The Vice-Chancellor, Jammu University and Another

Vs

Shri Dushiant Kumar Rampal

Civil Appeal No. 1739 of 1973

(P.N. Bhagwati, A.C. Gupta, P.N. Shinghal JJ )

23.02.1977

JUDGMENT

BHAGWATI, J. –

1. We pronounced our order on this appeal on December 17, 1976 and we now proceed to give our reasons. We may point out that the respondent was not represented by a lawyer and he argued his case in person and though he is a lay man, not well versed in the science of law and in the art and skill of advocacy, we must admit that he argued his case with conspicuous ability.

2. Prior to September 5, 1969 there was only one University for the entire territory of the State of Jammu & Kashmir, namely, the University of Jammu & Kashmir. It was constituted under the Jammu & Kashmir University Act, 1965 (hereinafter referred to as the Act of 1965) and, as provided in Section 20, its central authorities included the Senate and the Central Council. The Central Council was the executive body of the University and it had the power inter alia to appoint teachers and to define their duties. The respondent was appointed as a lecturer in English by the Central Council on April 25, 1966 and after his period of probation was over he was confirmed as lecturer with effect from April 29, 1967. The conditions of service of the respondent, like those of other confirmed teachers, were regulated by the Statutes made by the Senate from time to time under the provisions of the Act of 1965. Statute 2 provided that every salaried teacher of the University shall have to execute a written contract with the University and the conditions of service of teachers appointed by the University shall be those embodied in the agreement of service annexed to the Statutes and every teacher shall execute such agreement before he enters upon his duties or as soon as possible thereafter. It appears that though Statute 2 required an agreement of service to be executed by a teacher, no such agreement of service was executed by the respondent on his appointment as lecturer. But it was common ground between parties that the conditions of service of the respondent were governed by the provisions set out in the form of agreement of service annexed to the Statutes. Clause (6) of this agreement - and this clause admittedly governed the respondent - stipulated that in all matters, the teacher would "abide by the Statutes and Regulations from time to time in force in the University, and in particular, by those determining his/her grade, increment, conditions of service, rules of superannuation and provident fund rules, provided that no change in the Statutes and Regulations in this regard shall be deemed to have adversely affected the teacher". The respondent was thus clearly bound by any changes which might be made in the Statutes from time to time and no change made in the Statutes was to be regarded as having adversely affected the respondent and he could not complain against it. The case of the respondent was that he satisfactorily carried on his duties as lecturer and earned his increments from year to year.

3. On September 5, 1969 the Governor of Jammu & Kashmir promulgated Ordinance No. 10 of

1969 establishing in place of the University of Jammu & Kashmir, two separate universities, namely, the University of Kashmir for the Kashmir division and the University of Jammu for the Jammu division of the State. This Ordinance was replaced by the Jammu & Kashmir Universities Act, 1969 (hereinafter referred to as the Act of 1969) which came into force on October 30, 1969. The Act of 1969 made a slight departure from the earlier Act in the constitution of the various authorities of each University. Section 20 of the Act of 1969 provided that the authorities of each University shall include the University Council and the Syndicate. The University Council was constituted supreme authority of the University while the Syndicate was entrusted with the chief executive authority. Whereas under the earlier Act, the power to appoint all teachers of the University was entrusted to the Central Council, there was bifurcation of this power between the University Council and the Syndicate under the Act of 1969. The University Council was given the power to appoint teachers of the status of a reader and above while the power to appoint teachers below the status of a reader was entrusted to the Syndicate. The Syndicate was thus the authority under the Act of 1969 vested with the power to appoint and that power would also carry with it the power to dismiss teachers below the status of a reader. Since the University of Jammu & Kashmir came to an end on the repeal of the Act of 1965 and two new universities, one of Kashmir and the other of Jammu, were established, some provision had to be made in the Act of 1969 for continuance of the Statutes and Regulations so that there might be no hiatus or break causing dislocation in the functioning of the two new universities. Section 51 of the Act of 1969, therefore, provided that all Statutes and Regulations made under the Act of 1965 and in force immediately before the commencement of the Act of 1969 shall, so far as may be consistent with the provisions of the latter Act, continue to be in force in each University and Section 48, sub-section (2) gave power to the special officer to "examine the Statues and Regulations continued under Section 51 of this Act and propose such modifications, alterations and additions therein as may be necessary to bring such Statutes and Regulations in conformity with the provisions of this Act" and provided that the modifications, alterations and additions proposed by the Special Officer shall, if approved by the Chancellor, be deemed to have been made by the competent authority under the Act of 1969 and shall continue in force until altered or superseded by the authority constituted under the Act of 1969. There was also the problem of ensuring continuance of service of the existing employees of the University of Jammu & Kashmir and their allocation between the two succeeding universities and this problem was solved by the enactment of Section 52 in the Act of 1969. That section, in so far as material, provided as follows :

