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## UNIVERSITY OF KASHMIR AND OTHERS

v.

## MOHD. YASIN AND OTHERS

November 5, 1973

[V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

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*Jammu and Kashmir University Ordinance, 1969, and Jammu and Kashmir University Act, 1969—Section 52—Automatic termination under section of services of Lecturer employed on contract basis—No reemployment as provided by statute—More continuation on the expiry of statutory period does not justify inference of implied engagement.*

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*Jammu and Kashmir University Act, 1965—Enquiry into misconduct and report under the 1965 Act—No validation or continuation of enquiry commenced under the 1965 Act in the 1969 Act—Show cause notice and termination service based on the Enquiry—Report under the 1965 Act—Validity.*

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The respondent joined the Jammu and Kashmir University in 1963 as lecturer on contract basis. He was later promoted as professor. His appointment as professor was also on contract basis and by agreement he was bound by the statutes and regulations from time to time in force in the University. While extending his period of probation as Professor the Central Council of the University resolved that the respondent be charge-sheeted for certain alleged misconduct. An Enquiry was held under the Jammu and Kashmir University Act, 1965 and a report was submitted holding the respondent guilty. On the day the enquiry officer submitted the report, the Jammu and Kashmir University Ordinance 1969 was promulgated. Section 52 of the Ordinance provided that teachers employed on contract basis "unless otherwise ordered by the Chancellor after consulting the Pro-Chancellor shall cease to hold such posts or to discharge such duties after 60 days from the commencement of this Ordinance or the Act, as the case may be." No such order was issued by the Chancellor extending the respondents employment on the expiration of the period. On the other hand, the Vice-Chancellor, allowed him to function as Professor and his probation was again extended for a year by the Vice-Chancellor under s. 13(4) of the Ordinance (which had already been replaced on November 16, 1969 by the Jammu and Kashmir University Act, 1969). The Vice-Chancellor also directed the release of the salary of the respondent and requested him to serve on the academic council as an ex-officio member. Based on the enquiry report the Vice-Chancellor issued a show cause notice to which the respondent submitted his explanation. The University Council decided to terminate the services of the respondent. In a writ petition filed by the respondent the High Court directed re-instatement. The High Court took the view that the facts and circumstances of the case clearly enabled the spelling out of a fresh appointment of the respondent as Professor by an implied contract. The High Court was also of the opinion that the enquiry directed under the 1965 Act lapsed when the 1969 Ordinance came into force and could not furnish the basis for punitive action against the respondent and therefore the order of dismissal based on the report of the Enquiry Officer was bad in law.

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HELD : that the High Court's order of reinstatement had to be quashed. While the respondent had no right to continue in the University the termination of his services was invalid.

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(i) Under the 1969 Ordinance and the subsequent Act which replaced it the only body competent to appoint a professor, like the respondent, is the University Council and even the Council shall make such appointments only on the recommendation of the Selection Committee created by section 36. There is no case that, the Selection Committee even considered or recommended the respondent for appointment and there is no suggestion that the University Council appointed the respondent as professor. It follows that the only statutory body

empowered in this behalf has not appointed the respondent to the post claimed by him. Therefore the continuance of the respondent on the expiration of the statutory two months' period cannot be legitimated by law. The circumstance that the respondent functioned in the University does not vest in him the legal status of a validly appointed employee with all the protection that the Act and the relevant statutes give to such a person. Thus no case of statutory termination is called for, the basis of statutory employment being absent. [175F]

When a statute creates a body and vests it with authority and circumscribes the powers by specifying limitation, the doctrine of implied engagement *le hors* the provisions and powers under the Act would be subversive of the statutory scheme regarding appointment of officers and cannot be countenanced by the Court. If a Vice-Chancellor by administrative drift allows such employment it cannot be validated by any theory of *factum valet*. [176E]

(ii) When there was no provision in the 1969 Act which would continue or validate the enquiry commenced against the respondent by the Jammu and Kashmir University created by the 1965 Act, the Enquiry report falls to the ground *vis-a-vis* the respondent. The fact that he responded to a show cause notice cannot clothe the enquiry with legality and the report is impermissible material to injure the respondent with a punitive termination. The respondent would be considerably damnified in his standing and reputation by the order of the University. The termination of his service therefore has to be declared illegal. [176G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1386 of 1972.

