

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/02/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.24574 of 2002

Dr.V.Sundararasu .. Petitioner

-Vs-

1. The Government of Tamilnadu
rep. by the Secretary to Government
Animal Husbandry and Fisheries Department
Chennai-9.

2. Tamilnadu Veterinary and Animal
Sciences University
rep. by its Vice Chancellor
Chennai-51.

3. Dr.R.Kadirvel
Vice Chancellor
Tamilnadu Veterinary and Animal
Sciences University, Chennai-51.

4. Dr.R.Kumararaj
Controller of Examination
Tamilnadu Veterinary and
Animal Sciences University
Chennai-51. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for
issue of a writ of Certiorari as stated therein.

For Petitioner : Mr.K.Chandru
Senior Counsel

For Respondents : Mr.P.S.Shivashanmugha
Sundaram, AGP
for 1st respondent
Mr.R.Parthasarathy
for respondents 2 and 4
Mr.G.Masilamani
Senior Counsel
for 3rd respondent

:ORDER

The petitioner seeks a writ of Certiorari to call for the records on the file of the third respondent pertaining to his order bearing R. C.No.8969/R1/2002, dated 12.6.2002 and to quash the same.

2.1. The events leading to the filing of this petition, briefly stated, are that the petitioner was appointed as a Registrar in the second respondent/University on 7.12.2000 for period of three years from the date of assuming charge of the said post or till he attains the age of 58 years, whichever is earlier; and his appointment is governed by the Act, Statutes, Regulations and Rules of the second respondent/University.

2.2. By proceedings dated 12.6.2002 of the third respondent, which is impugned in this writ petition, the petitioner was transferred from the post of Registrar of the second respondent/University to the post of Controller of Examinations and in consequence, the fourth respondent, who was holding the post of Controller of Examinations was posted as the Registrar of the second respondent/University, in the place of the petitioner herein. Aggrieved by the said proceedings dated 12.6.2002 of the third respondent, the petitioner had preferred this writ petition.

3. Mr.K.Chandru, learned senior counsel appearing for the petitioner contends that:

- i.since the petitioner was appointed as the Registrar for a term of three years from the date of assuming charge of the said post or till he attains the age of 58 years, whichever is earlier, he is entitled to discharge his duties and responsibilities as the Registrar till the term expires and such right conferred on him under the Act, Statutes, Regulations and Rules of the second respondent/ University, cannot be either interfered or diluted by way of an order of transfer made under Clause 13(2)(d) of the Statute;
- ii.assuming the third respondent transferred the petitioner on administrative convenience as suggested in the impugned proceedings dated 12.6.2002, such decision should have been taken only by the Board of Management constituted under Section 18 of the Act, after giving a reasonable opportunity to the petitioner as contemplated under the proviso to Section 12(5) of the Act, as the petitioner is likely to be affected by the order of the third respondent,;
- iii.even though the impugned order of transfer was passed on 12.6.20

02, the same has not been ratified by the Board of Management till the expiry of the term of the petitioner as a Registrar. In this regard, placing reliance on a decision of the Apex Court in MARATHWADA UNIVERSITY Vs, SESHRAO BALWANT RAO CHAVAN reported in (1989) 3 SCC 13 2 it was argued that the third respondent/Vice Chancellor, being a statutory authority cannot travel beyond the power conferred and any action without power has no legal validity; and that the third respondent/Vice Chancellor being a conscience keeper of the University and Constitutional ruler is duty bound to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed strictly without any deviations, assuming he proposes to exercise the

emergency power, in the instant case the power conferred under Section 12(5) of the Act;

iv. highlighting Appendix 1-A of the Tamilnadu Veterinary and Animal Sciences University Regulations, it was argued that even though the educational qualification and experience required for both the posts, viz., the Registrar and the Controller of Examinations, is one and the same, the zone of consideration for selection of a candidate for the post of Registrar is narrow and different from that of the Controller of Examinations, in the sense that, the officer of the Government not lower than the rank of Deputy Secretary to Government can be considered to the post of Registrar, but it is not the same in the case of the Controller of Examinations. Therefore, treating the posts held by the petitioner and the fourth respondent as one and the same, even at the entry point, amounts to discrimination attracting Article 14 of the Constitution of India, as unequals were treated as equals;

