

5. The appellant was not eligible for appointment in any part of the area of the present State of Punjab. She had been selected and appointed in the hilly areas of the then State of Punjab, that is, Kulu and Kangra, which, prior to the reorganization, formed its part, after relaxing the conditions of subject combination. Those conditions were not relaxed in the case of candidates selected and appointed in the other areas of Punjab. The conditions of selection did not permit her claim for consideration for absorption in the Punjab State Service after the reorganisation of the State. The order appointing her and other candidates was conditional. As is apparent from its reproduction above, besides the relaxation of condition of subject-combination, it was to be operative from the date the appointee joined the place of his posting, which was further subject to the availability of the post. The post to which she was appointed but had not been posted by the Circle Education Officer, Jullundur, was lost to the State of Punjab after November 1, 1966 on the reorganization of the State and had gone to the State of Himachal Pradesh. This post was no longer available to the State of Punjab for posting. When these are the facts, *Beant Singh's case* is not attracted for reference, which was decided on different facts. In this situation, we need not examine the correctness of that decision.

6. When this is the situation, the appellant could not be deemed to be serving in connection with the affairs of the existing State of Punjab at the time of the reorganization of the State on November 1, 1966. She had no judicially enforceable right to justify a prayer for the issue of the writ prayed for.

7. The appeal, therefore, is dismissed with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

Prem Chand Jain, J.—I also agree.

N.K.S.

FULL BENCH

Before P. C. Jain, S. C. Mital and D. S. Tewatia, JJ.

HARDWARI LAL VICE-CHANCELLOR,—Petitioner.

versus

CHANCELLOR M. D. UNIVERSITY and others,—Respondents.

Civil Writ Petition No. 3385 of 1979.

November 16, 1979.

The Rohtak University Act (25 of 1975)—Sections 8 and 9—First Statutes of the Rohtak University—Statutes 2, 3(1), 4 and 5—The

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Punjab General Clauses Act (X of 1897)—Section 14—Order of suspension—Effect of—Whether results in a casual vacancy—Chancellor—Whether competent to suspend a Vice-Chancellor—Enquiry under the Commissions of Enquiry Act—Suspension of the Vice-Chancellor to facilitate such enquiry—Whether legal.

Held, that clause (8) of statute 4 of the First Statutes of the Rohtak University envisages appointment of a Vice-Chancellor temporarily when a casual vacancy occurs. Such an appointment lasts only until the appointment of a new Vice-Chancellor. A casual vacancy occurs when the same comes into being on the happening of an unforeseen event, i.e., by death, resignation, removal or otherwise. A casual vacancy occurs and is not created. If it is so, then no casual vacancy will come into being as a result of an order of suspension as an order of suspension only results into temporary deprivation of office, position or of one's privilege. A post does not fall vacant as a result of an order of suspension. The effect of suspension is only to divest a person of the work which he is required to do. If by ordering suspension a vacancy is not created, then no new Vice-Chancellor can be appointed temporarily in exercise of the powers under clause (8) of statute 4. There is, therefore, no escape from the conclusion that the order of suspension would not result in the creation of a casual vacancy and that no new Vice-Chancellor can be appointed temporarily in place of the suspended Vice-Chancellor. (Para 16).

Held, that clause (6) of statute 4 covers all types of appointment except the ones to which reference has been made in clause (8) and that under clause (6) read with section 14 of the Punjab General Clauses Act, 1897 the Chancellor who is the appointing authority of the Vice-Chancellor has power to suspend the latter as no contrary intention is available in the Rohtak University Act, 1975 or the statutes.

(Para 18)

Held, that from the scheme of the Rohtak University Act, 1975 and the statutes, it appears to be quite clear that if any enquiry is to be conducted against the Vice-Chancellor, then either it has to be done by the Chancellor himself or through some person appointed by him on whom, he (Chancellor) has complete control and it is only during the pendency of that inquiry that an order of suspension can legally be passed if the Chancellor is satisfied that suspension of the Vice-Chancellor would facilitate the holding of an enquiry. This, however, does not mean that a Commission of Inquiry cannot be appointed under the Commissions of Enquiry Act. The Government has power to appoint a Commission and the Commission can legally and validly inquire into all those allegations

which may have been made against a Vice-Chancellor, but in order to facilitate the holding of that enquiry the Chancellor could not legally pass the order suspending the Vice-Chancellor.

(Para 25)

Writ Petition under Article 226 of the Constitution of India praying that :

- (a) *the order of respondent No. 1 (Annexure P-9), relating to the suspension of the petitioner, may kindly be quashed as being void ;*
- (b) *the order of the Chancellor P. 20, appointing the Deputy Commissioner, Rohtak, to the office of the Vice-Chancellor of the University, may kindly be quashed as being void ;*
- (c) *the Chancellor, Respondent No. 1, may kindly be restrained from accepting any demand from the State Government or the Union Government for any kind of action against the petitioner, contrary to the provisions of the University Act and the terms and conditions of the petitioner's appointment as Vice-Chancellor ;*
- (d) *the Chancellor, Respondent No. 1 may kindly be directed not to take any action against the petitioner arbitrarily; in disregard of the provisions of the Act and the Statutes.*
- (e) *the respondents Nos. 2 to 7 may be restrained from interfering in the internal affairs of the University such as control of discipline in the University ;*
- (f) *the Chancellor Respondent No. 1 may kindly be restrained from interfering with the discharge of the Statutory duties and functions of the petitioner.*
- (g) *it may be declared that vide Annexure 'P-4' to the first petition, the petitioner has a right to work as Vice-Chancellor for a period of six years with effect from 28th October, 1977.*