From the Judgment and order dated the 26th October, 1971 of the Jammu and Kashmir High Court at Srinagar in Writ Petition No. 36 of 1970.

*F. S. Nariman, Additional Solicitor General of India, O. C. Mathur and P. C. Bhartari*, for the appellant.

*T. R. Bhasin, R. L. Kohli and Ramesh Kohli*, for respondent No. 1

The Judgment of the Court was delivered by

KRISHNA IYER, J.—The University of Kashmir, the appellant, with a blurred sense of legality, issued a ukase by resolution of its Council, terminating the services of its Professor, the appellee, insufficiently aware of the kaleidoscopic legislative changes and crucial statutory consequences on the one hand and curiously indifferent to its own embarrassingly ambivalent dealings seemingly legitimising the permanent status of the Professor. This decision virtually dismissing the appellee was successfully challenged as void in the High Court, but the appellant University has come up in appeal, with a certificate of fitness seeking to sustain the validity of its action. At the first blush, the law of master and servant may apply to the present fact-situation but the statutory status of the employer substantially transforms the character of the master, the consequences of its *ultra vires* acts as well as amenability to types of relief like re-instatement and the applicability or writ remedies, alien to the legal chemistry of breaches of contract. However, in the light of the factual-cum-legal conclusions which appeal to us these thorny jurisprudential issues of deeper import in a socio-economic and cultural context where the State undertakes dynamic activities affecting citizens' rights and operates through

**A** corporate and other effective instrumentalities may not fall for direct decision. Enough unto the day is the evil thereof.

A chronological narration of the principal facts and events and legislative shifts and their implications must precede consideration of the legal contentions put forward by either side.

**B** The Jammu and Kashmir University Act, 2005 (Samvat Year) created the University of Jammu and Kashmir. Several years later, the present respondent joined the University as a lecturer on contract basis, the law that governed his services being the provisions of that Act and the statutes framed thereunder. Subsequently, the Jammu and Kashmir University Act, 1965, was passed which, while repealing the previous Act, preserved and continued for the transitional period the rules and regulations and services of teachers and officers of the University (s. 52). Primarily, the 1965 Act imparted embryonic shape to the Jammu University and the Kashmir University by the creation of two Divisions, (1) Jammu Division, and (2) Kashmir Division. Anyway, the respondent who had joined in 1963 was appointed as Reader in September 1965, a few months after the 1965 Act came into force. A couple of years later the respondent registered an advance in his career and became Professor in the Post-Graduate Department of the University in the Kashmir Division on terms and conditions contained in letter dated January 8, 1968. While he was put on probation for one year he was informed that immediately after his appointment he would have to enter into an agreement with the University in the form forwarded to him. This agreement bound the respondent to the statutes and regulations from time to time in force in the University. It is significant to note, as the High Court has pointed out in its judgment, that "the case of both the parties, however, is that the appointment of the petitioner as Professor was on contract basis". The one-year period of probation expired on December 14, 1968, but the Vice-Chancellor extended it for one more year by order dated November 11, 1968. This extension was confirmed by the meeting of the Central Council of the University at its meeting dated June 26, 1969. But at the same meeting it was resolved by the Central Council that the respondent be charge-sheeted for certain alleged misconduct. An enquiry was held by an enquiry officer appointed in this behalf, Shri J. N. Bhan, who submitted his report on September 5, 1969 holding the respondent guilty substantially. By accident it happens that on the same date, namely, September 5, 1969, the Jammu and Kashmir University Ordinance, 1969, was promulgated by the Governor establishing two separate universities, one for Jammu and the other for Kashmir. However, by s. 52 thereof, the rules and regulations and services of employees were continued. And then followed a significant provision which laid down that within 60 days from the commencement of the Ordinance the services of teachers employed on contract basis were to cease unless otherwise ordered by the Chancellor. No such order was issued by the Chancellor extending the respondent's employment.

