti Banerjee, Vice Chancellor of Calcutta University for second term of four years, is not in consonance with the applicable statutory prescriptions as is amply reflected in the note dated 2.8.2021. I need to indicate here that without being a participant in selection, and consequent selection, an incumbent Vice Chancellor cannot get another term in view of section 8(2)(a) of the Calcutta University Act, 1979.”

18. The Allahabad High Court in the matter of **Joti Prasad Upadhyaya vs. Kalka Prasad Bhatnagar and Others** reported in **AIR 1962 ALL 128** considering the distinct power of the Governor and the State Government while examining the issue of appointment of Vice-Chancellor of the Agra University though challenging different ground has held that:

“11. It will thus appear that the State Government has been conferred with the power to make only one appointment, namely a Special Officer for the University under Sec. 41 of the Act, and the other appointments are to be made by the Chancellor or other officers or authorities of the University. It will also be clear that the legislature has made a differentiation between the various appointments: the appointment of the Vice-Chancellor is to be made by the Chancellor, who is ex-officio the Governor of Uttar Pradesh, and the appointment of the Special Officer for the University by the State Government. In addition, the State Government has the power to order inspection or inquiry and to issue directions to be complied with by the University and the affiliated colleges. It is nowhere laid down that the State Government shall pass an order for inspection or inquiry or issue directions in consultation with or with the concurrence of the Chancellor. The Act clearly envisages two distinct authorities, namely, the Chancellor and the State Government. When the legislature intentionally made a differentiation between Chancellor and the State Government, no other opinion can be formed except that it was the intention of the legislature not to regard the Chancellor to be a part of the State Government, and while exercising his powers the Chancellor was not exercising the executive powers of the State.”

19. Thus, in the present case also, the Government exercising the power as chancellor under Section 7(3) of the Act had the exclusive power to appoint or re-appoint or temporarily appoint the Chancellor under Section 8 of the Act.

20. In a statute, removal of difficulties clause, also nick-named as “Henry VIII clause”, is incorporated for a limited purpose to obviate the necessity of approaching the legislature on trivial issue relating to enforcement of statute. This clause gives executive very limited power to make minor adaptation and adjustment in statute but by taking shelter of this clause executive cannot alter the substance of statute or act contrary to the scheme of the Act. A somewhat similar issue in respect of scope of removal of difficulty clause came up for consideration before the Hon’ble Supreme Court in the matter of **Madeva Upendra Sinai and Others vs. Union of India and Others** reported in **(1975) 3 SCC 765** wherein the Hon’ble Supreme Court has held that:

“**38.** For a proper appreciation of the points involved, it is necessary to have a general idea of the nature and purpose of a “removal of difficulty clause” and the power conferred by it on the Government.

39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered *in the enforcement* of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the “removal of difficulty clause”, once frowned upon and

nick-named as “Henry VIII clause” in scornful commemoration of the absolutist ways in which that English King got the “difficulties” in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-independence era.

21. Thus, it is clear that in the guise of removing the difficulty, the State cannot change the scheme and essential provisions of the Act.

22. UGC regulation, namely, University Grants Commission (Minimum Qualifications for appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education), Regulations, 2018, which provide for appointment of Vice-Chancellor only by visitor/Chancellor also comes in the way of the State in making such appointment. Learned counsel for the petitioner has placed reliance upon the judgment of the Hon’ble Supreme Court in the case of **Gambhirdan K. Gadhvi (supra)** wherein, Hon’ble Supreme Court, considering the issue of appointment of Vice-Chancellor by the State of Gujarat, has held that such an appointment, being contrary to UGC Regulations, 2018, which have a statutory force and which are in the nature of sub-ordinate legislation, is contrary to law and has issued the writ of quo warranto by setting aside such an appointment. Hon’ble Supreme Court in this regard in the matter of **Gambhirdan K. Gadhvi (supra)** has held that:

“49. Therefore, when the appointment of Respondent 4 is found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force, we are of the opinion that this is a fit case to issue a writ of quo warranto and to quash and set aside the appointment of Respondent 4 as the Vice-Chancellor of the SP University.

50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the

Constitution as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.

51. In view of the above discussion and for the reasons stated above, the appointment of Respondent 4 as Vice-Chancellor of the SP University — Respondent 2 herein, is contrary to the UGC provisions, namely, UGC Regulations, 2018. We hence allow the present writ petition and issue a writ of quo warranto quashing and setting aside the appointment of Respondent 4 as the Vice-Chancellor of SP University. The present petition is accordingly, allowed.”

23. In the present case, though learned Advocate General has raised the objection that there is no pleading in respect of violation of the UGC Regulations, but he has not categorically denied, during the course of argument, that UGC Regulations are not applicable in the State of West Bengal. The judgment of the Hon’ble Supreme Court, being a binding precedent under Article 141 of the Constitution, can be duly looked into by this Court even in the absence of any pleading.

24. Further stand of the respondents is that the State Government in terms of Section 8(2)(a) of the Act had submitted the proposal for reappointment of respondent no. 4 to the Chancellor but the Chancellor had sought certain clarifications on some issues and had suo motu extended the tenure of the respondent no. 4 for 3 months which was not in conformity with the proposal of reappointment for 4 years, hence, power under Section 60 of the Act was exercised by the State and respondent no. 4 was reappointed as Vice-Chancellor by the State. Such a plea put forth by the respondent State does not justify its action under Section 60 of the Act because State cannot act contrary to the provisions of Section 8 of the Act and exercise the power of appointment of Vice-Chancellor which under the Act has been conferred upon the Chancellor.