PRAYER FOR INTERIM RELIEF

- (i) *That Deputy Commissioner, Rohtak may kindly be restrained from interfering with the functioning of the petitioner, with the connivance or help of the State Government.*

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(ii) *That the Chancellor, Respondent No. 1 may kindly be asked to withdraw his void orders relating to the appointment of Deputy Commissioner, Rohtak as acting Vice-Chancellor.*

(iii) *That since the illegal suspension of the petitioner and the illegal appointment of Deputy Commissioner, Rohtak as acting Vice-Chancellor, whose orders as regards the affairs of the University will have no legal force, will lead to total chaos and endless litigation in the University, the operation of the orders relating to the petitioner's suspension and Deputy Commissioner, Rohtak's appointment as Acting Vice-Chancellor of the University, may kindly be stayed, till the decision of this writ petition.*

That apart from the first petition, no such or similar petition has been filed in this Hon'ble Court or in the Supreme Court on the factual grounds mentioned in the first petition and in this petition.

That the certified copies of Annexures are not easily available to be filed with the petition and the exemption from filing the certified copies, may kindly be granted and advance copies to the Respondents may also kindly be dispensed with.

C. Misc. 1577 of 1979.

Miscellaneous Application under Section 151 C.P.C. praying that the petitioner applicant be permitted to supply copies of the replications to the Advocate-General, Haryana, by the evening of 5th October, 1979 and to file these in the Court in the morning of 8th October, 1979, and the Petition kindly be heard on 9th October 1979.

C. Misc. 1642 of 1979.

Miscellaneous Application under Section 151 C.P.C. praying that in the interest of justice and to put the record straight, the above-mentioned documents kindly be permitted to be put on record as annexure P-21, 22 and 23, respectively.

Application under Section 151, Order XI Rule 14, Order XLI, Rule 27, C.P.C. praying that the two documents mentioned above kindly be permitted to be placed on the record and taken into consideration in relation to the relevant allegations in the petitions.

Hardwari Lal, in person.

U. D. Gaur, A. G. (H) for Respondent 1 to 6.

Gian Singh, Advocate for Respondent No. 7.
with Hari Paran Singh, Advocate.

JUDGMENT

Prem Chand Jain, J.

(1) Shri Hardwari Lal has filed this petition under Article 226 of the Constitution of India praying for the issuance of an appropriate writ, order or direction quashing the order of suspension passed against him, dated 21st of September, 1979 (copy Annexure P/9 to the petition) and the order dated 21st of September, 1979 (copy Annexure P/20 to the petition) by which Shri Chander Singh, I.A.S. Deputy Commissioner, Rohtak, was appointed Vice-Chancellor, temporarily. The petitioner has also prayed that the Chancellor (respondent No. 1) be restrained from accepting any demand from the State Government or the Union Government for any kind of action against the petitioner, contrary to the provisions of the University Act and the terms and conditions of the petitioner's appointment as Vice-Chancellor.

(2) In order to understand the contentions of the petitioner, it would be necessary to recapitulate certain salient features of the case which read as under:

(3) The petitioner was appointed Vice-Chancellor of the Maharishi Dayanand University, Rohtak,—*vide* notification dated 26th of October, 1977 for a period of three years. His terms and conditions of appointment were issued separately. The petitioner continues to be the Vice-Chancellor. It appears that for quite some time past, there has been considerable unrest in the University Campus. The reason assigned by the petitioner is unnecessary interference from the Government and its Ministers. Be that as it may, the fact remains that there has been unrest in the University Campus.

(4) On 11th of September, 1979, a news-item appeared in 'The Tribune' to the effect that the Chief Minister of Haryana had said in a meeting at Kosli that the petitioner's refusal to go on leave left

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him with no option but to suspend him so that normalcy could be restored. Apprehending some notice, the petitioner, on the basis of the said news-item, filed C.P.W. No. 3228 of 1979. Notice of motion was issued in that petition for 17th of September, 1979, Separate written statements were filed on behalf of the respondents Nos. 1 to 6. The petition was heard and the Bench on 20th of September, 1979 dismissed the petition *in limine*. Although from the judgment of the Bench, it would be evident that the petition was dismissed, one of the matters on which opinion was expressed by the Bench, was that no suspension order had been passed against the petitioner.

(5) Thereafter, on 21st of September, 1979 the impugned order suspending the petitioner was passed by the Chancellor; and the Deputy Commissioner, Rohtak, was appointed Vice-Chancellor; temporarily. As earlier observed, the petitioner has called in question the legality and propriety of these orders on various grounds.

