

FULL BENCH

Before S. S. Sandhwalia, C.J., S. C. Mital and R. N. Mittal, JJ.

BHAGAT SINGH (DR.),—Petitioner.

versus

CHANCELLOR, PUNJABI UNIVERSITY and others,—Respondents.

Civil Writ Petition No. 694 of 1981.

May 22, 1981.

Punjabi University Act (35 of 1961)—Section 9-A—Punjab Civil Services Rules Volume I, Part I—Rule 10.21 Note 2—Statute providing a fixed tenure for a Vice-Chancellor—Government Officer sent on deputation and appointed a Vice-Chancellor for the period fixed by statute—Civil Service Rules enabling Government to recall any officer on deputation even before the expiry of his term of deputation—Such condition of deputation—Whether subservient to the fixity of tenure—Such Officer—Whether can be recalled before the expiry of his term—Such recall without any exigency of service—Whether a punishment—Note 2 to Rule 10.21—Whether in conflict with the statute—Provisions of the statute—Whether to prevail over such a rule.

Held, that section 9-A of the Punjabi University Act, 1961 does not authorise the Chancellor to cut short the statutory tenure of three years or stipulate any condition which could result in cutting short the said term. Consequently, the conditions of appointment and deputation specified in the notification appointing a Vice-Chancellor have to be read subject to the fixity of his tenure. These conditions cannot be varied to the dis-advantage of the Vice-Chancellor according to the proviso to subsection (3) of Section 9-A—Thus, an officer who had been appointed a Vice-Chancellor could not be re-called by the Government by cutting short his term. The officer while taking up the assignment as Vice-Chancellor also knew that he was going on a tenure post for a period of three years and is equally bound by the fixity of tenure and cannot be allowed to go back on his original post in case he opts to do so. The provisions of the Act are as much binding upon him as on the Government.

(Paras 12 and 21)

Held, that in the absence of any evidence of exigencies of service, the recall of a Vice-Chancellor thereby depriving him of his unique status and other fringe benefits & advantages which he would have continued to enjoy but for his statutory term being cut short amounts to punishment.

(Para 18).

Held, that from a comparison of Section 9-A (2) of the Act and Note 2 to Rule 10.21, it cannot be said that these two operate in different spheres. The former provision provides a fixity of tenure for the person including a government servant who is appointed as a Vice-Chancellor, whereas the latter authorises the Government to recall the government servant who is on deputation at any time. The provisions of the Act are binding on all persons including the Government. Thus, there is an apparent collision between the two provisions. However, if the Parliament or the State Legislature enacts any law within its constitutional limits, no person or authority has a right to override or set aside the same. On the other hand, certain legislative powers have also been conferred by the Constitution on the executive authorities which is called subordinate legislation. It may be regarded as having its origin in a delegation of the powers to inferior authorities which, in the exercise of their delegated functions, remain subject to the control of the sovereign legislature. Thus, the powers of the legislature in enacting laws are supreme, whereas those of the delegated legislation are subservient. Therefore, if there is a clash between the laws framed by the legislature and those framed by subordinate legislation, the former will prevail over the latter. (Paras 15 and 16).

Petition under Articles 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued direction the respondents ;

- (i) *to produce the complete records of the case ;*
- (ii) *the order at Annexure P-4 be quashed and the order of recall to Government Servant be quashed.*
- (iii) *it be declared that the petitioner has a right to continue for a period of three years i.e. till 9th February, 1982.*
- (iv) *it is further prayed that pending the disposal of the Writ Petition, the petitioner be allowed to continue working on the post of Vice-Chancellor and none else be appointed in his place.*
- (v) *the service of advance notices be dispensed with.*
- (vi) *this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case*
- (vii) *the costs of this petition may also be awarded to the petitioner.*

P. P. Rao, Advocate (J. L. Gupta, G. C. Gupta and Harbans Singh with him), for the Petitioner.

H. L. Sibal, Senior Advocate with S. C. Sibal for Respondents 1 to 4,

M. R. Agnihotri Advocate for respondent No. 5.

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JUDGMENT

Rajendra Nath Mittal, J.

