

MISCELLANEOUS CIVIL

*Before A. S. Bains, J.*JANTA VIDYA MANDIR GANPAT RAI RASIWASIA COLLEGE,
CHARKHI,—*Petitioner**versus*KURUKSHETRA UNIVERSITY THROUGH ITS REGISTRAR,
AND OTHERS.—*Respondents.*

Amended Civil Writ No. 5723 of 1974.

February 11, 1975.

The Kurukshetra University Act (XII of 1956)—Sections 4(1), 11, 13(c), 14 and 16(2)—Statutes 10(e), 19 and 22—University—Whether has the power to adopt regulations of another University—Regulation dealing with conditions of service of teachers—Whether can be adopted by the Karya-Samiti (Executive Council).

Held, that in the Kurukshetra University Act, 1956 and the Statutes framed thereunder, there is no prohibition anywhere to the effect that the regulations of any other University cannot be adopted by the University or by any of its authorities. The scheme of the Act shows that the University and its 'Samsad' (Court) and the 'Karya-Samiti' (Executive Council) have ample powers to frame, add, alter or to repeal any of the ordinances and statutes within their respective spheres. If the University authorities can alter, repeal, add or modify any ordinance or statute, then they have the inherent power to adopt the regulations of another University as the power to frame includes the power to adopt.

(Para 10)

Held, that from a bare reading of the provisions of the Act and the Statutes it is evident that although under section 13(c) of the Act, a regulation dealing with the conditions of service of teachers is to form part of a Statute, but under Statute 10(e) itself, the 'Karya-Samiti' (Executive Council) has been given the power to deal with such matters. Statute 22 makes it clear that teachers of the University include both the appointed teachers of the University and teachers of recognised affiliated Colleges and the 'Karya-Samiti' (Executive Council) has the power and jurisdiction to frame ordinances. The only harmonious construction which can be given to the various provisions of the Act and the Statutes read together is that an Ordinance can deal with the conditions of service of the teachers and the same can be framed or adopted by the 'Karya-Samiti' (Executive Council). Thus a regulation dealing with the conditions of service of teachers can be adopted by the 'Karya-Samiti' (Executive Council).

(Paras 12 and 13).

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Amended Petition under Articles 226 and 227 of the Constitution of India, praying that a Writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the impugned Annexures P. 2 and P. 3, dated April 17, 1974 and September 3, 1974 and directing respondents Nos. 1 and 2 not to proceed with the arbitration proceedings and further praying that filing of the certified copies of the documents marked as Annexures P. 1 to P. 7 to this writ petition be dispensed with and also praying that service of Notice on the respondents be also dispensed with on such terms and conditions which this Hon'ble Court deem fit and proper in the circumstances of the case and further praying that arbitration proceedings be also ordered to be stayed pending decision of the writ petition.

G. C. Mittal, Advocate, for the petitioner.

J. L. Gupta, Advocate (A.K. Arora, Advocate, with him), for respondent No. 1.

O. P. Goyal, Advocate, for respondent No. 3.

JUDGMENT

BAINS, J.—(1) The petitioner, Janta Vidya Mandir Ganpat Rai Rasiwasia College, a registered institution through the President of its Managing Committee, has filed the present petition under Articles 226 and 227 of the Constitution of India against the Kurukshetra University through its Registrar, Vice-Chancellor of the Kurukshetra University and Lajpat Rai Singhal. The admitted facts of the petition are as under:—

(2) Shri Lajpat Rai Singhal, respondent No. 3, was appointed as Senior Lecturer in Physics by the petitioner and his services were terminated on 18th April, 1974. The reason given in the termination order was that since B.Sc. (Medical and non-Medical) classes were closed with effect from the Session 1974-75, his post was rendered surplus. Respondent No. 3 filed an appeal under Regulation 12.2 of Chapter VIII-E of the Punjab University Calendar, 1973, Volume I, to the Panjab University against his termination order. The Panjab University directed the petitioner not to terminate the services of respondent No. 3 and sent a letter to this effect to the Management, but the petitioner did not agree to the same. In the meanwhile, all the colleges affiliated to the Panjab University situate in the territory of Haryana State were transferred to the Kurukshetra University by a notification of Haryana