> 52. Continuance of service of the existing employees and their allocation - Notwithstanding anything contained in this Act or any Statute or Regulation made thereunder or in any other law for the time being in force.
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> (1) all employees of the University of Jammu and Kashmir constituted under the Jammu and Kashmir University Act, 1965 (other than those serving on contract or on deputation in the University or those serving in the Publication Bureau of the University) who immediately before the commencement of this Act, were holding or discharging the duties of any post or office in connection with the affairs of the said University shall, subject to the provisions of sub-section (2), continue in service on the same terms and conditions as regulated their service before such commencement;
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> (2) the Chancellor may in consultation with the Pro-Chancellor by order allocate the employees of the University of Jammu & Kashmir (other than those serving on contract or deputation in the University or those serving in the Publication Bureau of the University) between the University of Kashmir and the University of Jammu

constituted under this Act in such manner as he may consider necessary and every such allocation shall be deemed to be an appointment, transfer or promotion as the case may be, to the post or office by the competent authority under this Act :

Provided that in making such allocations the conditions of service of employment of such employees shall not be varied to their disadvantage;

#(3) * * * *##

(4) all persons who immediately before the commencement of this Act were holding or discharging the duties of any post or office in connection with the affairs of the University of Jammu and Kashmir, on contract basis or by virtue of their deputation to such posts or offices from other services in the State, unless otherwise ordered by the Chancellor after consulting the Pro-Chancellor, shall cease to hold such posts or to discharge such duties after 60 days from the commencement of this Act and all such contracts with or deputations to the University of Jammu & Kashmir shall stand terminated with effect from the expiry of the said period of 60 days.

Since most of the teachers had entered into an agreement of service with the University of Jammu & Kashmir as provided in Statute 2 and the rest were also treated as having entered into such agreement of service by reason of the compulsive force of Statute 2 though in fact such agreement of service had not been executed by them, perhaps due to inadvertence, the Chancellor took the view that all of them held their posts on contract basis and hence, proceeding on the assumption that sub-section (4) of Section 52 was attracted in their case, he made an order dated December 24, 1969 directing that the appointments of the teachers set out in Schedule I, which also included the respondent, shall continue on the respective posts mentioned in that schedule on the terms and conditions embodied in Schedule II with effect from January 9, 1970. Schedule II contained the terms and conditions on which teachers mentioned in Schedule I were continued in service of the University of Jammu and Clause 9(ii) of that schedule read as follows :

The Vice-Chancellor may when he deems it necessary suspend the teacher on grounds of misconduct, insubordination, inefficiency or unsatisfactory performance of duty. When he suspends the teacher he shall report it to the University Council/Syndicate at the next meeting.

The respondent and some other teachers were of the view that the terms and conditions set out in Schedule II effected a change in their conditions of service to their prejudice and hence they made a representation to the Chancellor and other authorities of the University of Jammu. It does not appear from the record as to what happened to this representation but presumably it was rejected.

4. Now we come to the events which formed the immediate cause for the predicament of the respondent. It appears that certain complaints were received by the Vice-Chancellor against the conduct of the respondent and the Vice-Chancellor took the view that these complaints were of a serious character and needed to be enquired into and pending such enquiry, it was not desirable that the respondent should be allowed to continue to work as a lecturer. The Vice-Chancellor accordingly passed an order dated May 21, 1970 directing that the respondent be placed an under suspension with immediate effect. This order was purported to be passed by the Vice-Chancellor in exercise of the powers vested in him under Clause 9(ii) of Schedule II of the Order dated December 24, 1969

and Section 13(4) of the Act of 1969. It may be convenient at this stage, before we proceed further, to refer to Section 13(4), since considerable argument before us turned upon it. Section 13 deals with the powers and duties of the Vice-Chancellor and sub-section (4) of that section reads as follows :

> (4) The Vice-Chancellor may take action as he deems necessary in any emergency which, in his opinion, calls for immediate action. He shall in such a case and as soon as may be thereafter, report his action to the officer, authority or other body of the University concerned who or which would ordinarily have dealt with the matter.