(1) Briefly, the case of the petitioner is that he was working as Director of Public Instruction (Colleges), Punjab, in 1979. He was appointed as Vice-Chancellor of the Punjabi University, Patiala (hereinafter referred to as the University),—*vide* notification dated 30th November, 1979 (Annexure P-1), issued by the Governor of Punjab and Chancellor of the University, in exercise of the powers conferred by clause (1) of section 9-A of the Punjabi University Act, 1961 (hereinafter called the Act), for a period of three years on the terms and conditions contained therein. One of the conditions of appointment was, that he would be on deputation till he retired from Government service and thereafter his conditions of service would be notified again. He, it is stated attained the age of 55 years and was suffering a financial loss and, therefore, he sent a request to the Commissioner for Education and Secretary to Government, Punjab, Education Department, Chandigarh,—*vide* his letter dated 25th November, 1980, for retiring him from Government service with immediate effect. He also tendered three months' pay in lieu of three months notice through a Bank draft. It is alleged that Mr. Darbara Singh, Chief Minister, Punjab, respondent No. 2, and Mr. Harcharan Singh Ajnala, Minister for Education, respondent No. 3, did not like the petitioner's continuance as Vice-Chancellor on account of the fact that he had been appointed by the Akali Government. The petitioner further averred that with that object, an effort had been made to disrupt the working of the University campus and to harass the petitioner but when that effort did not result in forcing him to resign from that post, it was ordered on 19th February, 1981, a few days before the expiry of three months from the date of notice, to recall him by curtailing the period of tenure post and appoint Prof. Gursewak Singh, Director of Public Instruction (Colleges), Punjab, as the Vice-Chancellor. He claims that he was appointed for three years and this term had a statutory protection and could not be varied. It is next alleged that he has been recalled not in the exigency of the service, but *mala fide* and for extraneous considerations. He has challenged the aforesaid order *inter alia* on the grounds that it is contrary to section 9-A of the Act and the Civil Services Rules, that the action is *mala fide*

and based on extraneous considerations, and that it has been passed in violation of the principles of natural justice.

(2) The respondents have controverted the allegations of the petitioner. They have pleaded that the petitioner was on deputation till he retired from the Government service. Before retirement he was under the control of the Government and it could recall him at any time. They allege that it is the inherent right of the Government in respect of any Government servant sent on deputation to recall him. They have further pleaded that in view of the circumstances prevailing in the University, it was considered necessary to recall the petitioner. They have also denied the allegation of *mala fide*.

(3) It is contended by Mr. Rao that the petitioner was appointed Vice-Chancellor of the University,—*vide* order dated 30th November, 1979, for a term of three years. According to him, the condition in the order dated 30th November, 1979, that he was on deputation till he retired was subservient to fixity of tenure of three years and does not confer any right on the Government to negotiate the said term. He has been recalled by the Government,—*vide* order dated 19th February, 1981, which amounts to cutting short his term. The learned counsel vehemently argues that the petitioner was appointed for a fixed term in terms of section 9-A of the Act and, therefore, his term could not be cut short except in consonance with the principles of natural justice. He places reliance on *Dr. Bool Chand, Vice-Chancellor, Kurukshetra University vs. The Chancellor* (1).

(4) We have duly considered the argument of the learned counsel. The petitioner was working as Director of Public Instruction (Colleges), Punjab, when he was appointed Vice-Chancellor of the University. In the notification under section 9-A, dated 30th November, 1979 (Annexure P-1), it is stated that he was appointed as Vice-Chancellor of the Punjabi University for a period of three years with immediate effect on the terms and conditions stated therein. The notification read as follows:—

“PUNJAB RAJ BHAVAN

Notification.—The 30th November, 1979, No. 9163-20-79/5576.