v. assuming the third respondent/Vice Chancellor exercised his power only under Clause 13(2)(d) of the Statute, which empowers the Vice Chancellor to transfer personnel from one post to another in the interest of the University, without affecting their emoluments and service conditions, again the impugned order does not satisfy the said condition contemplated under Clause 13(2)(d) of the Statute, as it offends the service conditions of the petitioner;

vi. the mere fact that both the posts, viz., Registrar and the Controller of Examination carry equal pay itself cannot be a satisfactory compliance of Clause 13(2)(d) of the Statute, as "service conditions" of the petitioner as a Registrar of the second respondent/University are affected in view of the impugned transfer as he cannot represent the Board of Management in his capacity as a Controller of Examinations, as per Section 18 of the Act. Therefore, merely because the post of Registrar and the Controller of Examination fall under the category of the Officers of the University under Section 8 of the Act, the same itself cannot be a justification to the impugned order of transfer exercising the power conferred under Clause 13(2)(d) of the Statute;

vii. placing reliance on a decision of this Court in PAKCIAM.S,DR. VS. STATE OF TAMILNADU & ANOTHER reported in 1993 WLR 940, wherein a transfer order, transferring the Registrar as Principal was quashed, it is argued that the appointment of the petitioner as a Registrar being made for a definite tenure cannot be disturbed under the guise of administrative convenience without any justification to that effect; and

viii. incidentally, legal and personal malafide is alleged against the third respondent, who has passed the impugned order, stating that the petitioner in his capacity as a Registrar informed the Government that the third respondent was facing a vigilance enquiry, when the name of the third respondent was under consideration and was selected as the Vice-Chancellor of the second respondent/ University, and therefore, the third respondent after becoming the Vice-Chancellor had taken action against the petitioner malafide.

4.1. Per contra, Mr.R.Parthasarathy, learned counsel for the second and fourth respondents contends that:

i. the impugned order dated 12.6.2002 passed by the third respondent is justified, as the same was passed by exercising the power conferred under Clause 13(2)(d) of the Statute, which empowers the third respondent/Vice-Chancellor to transfer personnel from one post to another in

the interest of the University;

ii. the post of the Registrar and the Controller of Examinations fall within the same category, namely the Officers of the University as defined under Section 8(1) of the Act and therefore, the third respondent/Vice Chancellor is empowered to pass the impugned order under Clause 13(2)(d) of the Statute, more so when the qualification prescribed for the post of Registrar and Controller of Examinations is one and the same as per Appendix-IA read with regulation 5 of the Regulations;

iii. the question of non-compliance of the proviso to Section 12(5) of the Act does not arise as the power under Section 12(5) of the Act was not invoked in the instant case, as contended by Mr.K.Chandru, learned Senior Counsel appearing for the petitioner;

5.1. Mr.G.Masilamani, learned senior counsel appearing for the third respondent inviting the attention of this Court to the following relevant dates:

(i) the petitioner was appointed on 7.12.2000 for a period of three years from the date of assuming charge of the said post or till he attains the age of 58 years, whichever is earlier, and the said tenure had already expired on 6.12.2003; and

(ii) the third respondent was appointed as the Vice-Chancellor on 14.9.2001, but the impugned order was passed only on 12.6.2002, i.e., nearly after one and half years of the service of the petitioner as the Registrar of the second respondent/University, contends that the allegation made against the third respondent that the impugned order dated 12.6.2002 was passed by the third respondent malafide, for the reason that the petitioner informed the Government that the third respondent was facing a vigilance enquiry, when the name of the third respondent was under consideration and was selected to the post of Vice-Chancellor, is untenable.