Sub-section (6) of Section 13 is also material and it is in the following terms :

> (6) The Vice-Chancellor shall give effect to the orders of the University Council and the Syndicate of the University concerned regarding the appointment, dismissal and suspension of persons in the employment of the University and shall exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, Statutes and Regulations.

The Vice-Chancellor, immediately after passing the Order of suspension, placed it before the Syndicate at its next meeting held on June 24, 1970. The respondent had also in the meantime submitted his representation against the Order of suspension and this representation also came up before this meeting of the Syndicate. The Syndicate considered the Order of suspension made by the Vice-Chancellor as also the representation submitted by the respondent and passed a resolution rejecting the representation of the respondent, recording the action taken by the Vice-Chancellor and directing that articles of charge be framed and communicated to the respondent and he may be required to submit his explanation in writing and a committee consisting of the Vice-Chancellor and three other persons be appointed to investigate the matter and submit its finding to the Syndicate. The Registrar of the University thereafter passed an order dated June 6, 1970 declaring that, during the period of suspension, the respondent would not be entitled to get full salary but he would be paid only subsistence allowance at an amount equal to half pay and half dearness allowance in accordance with the usual practice followed by the University. It may be pointed out that with effect from May 21, 1971, that is after the expiry of a period of one year from the date of suspension, the subsistence allowance payable to the respondent was raised to 75% of the pay and dearness allowance. A chargesheet containing twelve charges was then given to the respondent and he was required to submit his explanation. The respondent gave his explanation to the charges levelled against him and while doing so, he also objected to the constitution of the Committee which was appointed to enquire into the charges. In consequence of his objection, the constitution of the committee was changed and the Vice-Chancellor was kept out of it. The enquiry by the Committee commenced on March 12, 1971 and it went on for some time, but before it could be completed, the respondent filed a writ petition in the High Court of Jammu & Kashmir challenging the validity of the Order dated December 24, 1969, the Order dated June 6, 1970 in regard to payment of subsistence allowance and also impugning the legality of the enquiry proceedings. There were various grounds taken by the respondent in the writ petition but it is not necessary to refer to them in detail having regard to the course which the appeal has taken before us. The writ petition was heard by a Single Judge of the High Court and

by a judgment dated April 28, 1972 the learned Judge dismissed the writ petition. The respondent thereupon preferred a Letters Patent appeal in the High Court. During the pendency of the appeal, the departmental enquiry which was started against the respondent was completed and the committee made a report absolving the respondent of all the charges except charges 1 and 12 of which the respondent was found guilty. The Syndicate, after considering the report of the committee, resolved to issue a notice to the respondent to show cause why "the punishment for termination of his services from the University be not imposed on him" on the ground of charges 1 and 12. Pursuant to this resolution, a show-cause notice was issued to the respondent which led to the filing of a petition by the respondent in the Letters Patent appeal for taking notice of these subsequent events. The respondent in this petition challenged the report of the committee as also the resolution of the Syndicate on various grounds which are no longer material. The University filed its reply to the petition denying the allegations made against the committee and disputing the grounds on which the validity of the enquiry was challenged on behalf of the respondent. The Letters Patent appeal thereafter came to be heard by a Division Bench of the High Court and the Division Bench, by a judgment dated December 22, 1973, took the view that the Order dated December 24, 1969 was violative of Section 52, sub-section (1) of the Act of 1969 and the Order of suspension dated May 21, 1970 was "defective for want of jurisdiction and other legal infirmities" and these two orders were accordingly quashed and set aside by the Division Bench. The Divisions Bench also held that " as a necessary corollary to our findings on the two impugned orders and also in consequence of our observations on the legal aspect of the show-cause notice issued to the appellant to terminate his service, the same also deserves to be quashed". The Division Bench accordingly allowed the appeal, set aside the judgment of the learned single Judge and issued a writ of certiorari quashing the Order dated December 24, 1969 and the Order of suspension dated May 21, 1970 as also the show-cause notice issued to the respondent and directed the reinstatement of the respondent. The University and the Vice-Chancellor thereupon preferred the present appeal with special leave obtained from this Court.