Government with effect from 30th June, 1974. The Panjab University consequently informed the same to respondent No. 3 on 2nd July, 1974, that on account of the peculiar situation arising out of the notification, it is not possible to appoint Arbitration Committee as it has no longer jurisdiction over the petitioner's college and thus the appeal of respondent No. 3 was sent by the Panjab University to the Kurukshetra University for appropriate action in the matter. On 25th July, 1974, respondent No. 3 represented to the Kurukshetra University that his case be looked into and decided. The Kurukshetra University sent a letter addressed to the Principal of the petitioner's college enclosing therewith a copy of the representation made by respondent No. 3 asking the petitioner to give comments within seven days. The petitioner sent the comments on 20th August, 1974, that since the appeal was not filed within the time prescribed by Regulation 12.2 of Panjab University Calendar, Volume-I, Chapter VIII-E, the order of termination of his service has become absolute and cannot be looked into; that Karya-Samiti (Executive Council) formed under the Kurukshetra University Act, 1956 (hereinafter briefly referred to as 'the Act') adopted the recommendations of the Vice-Chancellor of their University on 17th April, 1974, as under:—

“Considered the recommendations of the Vice-Chancellor that Panjab University Rules on the following subjects, till these are modified by the Executive Council, be adopted for the teachers/Principals in Non-Government Colleges in the State of Haryana recognised by the Kurukshetra University with the modification that for the word 'syndicate' wherever occurring, the word Executive Council shall be substituted:—

- (1) Service and conduct of teachers.
- (2) Leave.
- (3) Provident Fund.
- (4) Qualification for appointment as Teacher/Principals.

“RESOLVED THAT THE RECOMMENDATION MADE BY THE VICE-CHANCELLOR BE APPROVED.”

The Karya Samiti (Executive Council) of the Kurukshetra University on 2nd September, 1974, amended the aforesaid regulation to the effect that the period for filing the appeals will be up to 30th September, 1974, irrespective of the fact whether the appeal has or has

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not been preferred. The amended regulation of the University is reproduced as under :—

“12.2. The period for filing an appeal to the University shall be 30 days from the date the order of termination of service is served on the teacher.

Provided that in view of the transfer of control of the affiliated colleges from the Panjab University to this University, such appeals shall be entertained up to and including the day of 30th September, 1974, this year only, as a very special case, irrespective of the fact whether or not such an appeal had been preferred previously to the Panjab University.

(3) In the mean time, the Kurukshetra University appointed the Arbitration Committee and also informed the petitioner to appoint their nominee but the petitioner did not appoint any of the nominee to the Arbitration Committee. The Arbitration Committee, after giving full opportunity to respondent No. 3 and also to the University, announced its award on 19th November, 1974. The petitioner did not participate in the proceedings before the Arbitration Committee in spite of the notice. It is against the adoption of the regulations of the Panjab University pertaining to the service conditions of the teachers in the affiliated colleges and its subsequent amendment, that this petition has been filed.

(4) The learned counsel for the petitioner has raised following four contentions:—

- (i) That the University has no power to adopt the regulation of the Panjab University although the University has the authority to frame the new regulations.
- (ii) That if for any reason this Court holds that the University has the authority to adopt any regulation of the Panjab University, Karaya Samitis (Executive Council) had no jurisdiction to adopt the same as such a regulation could be adopted only by the 'Samsad' (Court) with the approval of the Vice-Chancellor, as required under section 14(5) of the Act, 1956.
- (iii) That the University had no authority to give the adopted ordinance or statute the retrospective effect. The impugned amendment of the regulation gives it the retrospective effect and this cannot be done.

(iv) Assuming that the order of the termination is wrong, the relief claimed by the respondent cannot be granted.

(5) I have carefully gone into the record produced by the University and also heard the counsel for the petitioner and the respondents at length.

(6) In support of his first contention, the learned counsel states that the respondents had no authority in law to adopt the regulation of the Panjab University. He further says that since there is no specific provision in the Act for adopting the regulation of any other University, this cannot be adopted. To support his argument he has made reference to sections 87, 88 and 89 of the Punjab Reorganisation Act and has relied upon a Full Bench authority of this Court in *Dr. Harkishan Singh v. Union of India and others* (1).

