PATNA HIGH COURT

Ram Kripalu Mishra

Vs

University of Bihar

Misc. Judl. Case No. 854 of 1962

(V. Ramaswami, C.J. and N.L. Untwalia, J.)

23.04.1963

ORDER

V. Ramaswami, C.J.

1. In this case the petitioner Sri Ram Kripalu Mishra was appointed a Lecturer in the Department of Hindi in the R. K. College, Madhubani, on the 14th January, 1962, by the Governing Body of that College; after the advertisement and regular interview of the candidates. The appointment of the petitioner was made under the three-year-degree course scheme of the Bihar University. The appointment of the petitioner was subsequently approved by the Syndicate of the Bihar University at its meeting held on the 15th January, 1962, and the approval of the Syndicate was communicated to the Principal of the college. Later on the Bihar Legislature enacted Bihar Act 13 of 1962 which received the assent of the Governor on the 20th April, 1962, and published in the Bihar Gazette on the 21st April, 1962. Section 4 of this Act reads as follows :

> "Notwithstanding anything contained in the said Act or the Magadh University Act, 1961 Bihar Act 4 of 1962) or the statutes made thereunder, or the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Ordinance, 1962 (Bihar Ordinance No. 1 of 1962) every appointment, dismissal, removal, termination of service or reduction in rank of any teacher of a college, not belonging to the State Government, affiliated to the University established under the said Act of the Magadh University Act, 1961 (Bihar Act 4 of 1962), made on or after the twenty-seventh day of November, 1961 and before the first day of March, 1962, shall be subject to such order as the Chancellor of the University may, on the recommendation of the University Service Commission established under Section 48A of the said Act pass with respect thereto."

(Acting under the provisions of that Section the Chancellor of the University made an order OB the 20th June, 1962, to the effect that the services-of the petitioner along with those of five other

teachers were approved only up to the end of the 31st August, 1962. The order of the Chancellor is annexure-D to the writ application and reads as follows :

"From
Shri Lt. Col. C.S. Bhatnagar,
Secretary to the Governor, Bihar.
To
The Vice Chancellor,
University of Bihar,
Muzartarpur.
Sub :- Appointment of teachers in R.K College, Madhubani.
Sir,

I am directed to say that on the recommendation of the University Service Commission Communicated in their letter No. 306/USC dated the 31st May, 1962, the Chancellor has been pleased to approve the appointment of the following teachers in the 'department noted against their names in R.K. College, Madhubani, under Section 4 of the Bihar State Universities (Amendment) Act, 1962.

	Names of teachers.		**Departments.**
1	Shri Raj Narayan Nayak	-	History.
2	Shri Sukhdeo Rout.	-	Botany.
3	Shri Sushil Kumar Jha	-	Psychology.
4	Shri Karunandand Das	-	Geography.
5	Shri Nagendra Nath Jha	-	Maithili.
6	Shri Bharat Purbey.	-	Chemistry.

He has further been pleased to approve, on the recommendation of the Commission, that the following teachers of the College may continue temporarily in their posts till the appointment of fresh candidates to these posts are made on the recommendation of the University Service Commission or till the 31st August, 1962, whichever is earlier.

	Names		**Departments.**
1	Shri Shankar	-	Commerce.

	Prasad Mahaseth		
2	Shri Sudhir Chandra Pandey	-	Commerce.
3	Shri Brahmadeo Narayan Mahto	-	Commerce.
4	Shri Rani Kripalu Mishra	-	Hindi.
5	Shri Mahadeo Prasad	-	Economics.
6	Shri Jagdish Narayan Rout	-	Philosophy.

Yours faithfully,
Sd. C.S. Bhatnagar,
Secretary to the Governor, Bihar Memo No. USC (BU) 5/62 - 2912-GS(1)
Ranchi, the 30th Jyaistha, 1884 (S)
20th June, 1962.

Copy forwarded to the Secretary, University Service Commission, for information with reference to his letter No. 306/USC dated the 31st May, 1962.

2. The Secretary, R. K. College, Madhubani (Darbhanga) for information and necessary action.
Sd. C.S. Bhatnagar,
Secretary to the Governor, Bihar."

2. The petitioner has now obtained a rule from the High Court calling upon the respondents to show cause why the order of the Chancellor of the Bihar University, dated the 20th June, 1962 should not be quashed by the High Court by a writ in the nature of certiorari under Article 226 of the Constitution.

3. Cause has been shown by the Advocate General and other Counsel on behalf of the respondents to whom notice of the rule was ordered to be given.

