DR. J. SHASHIDHARA PRASAD

v.

GOVERNOR OF KARNATAKA AND ANR.

NOVEMBER 27, 1998

[M. SRINIVASAN AND A.P. MISRA, JJ.]

Service Law:

Mysore University—Vice Chancellor—Appointment—Appellant appointed on 20.8.1997 as Vice Chancellor w.e.f. 4.9.1997—On 21.8.1997 order dated 20.8.1997 rescinded as it came to notice of Chancellor that a criminal case was pending against appellant—Order challenged on the grounds that before passing the order no opportunity of hearing was given and the order cast stigma on the appellant—Held, there was no necessity to give opportunity of hearing to appellant—Order does not cast any stigma on appellant—Administrative Law—Principles of natural justice—Opportunity of hearing.

The appellant was appointed as Vice Chancellor of the Mysore University by the order dated 20.8.1997 passed by the Governor of Karnataka who was also the Chancellor of the University, for a period of 3 years w.e.f. 4.9.1997. However, on 21.8.1997 the Chancellor noticed a news item stating that the appellant had been facing a criminal case and had been nominated as a Vice Chancellor. The Chancellor passed another order rescinding the earlier order of appointment of the appellant stating that he found it not desirable to appoint the appellant as Vice Chancellor. The appellant challenged the order in the High Court by filing a writ petition which was dismissed. The review partition was also dismissed on the ground that the acquittal of the appellant in the criminal case was subsequent to the order of the Chancellor. Aggrieved, the appellant filed the present appeal.

It was contended for the appellant that he was entitled to notice before the impugned order was passed by the Chancellor and; that the order would cast stigma against the appellant and principles of natural justice required an opportunity to be given to the appellant before the order was passed.

Dismissing the appeal, this Court

A **HELD : 1. There was no necessity for giving an opportunity to the appellant before the Chancellor passed the order dated 21.8.1997 rescinding the earlier order dated 20.8.1997. [172-D]**

Union Territory of Chandigarh **v.** *Dilbagh Singh,* **[1993] 1 SCC 154 and** *State of U.P. and Anr.* **v.** *Girish Bihari and Ors.,* **[1997] 4 SCC 362, relied** B **on.**

S. Govindaraju **v.** *Karanataka S.R.T.C. and Anr.,* **[1986] 3 SCC 273;** *Shrawan kumar Jha and Ors.* **v.** *State of Bihar and Ors.,* **[1991] Supp 1 SCC 330;** *Dr. Bool Chand* **v.** *The Chancellor, Kurukshetra University,* **[1968] 1 SCR 434 and** *D. Subba Rao* **v.** *The State of Andhra Pradesh,* **AIR (1975) SC** C **94, held inapplicable.**

Jagdish Mitter **v.** *Union of India,* **AIR (1964) SC 449, cited.**

2. The impugned order does not cast any stigma on the appellant. It D **only indicated that in view of the facts stated in the order it was not desirable on the part of the Chancellor to appoint this particular person. If in future any vacancy arises and an occasion arises for the selection panel to consider different names to the post, nothing prevents that panel from considering the name of the appellant also. [172-E-F, G]**

E **3. The order passed on August 21, 1997 rescinding the earlier order of appointment is valid. It is not disputed that the Chancellor has appointed respondent no. 2 as Vice Chancellor after cancelling the appointment of the appellant. It is also not disputed that a criminal case was pending against the appellant on the date on which the order of cancellation of his appointment was made. [174-B; 173-H; 174-A]**

F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5988-5989 of 1998.

From the Judgment and Order dated 28.8.97 and 16.1.98 of the Karnataka High Court in W.A. No. 4831/97 in C.P.No. 820 of 1997.

G

P.P. Rao and P.R. Ramasesh for the Appellant.

S. Vijay Shankar, Advocate General for Karnataka and N. Ganpathy for the Respondent No. 1.

H K.K. Venugopal, (G.V. Chandrashekhar) and P.P. Singh for the Respondent

No. 2. A

The Judgment of the Court was delivered by

1. Delay condoned. Leave granted.

2. Heard learned counsel on both sides at length. B

3. The facts which are necessary for the purpose of this judgment are as follows:

The Governor of Karnataka, who is the Chancellor of the Mysore University, selected the appellant herein, who was Professor in Physics in the C University of Mysore to be the Vice Chancellor of the said University while exercising his powers under Section 11 of the Karnataka State Universities Act, 1976. An order was passed by him on August 20, 1997 by which he appointed the appellant herein as Vice Chancellor for a period of three years with effect from September 4, 1997. But on the very next day, i.e. on August 21, 1997, he passed another order referring to a news item which appeared in D the Times of India in respect of the appellant herein stating that he had been facing a criminal case and had been named as the Vice Chancellor. The order passed by the Chancellor stated that he was not aware earlier of the pendency of the criminal case as against the appellant herein and that he found it not desirable to appoint the appellant as Vice Chancellor. Consequently, the earlier E order of appointment was rescinded by the later order.