Notice of motion was issued to the Advocate-General, Haryana on 25th of September, 1979 and stay of operation of the impugned orders was granted. The respondents have filed separate written statements in which the material allegations including the allegation of *mala fide* have been completely denied. Respondent No. 1 in his written statement has supported his action of suspending the petitioner.

(7) The matter was argued by Shri Hardwarai Lal in person and on behalf of the respondents by the learned Advocate-General, Haryana.

(8) Before I deal with the contentions of the learned petitioner, I propose to dispose of Civil Miscellaneous application No. 1642 of 1979 and Civil Miscellaneous application No. 1700 of 1979. Notice of these two applications was given to the learned Advocate-General. Civil Miscellaneous No. 1700 of 1979 has been filed for allowing a copy of the letter written by Dr S. K. Dutta ex-Vice-Chancellor, dated October 15, 1979, and of the certificate by Shri Chander Singh, I.A.S., Deputy Commissioner, Rohtak, regarding the taking over of the charge as Vice-Chancellor, to be placed on record. *Vide* Civil Miscellaneous No. 1642 of 1979, a copy of the letter of Shri Prem Bhatia dated October 10, 1979, written to the petitioner in which an assurance has been given that the correspondent on whose report the news item dated

September 10, 1979, appeared in 'The Tribune' if called, would appear as a witness, and a copy of the letter written by the Registrar to the petitioner and some press statement are sought to be produced. During the course of arguments, we did not find any relevancy of these documents. Consequently we decline the prayer made in these two miscellaneous applications and dismiss them.

(9) So far as the replication is concerned, we allowed the petitioner to read certain relevant portions out of the same and did not permit him to refer to new allegations and read new documents which have been produced with the replication, and to that extent the prayer of the petitioner had been declined.

(10) The first contention raised by the petitioner was that the Chancellor had no power to suspend him under clause (6) of statute 4 of the First Statutes of the Rohtak University, read with section 14 of the Punjab General Clauses Act (hereinafter referred to as the Punjab Act). It is an admitted case of the parties that the Chancellor is the appointing authority of the Vice-Chancellor and that under section 14 of the Punjab Act an authority having power to make an appointment shall also have power to suspend, unless a different intention appears. What was sought to be argued by the petitioner was that from various relevant provisions of the Rohtak University Act, 1973 and the Statutes it was evident that a contrary intention appeared with regard to the exercise of the power of suspension by the Chancellor. In order to appreciate this contention of the petitioner, it would be necessary to advert to certain provisions of the Act and the Statutes.

(11) The Rohtak University Act, 1975, (hereinafter referred to as the Act) received the assent of the Governor of Haryana on the 21st August, 1975. Section 8 of the Act provides that the Chancellor, the Vice-Chancellor, the Dean of Students Welfare, the Registrar, the Comptroller, and such other persons in the service of the University as may be declared by the Statutes to be the officers of the University, shall be officers of the University. Under sub-section (2), power is given to the Chancellor to appoint a person to be pro-vice-Chancellor in addition to the offices mentioned above as and when deemed necessary and on such terms and conditions as he may think fit. Section 9 provides that the mode of appointment and functions of the officers of the University, other than the Chancellor shall be prescribed by the Statutes and the ordinances, in so far as they are not prescribed

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in the Act. Sub-section (2) of section 9 provides that subject to the provisions of the Act, the powers and duties of the officers of the University, the term for which they shall hold office and the filling up of casual vacancies in such offices shall be such as prescribed by the statutes. In the First Statutes of the Rohtak University, under statute 2 it is provided that the Governor of Haryana shall be the *ex officio* Chancellor of the University. Under statute 3(1) it is provided that the Chancellor by virtue of his office will be the head of the University. Statute 4 being an important statute on which much stress was laid on either side, may be reproduced in its entirety:—

- “4. (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall take rank next to the Chancellor. He shall be the *ex officio* Chairman of the Executive Council, the Academic Council and the Finance Committee and shall in the absence of the Chancellor preside over the convocation and the meetings of the Court. He shall be entitled to be present at and to address, any meeting of any authority or other body of the University.
- (2) It shall be the duty of the Vice-Chancellor to see that the Act, the statutes, the ordinances and the regulations are faithfully observed. He shall have all powers necessary for the purpose.
- (3) The Vice-Chancellor shall have power to convene meeting of the Court, the Executive Council, the Academic Council and the Finance Committee and may do all such acts as may be necessary to carry out the provisions of the Act, the statutes and the ordinances.
- (4) If in the opinion of the Vice-Chancellor, an emergency has arisen which requires that immediate action should be taken the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next succeeding meeting of the authority which in the ordinary course would have dealt with the matter:

Provided that if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Chancellor, whose decision shall be final:

Provided further that where any such action taken by the Vice-Chancellor affects any person or persons in the service of the University, such person or persons, shall be entitled to prefer within thirty days from the date on which notice of such action is received, an appeal to the Executive Council.

- (5) The Vice-Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the authorities of the University.
- (6) The Vice-Chancellor shall be appointed by the Chancellor on the terms and conditions to be laid by the Chancellor.
- (7) The Vice-Chancellor shall hold office ordinarily for a period of three years, which term may be renewed.
- (8) In the case of a casual vacancy in the office of the Vice-Chancellor, the Chancellor, until the appointment of a new Vice-Chancellor, may make a temporary appointment."

