

Jiwandhar Kumar *v.* The Punjab University (Gurdev Singh, J.)

So I accept the application, in so far that I order the expunging from the mutation order of so much of it as orders the payment of maintenance by applicants to respondent.

Parties may pay their own costs."

It was argued on behalf of the respondents that the petitioners had submitted without objection to the jurisdiction of the Revenue Officers in so far as it was agreed that they would pay the amount of Rs. 710 by way of maintenance per annum to each of the step-mothers. It is well settled proposition of law that a party by submission cannot confer jurisdiction upon a Court upon which the law has conferred no such jurisdiction.

From the above, it is clear that the Revenue Officers from the Assistant Collector upwards to the Financial Commissioner had no jurisdiction whatsoever either to determine the amount of maintenance or to impose any conditions with regard to it. The Financial Commissioner acted without jurisdiction in passing the impugned order. The question of maintenance is a matter within the jurisdiction of the civil Courts and does not fall within the purview of Revenue Officers.

In this case, the petitioners have impugned orders of the Assistant Collector, dated 16th December, 1960 (Annexure B), of the Collector, dated 16th June, 1961 (Annexure C), of the Additional Commissioner, dated 11th April, 1963 (Annexure D), and of the Financial Commissioner, dated 26th March, 1964 (Annexure E), in so far as these fixed amount of maintenance, related to arrears thereof or gave directions for their payment or otherwise, entitling respondents 2 and 3 to take possession of the land in default of payment. To this extent, the impugned orders referred to above deserve to be set aside.

For reasons stated above, the petition is allowed. A writ of certiorari to that effect shall issue. In the circumstances, there will be no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Daya Krishan Mahajan and Gurdev Singh, JJ.

JIWANDHAR KUMAR,—Appellant.

versus

THE PANJAB UNIVERSITY,—Respondent.

Letters Patent Appeal No. 338 of 1967

February 19, 1968.

Panjab University Act (VII of 1947)—S. 31—Panjab University Calendar, 1967, Volume I, Chapter IV—Regulation 10 and 22—Operation of a Regulation—Prior sanction of the Government and publication in Official Gazette—Whether

essential—Approved by the Senate of the University to the amendment of Regulation 10 before the commencement of a candidate's examination—Sanction of the Government after the conclusion of the examination—Publication of the amendment in the Official Gazette after the declaration of the examination's results—Such amendment of Regulation 10—Whether applicable to the said examination.

Held, that in view of section 31 of the Panjab University Act, 1947, it cannot be disputed that the Senate of the Panjab University has the power not only to frame Regulations laying down conditions to be complied with by candidates for any University Examination other than Matriculation Examination, but also to amend, alter or cancel any rules or regulations or by-laws. The procedure for framing Regulations under section 31 of the Act is contained in the Regulations appearing in Chapter IV of the Panjab University Calendar, 1967, Volume I. From these provisions it is evident that before a Regulation framed by the Senate becomes operative or can be enforced, its sanction by the Government has to be obtained under section 31, and it has to be published in the Gazette as provided in Regulation 22. It is only on its publication in the Gazette that a Regulation becomes operative.

Held, that it is true that in this case the Senate had approved the amendment of Regulation 10 in December, 1966, before the appellant's examination commenced, and in the amended regulation approved by it was stated it would take effect from the examination of 1967, yet the fact remains that it was after the appellant's examination in April, 1967, had concluded that the amended regulation was sanctioned by the Government, and it was still later, after the appellant's result had been declared, that this amended regulation, on the basis of which he is stated to have failed, was published. As it is only on the publication of a Regulation, as provided in Regulation 22 that it comes into force, it could not be made the basis for declaring results before its actual publication in the Gazette, when it had no legal existence.

Appeal under Clause X of the Letters Patent against the order of the Hon'ble Mr. Justice Tek Chand, dated 5th September, 1967 passed in Civil Writ No. 1335 of 1967.

M. S. JAIN, WITH G. S. CHAWLA, ADVOCATE, for the Petitioner:

H. R. SODHI, SENIOR ADVOCATE, WITH N. K. SODHI, ADVOCATE, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—This appeal under clause 10 of the Letters Patent is directed against the order of the learned Single Judge of

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this Court passed on 5th September, 1967, in Civil Writ No. 1335 of 1967 brought by the appellant under Articles 226 and 227 of the Constitution of India.