(7) I find no merit in this argument of the learned counsel for the petitioner. The facts of the present case are not similar to the facts of the Full Bench case. The pertinent observations in the Full Bench case are reproduced below:—

“The meaning of the term ‘in force’ is in actual operation’, that is, action can be taken under the Act in accordance with its provisions. Since the Act was not in force in the territories now comprised in the Union Territory of Chandigarh, or any part thereof, no action under any provision of the Act could be taken in Chandigarh on October 31, 1966. If the Act was not in force in the whole or any part of the territories now comprised in the Union Territory of Chandigarh, as I have held above, the references to territory in the Act cannot read as references to Union Territory of Chandigarh after the reorganisation, because under section 88, two conditions are necessary, that is, the Act extended or applied to those territories and was in force in those territories. Even if it be accepted that the Act extended or applied to the territories now comprised in the Union Territory of Chandigarh because these territories formed part of the ‘existing State of Punjab’, the Act was not in force in these territories as no notification under sections 2(j) declaring these territories to the urban

(1) CW 266/74 decided on 9th October, 1974.

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area was ever issued. For this reason, under section 88 of the Reorganisation Act, the term 'Union Territory of Chandigarh' cannot be read in place of 'Punjab' in section 2(1) of the Act."

(8) Their Lordships mainly interpreted the provisions of the Punjab Reorganisation Act in a rent case and the conclusions arrived at by the Full Bench are not applicable to the facts of the present case as East Punjab Urban Rent Restriction Act was not enforced in Chandigarh on 1st November, 1965. In the case in hand, in consequence of the notification of the Haryana Government, the colleges situate in the State of Haryana were transferred from the jurisdiction of the Punjab University and were affiliated to the Kurukshetra University from 1st July, 1974. Kurukshetra University was created by a statute passed by the Punjab State in the year 1956. Only its jurisdiction was increased by the notification of Haryana Government. Moreover, under section 16(2) of the Act, 'Karya Samiti' (Executive Council) has the power to amend, repeal or add any ordinance at any time. Section 16(2) of the Act reads as follows:—

"16(2) The Ordinances may be amended, repealed or added to, any time by the 'Karya Samiti' (Executive Council):

"Provided that—

(a) no Ordinance shall be made—

- (i) affecting the admission or enrolment of students or prescribing of examinations to be recognised as equivalent to the University Examination; or
- (ii) affecting the conditions, mode of appointment or duties of Examiners or the conduct or standard of examinations or any courses of study; unless the draft of such an Ordinance has been proposed by the 'Shiksha-Samiti— (Academic Council).

(b) The 'Karya-Samiti' (Executive Council) shall not have power to amend any draft, proposed by the 'Shiksha-Samiti' (Academic Council) under sub-section (2), but may return it to the 'Shiksha-Samiti' (Academic

Council) for re-consideration, either in whole or in part, together with any amendments, which the 'Karya-Samiti (Executive Council) may suggest or reject it, after it has been submitted for the second time. Where the 'Karya-Samiti' (Executive Council) has rejected an Ordinance proposed by the 'Shiksha-Samiti' (Academic Council), it may appeal to the 'Samsad' (Court) which, after obtaining the views of the 'Karya-Samiti' (Executive Council), may, if it approves of the Ordinance, make the Ordinance and submit it to the Chancellor for approval.

- (c) All 'Shasana' (Ordinances), made by the 'Karya-Samiti' (Executive Council), shall have effect from such date as it may direct, but every ordinance, so made shall be submitted, as soon as may be, to the 'Samsad' (Court) and shall be considered by the 'Samsad' (Court) at its next succeeding meeting. The 'Samsad' (Court) shall have power, by a resolution, passed by a majority of not less than two-thirds of the members present at such meeting, to modify or cancel any such Ordinance and such Ordinance shall, from the date of such resolution, stand modified or cancelled, as the case may be."

(9) From the bare reading of the section, it is evident that the 'Karya-Samiti' (Executive Council) of the University can amend, alter or add any ordinance at any time. Similarly, under section 14 (2) of the Act, 'Samsad' (Court) of the University can, from time to time, make new or additional statutes or may amend or repeal the statutes in the manner hereafter provided in this section. Under section 4(1) of the Act, the University has the power to frame statutes, ordinances or regulations and alter modify or rescind the same for all or any of the aforesaid purposes. Section 4(1) of the Act is reproduced below:—

"4. The University shall exercise the following powers and perform the following duties, namely:—

* ** * * * * *

- (1) to frame Statutes, Ordinances or Regulations and alter, modify or rescind the same for all or any of the aforesaid purposes."