Statute 5 provides that the Pro-Vice-Chancellor shall assist the Vice-Chancellor in respect of such matters as may be specified by the Vice-Chancellor in this behalf, from time to time, and shall also exercise such powers and perform such duties as may be assigned to him by the Vice-Chancellor. Under clause (2), it has been provided that the terms and conditions of service of the Pro-Vice-Chancellor shall be such as may be specified by the Chancellor.

(12) From a review of the aforesaid provisions, it is clear that the Vice-Chancellor is an officer of the University invested with executive powers set out in the statutes and his appointment is to be made ordinarily for a period of three years on such terms and conditions as laid down by the Chancellor, and that the Chancellor too is required to perform certain important functions.

(13) Now, I propose to deal with the merits of the contention of the petitioner, but before I do so it may be observed that Shri Hardwari Lal had started his arguments by submitting that section 14 of the Punjab Act was not applicable to the provisions of the Act

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and the statutes, but he did not press this contention in view of the judgment of the Supreme Court in *Dr. Bool Chand v. Chancellor, Kurukshetra University* (1). Hence, the case has to proceed on the premises that section 14 of the Punjab Act is applicable to the provisions of the Act and the Statutes. What has now to be seen is whether from the provisions of the Act and the Statutes to which reference was made, any contrary intention appeared with regard to the exercise of the power of suspension by the Chancellor. Admittedly, the Chancellor is the appointing authority and under section 14 of the Punjab Act he will have power to suspend the Vice-Chancellor unless a contrary intention is indicated.

(14) What was contended by the petitioner was that under clause (6) of statute 4, the Vice-Chancellor is appointed by the Chancellor on the terms and conditions to be laid down by him; that under clause (7) the Vice-Chancellor ordinarily holds office for a period of three years which term may be renewed and that under clause (8) in the case of a casual vacancy, the Chancellor has power to appoint a new Vice-Chancellor, until the appointment of a new Vice-Chancellor, temporarily. According to Shri Hardwari Lal, when clauses (6), (7) and (8) of statute 4 are read conjunctively, then it becomes quite evident that after an appointment is made under clause (6) read with clause (7) of the person as Vice-Chancellor for a term of 3 years, then such person continues to remain a Vice-Chancellor for that period and the Chancellor cannot in any way interfere in his (Vice-Chancellor's) work. According to the petitioner, the statute only provides for the filling up of a casual vacancy in the manner as provided for under clause (8) of statute 4; that a casual vacancy comes into existence only as a result of death, resignation, removal or otherwise; that under section 8 of the Act only one Vice-Chancellor can be appointed that by passing an order of suspension no vacancy is created; that when one Vice-Chancellor continues to be in office no other Vice-Chancellor can be appointed; that the moment regular appointment is made under clause (6) for a period as provided for in clause (7), or on some other terms and conditions then in respect of such appointment the power of the Chancellor stands exhausted as such a person has an indefeasible right to continue as Vice-Chancellor for the term for which he has been appointed; that it is not unheard of as in cases of some appointments made under the Constitution, there is no power of suspension, and that the power of suspension has rightly

(1) 1968 S.C. 292.

not been provided for in the Act or the statute as between the Chancellor and the Vice-Chancellor there is no relationship of master and servant.

(15) After giving our thoughtful consideration to the entire matter, we find ourselves unable to agree with this contention of the petitioner.

(16) It may be observed at the outset that clause (8) of statute 4 has no applicability to the facts of the case in hand. Clause (8) envisages appointment of a Vice-Chancellor temporarily when a casual vacancy occurs. Such an appointment lasts only until the appointment of a new Vice-Chancellor. A casual vacancy occurs when the same comes into being on the happening of an unforeseen event, i.e., by death, resignation, removal or otherwise. A casual vacancy occurs and is not created. If that is so, then no casual vacancy would come into being as a result of an order of suspension as an order of suspension only results into temporary deprivation of office, position or of one's privilege. A post does not fall vacant as a result of an order of suspension. The effect of suspension is only to divest a person of the work which he is required to do. If by ordering suspension a vacancy is not created, then no new Vice-Chancellor can be appointed temporarily in exercise of the powers under clause (8) of statute 4. In this view of the matter, there is no escape from the conclusion that an order of suspension would not result in the creation of a casual vacancy and that no new Vice-Chancellor can be appointed temporarily in place of the suspended Vice-Chancellor.