5.2. Mr.G.Masilamani, learned senior counsel inviting my attention to the appointment order of the petitioner dated 7.12.2000 contends that the petitioner was appointed as Registrar in the cadre of an University Officers, which also includes the Controller of Examinations, and therefore, both the posts are inter-transferrable.

5.3. Mr.G.Masilamani, learned senior counsel also submits that the contention made on behalf of the petitioner that the third respondent passed the impugned order of transfer by exercising the power conferred under Section 12(5) of the Act is totally misconceived, as the said power was not at all invoked by the third respondent in the instant case and consequently, the question of giving a reasonable opportunity to the petitioner before passing the impugned order of transfer does not arise.

5.4. Mr.G.Masilamani, learned senior counsel also contends that the impugned order was passed purely on administrative convenience as an order of transfer simplicitor but, not an order passed as a punishment pursuant to any disciplinary action initiated against the petitioner.

5.5. According to Mr.G.Masilamani, learned senior counsel, the third

respondent invoked the power only under Clause 13(2)(d) of the Statute, as suggested in the impugned order dated 12.6.2002, which empowers him to transfer personnel from one post to another in the interest of the University, without affecting their emoluments and service conditions, and the same does not require any ratification by the Board of Management as contended by the learned senior counsel for the petitioner.

5.6. It is further contended that, as per Clause 13(2)(m) of the Statute, the third respondent/Vice-Chancellor is empowered to change, modify and reallocate the functions and duties of the University Officers and other employees of the University.

5.7. In any event, it is contended by Mr.G.Masilamani, learned senior counsel that, when the post of Registrar as well as the Controller of Examinations carries equal pay and emoluments, the impugned order does not offend Clauses 13(2)(d) and 13(2)(m) of the Statute.

6. I have given careful consideration to the submissions of both sides.

7. From the above rival contentions of the parties, the issues that arise for my consideration in this petition are:-

(i) whether the third respondent/Vice Chancellor has got the power to pass the impugned order of transfer, transferring the petitioner from the post of Registrar to the post of Controller of Examinations and, in consequence, to transfer the fourth respondent from the post of Controller of Examinations to the post of the Registrar, by exercising the power under Clauses 13(2)(d) and 13(2)(m) of the Statute, and if so to what extent such powers could be exercised?

(ii) whether the third respondent acted malafide? and

(iii) to what relief the parties are entitled to?

8.1. Issue No.(i): whether the third respondent/Vice Chancellor has got the power to pass the impugned order of transfer, transferring the petitioner from the post of Registrar to the post of Controller of Examinations and, in consequence, to transfer the fourth respondent from the post of Controller of Examinations to the post of the Registrar, by exercising the power under Clauses 13(2)(d) and 13(2)(m) of the Statute, and if so to what extent such powers could be exercised?

8.2. Section 8 of the Act, which defines the Officers of the University, reads as follows:

"8. The University shall consist of the following Officers, namely:-

- (1) The Chancellor;
- (2) The Pro-Chancellor;
- (3) The Vice-Chancellor;
- (4) The Registrar;
- (5) The Finance Officer;
- (6) The Deans;
- (7) The Director of Research;

(8) The Director of Clinics;
(9) The Director of Extension Education;
(10) The Director, Centre for Animal Health Studies;
(11) The Director, Centre for animal Production Studies; and
(12) Such other persons as may be declared by the Statutes to be Officers of the University."

8.3. Sections 9 and 10 of the Act prescribe the powers of the Chancellor and Pro-Chancellor respectively.

8.4. The appointment, powers and duties of the Vice Chancellor are defined under Sections 11 and 12 of the Act.

8.5. Section 13 of the Act provides for the appointment, powers and duties of the Registrar.

8.6. Section 14 of the Act deals with the appointment, powers and duties of the Finance Officer.

8.7. Sections 15 and 16 of the Act provide for the appointment, powers, duties of the Dean and the Director, respectively.