5. The appeal was heard by this Court for some time on the points which were decided against the University and the Vice-Chancellor and certain further points were also raised by the respondent in support of the order made by the Division Bench of the High Court. But it is not necessary to examine the arguments advanced on behalf of the parties on these various points, since before the hearing of the appeal could be concluded, a partial settlement was arrived at between the University and the Vice-Chancellor on the one hand and the respondent on the other. It was agreed between the parties as a result of this settlement that the University should drop the disciplinary proceedings/action against the respondent and that the respondent should be allowed to join service within fourteen days from the date of the order to be made by this Court and upon his joining, his pay should be fixed as lecturer taking in view the increments which he would have earned but for the suspension. It was also declared in the settlement that there shall be no stigma whatsoever attached to the respondent and so far as the personal allegations made by him against the University authorities were concerned, they would stand withdrawn by him. The settlement also provided that the respondent should be given benefit of continuity of service and if the validity of the Order of suspension was ultimately upheld by this Court and it was held that the respondent was not legally entitled to anything more than the subsistence allowance actually paid to him, the matter would be

left to the Chancellor to determine in his sole and absolute discretion as to whether any additional amount at all, and if so, what amount, may be paid to the respondent for the period of suspension ex gratia without any liability on the part of the University. The Chancellor was authorised to determine this matter in consultation with the Pro-Chancellor or in such other manner as he thought proper and he could do so, even without giving any opportunity to either party to make his or their submissions in the matter. Having regard to this settlement, the only two questions which remained to be resolved by this Court were, first, whether the Order of suspension was valid, and secondly, if the Order of suspension was valid, whether the respondent was entitled to anything more than the subsistence allowance actually paid to him. These two questions we shall now proceed to decide.

6. The first question is whether the Order of suspension made by the Vice-Chancellor was a valid Order or it suffered from any legal infirmities. The respondent assailed the validity of the Order of suspension on the ground that it was made in purported exercise of the power conferred under Clause 9(ii) of Schedule II of the Order dated December 24, 1969, but this Order was itself void and inoperative as it was in conflict with the provisions of Section 52, sub-section (1) of the Act of 1969. The argument of the respondent was that immediately before the commencement of the Act of 1969, he did not hold or discharge the duties of any post or office in connection with the affairs of the University on contract basis, nor was he on deputation from any other service of the State of Jammu and Kashmir and he was, therefore, not covered by Section 52, sub-section (4) under which the Order dated December 24, 1969 was purported to be made, but his case was governed by Section 52, sub-section (1) which ensured him continuity in service on the same terms and conditions as before and hence the Order dated December 24, 1969 altering his terms and conditions as set out in Schedule II was invalid. This argument would have required us to consider whether the employment of the respondent under the University of Jammu and Kashmir immediately prior to the commencement of the Act of 1969 was on contract basis, because the provision in regard to deputation being inapplicable, it is only if the employment of the respondent was on contract basis that the Order dated December 24, 1969 could be justified under Section 52, sub-section (4). But we shall, for the purpose of the present appeal, proceed on the assumption that the case of the respondent was governed by sub-section (1) and not sub-section (4) of Section 52 and the Order dated December 24, 1969 in so far as it determined any different terms and conditions for the respondent was not valid, since we find that, in the view which is being taken by us, it is not necessary to examine this question. Undoubtedly, the effect of this assumption would be to put Clause 9(ii) of Schedule II to the Order dated December 24, 1969 out of the way of the respondent and it would not be available to the University and the Vice-Chancellor in support of the Order of suspension. But even so, we think the Vice-Chancellor had power to make the Order of suspension and he was within his authority in doing so.

7. We have already pointed out that by reason of Statute 2 read with clause (6) of the Form of Agreement annexed to the Statutes made under the Act of 1965, the respondent was bound by any changes which might be made in the Statutes from time to time and no change made in the Statues was to be regarded as having adversely affected the respondent. Now, the Statutes made under the Act of 1965 continued to be applicable to the University by reason of Section 51, but Section 48, sub-section (2) provided for making of modifications, alternations and additions in the Statutes with a view to bringing them in conformity with the provisions of the Act of 1969. The Special Officer accordingly proposed certain modifications in the Statutes which were found necessary to bring the Statutes in conformity with the provisions of the Act of 1969 and these modifications were approved by the Chancellor by an Order dated December 24, 1969 and by reason of Section 48, sub-section (2) they were deemed to have been made by the competent authority under the Act of 1969. This Order dated December 24, 1969 substituted Chapter IV in the Statutes by a new Chapter and