(17) Having arrived at the aforesaid conclusion, the next question that arises for consideration is whether there is any other provision in the statutes which may permit the exercise of the power of suspension. In the instant case, the power of suspension has been exercised under clause (6) of statute 4, read with section 14 of the Punjab Act. What was sought to be argued by the petitioner was that clause (6) applies only to cases of normal or regular appointments and that it does not envisage the power of appointment to be exercised for filling the post temporarily. According to the petitioner, the statute had made a specific provision for the temporary filling of vacancies and if the matter is not covered by that provisions, i.e., clause (8), then in no case an appointment can be made temporarily. To my mind, the contention of the petitioner is again untenable. The bare reading of clauses (6) and (8) would show that they are independent of each other and cover different fields. As I have observed

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earlier, clause (8) applies only to the filling of a casual vacancy temporarily. The appointment of the petitioner was made under clause (v) of statute (4). The Chancellor is his appointing authority. Under section 14 of the Punjab Act, the authority has power of suspension until a contrary intention appears. For finding out a contrary intention no benefit can be drawn from the provisions of clause (8) as the same cover entirely a different field. It cannot justifiably be contended that if a case does not fall within the provisions of clause (8), then in no case a temporary appointment of a Vice-Chancellor can ever be made as such a contention, if accepted, may lead to anomalous and illogical results. I propose to project this aspect by taking an example. In a given case, a Vice-Chancellor may become incapacitated temporarily as a result of an accident. The incapacity is such that he is in a state of coma. In the opinion of the doctors, such a condition is likely to continue for a month or so. If the contention of Shri Hardwari Lal is accepted, then in such a situation the only course available to the Chancellor would be to remove the disabled Vice-Chancellor. This, on the face of it, may not only look inhuman but also absurd. It was agreed to, and apparently rightly, that this situation is not covered by clause (8). That being so, to carry out the functions of the University it would become incumbent on the Chancellor to appoint a Vice-Chancellor temporarily and that can be done in exercise of his powers under clause (6) of statute 4. If clause (6) of statute 4 is viewed in this light, then answer to the problem of suspension, with which we are faced, would become very easy. The Chancellor is the appointing authority and in order to meet a particular situation, if the action can be justified otherwise, he would be entitled to exercise the power of suspension under clause (6) of statute 4. Shri Hardwari Lal had argued that there cannot be two Vice-Chancellors as section 8 of the Act envisages only the appointment of one Vice-Chancellor. This approach of the petitioner again suffers from an obvious fallacy. Section 8 only prescribes as to who would be the officers of the University and Vice-Chancellor is one of them. Similar is the case with the office of the Chancellor. When a Vice-Chancellor is suspended or is in any other manner incapacitated to work as Vice-Chancellor and in case another temporary appointment is made then for that period there is only one Vice-Chancellor who is actually discharging the functions of that office and that is what is intended by the provisions of section 8. In other words, under section 8 there has to be a Vice-Chancellor who is actually discharging the functions of that office. As

I have observed earlier, under section 8 Chancellor is also an officer of the University. In the instant case, the Governor is the *ex-officio* Chancellor of the University. Suppose the Governor takes one month's earned leave and in his place an Acting Governor is appointed, then he (the Acting Governor) would automatically become the Chancellor of the University. The Governor who has gone on earned leave does not cease to be the Chancellor. If the contention of Shri Hardwari Lal is accepted, then in case of Chancellor also, the Governor (Chancellor) who goes on leave, has to be removed for a month as a Chancellor and then only an appointment of another Chancellor can be made. In my view, this is neither possible nor is ever intended to be so. As earlier observed, section 8 only mentions the designation of the person who would be an officer of the University and that from this provision it cannot be held that no other person can temporarily be appointed as Vice-Chancellor in case the regular incumbent is unable to discharge the functions of his office. Shri Hardwari Lal had contended that under the statute itself the Vice-Chancellor has the power to delegate some of his duties to the Pro-Vice-Chancellor or the Registrar or any other officer and that any eventuality where a Vice-Chancellor is temporarily unable to perform his functions can be met by delegating the powers. This contention is of no help to the petitioner, nor does it meet the example which I have taken in the earlier part of the judgment. Moreover, under the Act and the statutes, the Vice-Chancellor may be in a position to delegate some of his powers which may facilitate the working of the University but no provision in the Act or the statutes was brought to our notice under which the Vice-Chancellor can direct any other officer of the University to act as Vice-Chancellor.

(18) In this view of the matter, I have no hesitation in holding that clause (6) of statute 4 covers all types of appointments except the ones to which reference has been made in clause (8) and that under clause (6), read with section 14 of the Punjab Act, the Chancellor, who is the appointing authority of the Vice-Chancellor, has power to suspend as no contrary intention is available in the Act or the statutes.

(19) It was next contended by Shri Hardwari Lal that in case we did not agree with him on his first contention that there is no power with the Chancellor under the Act to suspend the Vice-Chancellor, then this power of suspension can be exercised by the Chancellor

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only in order to facilitate the holding of an inquiry which is either conducted by himself or by some persons appointed by him. According to the petitioner, the order of suspension could not be passed in order to facilitate the holding of the inquiry to be made by a Commission appointed under the Commission of Inquiry Act, 1952 (hereinafter referred to as the Inquiry Act) as such a suspension would be only to support the action of the State Government. It was also submitted by the petitioner that it has to be the personal satisfaction of the Chancellor before an order of suspension can be passed; that an order of suspension be passed only if it would ultimately help the appointing authority to pass an order of removal and that any finding by the Commission under the Inquiry Act would be of no help or assistance to the Chancellor as ultimately the Chancellor has to form his own independent opinion before passing an order of suspension.