**H** However, oblivious or heedless of the statutory cessation of the respondent's services he was allowed to function as Professor and his probation was again extended for a year by the Vice-Chancellor under

s. 13(4) of the Ordinance (which had already been replaced on November 10, 1969 by the Jammu and Kashmir Universities Act, 1969). More incongruous with the appellant's present stand is the direction by the Vice-Chancellor to release the salary of the respondent and the request to him to serve on the Academic Council as an ex-officio member, being Professor and Head of the Department of History. While, thus, on the one side quiet flowed the stream of service as professor, on the other turbid eddies of threat to terminate surfaced up. For, based on the enquiry report the Vice-Chancellor issued a 'show-cause' notice on December 22, 1969, which elicited the respondent's explanation on January 31, 1970. Together, all the materials were considered by the University Council at its meeting dated July 7, 1970, where the decision was taken to remove him paying one month's salary. Thereafter, of course, the present litigation started.

The principal questions canvassed before us turn on the correctness of the views taken by the High Court on (a) the respondent's right to continue in service even after the statutory explanation thereof, and (b) the validity of the reliance on the enquiry report in the termination order and the breach of statutory conditions subject to which alone the power of terminating the relationship could be exercised by the University Council. In the opinion of the High Court, the facts and circumstances of the case clearly enabled the spelling out of a fresh appointment of the respondent as Professor and Head of the Department of History of the new University of Kashmir by an implied contract. Once this position is reached, it follows logically that the termination has to be in terms of the statutory regulations. On this aspect of the case the Court took the view that the enquiry directed under the 1965 Act lapsed when the 1969 Ordinance and the Act came into force, and could not furnish the basis for punitive action against the respondent. The irresistible conclusion the Court therefore reached was that the order of dismissal passed by the University Council being based on the report of the Enquiry Officer was bad in law. The Court directed re-instatement by a writ of *mandamus*.

The learned Additional Solicitor General, appearing for the appellant University, built an argument the corner-stone of which was that there was a statutory cessation of the contractual service of the respondent by operation of s. 52(4) of the Ordinance and the Act of 1969. The statutes under the Act of 1965 contained a provision which ran thus :

"Procedure—conditions for appointment of University Teachers.

#### STATUTES

1. ....

2. Every salaried teacher of the University shall have to execute a written contract with the University. The conditions of service of teachers appointed by the University shall be those embodied in the Agreement of service annexed hereto or, on Agreement substantially to like effect, and every teacher shall execute the Agreement before he enters upon his duties or as soon as possible thereafter."

A It is also common case that respondent's employment was on a contractual basis. By s. 51 of the 1969 Ordinance "all the statutes and regulations made under the Jammu and Kashmir University Act of 1965 and in force immediately before the commencement of this Ordinance shall so far as may be consistent with the provisions of this Ordinance continue to be in force in each University after the commencement of this Ordinance."

B Thus we reach the position that, on a combined reading of Statute 2 framed under the 1965 Act (already extracted above) and s. 51 of the Ordinance of 1969, which is in identical terms with s. 59 of the Act which replaced the Ordinance, the respondent was an employee of the University serving under a contract. In fact neither party disputes this position. Our attention must now turn to a crucial provision in the 1969 Ordinance which is also reproduced in the ensuing Act. Section 52 thereof runs thus :

C "52. Continuance of service of the existing employees and their allocation :—Notwithstanding anything contained in this Ordinance or any Statute or Regulation made thereunder or in any other law for the time being in force :—

- D (1) all employees of the University of Jammu and Kashmir constituted under the Jammu & Kashmir University Act, 1965 (other than those serving on contract or on deputation in the University or those serving in the Publication Bureau of the University) who, immediately before the commencement of this Ordinance, were holding or discharging the duties of any post or office in connection with the affairs of the said University shall, subject to the provisions of sub-section (2), continue in service on the same terms and conditions as regulated their service before such commencement;
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- F (2) the Chancellor may in consultation with the Pro-Chancellor by order allocate the employees of the University of Jammu and Kashmir (other than those serving on contract or deputation in the University or those serving in the Publication Division of the University) between the University of Kashmir and the University of Jammu constituted under this Ordinance in such manner as he may consider necessary and every such allocation shall be deemed to be an appointment, transfer . . . as the case may be to the post or office by the competent authority under this Ordinance :
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Provided that in making such allocations the conditions of service of employment of such employees shall not be varied to their disadvantage :