4. Aggrieved thereby the appellant filed a writ petition in the High Court of Karnataka which was taken on file as writ Petition No. 23086 of 1997. In the writ petition It was contended by the appellant that in the criminal case he was acquitted later as the charge was found to be unsustainable and that F the order of the Chancellor rescinding the earlier order was not valid inasmuch as he had not been given any opportunity to be heard before it. The High Court dismissed the writ petition taking the view that it was for the Chancellor to decide whether the appellant could be appointed as the Vice Chancellor and even the pendency of the criminal case was sufficient for him to cancel G the order of appointment inasmuch as it had been passed immediately and much before the date on which the appointment could become effective. The appellant challenged the said order in a writ appeal. That was dismissed by a Division Bench of the High Court. The appellant brought it to this Court by way of a special leave petition. The appellant had also filed a review petition in the High Court. In the special leave petition, the appellant made H

A a submission that in the review petition, filed before the High Court, notice had been issued and therefore, he would withdraw the special leave petition, Consequently, this Court dismissed that special leave petition as withdrawn. Subsequently, the review petition, filed by the appellant, was dismissed by the High Court on the ground that the acquittal of the appellant in the criminal case was subsequent to the order of the Chancellor and on the date on which B that order was made, the proceedings in the criminal case were pending and, therefore, it was supported by proper reasons. Consequently, the review petition was dismissed. Aggrieved thereby, the appellant has preferred these appeals on special leave against both the original order in the writ appeal and the order on the review petition .

C

5. Mr. P P Rao, learned senior counsel has put forward two contentions: (1) the appellant was entitled to notice before the order was passed by the Chancellor; and (2) the order casts a stigma against the appellant and principles of natural justice required an opportunity to be given to the appellant before such an order was passed. It was contended that if such an opportunity had D been given, the appellant would have brought to the notice of the Chancellor that "in the criminal case the judgment would be pronounced within a few days and would have requested the Chancellor to wait for a few days before passing any order. So far as this factual aspect "is concerned, there is no such averment in the writ petition filed by the appellant in the High Court. However, E it is not necessary for us to go into that aspect of the case.

6. In support of his contention, Mr. Rao has cited various decisions. First in the line is the decision in *S. Govindaraju* v. *Karnataka S.R.T.C. and Anr.*, [1986] 3 SCC 273. In that case the appellant therein was selected for appointment as Conductor in the Karnataka State Road Transport Corporation. F He was not given a regular appointment but he was appointed to work as Conductor in temporary vacancy. He continued to work for a period of more than 240 days. An order was passed against him terminating his services. But the said termination order also directed that he would forfeit his chance for appointment in terms of selection and his name shall stand deleted from the G select list. In such a situation, the Bench of this Court held that the appellant therein had the right to be given an opportunity before such an order of termination was passed. The relevant passage in the judgment reads thus :

> "There is no dispute that the appellant's services were terminated on the ground of his being found unsuitable for the appointment and H as a result of which his name was deleted from the select list, and he

forfeited his chance for appointment. Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted, and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned."

7. This ruling will not have any application in the present case as it is seen that the appellant therein was working as Conductor for some time and the order of termination itself precluded his chances for appointment in future also and his name was deleted from the select list. In the background of such facts, the ruling was given. It is not necessary for us to consider whether the observation regarding a person in the select list is still good law in view of the subsequent rulings of this Court.

8. Learned Senior counsel for the appellant has invited our attention to the judgment in *Shrawan Kumar Jha & Ors.* v. *State of Bihar & Ors.*, [1991] Supp. 1 SCC 330. In that case the appellants, who were 175 in number were appointed as Assistant Teachers by the District Superintendent of Education, Dhanbad by order dated May 28, 1988. They were to join specified schools by July, 4, 1988. By order dated November 2, 1988, the Deputy Development Commissioner cancelled their appointments. The question whether they had joined duty or not was a disputed one and the Court did not go into the same. On the other hand, the Court held that the principles of natural justice demanded opportunity to be given to them before their appointments were cancelled. While allowing the appeal, the Court also directed the Secretary (Education), Government of Bihar or other persons nominated by him to give an opportunity of hearing to the appellants and give a finding as to whether, they were validly appointed as Assistant Teachers. They were also directed to determine as to whether any of the teachers had joined their respective schools and for how much duration and that in case some of them had joined their schools and worked, they should be paid their salary for such period.

A 9. This ruling does not help the appellant in the present case as it is seen that the order of cancellation came long after the date specified in the order of appointment for the appellants to join their respective posts. In the present case the order of cancellation was passed the very next day, long before the date on which the appellant was to take charge as Vice Chancellor.

B 10. As against this Mr. K.K. Venugopal learned senior counsel appearing for the second respondent, drew our attention to the judgment in *Union Territory of Chandigarh* v. *Dilbagh Singh*, [1993] 1 SCC 154. Reliance is placed on paragraphs 11 and 12 of the judgment, which read as follows :

C "11 . In *Shankarasan Dash* v. *Union of India*, a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list (select list) of candidates for such post has answered the question in the D negative by enunciating the correct legal position thus :

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely E amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona F fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions G in the *State of Haryana* v. *Subhash Chander Marwaha, Neelima Shangla (Miss)* v. *State of Haryana* or *Jitender Kumar* v. *State of Punjab.,"*

"12. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for H appointment to a civil post, does not acquire an indefeasible right to

be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected."