(20) On the other hand, it was contended by the learned Advocate-General, Haryana, that in the instant case the Commission had been appointed under the Inquiry Act; that the inquiry was being conducted by the Commission against the Vice-Chancellor with regard to the charges which had been levelled against him; that the Commission of Inquiry had been appointed by the Government on the asking of the Chancellor and that in such a situation the order of suspension was rightly passed against the petitioner. According to the learned counsel, once the power of suspension is conceded in the Chancellor, then in order to facilitate the holding of the inquiry by the Commission an order of suspension could legally be passed against the petitioner.

(21) After giving our thoughtful consideration to the entire matter, we find that there is considerable force in the contention of the petitioner. In the instant case, the Commission has been appointed under section 3 of the Inquiry Act, which reads as under:—

“3. (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing

such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter—

- (a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;
 - (b) by a State Government, the Central Government shall not appoint another commission to inquiry into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.
- (2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.
 - (3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission whether consisting of one or more than one member).
 - (4) The appropriate Government shall cause to be laid before the House of the People or, as the case may be, the Legislative Assembly of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government."

(22) The bare reading of section 3 of the Inquiry Act shows that the Commission is to be appointed by the Government and he is required to submit his report to the Government. The Chancellor

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has nothing to do directly with the Commission. The terms and conditions of the Commission are to be finalised by the Government. It would be worthwhile to mention here that under section 7 the Government has jurisdiction to declare that in its opinion the continuance of the Commission is unnecessary with the result that from the date of notification the Commission shall cease to exist. Further, the report is to be submitted by the Commission to the Government. The Government may or may not take any action on the basis of that report. In a given case the report may not even see the light of the day. The Chancellor would have no power to ask the Government to send a copy of the report of the Commission to him. When a Commission is appointed under the Inquiry Act, it may be possible that the Commission may take long time to submit his report and in this situation the Chancellor, at whose instance the Commission was appointed, would be a helpless spectator.

(23) In the Act and the statutes all effort has been made to provide for the proper functioning of the University which is headed by a Chancellor. The University is an autonomous body and is not a department of the Government. Ordinarily, it should be completely free from influence of any kind from the Government. The Chancellor, so far as the University affairs are concerned, is not merely a titular head and is required to perform important functions and has an effective say in the matters of the University. To understand the powers of the Chancellor, reference may be made to some provisions in the statutes and the Act. Under clause (4) of statute 4, if an action taken by the Vice-Chancellor is not approved by the executive, then the matter is referred to the Chancellor whose decision is final. Under section 15(5) of the Act, every new statute or addition to the statute or any amendment or repeal of a statute shall require the previous approval of the Chancellor who may sanction, disallow or remit it for further consideration. It is also provided under this very provision that a statute passed by the Court shall have no validity until it has been assented to by the Chancellor. Under section 19(1) of the Act the Chancellor has power to require or direct, at any time, any officer or authority of the University to act in conformity with the provisions of this Act and the statutes, ordinances and regulations made thereunder, and if such a power is exercised then under sub-section (2) it is provided that it shall not be called in question in any civil Court. Further, it goes without

saying that the post of the Vice-Chancellor is of a very great importance and carries with it considerable prestige and authority. The Vice-Chancellor is the principal executive officer of the University.

(24) If with this background we judge the legality of the action of the Chancellor in suspending the Vice-Chancellor during the pendency of an inquiry by the Commission, then it would become quite evident that such an action would not legally be sustainable.

(25) As observed earlier, the Chancellor is not merely a titular head. Under the Act and the statutes he has been given sufficient powers to ensure the smooth working of the University. He being the appointing authority has power to remove or suspend the Vice-Chancellor, but before taking such an action he alone has to satisfy himself whether circumstances exist for the exercise of that power. Considering the status of the Vice-Chancellor, the power of suspension is to be exercised sparingly and that too only where some grave and serious allegations of misconduct, corruption or immorality have been levelled which, if proved on inquiry, can result in the removal of the Vice-Chancellor. If power of suspension is also conceded in a case of the present nature, then in a given situation it is likely to cause great hardship and irreparable injury. Taking the present case as an example, suppose the inquiry continues for about a year or so and ultimately nothing comes out of the inquiry, then the suspension of the petitioner would be a punishment only as by the time the inquiry comes to an end his remaining term may even expire. What consolation or relief the suspended person would have from the report of the Commission even if he is exonerated of all charges when the mischief has already been done. From the scheme of the Act and the statutes, to me, it appears to be quite clear that if any inquiry is to be conducted against the Vice-Chancellor, then either it has to be done by the Chancellor himself or through some person appointed by him on whom he (Chancellor) has complete control, and it is only during the pendency of that inquiry that an order of suspension can legally be passed if the Chancellor is satisfied that suspension of the Vice-Chancellor would facilitate the holding of an inquiry. However, this finding of ours should not be understood to mean that a Commission cannot be appointed under the Inquiry Act. The Government has power to appoint a Commission and the Commission can legally and validly inquire into all those allegations which may have been made against the petitioner, but

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in order to facilitate the holding of that inquiry the Chancellor could not legally pass the impugned order of suspension.