Stature 24(ii) in the newly substituted Chapter made the same provision as Clause 9(ii) of Schedule II to the Order made under sub-section (4) of Section 52. Now, obviously, if Statute 24(ii) were a valid provision, the Vice-Chancellor would have power to suspend a teacher "on the ground of misconduct, insubordination, inefficiency or unsatisfactory performance of duty" and the Order of suspension made against the respondent would be within the authority of the Vice-Chancellor. The respondent, therefore, assailed the validity of Statute 24(ii) on the ground that it was not necessary for the purpose of bringing the Statutes in conformity with the provision of the Act of 1969 and was hence not within the terms of Section 48, sub-section (2). Turning to the language of Section 48, sub-section (2), it is clear that the power conferred on the Chancellor under that provision to approve modifications in the Statutes is a power which can be exercised only where the modifications are necessary for bringing the Statutes in conformity with the provisions of the Act of 1969 and if it is found that any modifications purported to be approved by the Chancellor are plainly unnecessary from the point of view of bringing the Statutes in conformity with the provisions of the Act of 1969, it would be outside the power of the Chancellor to approve them. The Chancellor cannot say that it is for him to decide in his subjective opinion whether the modifications proposed to be made are necessary for bringing the Statutes in conformity with the Act of 1969 and that his subjective opinion is immune from scrutiny in a court of law. Of course, if the view taken by the Chancellor is a reasonably possible view, the Court would not interfere with the Order made by him approving the modifications, but if what has been done by him is plainly and egregiously wrong, the Court would certainly interfere on the ground that the order made by the Chancellor is beyond the power conferred on him by Section 48, sub-section (2). The question which, therefore, arises for consideration is whether Statute 24(ii) could reasonably be said to be necessary for bringing the Statutes in conformity with the provisions of the Act of 1969.

8. We may first refer to Section 13, sub-section (4) of the Act of 1969 which confers power on the Vice-Chancellor to take such action as he deems necessary in any emergency which in his opinion calls for immediate action. A similar provision was also made in Section 13, sub-section (4) of the Act of 1965. But the Act of 1969 introduced a new provision in sub-section (6) of Section 13 to the effect that the Vice-Chancellor shall be responsible for the discipline of the University in accordance with the Act, Statutes and Regulations. The Vice-Chancellor was, thus, entrusted under sub-section (6) of Section 13 with the task of maintaining discipline in the University and the entrustment of this task carried with it by necessary implication power to take whatever action was necessary for the purpose of maintaining discipline, provided of course such action was in accordance with the Act of 1969 and the Statutes and Regulations. Since sub-section (6) of Section 13 was a new provision enacted in the Act of 1969, it was necessary to make Statutes for the purpose of enabling the Vice-Chancellor to effectively discharge the responsibility of maintaining the discipline of the University and for that purpose, vesting power in the Vice-Chancellor to suspend a teacher pending departmental enquiry against him. It was with this object of bringing the Statutes in conformity with sub-section (6) of Section 13 that Statute 24(ii) was added by way of modification in the Statutes by the Order dated December 24, 1969. We may concede straightaway that if there was anything in the Act of 1969 which was inconsistent with the conferment of power of interim suspension on the Vice-Chancellor, Statute 24(ii) could not be approved by the Chancellor, because no Statute can be made which is in conflict with any provision of the Act. But we do not find anything in the Act of 1969 which militates against vesting of power in the Vice-Chancellor to order interim suspension of a teacher and hence Statute 24(ii) must be held to be a Statute validly approved by the Chancellor within his authority under Section 48, sub-section (2). The view taken by the Chancellor that Statute 24(ii) was necessary for bringing the Statutes in conformity with sub-section (6) of Section 13 cannot in any event be said to be so plainly erroneous that the Courts would strike down Statute

24(ii) as invalid. Now, if Statute 24(ii) is valid, there can be no doubt that the respondent would be bound by it and in that event, the Order of suspension made by the Vice-Chancellor would be clearly within the power conferred on him by that Statute. It is true that the Order of suspension did not recite Statute 24(ii) as the source of power under which it was made, but it is now well settled, as a result of several decision of this Court, that when an authority makes an order which is otherwise within its competence, it cannot fail merely because it purports to be made under a wrong provision of law, if it can be shown to be within its powers under any other proviso : a wrong label cannot vitiate an order which is otherwise within the power of the authority to make. Vide Hukumchand Mills Ltd. v. State of Madhya Pradesh (AIR 1964 SC 1329 : (1964) 1 SCJ 561 : (1964) 52 ITR 583) and P. Balakotaiah v. Union of India (1958 SCR 1052 : AIR 1958 SC 232 : 1958 SCJ 451).