8.8. Section 17 of the Act prescribes the authorities of the University, namely the Board of Management, the Academic Council, the faculties, the Board of Studies, the Planning Board, the Finance Committee and such other bodies of the University as may be declared by the Statutes to be authorities of the University.

8.9. Section 18 provides for the constitution of the Board of Management, which is the apex body of the University. As per Section 18(2)(g) of the Act, the Registrar is entitled to represent as an exofficio member of the Board of Management, but the Controller of Examinations is not entitled for the same.

8.10. Obviously, there is no provision under the Act prescribing the appointment, duties and responsibilities of the Controller of Examinations, even though the same was brought in by virtue of the proceedings of second respondent/University dated 22.11.1994, including the post of Controller of Examinations as an Officer of the University and making appropriate amendment inserting Sl.No.5(a) in Appendix 1-A of the Tamilnadu Veterinary and Animal Sciences University Regulations.

8.11. Since the learned counsel for the third respondent/Vice Chancellor effectively contends that the third respondent had never invoked Section 12(5) of the Act, the only source of power exercised for passing the impugned order dated 12.6.2002 is Clause 13(2)(d) of the Statute, which reads as follows:

"Clause 13. Vice-Chancellor:

(1) ...

(2) In addition to the powers and duties mentioned in Section 12 of the Act, the Vice Chancellor shall exercise the following powers and privileges:-

(a) to (c) ...

(d) to transfer personnel from one post to another in the interest of the University, without affecting their emoluments and service conditions."

8.12. Incidentally, my attention was also invited to Section 13(2)(m) of the Statute, which reads as follows:

"Clause 13. Vice-Chancellor:

(1) ...

(2) In addition to the powers and duties mentioned in Section 12 of the Act, the Vice Chancellor shall exercise the following powers and privileges:-

(a) to (l) ...

(m) The Vice-Chancellor shall have powers to change modify and reallocate the functions and duties of the University Officers and other employees of the University."

8.13. From a comparative reading of Clauses 13(2)(d) and 13(2)(m) of the Statute, a clear distinction is indicated in the Statute between the words "University Officers and employees of the University" employed in Clause 13(2)(m) of the Statute, and the word "personnel" employed in Clause 13(2)(d) of the Statute. Of course, if the powers conferred under Clause 13(2)(d) of

the Statute are read with Appendix XIII, the third respondent/Vice Chancellor is empowered to transfer the Officers of the University from one post to another.

8.14. If the argument of Mr.G.Masilamani, learned senior counsel for the third respondent that the power conferred under Clause 13(2)(d) of the Statute read with Appendix XIII is construed to empower the third respondent/Vice Chancellor to transfer the Officers also, bringing the University Officers as well as the employees of the second respondent/University under one umbrella, namely "personnel" employed in clause 13(2)(d) of the Statute, such orders of transfer should also satisfy the conditions contemplated under Clause 13(2)(d) of the statute, viz., the service conditions of such personnel should not be affected.

8.15. It is true that while enacting the Act, Statute, Rules and Regulations, the legislature was conscious that the University Officers are also transferrable by exercising the power under Clause 13(2)(d) read with Appendix XIII and such legislative intention cannot be lightly disregarded. But, equally the intention of the legislature enshrined under Clause 13(2)(d) of the Statute that the service conditions of such personnel should not be affected should also be given due importance while passing the order of transfer.

8.16. In the instant case, Section 18(2)(g) of the Act of the Act confers the right on the Registrar to represent the Board of Management as an ex-officio member. But, such right is not available to the Controller of

Examinations. It is only by virtue of the proceedings of second respondent/ University dated 22.11.1994, the Controller of Examination was included as an Officer of the University, making appropriate amendment inserting Sl.No.5(a) in Appendix 1-A of the Tamilnadu Veterinary and Animal Sciences University Regulations. But, there is no such provision found under Section 18(2) of the Act giving right to the Controller of Examinations to represent the Board of Management. Therefore, obviously, the legislature never intended to confer such right on the Controller of Examinations to represent the Board of Management, the Apex body of the University.