In exercise of the powers conferred by clause (1) of section

(1) 1968 S.L.R. 119.

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9-A of the Punjabi University Act, 1961, as amended from time to time, the Chancellor of the Punjabi University, Patiala, is pleased to appoint Dr. Bhagat Singh, Director of Public Instruction (Colleges), Punjab, as the next Vice-Chancellor of the said University for a period of three years, with immediate effect.

2. Further, in exercise of the powers conferred by clause (3) of section 9-A of the Punjabi University Act, 1961, the Chancellor of the said University is pleased to determine as under the conditions of service of Dr. Bhagat Singh from the date he takes over—

(I) Pay Normal deputation terms for Government employees.

(II) to (VIII) * * * * *

* * * * *

(IX) Deputation. *He will be on deputation till he retires. Thereafter his conditions of service will be notified again.*

SEWA SINGH,

Secretary to Governor, Punjab-
cum-Chancellor, Punjabi University.

No. 9163-2G-79/5576-A, dated, Chandigarh, the 30th November, 1979.

A copy is forwarded for information and necessary action, to —

* * * * *

(iv) The Secretary to Government, Punjab, Education Department.

He is requested to relieve Dr. Bhagat Singh, Director of Public Instruction (Colleges), Punjab, immediately to enable him to join his new assignment.

(v) * * * * *

Sd/-

Secretary to Governor, Punjab-cum-Chancellor, Punjabi University."

(Note: Emphasis supplied by underlining.) From a perusal of the notification, it is apparent that the petitioner was appointed as Vice-Chancellor by the Chancellor under the powers conferred upon him by sub-section (1) of section 9-A for a period of three years. His terms and conditions of service during the period of deputation were settled and after retirement from Government service these were to be notified subsequently.

(5) He was recalled,—*vide* order dated 19th February, 1981 (Annexure R.W. 4/3), passed by the Commissioner and Secretary to Government, Punjab, Education Department. It is reproduced below for ready reference.

"Dr. Bhagat Singh P.E.S., Class I presently on deputation as Vice-Chancellor, Punjabi University, Patiala, is hereby recalled from deputation with immediate effect.

MAN MOHAN SINGH,

Commissioner and Secretary to Government, Punjab, Education Deptt.

Dated, Chandigarh, the 19th February, 1981.

Endst. No. EA/ES-81/994-1000, dated, Chandigarh, the 19th February, 1981.

A copy is forwarded for information and necessary action to—

* * * * *

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(VII) Dr. Bhagat Singh, Vice-Chancellor, Punjabi University, Patiala. *He should report immediately to Commissioner and Secretary to Government, Punjab, Education Department, for further orders.*

Sd/-

Commissioner and Secretary to
Government, Punjab, Education Deptt.

A copy is forwarded for information and immediate action to the Secretary to the Governor, Punjab, Chandigarh.

Sd/-

Commissioner and Secretary to
Government, Punjab, Education Deptt.

The Secretary to Governor, Punjab,
Chandigarh.

U.O. No. PA/ES-81, dated, Chandigarh, the 19th February, 1981.

(Note : Emphasis supplied by underlining.)

The Commissioner and Secretary to Government, Punjab, further wrote to him a letter, Annexure R.W. 4/2, on the same date that there was no provision under the Rules for tendering three months pay in lieu of three months notice and, therefore, three months notice would take its course in accordance thereof. He also returned the draft of the petitioner dated 25th November, 1980. The order does not give any grounds for recall of the petitioner and also does not mention about his posting. He has been asked to report to the Commissioner and Secretary to Government, Punjab, Education Department, for further orders. The language thus suggests that there was no exigency of service to recall him, otherwise he would have been posted immediately. The Commissioner and the Secretary to the Government also replied to the

notice of the petitioner on the same day, that is, 19th February, 1981, though it was received about three months back and declined to retire him from the date of notice.