9. We may also point out that the order of suspension was, in any event, justified by the provision in Section 13, sub-section (4). The order of suspension, in fact, recited that it was made in exercise of the power conferred under Section 13, sub-section (4). Sub-section (4) of Section 13 is general in terms and provides that the Vice-Chancellor shall be entitled to take such action as he deems necessary in any emergency which in his opinion calls for immediate action. It does not talk specifically of an order of interim suspension of a teacher but the width and amplitude of the language of the provision would clearly include action by way of interim suspension of a teacher, when there is in the opinion of the Vice-Chancellor an emergency calling for immediate action. The respondent contended that the power to order interim suspension is a quasi-judicial power and it would not be comprehended within the language of sub-section (4) of Section 13. But this contention is clearly fallacious and the premise on which it is based is unsound. It is not correct to say that an order of interim suspension is a quasi-judicial order and in any event, the language of sub-section (4) of Section 13 is sufficiently wide and comprehensive to take within its scope and ambit every kind of action which may be considered necessary by the Vice-Chancellor in an emergency and there is no reason why such action should not include making of an order of interim suspension. The Vice-Chancellor, therefore, clearly had power under Section 13, sub-section (4) to make an order of interim suspension if he thought it necessary to make such an order in an emergent situation which in his opinion called for immediate action. The respondent sought to contend that at the date when the order of suspension was passed, there was no emergency which called for immediate action on the part of the Vice-Chancellor and, therefore, the foundation for taking action under Section 13, sub-section (4) was wanting and the order of suspension could not be justified under that provision. But this contention cannot be entertained by us since it has not been taken as a ground of challenge in the writ petition. Whether or not there was an emergency requiring immediate action on the part of the Vice-Chancellor is entirely a question of fact and if the respondent wanted to contest the validity of the exercise of power by the Vice-Chancellor under Section 13, sub-section (4) in making the order of suspension, he should have pleaded in the writ petition that the order of suspension was outside the power conferred under Section 13, sub-section (4) as there was no emergency. The respondent was aware from the recital contained in the order of suspension that it was made by the Vice-Chancellor in exercise of the power conferred under Section 13, sub-Section (4) and, therefore, if the respondent wanted to challenge the exercise of this power on the ground that there was no emergency justifying its exercise, he should have made an averment to that effect in the writ petition. If such averment had been made in the writ petition, the University and the Vice-Chancellor would have had an opportunity of meeting it in the affidavit in reply filed by them, but no such averment having been made in the writ petition, the University and the Vice-Chancellor were not called upon to meet it. Hence, we cannot permit the respondent to challenge the validity of the order of suspension on the ground that there was no emergency

attracting the applicability of Section 13, sub-section (4). The order of suspension made by the Vice-Chancellor was plainly and indubitably an order which the Vice-Chancellor had power to make under Section 13, sub-section (4). It may be noted that immediately after making the order of suspension the Vice-Chancellor placed it before the Syndicate at its next meeting as required by the second part of Section 13, sub-section (4) and the Syndicate approved of the action taken by the Vice-Chancellor by rejecting the representation of the respondent and recording the fact of the making of the order of suspension.