25. Hon’ble Supreme Court in the matter of **Raghavendra Rao and Others (supra)** has held that an appointment made by a person who had no authority to make the appointment must be held to be nullity.

26. In the above circumstances of the case, we are of the opinion that the State Government has no power under the Act to appoint or reappoint the Vice-Chancellor, therefore, the order of reappointment of the respondent no. 4 dated 27th of August, 2021 as Vice-Chancellor, Calcutta University, issued by the State Government has no legal force and is void in the eyes of law and non-existent, hence liable to be set aside. It is a fit case for issuing the writ of quo warrant.

27. Additional issue which has been raised by learned Counsel for the petitioner is that the same procedure which is provided for appointment of Vice-Chancellor under Section 8(1) of the Act is required to be followed at the time of reappointment of the Vice-Chancellor. Learned Advocate General has also pointed out that by West Bengal University Laws (Amendment) Act, 2011, Section 8(2)(a) was inserted in the Act providing that:

“(2) (a) The Vice-chancellor shall hold office for a term of four years or till he attains the age of sixty-five years, whichever is earlier, and shall be eligible for re-appointment for another term of four years or till he attains the age of sixty-five years, whichever is earlier, following the provisions of sub-section (1).”

28. The aforesaid Section 8(2)(a) has been substituted with the following provisions by the West Bengal University (Amendment) Act, 2019:

“(a) The Vice-Chancellor shall hold office for a period of four years appointed as such in terms of the provisions of sub-section (1), and shall be eligible for reappointment for another term of four years subject to the satisfaction of the State Government and on the basis of his past academic excellence and administrative success established during his term of office in the capacity of Vice-Chancellor, or till he attains the age of seventy years, whichever is earlier.”;

29. The amended Section 8(2)(a) provides for the reappointment for another term and it does not provide for following the same procedure for reappointment as contained in Section 8(1) of the Act. The legislature has

omitted such a provision which was earlier incorporated by the West Bengal University Laws (Amendment) Act, 2011, in Section 8(2)(a). In view of judgment of the Hon'ble Supreme Court in **Malik Zarid Khalid (supra)**, such omissions gain significance to gather the legislative intention. It is also worth noting that Section 8(6) of the Act provides for appointment on expiry of tenure of office but does not relate to reappointment which has been specifically provided in Section 8(2)(a) of the Act.

30. The Division Bench of the Rajasthan High Court in the matter of **Prof. S.B. Chaturvedi vs. G.C. Chatterji** reported in **AIR 1959 Raj 260**, considering the issue of reappointment of Vice-Chancellor, has taken the view that where the term of the same person is being extended in continuation of the first terms, there is no necessity for a Selection Committee and recommendation of the syndicate. In that case though Section 12(2) of University of Rajputana Act, 1946 under consideration, provides for reappointment for further three years "in continuation of the first term", but the Division Bench has considered the general issue of reappointment without going through the process of original appointment. High Court of Jammu and Kashmir in **NGOs Coordination Fed v. State** reported in **2008 (2) JKJ 341** has also considered the issue of reappointment of Vice-Chancellor and while considering the applicable provisions has held that the condition of drawing of a penal prescribed in sub-section 1 has not been incorporated in sub-section 2 and will not be applicable as that is not the intention of the legislature. Similar is the view taken by the High Court of Madras in **N. Radhakrishnan v. the Registrar, University of Madras** reported in **(1990) 1 Mad LJ 88**. Following the aforesaid judgments, Division Bench of the High Court of Kerala in the matter of **Dr. Premachandran Keezhoth (supra)** has reached to the conclusion that for reappointment for the Vice-Chancellor, the age bar prescribed in original appointment would not be attracted. The Single Bench of the Delhi High Court in the matter of **Dr. Harbhajan Singh Awla**

(supra) has taken the similar view on the issue of reappointment of Managing Director of warehouse corporation.

31. Hence, this Court is unable to accept the contention of the learned Counsel for the petitioner that same procedure is required to be followed for reappointment of the Vice-Chancellor as contained in Section 8(1) of the Act.

32. Thus, we find that the State had no authority to appoint or reappoint the Vice-Chancellor either under Section 8 of the Act or by taking recourse to the residuary Section 60 of the Act, therefore, the order of appointment dated 27th of August, 2021 issued by Special Secretary, Government of West Bengal, re-appointing the respondent No. 4 as Vice-Chancellor of the Calcutta University cannot be sustained and is hereby set aside and the prayer for issuance of writ of quo warranto against the respondent No. 4 is allowed by holding that respondent no. 4 has no authority to hold the office of the Vice-Chancellor, Calcutta University on the basis of appointment order dated 27th of August, 2021.

33. The petition is accordingly allowed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Later,

After pronouncement of the judgment, oral prayer has been made by learned Counsel for the State as also respondent No. 4 for staying the operation of the order of this Court.

We find no ground to accept the prayer. Accordingly, prayer is rejected.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.09.2022

PA(RB)

(A.F.R. / N.A.F.R.)