(6) At this stage, the relevant portions of section 9-A of the Act and Note 2 under rule 10.21 of the Punjab Civil Services Rules, Volume I, Part I, which relates to termination of deputation, are set down as follows :—

“9-A. (1) The Vice-Chancellor shall be appointed by the Chancellor on the advice of the State Government.

(2) *The Vice-Chancellor shall hold office for a term of three years which may be extended by the Chancellor, on similar advice, for such further periods not exceeding three years at a time as he may deem fit.*

(3) The Chancellor shall determine the amount of remuneration and other conditions of service of the Vice-Chancellor.

Provided that such terms and conditions shall not be altered to the disadvantage of the Vice-Chancellor during his term of office.”

“10.21. * * * *

Note 2.—Government have an inherent power to terminate deputation arrangements earlier than the period specified in the order of terms and conditions of deputation when exigencies so demand. Government may, of its own motion or on the request of the borrowing agency or authority, recall a Government employee at any time before the expiry of the period of deputation. However, to make it more clear and to remove any doubt in this behalf, a specific condition empowering the State Government to recall a Government employee before the expiry of the period of deputation shall invariably be incorporated in all orders transferring employees on deputation or foreign service.”

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It is clear from sub-section (2) of section 9-A of the Act that the minimum term of a Vice-Chancellor has been fixed as three years and it is not negotiable. It is not without purpose that the Legislature has fixed a minimum tenure for him. In order to know the purpose, reference may be made to the reports of the Education Committees.

(7) In 1961, a Committee headed by Dr. D. S. Kothari was constituted to consider broadly the organisational structure of the Universities in India and to prepare the outline of a 'Model Act' suited to their role and functions in the context of fast developing society. The Committee observed that the proper functioning of a University depends on the all round acceptance of two basic principles, firstly, autonomy for universities from external control together with a democratic administrative system and secondly, effective participation of the academic community in the formation and implementation of university policy and programmes. Autonomy for a university is not a matter of fundamental right as it were, but is a condition for its efficient functioning and for enabling it to achieve the true ideals and aims of a university. A university needs autonomy if it is to discharge properly its functions and obligations to society and play an effective part in the development and progress of the country. Universities which are established by law can have only the rights given to them by that law; but if the university is to foster and stand 'for humanism, for tolerance, for reason, for progress, for the adventure of ideas and for the search of truth', it must be an "autonomous institution". An autonomous institution may not always achieve these ideals; but it is certain that a university which is not autonomous is hardly likely ever to achieve these great objectives. Autonomy does not mean isolation or aloofness from national purposes or a claim for some superior status or position; but it does imply that the university ought not to be harnessed for securing regimentation of ideas or drawn into the ambit of party or power politics. The second principle of importance is that the university constitution should place certain responsibilities clearly and squarely upon the academic staff. Autonomy from external control is important, but it is equally or even more important that the administration internally is not autocratic or bureaucratic and insensitive to the real needs and interests of the academic community (staff and students). The university above all is a community of teachers and students dedicated to the common

pursuit of learning. If such a community is to discharge adequately its duties to itself and the nation, its governance of the university must essentially be in its own hands. The teachers, the Committee further observes, should have in practice an effective voice in the determination of the policies and the management of the affairs of the university, their participation should be real and meaningful and not merely formal and constitutional.

(8) It is evident from the above observations of the Committee that for the proper and efficient functioning of Universities, they require full autonomy from external control. It is further necessary that they should not owe allegiance to political parties or individuals. They are also to be kept immune from governmental intervention. It is also desirable that they should have a democratic internal administration. Further, there should be effective participation of the academic community in the formation and implementation of their policies and programmes.