10. We may also refer to one other contention urged on behalf of the respondent and that was that by reason of Section 52, sub-section (1) the respondent was entitled to continue in service of the University on the same terms and conditions as regulated his service before the commencement of the Act of 1969 and in view of the proviso to sub-section (2) of Section 52 the conditions of service of the respondent could not be varied to his disadvantage and, therefore, neither Statute 24(ii) nor Section 13, sub-section (4) could operate to confer on the Vice-Chancellor power to make the order of suspension which he did not posses under the old terms and conditions. This contention, plausible though it may seem, is, in our opinion, not well founded. Section 52, sub-section (1) undoubtedly continued the service of a teacher on the same terms and conditions as regulated his service before the commencement of the Act of 1969 and that was subject to the provisions of sub-section (2) of Section 52, but this subjection to the provisions of sub-section (2) did not import the requirement set out in the second proviso that the conditions of service of a teacher shall not be varied to his disadvantage. The words "subject to the provisions of sub-section (2)" employed in sub-section (1) of Section 52 were intended merely to clarify that a teacher shall continue in service on the same terms and conditions but subject to any allocation which may be made by the Chancellor under sub-section (2) of Section 52. Nothing in sub-section (1) should be construed as in any way derogating from the power of the Chancellor to make an allocation of the teacher under Section 52, sub-section (2). The proviso to sub-section (2) imposed a limitation on the power of the Chancellor to make an allocation by providing that in making such allocation the conditions of service of the employee shall not be varied to his disadvantage and it could not be construed as a substantive provision adding a requirement in sub-section (1) that even though the terms and conditions of service may permit alteration to the disadvantage of an employee, such alteration shall be inhibited. We must, therefore, consider the impact of sub-section (1) of Section 52 unaffected by the proviso to sub-section (2). Now, it is obvious that even if the respondent was entitled to continue in service on the same terms and conditions as before by reason of sub-section (1) of Section 52, these very terms and conditions provided that he would be bound by any changes which might be made in the Statutes from time to time vide Schedule 2 read with clause (6) of the Form of the Agreement annexed to the Statutes made under the Act of 1965. If, therefore, any changes were made in the terms and conditions of service of the respondent by Statutes validly made under the Act of 1969, the respondent could not complain of any infraction of the provision of sub-section (1) of Section 52. Statute 24(ii) was, as already pointed out above a Statute validly made under Section 48, sub-section (2) and hence the Vice-Chancellor was entitled to make the order of suspension against the respondent in exercise of the power conferred by that Statute. Section 13, sub-section (4) of the Act of 1969 could also be availed of by the Vice-Chancellor for sustaining the order of suspension, since it conferred the same power on the Vice-Chancellor as Section 13, sub-section (4) of the Act of 1965 and exercise of the power conferred by it as against the respondent did not involve any violation of sub-section (1) of Section 52.

11. We are, therefore, of the view that the order of suspension was a valid order made by the Vice-Chancellor in exercise of the power conferred upon him under Statute 24(ii) as also Section 13, sub-section (4) of the Act of 1969. Now, if the order of suspension was a valid order it suspended the

contract between the respondent and the University and neither the respondent was bound to perform his duties under the contract nor was the University bound to pay any salary to him. The respondent was entitled to receive from the University only such subsistence allowance as might be payable under the rules and regulations governing his terms and conditions of service. The legal position in regard to the right of a master to suspend his servant is now well settled as a result of several decisions of this Court. The law on the subject was succinctly stated in the following words by Hegde, J., in V. P. Gindroniya v. State of Madhya Pradesh ([1970] 3 SCR 448 : (1970) 1 SCC 362) :

> The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such a suspension. It is now well settled that the power to suspend, in the sense of a right to forbid a employee to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some Statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute rule under which, it could be withheld. The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words, the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey.
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> It will, therefore, be seen that where there is power conferred on the employer either by an express term in the contract or by the rules governing the terms and conditions of service to suspend an employee, the Order of suspension has to be effect of temporarily suspending the relation of master and servant with the consequence that the employee is not bound to render service and the employer is not bound to pay. In such a case the employee would not be entitled to receive any payment at all from the employer unless the contract of employment or the rules governing the terms and conditions of service provide for payment of some subsistence allowance. Here, as we have held, the Vice-Chancellor had the power to suspend the respondent under Statute 24(ii) or in any event under Section 13, sub-section (4) and hence the respondent could not claim payment of his salary during the period of suspension.

> The only payment which the respondent could claim to receive from the University was subsistence allowance, if the rules governing the terms and conditions of his service made such a provision. The University stated that it had adopted as a matter of practice the rules relating to Civil Servants of the State of Jammu and Kashmir for the purpose of payment of subsistence allowance to its employees and in fact the University Council at its meeting held on February 22, 1971 formally accorded approval to this practice. The respondent was, therefore, clearly not entitled to receive from the University anything more than the subsistence allowance actually paid to him, which, we are told, was paid on the same basis as that prevailing under the rules relating to Civil Servants of the State of Jammu and Kashmir.

12. These were the reasons for which we made our order dated December 17, 1976 upholding the validity of the order of suspension dated May 21, 1970 and holding that the respondent was not entitled to anything more than the subsistence allowance paid to him during the period of suspension under the order of the Registrar dated June 6, 1970.

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