DR. SMT. KUNTESH GUPTA

v.

MANAGEMENT OF HINDU KANYA MAHAVIDYALAYA, SITAPUR (U.P) & ORS.

SEPTEMBER 25, 1987

[RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

Constitution of India—Art. 226—When an authority acts wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 on the ground of existence of an alternative remedy.

Administrative Law—A quasi-judicial authority cannot review its own order unless power of review is expressly conferred on it by the statute under which it derives its jurisdiction.

U.P. State Universities Act, 1973—The Vice Chancellor in considering an order of dismissal of a principal acts as a quasi-judicial authority.

The appellant was the principal of an institution, the management of which had been entrusted to an Authorised Controller under s. 58 of the U.P. State Universities Act, 1973. Following upon certain disputes and differences with regard to the management of the institution, the appellant was suspended by the Controller but the order of suspension was stayed by the Vice Chancellor. The Controller, after holding an ex-parte inquiry, dismissed the appellant from service in exercise of the power vested in him by the University Statute 17.06 which provided the giving of an opportunity of being heard to the teacher concerned and prescribed a procedure for inquiry. The Vice Chancellor, on the ground that the charges against the appellant did not warrant her dismissal, disapproved the order of dismissal and directed reinstatement of the appellant, granting liberty to the Controller to impose a lesser punishment on her. The Controller passed an order allowing the appellant to function as the Principal but at the same time imposing various restraints and constraints on her powers and duties, which was challenged by her in a petition filed under Art. 226. The High Court quashed the said order with liberty to the Controller to impose a minor penalty on the appellant in accordance with the order of the Vice Chancellor. Three days before the High Court delivered its judgment, the Vice Chancellor had reviewed her earlier order at the instance of

A the appellant, and, on the basis of two reports of the Joint Director of Higher Education alleging that the appellant had committed grave financial irregularities, had approved the order of dismissal passed earlier by the Controller; but the Controller, who was a party to the writ petition did not bring it to the notice of the High Court. The appellant challenged the aforesaid order of the Vice Chancellor passed B in review by a petition under Art. 226 which was dismissed by the High Court on the ground of existence of an alternative remedy under s. 68 of the U.P. State Universities Act.

Allowing the appeal,

C HELD: It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 on the ground of existence of an alternative remedy. [362C-D]

D In the instant case, the Vice Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under Art. 226 and, in our opinion, the High Court was not justified in dismissing the writ petition on the ground that an E alternative remedy was available to the appellant under s. 68 of the U.P. State Universities Act. [362D-E]

2. It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice F Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice Chancellor. In the circumstances, it must be held that the Vice Chancellor acted wholly without jurisdiction in reviewing her order dated G January 24, 1987 by her order dated March 7, 1987. [361H; 362A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2468 of 1987.

From the Judgment and Order dated 13.5.1987 of the Allahabad H High Court in W.P. No. 1822 of 1987.

R.K. Jain and R.P. Gupta for the Appellant. A

S.N. Kacker, Dileep Tandon, R.B. Mehrotra, P.N. Bhatta and R.A. Gupta for the Respondents.

The Judgment of the Court was delivered by B

DUTT, J. Both the parties have made elaborate submissions at the preliminary hearing of the special leave petition filed by the appellant Dr. Smt. Kuntesh Gupta. The special leave is granted and we proceed to dispose of the appeal on merit.

The appeal is directed against the judgment of the Allahabad High Court dismissing the writ petition of the appellant on the ground C of existence of an alternative remedy under section 68 of the U.P. State Universities Act, 1973.

The appellant, Dr. Smt. Kuntesh Gupta, was appointed the Principal of Hindu Kanya Mahavidyalaya, Sitapur, U.P., on June 4, D 1984 and was confirmed in the said post on May 4, 1985. In view of existence of two unrecognised rival Committees of Management the State Government, in exercise of its power under section 58 of the U.P. State Universities Act, appointed one of the Additional District Magistrates of the District the Authorised Controller of the Institution. The Authorised Controller was entitled to exercise all the powers E of the Committee of Management.

It appears that the appellant, as the Principal of the Institution, and the Authorised Controller could not see eye to eye with each other and there were disputes and differences between them in regard to the management of the Institution. The differences between them reached F to such a degree that the Authorised Controller by his order dated January 27, 1986 suspended the appellant. The order of suspension was, however, stayed by the Vice-Chancellor of the University on January 29, 1986. After hearing the appellant and the Authorised Controller, the Vice-Chancellor maintained the stay order. Thereafter, the Authorised Controller held an *ex parte* enquiry and by his G order dated April 21, 1986 dismissed the appellant from service in exercise of the powers of the Managing Committee vested in him by Statute 17.06 of the Statutes of the University. Statute 17.06 provides for the giving of an opportunity of being heard to the teacher concerned and prescribes a procedure for enquiry which, according to the appellant, was not followed by the Authorised Controller. A copy of H

A the said order of dismissal was sent to the Director of Education and to the Vice-Chancellor for approval, as required under Statute 17.06(3).