8.17. Mr.R.Parthasarathy, who represents both the second respondent as well as the fourth respondent, is not in a position to explain how the fourth respondent, who was initially appointed to the post of Controller of Examinations, could represent the Board of Management constituted under Section 18 of the Act by virtue of the impugned order of transfer dated 12.6.2002, even though he is not entitled to do so based on his original appointment as the Controller of Examination.

8.18. It is not in dispute that the petitioner was considered and appointed to the post of Registrar, an officer of the University and similarly, the fourth respondent was considered and appointed as a Controller of Examination and then treated as an Officer of the University. In which event, the petitioner, having been conferred with some vested right attached to his original appointment to the post of the Registrar to represent the Board of Management as provided under Section 18(2) of the Act, cannot be deprived of such right by an order passed under Clause 13(2)(d) of the Statute, which is only a subordinate legislation. Similarly, the fourth respondent having been considered and appointed only to the post of Controller of Examination, a post created by the Subordinate legislation, viz., under Sl.No.5(a) in Appendix 1-A of the Tamilnadu Veterinary and Animal Sciences University Regulations, invoking the power under Section 8(12) of the Act, cannot be conferred with a right which was not available to him as a Controller of Examinations. Hence, the impugned order of transfer, transferring the petitioner from the post of Registrar to the post of the Controller of Examination and in consequence, the fourth respondent from the post of the Controller of Examinations to the Registrar, would only result in treating unequals as equals, offending Article 14 of the Constitution of India.

8.19. Assuming the third respondent/Vice Chancellor by exercising the power conferred under Clause 13(2)(d) of the Statute for the administrative convenience of the University is empowered to transfer the personnel, bringing the Officers and the Employees of the University under one umbrella, viz., personnel, such power cannot be exercised offending the latter limb of Clause 13(2)(d) of the Statute, namely affecting the service conditions of the Officers and the employees of the University who are transferred. Hence, I find the existence of an element of arbitrariness and discrimination attracting Article 14 of the Constitution of India in passing the impugned order of transfer dated 12.6.2002.

8.20. Issue No.(i) is answered accordingly.

9.1. Issue No.(ii) - whether the third respondent acted malafide?

9.2. In view of the undisputed facts, as rightly pointed by Mr.G. Masilamani, learned senior counsel for the third respondent, that the impugned order of transfer was passed only on 12.6.2002, while the petitioner was appointed as Registrar on 7.12.2000, viz., after one and half years of appointment, I am not convinced with the allegation against the third respondent with regard to the personal malafide as the petitioner was permitted to continue as Registrar for one and half years, since his appointment as a Registrar.

9.3. Issue (ii) is answered in negative.

10.1. Issue No.(iii) - to what relief the parties are entitled to?

10.2. Obviously, the tenure of the petitioner as Registrar of the second respondent/University expired on 6.12.2003 and the petitioner has already been reverted to the post of Professor and therefore, all the contentions and efforts made on behalf of the learned senior counsel for the petitioner and third respondent, as well as the learned counsel for the second and fourth respondents have now become academic. Hence, suffice it to observe that while the third respondent/ ViceChancellor proposes to exercise the power under Clause 13(2)(d) of the Statute, the same shall be done satisfying the test of reasonableness, without offending any of the conditions contemplated thereunder.

10.3. Since the petitioner has been transferred and posted as the Controller of Examinations, viz., an University Officer, there is no loss of emoluments and therefore, the question of compensation, as sought for by the petitioner, does not arise.

10.4. Issue No.(iii) is answered accordingly.

This writ petition is disposed of accordingly. No costs.

Index : Yes

Internet : Yes

sasi

To:

1. The Government of Tamilnadu
rep. by the Secretary to Government
Animal Husbandry and Fisheries Department
Chennai-9.

2. Tamilnadu Veterinary and Animal
Sciences University

rep. by its Vice Chancellor
Chennai-51.

□