The appellant Jiwandhar Kumar, a student of the Government College, Hissar, appeared at the Pre-engineering Examination of the Punjab University in April, 1967. The results of that Examination were published on 14th June, 1967 and the petitioner was declared to have failed, as in the subjects of English and Mathematics he had secured 48 and 50 marks respectively out of 150, being less than 35 per cent of the maximum marks prescribed as pass marks under the University Regulation 10 for the Pre-Engineering Examination as amended by the Senate of the Panjab University on 10th December, 1966, and published in the Gazette of India on August 5, 1967.

Prior to its amendment, this Regulation 10 read as follows:—

“The minimum number of marks required to pass the examination shall be 33 per cent in each subject, provided that in each Science subject this percentage shall be required separately in the written and practical parts of the examination:

Provided further that a candidate who fails in one or more subjects by not more than one per cent of the total aggregate marks (excluding additional subject) shall be given the marks required to pass the examination and these shall be to his best advantage.

A candidate who appears in a subject under compartment regulations and fails by not more than one per cent of the total marks in the subject shall be given grace marks up to 1 per cent of the total marks of the subject in order to be declared to have passed the examination.

A candidate shall receive no credit for marks obtained in the additional optional subject unless he has obtained at least thirty-three per cent in which case these marks shall be added to the total.”

The amended regulation, on the basis of which the petitioner was declared to have failed, merely substituted the figure “35” for “33” in the opening part of the regulation, without making any other alteration or addition.

It is not disputed that on the basis of this amended regulation (hereinafter called the new regulation) the appellant could not be declared to have passed the Pre-Engineering Examination.

It is true, the appellant had secured only 48 marks out of 150 in English and to pass in this subject, even according to the old Regulation 10 as it stood before the amendment, he had to secure 33 per cent marks in each subject, but it is not disputed that under the proviso to that old Regulation he could claim the benefit of six grace-marks and would thus have been declared to have passed the Pre-Engineering Examination. Contending that the new Regulation 10 did not apply to him and he was governed by the old Regulation, the appellant came to this Court with the writ petition, out of which this appeal has arisen, for quashing his result declared on 14th June, 1967, and praying for a declaration that he had passed the Pre-Engineering Examination held in April, 1967, and a direction to the respondent-University to admit him in the B.Sc. (T.D.C. Part II), or to any other class for which he was found eligible on the basis of his having passed the Pre-Engineering Examination. His petition was resisted on behalf of the respondent-University on the plea that he was governed by the new Regulation 10 and because of his having failed to secure in two subjects 35 per cent marks, being the minimum pass marks, he had been rightly declared to have failed in the Pre-Engineering Examination. Thus, the short question that arose for decision before the learned Single Judge was whether it was the old Regulation 10 or the new Regulation which governed his case and on the basis of which his result had to be declared. The learned Single Judge found that since the new Regulation had been made retrospective so as to apply to the Examination held in April, 1967, the petitioner having failed to secure the minimum of 35 per cent marks in the subject of English as prescribed under the new Regulation had been rightly declared to have failed. The learned Judge further observed that he was not satisfied that "the Panjab University had violated any such right of the petitioner as can be enforced by issuance of a writ of mandamus", and added "The University acted within the four corners of its jurisdiction and the new Regulation which was made retrospective, cannot be struck down". No relief was thus afforded to the appellant.

In challenging the correctness of the order under appeal Mr. M. S. Jain, appearing for the appellant, has reiterated the plea that the appellant's case was governed by the old Regulations and in accordance with the proviso to the old Regulation 10 as it stood before

the amendment, he was entitled to six grace-marks and was thus entitled to be declared to have passed. It is not disputed by Mr. H. R. Sodhi, who appears for the University, that if the old Regulation governed the appellant's case, he was entitled to be declared to have passed the Pre-Engineering Examination held in April, 1967. He has, however, urged that the finding of the learned Single Judge that the petitioner was governed by the new Regulation, according to which he had to secure 35 per cent marks in every subject, was correct, and no case for interference was made out as no right vesting in the petitioner had been violated. Thus, the short question for consideration is whether the new Regulation had been rightly applied to the appellant's case in declaring his results.