The Vice-Chancellor after hearing the parties, by her order dated January 24, 1987 disapproved the order of dismissal of the appellant on the ground that the charges against the appellant did not B warrant her dismissal from service and directed that the appellant should be allowed to function as Principal of the College forthwith.

After the said order was passed by the Vice-Chancellor reinstating the appellant and granting liberty to the Authorised Controller to impose lesser punishment on the appellant, if deemed necessary, the Authorised Controller without passing any lesser punishment, by his C order dated January 27, 1987 allowed the appellant to function as the Principal, but put various restraints and constraints on her powers and duties as Principal and directed her to vacate the quarters in which she was residing. Feeling aggrieved, the appellant moved the High Court under Article 226 of the Constitution of India against the imposition of such restraints and constraints on her powers and duties as the Princi- D pal of the College. The High Court, after considering the facts and circumstances of the case, by its judgment dated March 10, 1987 quashed the said order dated January 27, 1987 of the Authorised Controller and directed him to allow the appellant to function as the full-fledged Principal of the Institution in accordance with law. The High Court further granted liberty to the Authorised Controller to go ahead E with the imposition of minor penalty on the appellant in accordance with law and as provided in the said order of the Vice-Chancellor.

It appears that while the matter was pending before the High Court, at the instance of the appellant, the Vice-Chancellor passed an order dated March 7, 1987, that is to say, three days before the date of F the judgment of the High Court, reviewing her earlier order disapproving the dismissal of the appellant from service. By the order dated March 7, 1987 passed on review, the Vice-Chancellor approved the order of the Authorised Controller dismissing the appellant from service on the basis of two reports of the Joint Director of Higher Education, U.P., one dated August 1, 1986 and the other dated July G 18, 1986, alleging great financial irregularities committed by the appellant. Although the said order dated March 7, 1987 was passed by the Vice-Chancellor on review three days before the delivery of the judgment by the High Court, no steps were taken by the Authorised Controller, who was a party in the writ petition, to bring to the notice of the High Court the said order of the Vice-Chancellor dated March 7, H 1987.

It is alleged by the appellant that the said order was passed by the Vice-Chancellor in collusion with the Authorised Controller with a view to rendering the writ petition of the appellant and also the judgment of the High Court infructuous. While we reject the allegation of the appellant that the said order was passed by the Vice-Chancellor in collusion with the Authorised Controller, for there is no material whatsoever in support of that allegation, we are of the view that the Authorised Controller should have brought to the notice of the High Court the order of the Vice-Chancellor passed on review.

Be that as it may, the appellant again filed a writ petition under Article 226 of the Constitution of India against the said order dated March 7, 1987 of the Vice-Chancellor passed on review. The High Court, however, took the view that the impugned order could be challenged on a reference to the Chancellor of University under section 68 of the U.P. State Universities Act, 1973 and, accordingly, dismissed the writ petition on the ground of existence of an alternative remedy. Hence this appeal.

It has been strenuously urged by Mr. Jain, learned Counsel appearing on behalf of the appellant, that the Vice-Chancellor had no power of review under the Statutes of the University or under the U.P. State Universities Act, 1973 and, as such, the Vice-Chancellor acted wholly without jurisdiction in entertaining an application for review filed by the Authorised Controller. On the other hand, it is submitted by Mr. Kacker, learned Counsel appearing on behalf of the Vice-Chancellor, that as the two reports dated August 1, 1986 and July 18, 1986 of the Joint Director of Higher Education, U.P., alleging certain grave financial irregularities, were not before the Vice-Chancellor, the Vice-Chancellor was entitled to review her order and after considering the said reports reviewed her order and approved the order of dismissal of the appellant from service. Further, it is submitted by the learned Counsel that the High Court was justified in not entertaining the writ petition of the appellant, as there was an alternative remedy under section 68 of the U.P. State Universities Act and the impugned order could be challenged before the Chancellor of the University on a reference of the question to the Chancellor under the provision of section 68.

It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of

A dismissal of the Principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated January 24, 1987 by her order dated March 7, 1987. The B said order of the Vice-Chancellor dated March 7, 1987 was a nullity.

The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. It is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under section 68 of the U.P. C State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In the instant D case, the Vice-Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under Article 226 of the Constitution and, in our opinion, the High Court was not justified in dismissing the writ petition on the ground E that an alternative remedy was available to the appellant under section 68 of the U.P. State Universities Act.

As the impugned order of the Vice-Chancellor is a nullity, it would be a useless formality to send the matter back to the High Court for disposal of the writ petition on merits. We would, accordingly, F quash the impugned order of the Vice-Chancellor dated March 7, 1987 and direct the reinstatement of the appellant forthwith to the post of Principal of the Institution. The judgment of the High Court is set aside and the appeal is allowed. There will, however, be no order as to costs.

G We, however, make it clear that the respondents will be at liberty to initiate a departmental proceeding against the appellant, if they so think fit and proper, on the basis of the allegations as made in the said reports of the Joint Director of Higher Education, U.P.

H.L.C. Appeal allowed.