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(10) I have gone through the whole Act and the Statutes where-
in there is no prohibition anywhere to the effect that the Regulation
of any other University cannot be adopted or copied by the Univer-
sity or any of its authorities. The scheme and the reading of these
sections show that the University and its 'Samsad' (Court) and the
'Karya-Samiti' (Executive Council) have ample powers to frame,
add, alter or to repeal any of the Ordinances, statutes within their
respective spheres. If the University authorities can alter, repeal or
add or modify any ordinance or statute, then it has the inherent
power to adopt the regulation of any other University. In the cir-
cumstances of the case, it seems reasonable that adoption of the regu-
lations of the Panjab University is in the interest of continuity of
the law pertaining to the affiliated colleges as these were previously
under the Panjab University and now on the issuance of the notifi-
cation, these stood transferred to the Kurukshetra University and if
entirely new regulations are framed then it may lead to hardship
and may create complications and academic chaos. Hence I hold
that the University had the authority and the power to adopt the
impugned resolution as the power to frame includes the power to
adopt.

(11) The next contention of the learned counsel is that in the
present case it is the 'Karya-Samiti' (Executive Council) which had
adopted the impugned regulation whereas such a regulation could be
adopted by the 'Samsad' (Court). His main contention is that since
the regulation deals with the conditions of service of the teachers of
the University, this matter can be included only in a statute and
not in an ordinance. He has placed his reliance on sections 13(c) and
14 of the Act. I find no merit in this contention also. Section 13(c)
of the Act is in the following terms:—

"13. Subject to the provisions of this Act, the 'Vidhi' (Statutes)
may provide for all or any of the following matters,
namely:—

* * * * *

(c) the conditions of service, constitution of pension or provi-
dent fund and insurance schemes for the benefit of the
officers, the teachers, and other employees of the Uni-
versity;"

It is also pertinent to refer to section 11 which is in the following terms:—

“11. The ‘Karya-Samiti’ (Executive Council) shall be the executive body of the University, and its constitution and powers, as also the terms of office of its members, shall be prescribed by the Statutes.”

Statute 10(e) is as follows:—

“10. The ‘Karya-Samiti’ (Executive Council)—

* * * * *

(e) shall appoint officers and teachers of the University and shall define their duties and the conditions of their service and shall provide for the filling of temporary vacancies in these posts;”

(12) From the bare reading of these sections, it is evident that although under section 13(c), such a matter is to form a part of a statute but under statute 10(e) itself the ‘Karya-Samiti’ (Executive Council) has been given the power to deal with such matters. Hence, the argument of the learned counsel has no merit and the ‘Karya-Samiti’ (Executive Council) is fully competent to frame an ordinance dealing with the service conditions of the teachers. The learned counsel states that the statute 10(e) only deals with the specific appointment of the teachers of the University and does not deal with the teachers of the affiliated colleges. This argument of the learned counsel is fallacious. Statute 22 defines the teachers and is in the following terms:—

“22. (1) Teachers of the University shall be of two classes, namely:—

- (i) Appointed teachers of the University.
- (ii) Recognised teachers of the University.

2. ‘Appointed teachers of the University’ shall be either—

(a) servants of the University paid by the University and appointed by the ‘Karya-Samiti’ (Executive Council)

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as Professors, Readers or Lecturers or otherwise as teachers of the University; or

(b) persons appointed by the 'Karya-Samiti', (Executive Council) as Honorary Professors, Readers, or Lecturers or otherwise as teachers of the University.

(3) 'Recognised teachers of the University' shall be—

(a) members of the staff of a Recognised College of the University; or

(b) members of the staff of a recognised institution which provides graduate and postgraduate courses of study approved by the University:

Provided that no such member of the staff of a recognised college or institution shall be deemed to be a recognised teacher unless—

(a) he is recognised by the 'Karya-Samiti' (Executive Council) as a Professor, Reader or in any other capacity as a teacher of the University; and

(b) his teaching, in his own college or institution, relating to graduate and post-graduate courses, is approved by the University."