Before dealing with this matter, it is necessary to refer to the manner in which the relevant Regulation was amended and the new Regulation 10 came into being. On 9th September, 1966, the Academic Council of the respondent-University resolved that the pass percentage for the various subjects prescribed for the Pre-Engineering Examination be raised to 35 per cent and other connected modification be brought into effect from the examinations to be held in the year 1967. This proposal was approved by the Syndicate on 17th September, 1966, and after the same had been circulated to the Principals of all Colleges affiliated to the Panjab University, the proposed amendment in the Regulation was placed before the Syndicate on 19th September, 1966, and later the same was duly approved by the Senate on 10th December, 1966. The reorganisation of the State of Punjab having taken place in the meantime and Chandigarh having become a Union Territory, on the 11th January, 1967, the new Regulation was sent to the Government of India for obtaining its sanction in accordance with the provisions of section 31 of the Punjab University Act (hereinafter referred to as the Act) which provides for the making of Regulations. Its relevant part reads thus:—

“Section 31. Regulations:

- (1) The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University.
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) * * * * *

(n) the courses of study to be followed and the conditions to be complied with by candidates for any University Examination, other than an examination for Matriculation, and for degrees, diplomas, licences, titles, marks of honour, scholarships and prizes conferred or granted by the University;

* * * * *

(q) the alteration or cancellation of any rules, regulations, statute, or by-law of the Panjab University in force at the commencement of this Act by virtue of section 40;

* * * * *”

After the amendment of the Regulations had been adopted by the Senate at its meeting held on 10th December, 1966, they were submitted to the Central Government for obtaining its sanction. Before this sanction could be granted, the various examinations, including the Pre-Engineering Examination, were held and the appellant duly took the examination in all the subjects prescribed for that examination. It was, however, on 16th May, 1967, after the appellant's examination was over, that the Central Government accorded its assent to the new regulation by its letter, copy of which was placed before the learned Single Judge by the respondent-University as Annexure R. 3. It was still as late as 5th August, 1967, that the new Regulation 10, on the basis of which the appellant's result is stated to have been declared by the respondent-University, was published in the Government of India Gazette.

In contending that the new Regulation could not apply to the appellant's case, Mr. M. S. Jain has urged—

(1) that the appellant, having joined the Pre-Engineering class much prior to 9th September, 1966, the date on which the proposal to amend the regulation 10 was initiated by the academic Council, was governed by the old Regulation and was entitled to its benefit;

(2) that recourse could not be had to the new Regulation on 14th June, 1967, when the appellant's result was declared, as by that time the amended regulation had not come into force having not been published in the official Gazette, as required by Regulation 22;

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- (3) that since section 31 lays down that the regulations can be framed with the sanction of the Government, it was necessary for the Senate to obtain prior sanction of the Government;
- (4) that the amendment made in the Regulation 10 could not be given retrospective effect to the appellant's detriment;
- (5) that before the appellant took his Examination the new regulation was neither published nor the amendment proposed by the Senate brought to the notice of the appellant or any of the examinees; and
- (6) that, in any case, the expression used in the new regulation that it shall come into force "from the examination of 1967" clearly excluded its application to the examinations held in 1967 in view of the meaning of the word "from" as given in section 9 of the General Clauses Act, according to which the year 1967 has to be excluded.

In view of the provisions of section 31 of the Panjab University Act, 1947, reproduced earlier, it cannot be disputed that the Senate of the Panjab University has the power not only to frame Regulations laying down conditions to be complied with by candidates for any University Examination other than Matriculation Examination but also to amend, alter or cancel any rules or regulations or by-laws. This power, as laid down in Section 31 of the Act itself, can be exercised only "with the sanction of the Government." Since the amendment in regulation 10, with which we are concerned in this case, was made after the reorganization of the State of Punjab, when Chandigarh had become a Union Territory, the sanction of the Central Government had to be obtained. Admittedly, no sanction was obtained before the Regulation was amended by the Senate in December, 1966, and it was subsequently on 11th January, 1967, that the sanction was asked for. The Pre-Engineering Examination, at which the appellant appeared, took place in the month of April, 1967. No sanction to the proposed amendment in Regulation 10 was received by the time his examination was over, and it was on 16th May, 1967, that the Central Government accorded its sanction by its letter of that date.

The procedure for framing Regulations under section 31 of the Act is contained in the Regulations appearing in Chapter IV of the

Panjab University, calendar, 1967, Volume I, page 54. Clause (iii) of Regulation 21 provides:—

“21. * * * * *

(iii) The Regulations passed by the Senate shall be forwarded to the Government for sanction and when sanction has been received, the Common Seal shall be affixed to the Regulations and they shall be published in the Punjab Gazette.”

Regulation 22 then lays down:—

“22. A regulation shall take effect from the date of its publication in the Gazette unless any other date is named therein as the date upon which it is to come into force.”