- H (3) . . . .
- (4) all persons who immediately before the commencement of this Ordinance were holding or discharging

the duties of any post or office in connection with the affairs of the University of Jammu and Kashmir on contract basis or by virtue of their occupation to such posts or offices from other services in the State, unless otherwise ordered by the Chancellor after consulting the Pro-Chancellor, shall cease to hold such posts or to discharge such duties after 60 days from the commencement of this Ordinance and all such contracts with or deputations to the University of Jammu and Kashmir shall stand terminated with effect from the expiry of the said period of 60 days."

If we may condense the effect of this provision to the extent relevant to the present case, it means that teachers employed on contract basis "unless otherwise ordered by the Chancellor after consulting the Pro-Chancellor shall cease to hold such posts or to discharge such duties after 60 days from the commencement of this Ordinance" or the Act, as the case may be. To add emphasis, as it were, to the cessation of such tenure the further part of the section re-iterates that "all such contracts with...the University of Jammu and Kashmir shall stand terminated with effect from the expiry of the said period of 60 days." Thus, by the inexorable operation of the calendar, on November 5, 1969, the respondent made a statutory exit from the employment of the Kashmir University. This much even the respondent has reconciled himself to, and the High Court has accepted.

To retrieve the situation thereafter, the respondent had recourse to a plea which found favour with the learned Judges, that the actings and dealings of the higher functionaries of the University vis-a-vis the respondent eloquently testified to the claim of implied employment of the respondent subsequent to the statutory cessation. It is true that *de facto* the respondent functioned as Professor, drew salary as such, became a member of the Academic Council in that capacity and was treated as on extended probation by the Vice Chancellor. In view of these habiliments of professoriate the High Court assumed the premise that the respondent was "admittedly in the employment of the University of Kashmir on the relevant date", and proceeded to essay the next problem which it posed in these words :

"The main question in this cause is whether the employment of the petitioner was validly terminated under the impugned resolution."

We are dealing with a statutory body, the University, and its powers and duties and the canalisation thereof. The functionaries under it and the contours of their authority are delineated by the Act. If any body created by a statute went beyond the area of its powers, the act was *ultra vires* and of no effect. Ordinance 10 of 1969 and the subsequent Act which replaced it have vested in the

- A** University Council certain powers regarding the appointment of the teaching staff. Section 22 reads :

“22. Powers and functions of the University Council :—  
The University Council of a University shall be the supreme authority of the University and shall have the following powers, namely :—

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(f) save as otherwise provided in this Ordinance, to appoint officers of the status of Joint Registrar, Deputy Librarian and above and teachers of the status of Readers and above and to define their duties.

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Provided that no officer or teacher shall be appointed by a University Council until provision has been made for his salary in the approved budget of the University concerned :

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Provided further that all appointments (Permanent or temporary) to the posts of Officers or teachers referred to in this section shall be made by the University Council on the recommendation of the Selection Committee constituted for the purpose in accordance with the provisions of Section 36 of this Ordinance, and on such terms and conditions as may be prescribed by the Statutes :

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Provided also that the Vice-Chancellor may make appointments of teachers referred to in this Section as a temporary measure for a period not exceeding six months to carry on the work and if the recommendations of the Selection Committee are not received within a period of six months, the Vice Chancellor may extend the appointment, if any made by him, for the duration of the academic session with the approval of the University Council; . . .”