(26) This brings me to the next contention of the petitioner that the impugned action of the Chancellor suffers from the vice of malice. What was sought to be argued by Shri Hardwari Lal was that the order of suspension has come into being as a result of the personal malice of the Chancellor and in order to meet the political need of Shri Bhajan Lal, the Chief Minister of Haryana. So far as the statement of facts in support of the allegation of malice is concerned, it would be pertinent to observe that in the petition, may be due to paucity of time, allegations have been made in such a manner that it has become quite difficult to straightaway narrate the same in a chronological or proper manner. While filing this petition, the petitioner has treated his earlier petition (Civil Writ Petition No. 3226 of 1979) which was dismissed by a Bench of this Court *in limine* on September 20, 1979, as part of this petition. It is after making lot of effort that some important features of the allegation of malice detailed in the two petitions are being put forward.

(27) As is evident from paragraph 3 of this petition, the petitioner has brought out certain causes which have been responsible for intermittent unrest in the University Campus. Those causes read as under:—

“(a) Intrigues of Dr. J. D. Singh, Pro-Vice-Chancellor, M.D. University, appointed by respondent No. 1’s predecessor-in-office, at the instance of the Haryana State Government, and against the wishes of Mr. M. L. Batra, the petitioner’s predecessor and retained until 21st September, 1979 by respondent No. 1, again, at the instance of the State Government and also for his (respondent No. 1) personal and *mala fide* reasons. Attention in this connection is invited to Annexures P-3, P-5, to the first petition and para 9, part II of this petition.

(b) Interference in the internal affairs of the University by certain Ministers of the Government as indicated in Annexures P. 7, 11, 12, 13, 14 and 28 of the first petition, for purely *mala fide* reasons.

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- (c) Interference in the internal affairs of the University and unwarranted denigration of the petitioner by Ministers of the Government, as indicated later in this petition and Annexures P-7, 11, 12, 13, 14 and 28 of the first petition.
- (d) Old hostility against the petitioner of Swami Agnivesh, Respondent No. 4, Shri Mehar Singh Rathee, Respondent No. 5, Shri Mangal Sein, Respondent No. 6 and Shri Hira Nand Arya, Respondent No. 7 and their demand for the removal of the petitioner from the University, which all has had a very unsettling effect on the University Campus (Annexures P-10, P-11, P-12, P-13, P-27 of the first petition).
- (e) Direct and indirect encouragement of unrest in the University, by the Chancellor, Respondent No. 1 of this petition, with the object of keeping the petitioner so subdued that he may carry out his improper personal wishes. Attention, in this connection, is invited to Annexures P-1 to this petition and P-5 to the first petition."

During the course of arguments, we were taken through the entire documentary evidence which has been placed on record by the petitioner in support of his contention that the impugned action of the chancellor suffers from malice. So far as the Chancellor is concerned, Shri Hardwari Lal drew our attention to his letter dated August 12, 1979, addressed to the Chancellor, copy of which has been attached with the petition as Annexure P. 13. In this letter, various facts have been stated which go to show that the petitioner has been obliging the Chancellor by carrying out his wishes. Reference has also been made in this letter about the appointment of Dr. J. D. Singh as Pro-Vice-Chancellor, with whom the Vice-Chancellor has not been pulling on well. The petitioner has also placed on the file certain cuttings from the newspapers to show that from the time he was appointed as the Vice-Chancellor of the University, one Minister or the other has been unnecessarily interfering with his work in the University and has been creating unrest in the campus. The petitioner has also tried to make out that Shri Bhajan Lal, Chief Minister, Haryana, has been trying to remain in power and win vote of confidence; that before the filing of the Civil Writ Petition No. 3228 of 1979, a statement had been issued by him (i.e., the Chief Minister of Haryana) at Kosli that the petitioner was being

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suspended; that the petitioner was forced to file the said writ petition in this Court on the basis of that statement; that ultimately that writ petition was dismissed as pre-mature as it was stated by the respondents that no order of suspension had been passed or was contemplated; and that the petition was dismissed on September 20, 1979 and the impugned order was passed by the Chancellor on September 21, 1979. What was sought to be projected by the petitioner was that prior to September 20, 1979, whatever facts existed were not sufficient as nothing was brought out in the earlier written statement to show that the suspension of the petitioner was under contemplation; that nothing has been brought out on this file as to what was the new material available with the Chancellor on which the order of suspension was passed on September 21, 1979, i.e., one day immediately after the order of this Court dismissing the earlier petition of the petitioner *in limine*, and that all these facts clearly go to prove that the action of the Chancellor has been influenced by some extraneous considerations. As I have observed earlier, the petitioner took us through all the material on which he placed reliance for proving the plea of malice. He even tried to bring new material on the record by filing some miscellaneous application, to which I have made reference in the earlier part of my judgment.