From these provisions it is evident that before a Regulation framed by the Senate becomes operative or can be enforced, its sanction by the Government has to be obtained under section 31, and it has to be published in the Gazette as provided in Regulation 22 reproduced above. It is only on its publication in the Gazette that a Regulation becomes operative. Admittedly, when the appellant's result was declared, the amended Regulation, on the basis of which he was declared to have failed in the Pre-Engineering Examination, had not been published, and thus was not in force. Having taken recourse to a Regulation which had not yet come into force, the University Authorities have clearly over-stepped their jurisdiction as they were not competent to apply the Regulation in anticipation of its enforcement. On this short ground the appellant's writ petition was entitled to succeed.



The respondent's learned counsel, Mr. H. R. Sodhi, has, however, attempted to defend the action of the University authorities by urging—

- (1) that the amendment of Regulation 10 was adopted by the Senate in December, 1966, before the appellant took his examination and was thus applicable to the Examination held in 1967;
- (2) that though the sanction of the Government was not received before the appellant's examination commenced in April, 1967, and the amended regulation 10 was published in

August, 1967, after the appellant's result had been declared, it operates retrospectively so as to validate the action taken by the University authorities in view of Regulation 22 appearing at page 54 of the Panjab University Calendar, Volume I; and

- (3) that the appellant had no vested right and he was not entitled to insist that his result should have been declared on the basis of Regulation 10 as it stood before the amendment.

On giving my anxious consideration to the matters raised by Mr. Sodhi, I find myself unable to accept any of his contentions. As has been noticed earlier, it is only under section 31 of the Act that the Senate of the University is empowered to make Regulations with regard to the conditions to be complied with by candidates for any University Examination other than the Examination for Matriculation.

It is true that in this case the Senate had approved the amendment of Regulation 10 in December, 1966, before the appellant's examination commenced, and in the amended regulation approved by it, it was stated it would take effect from the examination of 1967, yet the fact remains that it was after the appellant's examination in April, 1967, had concluded that the amended regulation was sanctioned by the Government, and it was still later, after the appellant's result had been declared, that this amended regulation on the basis of which he is stated to have failed was published. As it is only on the publication of a Regulation, as provided in by-law 22 appearing at page 54 of Volume I of the University Calendar, 1967, that it comes into force, it could not be made the basis for declaring results before its actual publication in the Gazette when it had no legal existence. Mr. Sodhi is no doubt right in contending that even under Regulation 22, a regulation or rule or by-law framed by the University would come into force not necessarily on the date of its publication, but on some other date if such date is specified therein, but it must be remembered that even a provision which is expressly made retrospective cannot be applied before the date of its enforcement, and it is only after it is promulgated in accordance with law that it would operate retrospectively.

Apart from this, I find that in the regulation as published in the Government Gazette on 5th August 1967, no such specific date is mentioned. It is only in the foot-note to the Regulation that it is stated:

“To take effect from examination of 1967”. I am of the opinion that the foot-note cannot be considered to be a part of the regulation itself and it does not have the same force as the regulation. The Regulation 10, on the basis of which the appellant had been declared to have failed must be held to have come into force only on 5th August, 1967, when it was published in the Gazette of India, and since it had not received the assent of the Central Government by the time the appellant had taken his examination and it was not published before the appellant's results were declared, it could not be applied to the appellant's case to his detriment. As the appeal must succeed on this ground alone, we do not consider it necessary to deal with the questions whether the University Authorities could amend the Regulation to the disadvantage of a candidate during the period of his study for a particular examination and whether the rule-making authority can give retrospective effect to a rule made by it without such power having been conferred on it by the statute.

In the result, the appeal is accepted, and setting aside the order of the learned Single Judge, we quash the impugned result of the appellant and direct that his result be declared on the basis of regulation 10 as it stood before the amendment published in the Government Gazette of August, 1967.

D. K. MAHAJAN, J.— I agree.

K.S.K.

REVISIONAL CIVIL

Before Daya Krishan Mahajan and Gurdev Singh, JJ.

DR. LEKH RAJ LAROYA,—*Petitioner*

versus

JAWALA DEVI,—*Respondent.*

Civil Revision No. 932 of 1966.

February 20, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(a), (d), (g), (h)—‘Scheduled building’—Meaning of—Building casually used for one of the professions specified in the schedule of the Act—Whether becomes ‘scheduled building’—Words and Phrases—Word ‘use’—Meaning of.