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Thus, the only body competent to appoint a professor, like the respondent, is the University Council, and even the Council shall make such appointments only on the recommendation of the Selection Committee created by s. 36. There is no case that the Selection Committee ever considered or recommended the respondent for appointment and there is no suggestion that the University Council appointed the respondent as professor. It follows that the only statutory authority empowered in this behalf has not appointed the respondent to the post claimed by him. There is an interim power vested in the Vice-Chancellor hedged in with limitations, as is contained in the third proviso to s. 22(f). He may make appointments of teachers as a temporary measure for periods not exceeding six months to carry on the work, and if the Selection Committee's recommendation is not received within that time he may extend the appointment for the duration of the academic session with the approval of the University Council. There has been no exercise of the narrow power of the Vice-Chancellor under this proviso and the conclusion is irresistible that the continuance of the respondent on the expiration of the statutory two months' period cannot be legitimated by law. Of course, he remained to teach and was paid for

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his work. He did many other things which a legally appointed professor would do, with the full knowledge and even at the request of the Vice-Chancellor. May-be, he, the Vice-Chancellor and others in the University were perhaps not keeping themselves abreast of the law. But the fatal fact remains that the Chancellor did not extend the services of the respondent as contemplated by s. 52(4), and this failure finishes the plea of continuance in office of the professor. We are not concerned with the administrative fall-out from this finding although the salary of the teacher appears to have been sanctioned by the Vice-Chancellor—a piece of conduct which may be understandable on equitable grounds. The circumstance that the respondent functioned in the University does not vest in him the legal status of a validly appointed employee with all the protection that the Act and the relevant statutes give to such a person. In this view of the fact-situation, without more, the respondent's work on the University campus can be brought to a close. No case of statutory termination of service is called for, the basis of statutory employment being absent. The *ad hoc* arrangement by which he remained to teach did not acquire legal validity merely because the Vice-Chancellor went through the irregular exercises of extending his probation, etc. We have to hold that the curtain fell on the office held by the respondent when, at the end of 60 days after the Act, the sands of time ran out.

The ground urged successfully, as it were, before the High Court, of an implied engagement cannot, in our view, be sustained. When a statute creates a body and vests it with authority and circumscribes its powers by specifying limitations, the doctrine of implied engagement *de hors* the provisions and powers under the Act would be subversive of the statutory scheme regarding appointments of officers and cannot be countenanced by the Court. Power in this case has been vested in the University Council only and the manner of its exercise has been carefully regulated. Therefore, the appointment of the respondent could be made only by the Council and only in the mode prescribed by the statute. If a Vice-Chancellor by administrative drift allows such employment it cannot be validated on any theory of *factum valet*. We cannot countenance the alleged continuance of the respondent in the University campus as tantamount to regular service under the University with the sanction of law. In short, the respondent has no presentable case against the direction to quit.

Even so, there are certain disquieting features in this case. The Additional Solicitor-General fairly concedes that there was no provision in the 1969 Act which would continue or validate the enquiry commenced against the respondent by Jammu and Kashmir University created by the 1965 Act. If so, the enquiry report falls to the ground vis-a-vis the respondent. The fact that he responded to a show-cause notice cannot clothe the enquiry with legality and the report is impermissible material to injure the respondent with a punitive termination. The reliance on the enquiry report by the University to take a hostile decision on July 7, 1970 is illegal. The University Council could not act to his prejudice on the strength of a damaging report which had no force. We are, therefore, clear in our minds that the termination of the services of the respondent was stricken by the vice of statutory violation. The respondent is per-

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A fectly right in contending that he has been considerably damaged in his standing and reputation by this order of the University. We are, therefore, inclined to the view that while the respondent has no right to continue in the University, the termination of his services, as per annexure A, is invalid. It is no use the University contending that its order is innocuous. It is clear that its annexure A carries a stigma with it since it expresses "the unanimous conclusion that the . . . charges have been established against him" and the termination itself is founded on the guilt so made out. We, therefore declare that Annexure A is void but further hold that the respondent has no right to continue in service and the direction to him that he should leave his post as Professor and Head of the Post-Graduate History Department is good. The High Court's order of re-instatement is quashed.

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There is much in the circumstances of the case to show that both sides have been indifferent to the provisions of the law which changed from time to time and both sides have acted under misapprehensions, which warrant our direction that parties will bear their own costs throughout. The appeal is allowed subject to the above order as to costs.

K.B.N.

*Appeal allowed.*