(28) In reply, the Chancellor, the Chief Minister and other Ministers, against whom allegations of *mala fide* have been made, have categorically denied the allegations. The Chancellor, respondent No. 1, has in unequivocal terms averred in the written statement that as a cumulative effect of the deputations and letters/representations received earlier as well as after the stay order, dated 11th September, 1979, the answering respondent *bona fide* formed an opinion that the circumstances of the case and the nature of allegations demand that it would not be proper to let the petitioner continue to work as the Vice-Chancellor inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune for the employees of the University to come out with the truth before the Dulat Commission while the petitioner was present on the spot and functioning as Vice-Chancellor, and then passed the suspension order and that the order of suspension of the petitioner was not passed at the instance of the Government. As respondent No. 1 denied the allegations of *mala fide*, the petitioner sought to substantiate them by referring to certain documents

on the record, while on the other side the learned Advocate-General, Haryana, also placed reliance on certain documentary evidence to show that the plea of malice was baseless. The learned Advocate-General also contended that in the petition the plea taken in paragraph 4 is that Shri Bhajan Lal implored or pressurised the Chancellor, respondent No. 1, to suspend the petitioner; that there is absolutely no material on this record to prove this averment and that this Court would not go into this question of malice as it has become a disputed question of fact.

(29) After giving our thoughtful consideration to the entire matter, we find considerable force in the contention of the learned Advocate-General that the allegations of *mala fides* cannot be gone into as they raise a disputed question of fact. It would be pertinent to observe that most of the material allegations of *mala fide* which had been made in the earlier petition and which form part of this petition were not gone into by the Bench as they raised a disputed question of fact. With respect, we agree with that conclusion of the Bench. What we have found in this case is that even if an effort is made to go into this disputed question, then also it may not be possible to determine one way or the other the veracity of the allegations even after recording elaborate evidence. The newspaper cuttings, on which much reliance has been placed by the petitioner, have just to be ignored and no reliance can be placed on them on the basis of the judgment of the Supreme Court in *Samant N. Balakrishna etc. v. George Fernandez and others* (2), wherein it has been observed thus:—

“A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.”

In view of the aforesaid discussion, we decline to go into the merits of the disputed allegations of *mala fides*.

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Shri Hardwari Lal had also raised the following contentions:—

- (i) That Shri Chander Singh, Deputy Commissioner, Rohtak, could not be legally appointed temporarily as the Vice-Chancellor of the University;
- (ii) That the petitioner was to continue as Vice-Chancellor of the University for a period of six years; and
- (iii) That a pro-Vice-Chancellor cannot be appointed by the Chancellor without first finding out the views of the Vice-Chancellor.

Points Nos. (ii) and (iii) do not deserve to be gone into as for the purpose of deciding this petition, these points do not arise for consideration at all. So far as Point No. (i) is concerned, it is not necessary to deal with the same on merits in view of our finding with regard to the power of suspension exercisable by the Chancellor in a case where an inquiry is to be conducted by a Commission appointed under the Inquiry Act.

(3) In all fairness to the learned Advocate-General, we propose to notice his preliminary objection to the effect that the petitioner is not entitled to any relief in exercise of our power under Article 226 of the Constitution as the petitioner has failed to show that he has suffered any manifest injustice. We are afraid, in the circumstances of this case, we find no merit in this objection. Having held that the Chancellor could not legally pass an order of suspension in order to facilitate the holding of an inquiry by the Commission, there would be no escape from the conclusion that such an order would certainly result in manifest injustice to the petitioner. Thus, the preliminary objection is negatived.

(31) As result of the aforesaid discussion, our conclusions are as follows:—

- (1) That clause (6) of statute 4 of the first Statutes of the Rohtak University, covers all types of appointments except the ones to which reference has been made in clause (8); that under clause (6), read with section 14 of the Punjab Act, the Chancellor, who is the appointing authority, has power to suspend the Vice-chancellor, and that no contrary intention is available in the Act or the statutes;

- (2) That the Vice-Chancellor can be suspended by the Chancellor only if an inquiry is to be conducted by himself (Chancellor) or through some person appointed by him on whom the (Chancellor) has complete control, and it is only during the pendency of that inquiry that an order of suspension can legally be passed if the Chancellor is satisfied that suspension of the Vice-Chancellor would facilitate holding of the inquiry; and
- (3) That the allegations of *mala fide* are not being gone into as they raise disputed questions of fact.

(32) In view of our conclusion No. (2), we allow this petition and set aside the impugned order of suspension, dated September 21, 1979. Annexure P. 9, passed by the Chancellor, respondent No. 1. As a consequence thereof, the impugned order Annexure P. 20, by which Shri Chander Singh, Deputy Commissioner, Rohtak, was appointed Vice-Chancellor temporarily, automatically falls. In the circumstances of the case, we make no order as to costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. C. Mital and C. S. Tiwana, JJ.

KURUKSHETRA UNIVERSITY and others,—Appellants.

versus

RURAL COLLEGE of EDUCATION, KAITHAL,—Respondent.

Letters Patent Appeal No. 630 of 1978.

November 22, 1979.

Kurukshetra University Act (XII of 1956)—Section 15 and Ordinance 1. clause (2)—University issuing guide-lines to colleges for admission to B.Ed. course—Candidates of Haryana domicile only directed to be admitted—Validity of the guidelines challenged—Such guidelines—Whether have a statutory source—Infraction thereof—Whether a ground for disaffiliation of a colleges.