(9) The Vice-Chancellor is the most important functionary in a University not only on the administrative side but also for securing right atmosphere for the teachers and students to do work effectively and in the right spirit. In the report by the Committee on Higher Education appointed by the Prime Minister under the Chairmanship of Lord Robbins in the United Kingdom, the duties and responsibilities of a Vice-Chancellor are enumerated as follows:—

“676. This leads us to the position of the Vice-Chancellor or Principal. His is a role which, probably unfortunately, is seldom precisely spelt out in written constitutions. Yet it would be difficult to overstate its importance, particularly in a period of expansion, which calls for imagination and continuous initiative. There is a grave danger that the needs of expansion and the increasingly complex relations between institutions of higher education and government will impose upon the heads of universities a quite insupportable burden. There are certain duties of which the Vice-Chancellor cannot divest himself. He is at once a member of the governing body and the chairman of the main academic councils. He must, therefore, be at the centre of all discussions involving broad questions of internal policy or relations with the outside world. He must represent his institution in all, formal or informal

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relations with the University Grants Committee; he must be present at meeting of the Committee of Vice-Chancellors and Principals; he must keep in touch with potential benefactors, and he must be aware, in general, of developments in the various branches of learning. No other enterprise would impose on its chairman the variety and burden of work that the modern university requires of its Vice-Chancellor.

677. The section of a Vice-Chancellor or principal is perhaps the most important single decision that the governing body of a university may be called upon to make; and arrangements for doing so are not made easier by the fact that such a decision may arise only once in ten to twenty years."

In India, the duties and responsibilities of a Vice-Chancellor are no less onerous than those in the United Kingdom. In many respects, his burden, in our universities, is even greater. Mode of appointment of a Vice-Chancellor, therefore, assumes a great importance. It is, however, not necessary to go further into this matter. The important question is whether a fixed tenure should be provided to a Vice-Chancellor. The Committee, taking into consideration the multifarious responsibilities and onerous duties of the Vice-Chancellor, suggested that his term in the first instance should be at least for five years and he should not normally be appointed for more than two terms in the same University. Thus, a great emphasis has been laid on his tenure. It has been done for the reason that he may not succumb to outside pressures and thus the University may lose autonomous character.

(10) The same recommendations have been made by two other Commissions/Committees, namely, Education Commission and Committee on Governance of Universities and Colleges in their reports in 1964—66 and 1971, respectively. The Education Commission in its report has reiterated that universities should be immune from direct governmental intervention. It further says that it would be wrong if universities were expected to owe allegiance to any political party or individual or attempted to further the interests of such parties or individuals. The Committee on Governance of Universities and Colleges in its report has said that the concept of university

autonomy means that it would be appropriate on the part of the democratic legislature not to interfere with the administration of university life, both academic or non-academic. The claim for autonomy is made by the universities not as a matter of privilege, but on the ground that such an autonomy is a condition precedent if the universities are to discharge their duties and obligations effectively and efficiently as regards imparting and advancement of knowledge, and also making their unique contribution to the life and development of the nation. From the above report, it is absolutely clear that, in the interest of the university, there should be no interference in its working from outside. Both the Reports have further said that the Vice-Chancellor should hold office for a term of five years. It is in pursuance of these ideas that the Legislature incorporated in the Act that the Vice-Chancellor should be appointed for a minimum period of three years. It is further incorporated that he shall be a principal executive and economic officer of the University. He shall also be *ex-officio* Chairman of the Senate, the Syndicate and the Academic Council and have power to convene meetings of the said bodies. Thus, he has been made a central figure in running the University.

(11) However, the Chancellor can cut down the tenure of the office of a Vice-Chancellor and remove him from office for good cause and after holding an inquiry against him. The matter has been dealt with by the Supreme Court in *Dr. Bool Chand's case* (supra). It has been observed there that the office of the Vice-Chancellor is created by a statute, and after his appointment, he is invested with statutory powers and authority under the same. A power to appoint ordinarily implies a power to determine the employment. The appointing authority is not precluded from determining the employment but the decision of the appointing authority to do so must be based upon the result of an inquiry held in a manner consistent with the basic concept of justice and fair play. The power of removal can only be exercised for good cause, that is, in the interest of justice and only when it is found, after due inquiry held in a manner consistent with the rules of natural justice, that the holder of office is unfit to continue as a Vice-Chancellor. It cannot be exercised arbitrarily. In the above case, their Lordships were interpreting similar provisions of Kurukshetra University Act.