4. On behalf of the petitioner learned Counsel put forward the argument that Section 4 of Bihar Act 13 of 1962 is ultra vires and illegal since it violates the guarantee under Article 14 of the Constitution. It was contended that the power conferred upon the Chancellor under Section 4 of the statute was an arbitrary and uncontrolled power and no principle or standard has been laid down in the statute for guiding the Chancellor in the exercise of this power. It was, therefore, submitted that the provision of Section 4 of Bihar Act 13 of 1962 was unconstitutional as there

was violation of the guarantee under Article 14 of the Constitution. Reference was also made on behalf of the petitioner to Section 48A introduced into Bihar Act 14 of 1960 by the Amending Act, namely, Bihar Act 2 of 1962. This Section reads as follows :-

> "48A. (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the University, Service Commission.
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> (2) The said Commission shall be a body corporate having perpetual succession and as common seal, and shall by the said name sue and be sued.
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> X x x x x
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> (6) Subject to the approval of the University, appointments, dismissals, removals, terminations of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the college on the recommendation of the Commission.
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> (7) (i) In making recommendations for appointment, to every post of teacher of any such affiliated college, the Commission shall have the assistance of two experts in the subject for which an appointment is to be made, of whom one shall whenever possible be a teacher of the University to be nominated by the Syndicate and the other shall be a person, other than a teacher of the University, to be nominated by the Academic Council.
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> (ii) The experts shall be associated with the Commission as assessors whose duty it shall be t0 give expert advice to the Commission but who shall have no right to vote.
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> (8) The commission shall, wherever feasible, recommend to the governing body of a college for appointment to every post of teacher of the college names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefor.
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> (9) In making appointment to a post of teacher of a college, the governing body of the college shall, within three months from the date of the receipt of the recommendation under Sub-Section (8) make its selection out of the names recommended by the Commission, and in no case shall the governing body appoint a person who is not recommended by the Commission.

(10) Notwithstanding anything contained in the preceding Sub-Sections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the College;

> Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of which the appointment shall be deemed to have been terminated at the end of six months.
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> (11) The Commission shall be consulted by the governing body of a college in all disciplinary masters affecting a teacher of the college and no memorials or petitions

relating to such matters shall be disposed of nor shall any action be taken against, or any punishment imposed on, a teacher of the college otherwise than in conformity with the finding of the Commission :

Provided that it shall not be necessary to consult the Commission where only an order of censure, or an order withholding increment, including stoppage at an efficiency bar, or an order of suspension pending investigation of charges Js passed against a teacher of a college.

(12) It shall be the duty of the Commission to present annually to the University a report us to the work done by the Commission in relation to such colleges affiliated to the University and a copy of the report shall be placed before the Senate at its next meeting, and the University shall further prepare and submit to the State Government a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance, and the State Government shall cause the same to be laid before the Legislature of the State."

The argument was stressed on behalf of the petitioner that even Section 48A of Bihar Act 14 of i960 does not lay down any principle as to how the University Commission is to exercise its power of scrutiny over the appointments made by the Governing Bodies of the various colleges between the 27th November, 1961, and the 1st March, 1962, which are the dates mentioned in Section 4 of Bihar Act 13 of 1962. In our opinion there is great force in the argument addressed on behalf of the petitioner with regard to the constitutional validity of Section 4 of Bihar Act 13 of 1962, but we do not propose to express a concluded opinion in this case on this point. Even on the assumption that Section 4 of the Amending Act is intra vires, we are of opinion that this writ application should be allowed and the order of the Chancellor dated the 20th June, 1962, which is annexure-D to this writ application, must be quashed on the ground that it is ultra vires and illegal as it violates the principle of natural justice.

5. On behalf of the petitioner the argument was stressed that no notice was given to the petitioner either by the Chancellor or by the University Service Commission before the order was passed terminating his services. The petitioner has made this allegation in paragraphs 12, 16, 17 and 18 of the affidavit. This position is admitted on behalf of the respondents and the learned Advocate General conceded that no notice was given to the petitioner either by the University Service Commission or by the Chancellor before the impugned order was made. It is true that Section 4 of Bihar Act 13 of 1962 does not expressly say that notice must be given to the teacher who is to be affected prejudicially by the order of the Chancellor, but it is well established as a matter of law that in a case of this description a notice is necessary to be given by the authority to a person who is prejudicially affected by the order which is to be ultimately made. As a matter of necessary legal implication the Chancellor is bound to act in accordance with natural justice before exercise of the statutory power conferred by Section 4 of the statute. The principle is enunciated by Lord Selborne in *Spackman v. Plumstead Dist. Board of Works*[1],

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of this statute if there were anything of that sort done contrary to the essence of justice. But it appears to me to be perfectly consistent with reason, that the statute may have intentionally omitted to provide for form, because this is a matter not of a kind requiring form, not of a kind requiring litigation at all, but requiring only that the parties should have an opportunity of submitting to the person by whose decision they are to be bound such considerations as in their judgment ought to be brought before him."