11. Mr. S Vijay Shankar, learned Advocate General of Karnataka appearing for respondent No.1 has placed reliance on the judgment in *State of U.P. & Anr.* v. *Girish Bihari & Ors.*, [1997] 4 SCC 362. In that case the respondent was an IPS officer and was due to retire on superannuation on 31.3.96. An order was issued by the Governor on 20.3.1996 granting an extension of service for six months from 31.3.96. But on 23.3.1996, the order of extension was cancelled. The question was, whether the respondent therein was entitled to have an opportunity of hearing before the order of cancellation was made. The Court answered the question in negative. The Court also referred to the judgment in Shrawan Kumar's case (supra) and observed thus:

"A Division Bench of this Court comprising Kuldip Singh and K. Ramaswamy, JJ. observed that the candidates should have been given an opportunity of hearing before their appointments were cancelled. The court accordingly directed the Solicitor General to ask the Secretary (Education), Government of Bihar to grant an opportunity of hearing to the candidates and to give a finding as to whether they were validly appointed as Assistant Teacher. The Court also ordered that if anyone had actually worked as a Teacher, he or she would be

A entitled to the salary for that period. It is interesting to note that this Court while directing that a hearing be given to those appointed as Assistant Teachers did not grant any relief in terms of actual appointment in pursuance to the appointment letters. Nor did the Court order for any pecuniary benefits being given to those appellants pursuant to the appointment letters. Salary, etc. were ordered to be B paid only in case any one of those candidates had actually joined and worked."

12.The Court held that till the order of extension of service could become operative no right under the order had vested in the incumbent and C it was therefore, not necessary to grant him hearing before the extension order was cancelled. The Court also pointed out that the respondent therein may or may not have accepted the offer and till the order came into force, no vested right could have arisen. Consequently, the Court held that no opportunity was required to be given to the incumbent before cancelling the said order. The principles laid down in the aforesaid two cases will certainly D apply in the present case and in our opinion, there was no necessity for giving an opportunity to the appellant before the chancellor passed the order dated 21.8.97 rescinding the earlier order dated 20.8.97.

13. Turning to the second aspect of the matter, the contention of learned counsel for the appellant is that the order casts a stigma and therefore, E the principles of natural justice should have been satisfied. We are of the opinion that there is no merit in this contention. The relevant part of the order cancelling the appointment reads thus:

"Whereas under the above circumstances, I do not find it desirable F to appoint Dr. J Shashidhara Prasad as the Vice Chancellor."

It is entirely different from saying that the appellant was an undesirable person and that he should not be appointed. But what the order meant was only that in view of the facts stated earlier in that order it was not desirable on the part of the Chancellor to appoint this particular person. It does not, G in our opinion, cast any stigma on the appellant. If in future any vacancy arises and an occasion arises for the selection panel to consider different names to the post, nothing prevents that panel from considering the name of the appellant also.

14. Learned counsel for the appellant cited the judgment in *Jagdish* H *Mitter* v. *Union of India,* AIR (1964) Supreme Court 449 in support of his

contention. It is seen that the facts of that case are entirely different and in the view which we have expressed on the facts of this case. It is not necessary to consider the said ruling. A

15. Learned counsel placed reliance on the decision in *Dr. Bool Chand* v. *the chancellor, Kurukshetra University,* [1968] 1 SCR 434 and drew our attention to certain passages in that judgment but we find that on the facts of that case, it was held that sufficient opportunity had been given to the person aggrieved and the order of termination was upheld. The ruling will not have any bearing in the present case. B

16. Learned counsel invited our attention to the Judgment in *D. Subba Rao* v. *The State of Andhra Pradesh,* AIR (1975) SC 94. The Division Bench in that case, while quashing the removal of the President of Panchayat Samithi on the ground that he was denied an opportunity to be heard, directed the concerned authority to give an opportunity to him to make his representation against the charges set out in the notice and till an order was passed, the position which was then obtained was to be maintained provisionally. The facts of the case are entirely different and will not help the appellant herein. C D

17. The next decision referred to is the judgment in *C L Kapoor* v. *Jagmohan & Ors.,* [1981] 1 SCR 746. Reliance was placed on the following passage in the judgment: E

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs." F G

The aforesaid passage itself shows that the Court will refuse to issue a writ which will be futile even after there had been failure to observe the principles of natural justice. On the facts of the present case, it is not disputed that the chancellor has appointed the second respondent as Vice chancellor H

A after cancelling the appointment of the appellant. It is also not disputed that the criminal case was pending against the appellant on the date on which the order of cancellation of the appellant was made.

18. As we have come to the conclusion that the order passed on August 21, 1997 rescinding the earlier order of appointment is valid, we do
B not find any merit in these appeals and the same are accordingly dismissed. There will be no order as to costs.

R.P. Appeals dismissed.