(12) The question arises whether the petitioner can be recalled by cutting short his term. We have already reproduced relevant

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portions of the Act, Rules and notifications. Section 9-A of the Act does not authorise the Chancellor to cut short the tenure of three years or stipulate any condition which could result in cutting short the said term. Consequently, in the notification, dated 30th November, 1979, the term of three years was fixed in the very first para. The other conditions of service mentioned in para 2 are in respect of 'remuneration and other conditions of service' as required by sub-section (3). These conditions are, therefore, to be read subject to that of fixity of tenure provided in para 1. These conditions also cannot be varied to the disadvantage of the petitioner according to the proviso to sub-section (3). As the petitioner was in Government service, at the time of appointment, in order to assure him that his existing rights and privileges would continue, it was provided in the notification that he would be on deputation till he retired. In the absence of the said clause, he might have lost benefits of his past service. Therefore, the clause about deputation, in our view, is subservient to the main clause regarding fixity of tenure. It is also relevant to point out that in Note 2 *ibid*, it has been provided that a specific condition empowering the State Government to recall a Government employee before the expiry of the period of deputation shall invariably be incorporated in all orders transferring employees on deputation. In the present case, the order of transfer showing that such term was incorporated in it has not been produced. The irresistible inference is that such a term was not incorporated therein. In this situation, we are of the opinion that at the time of his appointment, the intention of the Government was not to recall him from the office of the Vice-Chancellor. It may also be highlighted that in the order, no exigency of service for recalling the petitioner has been given. Even he has not been given any posting. Therefore, in our view, he is being removed from the post of Vice-Chancellor on the pretext of recall, which cannot be done.

(13) Mr. Sibal made reference to *Shri Sohan Singh vs. The State of Punjab and other*, (2), wherein it has been held that no contract comes into being between the State Government and its employee when he is sent on deputation under the Punjab Civil Services Rules. Virtually he remains under the effective control of the State Government and his legal position continues to be

more one of status than of contract. He, it is further held, cannot be said to have any indefeasible right to insist that he should not be recalled before the expiry of specified period. The facts of the above case are, however, distinguishable. Sohan Singh while working as Joint Registrar was sent on deputation to the Punjab State Co-operative Supply and Marketing Federation Ltd., Chandigarh, for a fixed term. He was recalled earlier by the Government and posted in his parent department. The order of recall was challenged by him. From the above facts, it is evident that he was not sent on a post for which tenure had been fixed under a statute. Therefore, ratio of that case is not applicable in the instant case.

(14) Mr. Rao had next contended that there is an apparent conflict between the Rules and section 9-A(2) of the Act. According to him, in case of conflict, the provisions of the Act will prevail. On the other hand, Mr. Sibal has argued that there is no clash between the Act and the Rules which operate in different spheres. The Act, he contends, binds the Chancellor and the Vice-Chancellor, whereas the Rules bind the Government and the petitioner. According to him, if there is a clash, the Rules being special law will prevail over the provisions of the Act.

(15) We have given thoughtful consideration to the arguments of the learned counsel and find force in the argument of Mr. Rao. From a comparison of section 9-A(2) and Note 2 *ibid*, it cannot be said that these two operate in different spheres. The former provision provides a fixity of tenure for the person, including a Government servant, who is appointed as a Vice-Chancellor, whereas the latter authorises the Government to recall the Government servant who is on deputation at any time. The provisions of the Act are binding on all persons including the Government. Thus, there is apparent collision between the two provisions.