(13) From the reading of Statute 22 it is clear that teachers of the University include both the appointed teachers of the University and the recognised teachers of the University and under Statute 10, the 'Karya-Samiti' (Executive Council) has the power and jurisdiction to frame ordinances. It is further clear by Statute 19, which specifically deals with the appointments to teaching posts of the University Campus. The main argument of the learned counsel for the petitioner is that since such a matter could only be included in a statute and the statute cannot be framed by the 'Karya-Samiti' (Executive Council), therefore, the impugned amended ordinance is illegal and the statutes could only be framed by the 'Samsad' (Court) and not by the 'Karya-Samiti'. As discussed earlier, the intention of the Act and the Statutes referred to above is quite clear,

By reading together, the only harmonious construction, which can be given to these various provisions, is that the ordinance can deal with the conditions of service of the teachers and the same can be framed or adopted by the 'Karya-Sami' (Executive Council).

(14) The third contention raised by the learned counsel for the petitioner is that the impugned amendment made by the 'Karya-Samiti' (Executive Council) gives the retrospective effect to the ordinance which cannot be given lawfully by the 'Karya-Samiti' (Executive Council). In this contention also, there is no merit because the amendment does not give any retrospective effect. This amendment is made only to do justice with the teachers of the affiliated colleges, who were previously under the jurisdiction of the Panjab University and later on by the operation of the Haryana Government Notification came under the jurisdiction of the Kurukshetra University. To my mind, it is a most equitable and just amendment and it was only made in order to give relief to the aggrieved teachers and it in no way prejudices the petitioner or any other affiliated college. I do not know as to why the petitioner is afraid of the arbitration proceedings initiated by the University. As earlier seen, even the Panjab University had directed the petitioner to reinstate respondent No. 3 and other retrenched personnel. That being so, the petitioner's college and the management cannot be allowed to take shelter under hyper-technical objections and thereby the poor teachers cannot be thrown at their mercy. Section 16 (2) (c) of the Act can also be read with advantage in this regard. Under this provision, it is clearly mentioned that all 'Shasana' (Ordinances), made by the 'Karya-Samiti' (Executive Council), shall have effect from such date as it may direct, but every Ordinance, so made, shall be submitted, as soon as may be, to the 'Samsad' (Court) and shall be considered by the 'Samsad' (Court) at its next succeeding meeting. In the present case, the ordinance was approved by the 'Samsad' (Court) unanimously and the 'Karya-Samiti' (Executive Council) has the power to give any date for giving effect to the ordinance and, in the case in hand, the amendment only included that the last date for filing appeal under Regulation 12.2 shall be 30th September, 1974. Hence I find no merit in this contention also.

(15) The fourth contention is not very seriously urged by the learned counsel for the petitioner as the award is not challenged in the present petition. Thus it is not necessary to adjudicate upon

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this question. No other point is urged by the learned counsel. It is well settled law that extraordinary jurisdiction of this Court under Article 226 of the Constitution can only be invoked where there is grave or manifest injustice done to the petitioner. In the present case, no grave or manifest injustice or even injustice or prejudice is shown to have been done by the adoption of Panjab University regulations or by its amendment. On the other hand, if the regulation in question had not been adopted and amended, it would have led to grave injustice to the hundreds of teachers in the recognised colleges of Kurukshetra University. Teachers cannot be allowed to be thrown at the arbitrary mercy of the private managements. Such safeguards as the impugned regulations were achieved by the teaching community after a long struggle of several years.

(16) For the foregoing reasons, I find no merit in the writ petition and the same is dismissed with costs. Counsel fee Rs. 500.

N.K.S.

Before Bal Raj Tuli and S. S. Sandhwalia, JJ.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE,
AMRITSAR,—Appellant.

versus

UNION TERRITORY OF CHANDIGARH, ETC.,—Respondents.

Letters Patent Appeal No. 668 of 1974.

February 12, 1975.

The Punjab New Capital (Periphery) Control Act (1 of 1953)—Sections 3, 4, 12 and 15(b)—Provisions of sections 3 and 4—Whether can be complied with in the absence of rules—Notification issued under section 3(1) in such absence—Whether valid—Requirement of prescribing mode of publication—Whether directory—Action under section 12(2)—Whether can be taken only after taking proceedings under section 12(1)—Exemption under section 15(b)—When can be claimed.

Held, that the publication of a notification under section 3 of the Punjab New Capital (Periphery) Act 1952 declaring a controlled area does not depend on the making of the rules under the Act. The provisions of sections 3 and 4 of the Act are capable of compliance