6. In *Board of Education v. Rice*[2], the question at issue was whether the Board of Education had properly exercised their statutory duty to decide on appeal a question between parties. At page 182 Lord Loreburn makes the following statement of principle :

> "In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial.... They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

7. A similar view has been expressed by the Court of *Common Pleas in Cooper v. Wandsworth Board of Works*[3], Under an Act of 1855 it was provided that no one might put up a building in London without giving seven days' notice to the local Board of Works. If any one did so, it was provided that the Board of Works might have the building demolished. A builder, nevertheless, began to build a house in Wandsworth without having given the requisite notice, and when his building had reached the second storey the Board of Works sent men late in the evening who demolished it. The Board did exactly what the Act said they might do in exactly the circumstance in which the Act said they might do it. Nevertheless, the builder brought a successful action for damages for the injury to his building, and won it merely on the ground that the Board had no power to act without first asking him what he had to say for himself. At page 187 of the report Erie, C.J. stated as follows :

> "The contention on the part of the plaintiff has been that, although the words of the statute, taken in their literal sense, without any qualification at all, would create a

justification for the act which the district board has done, the powers granted by that statute are subject to a qualification which has been repeatedly recognised, that no man is to be deprived of his property without his having an opportunity of being heard. The evidence here shows that the plaintiff and the district board had not been quite on amicable terms. Be that as it may, the district board say that no notice was given and that consequently they had a right to proceed to demolish the house without delay, and without notice to the party whose house was to be pulled down, and without giving him an opportunity of showing any reason, why the board should delay. I think
that the power which is granted by the 76th Section is subject to the qualification suggested..... I fully agree that the legislature intended to give the district board any large powers indeed; but the qualification I speak of is one which has been recognised to the full extent. It has been said that the principle that no man shall be deprived of his property without an opportunity of being heard, is limited to a judicial proceeding, and that a district board ordering a house to be pulled down cannot be said to be doing a judicial act. I do not quite agree with that; neither do I undertake to rest my judgment solely upon the ground that the district board is a Court exercising judicial .discretion upon the point; but the law, I think, has been applied, to many exercises of power which in common understanding would not be at all more a judicial proceeding than would be the act of the district board in ordering a house to be palled down. The case of the corporation of the University of Cambridge, who turned out Dr. Bentely, in the exercise of their assumed power of depriving a member of the University of his rights, and a number of other cases which are collected in *In re Hammersmith Rent-Charge case*[4], in the judgment of Parke, B., show that the principle has been very widely applied."

In the course of his judgment Willes, J. said as follows :

"I am of the same opinion, I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds and that rule is of universal application, and founded on the plainest principles of justice. Now, is the Board in the present case such a tribunal ? apprehend it clearly is....."

Byles, J. also said in the same case :

"It seems to me that the board are wrong whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions, beginning with Dr. Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

There is a similar statement of principle in *Smith v. The Queen*[5], In that case the Judicial Committee decided an appeal from Queensland concerning the cancellation of a lease from the Commissioner of Crown Lands. The Governor's statutory power was that

> "if..... it shall be proved to the satisfaction of the Commissioner that the lessee has abandoned (the land), it shall be lawful for the Governor to declare the lease absolutely forfeited and vacated". The Commissioner having certified his satisfaction as to the abandonment, the Governor made an order for forfeiture.
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> The Judicial Committee, however, set aside the order of the Governor. On the facts they were inclined to hold that the Commissioner's certificate was inconclusive. "But" said their Lordships "they decide the case upon broader grounds. It appears to them that the defendant has not been heard in the sense in which 'a hearing' has been used in the cases which have been quoted, in many others, and in the sense required by the elementary principles of natural justice. The Commissioner doubtless acted with perfect good faith, but apparently without being aware that he was performing a judicial function, or even a function of a judicial nature."

8. Applying this principle to the present case it is manifest that the order of the Chancellor dated the 20th June, 1962, which is annexure-D to the writ application, is ultra vires, so far as the petitioner is concerned, and must be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. It is also manifest that the order of the Secretary of the Governing Body, dated the 17th August, 1962, which is annexure-E to the Writ application and is consequential to the order of the Chancellor, is ultra vires and illegal, so far as the petitioner is concerned, and must also be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. We accordingly allow this application, but there will be no order as to costs.
Application allowed.

Cases Referred.

[1](1885) 10 AC 229 at p. 240
[2](1911) AC 179
[3](1863) 14 CB (NS) 180
[4](1849) 4 Ex. 37 at p. 96
[5](1878) 3 AC 614 (624)