(16) The next question is whether, in such a situation, the provisions of the Act will prevail over those of the Rules or vice-versa. It is clear from the various provisions of the Constitution of India that the Parliament and the State Legislatures have plenary powers of legislation like any other sovereign legislature. However, there are certain constitutional limitations on those powers but it is not necessary to deal with them here. Therefore, if the Parliament or the State Legislature enacts any law within

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its constitutional limits, no person or authority has a right to override or set aside the same. On the other hand, certain legislative powers have also been conferred by the Constitution on the executive authorities which is called subordinate legislation. It may be regarded as having its origin in a delegation of the power to inferior authorities which, in the exercise of their delegated functions, remain subject to the control of the sovereign legislature. Thus, the powers of the legislature in enacting laws are supreme, whereas those of the delegated legislation are subservient. Therefore, if there is a clash between the laws framed by the legislature and those framed by subordinate legislation, the former will prevail over the latter. We get support in the above observations from a Division Bench judgment of Rajasthan High Court in *State of Rajasthan v. Kailash Chandra Jain and another* (3). It was held by the Division Bench that the proviso to Article 309 of the Constitution of India enables the Governor of a State to frame rules which become the conditions of service. These rules must be subject to the provisions of the Constitution and Acts of appropriate Legislature. It was further held that Industrial Disputes Act and other enactments affecting a "workman" are Acts of the appropriate Legislature and the rules framed under Article 309 of the Constitution of India must operate subject to said enactments. We are in respectful agreement with the above observations. In the present case, it may be highlighted that the rules have been framed under Article 309 of the Constitution of India. Therefore, the provisions of the Act will prevail over those of the rules. In view of the above position, it is not necessary to go in to the question as to which of the two laws is special and which general.

(17) It is then argued by Mr. Rao that the effect of recall is that the statutory tenure of the petitioner as Vice-Chancellor has been cut short in the middle of the term and thus he has been deprived of his status, powers, emoluments, etc., from the 19th February, 1981, the date of recall, till the 30th November, 1982, the end of his term. According to him, the order of recall amounts to punishment and is, therefore, liable to be struck down. He has placed reliance on *Dabesh Chandra Dass v. Union of India and others* (4).

(3) 1973 (1) S.L.R. 183.

(4) 1969 S.L.R. 485.

18. After due consideration, we find substance in this submission of the learned counsel as well. We have already dealt with the facts of the case at a considerable length and held that in the garb of the order of recall, the petitioner is being deprived of his unique status. Normally, an educationist, when he is at the peak of his career is appointed to that high office. Though the petitioner was getting the same pay as Vice-Chancellor which he was getting earlier, but, according to the order of appointment, dated 30th November, 1979, he was entitled to other fringe benefits such as rent-free accommodation and sumptuary allowance. In view of the fixity of tenure, he would have continued as Vice-Chancellor after his retirement from Government service on attaining the age of superannuation. After recall, he will be deprived of the said advantages. Thus, by the order of recall he will suffer not only in status but also monetary loss. The order, therefore, amounts to punishment. In the aforesaid view, we are fortified by the observations of the Supreme Court in *Dabesh Chandra Dass' case* (supra). The appellant in that case was a member of the Indian Civil Service. He was allotted to Assam. After working in various capacities in Assam, he was appointed as Secretary, Department of Social Security, with effect from 30th July, 1964. On 6th March, 1965, the appointments committee of the Cabinet approved the proposal to continue him as Secretary in the same department. The Government later decided that his services be placed at the disposal of his parent state. He challenged the order on the ground that it amounted to punishment. Hidayatullah, C.J., speaking for the Court, observed that the cadres for the Indian Administrative Services were found in the States only. There was no cadre in the Government of India. A few of those persons were, however, intended to serve at the Centre. When they did so, they enjoyed better emoluments and status. They ranked higher in the service and even in the warrant of Precedence of the President. In the States they could not get the same salary on any post as Secretaries were entitled to in the Centre. The appointments to the Centre were not in any sense a deputation. They meant promotion to a higher post. Many of the posts at the Centre were tenure posts. Those of the Secretaries and equivalent posts were for five years and for lower posts the duration of tenure was four years. Das, appellant, held a tenure post and his tenure ordinarily was five years. He was expected to continue in that post till 29th July, 1969. Consequently, the Supreme Court quashed the

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order *inter alia* on the ground that no Secretary had been sent back in that manner and that emphasised the element of penalty.

(19) The learned counsel for the petitioner has lastly contended that the order of recall of the petitioner was made in *mala fide* exercise of power and, therefore, it was liable to be set aside. In view of the circumstances that we have held that the order of recall is otherwise illegal, it is not necessary to go into the question of *mala fide*.

(20) Now, two contentions of Mr. Sibal may be noticed. The first contention is that in view of the term in the order of appointment that the petitioner was on deputation, he could, if he liked, return to his parent department. He urges that if he could do so, the Government had also a right to recall him. To fortify his argument, he referred to *T. R. Sharma v. Prithvi Singh and others* (5).

(21) We have heard the learned counsel at a considerable length. We, however, regret our inability to accept the contention of Mr Sibal. It has already been observed above that the petitioner was appointed under section 9-A of the Act for a period of three years and he could not be recalled by the Government by cutting short his term. He, while taking up the assignment as Vice-Chancellor, also knew that he was going on a tenure post for a period of three years and during that period he would retire. Therefore, he is equally bound by the fixity of tenure and he cannot be allowed to go back on his original post in case he opts to do so. The provisions of the Act are as much binding upon him as on the Government.

(22) *T. R. Sharma's case* (supra), a reference to which has been made by Mr Sibal, is distinguishable. In that case, Mr Sharma joined as Agricultural Inspector in the Agriculture Department of the Punjab Government in 1945. Teja Singh, Bhala Ram and Prithvi Singh also joined as Agricultural Inspectors in the same department on different dates between 1950 and 1958. The appellant was confirmed as Agricultural Inspector in 1959. In 1961, he was appointed as Block Development and Panchayat Officer against a temporary post. In 1966, he was made substantive permanent Block Development and Panchayat Officer with effect from April, 1964. As a result of

reorganisation of the Punjab State, he as well as Teja Singh, Bhala Ram and Prithvi Singh were allocated to the State of Haryana. In February, 1969, the Governor of Haryana passed an order deconfirming the appellant on his request from the post of Block Development and Panchayat Officer with effect from that date. In March, 1969, the Governor of Haryana promoted the appellant as District Agricultural Officer in M.A.S. Class II and reverted Shri Prithvi Singh as Agricultural Inspector. Two writ petitions were filed one by Prithvi Singh and the other by Bhala Ram and Teja Singh. It was held by the Supreme Court on interpreting a different set of rules that no written request was made by the appellant for terminating his suspended lien on the post of Agricultural Inspector and, therefore, his lien on that post did not stand terminated. From the aforesaid facts, it is evident that the appellant was not sent on deputation to a post which had a fixity of tenure under an enactment. In the said situation, the ratio of the case will not apply to the facts of the present case.

(23) The second contention of Mr. Sibal is that the order of recall has brought about the termination of the petitioner's appointment as Vice-Chancellor. According to him, he has now no right to be reinstated. We regret our inability to accept this contention, also. The petitioner has challenged the order of recall dated 19th February, 1981, through this writ petition. From the discussion, it emerges that the order of recall is illegal and liable to be quashed. As soon as the order is quashed, the petitioner who was working against the post of the Vice-Chancellor shall be restored to his position. We consequently reject the contention of the learned counsel.

(24) For the aforesaid reasons, we accept the writ petition and quash the order of recall dated 19th February, 1981. No order as to costs.

S. S. Sandhawalia, C.J.—I agree.

S. C. Mital, J.—I agree.

N.K.S.