

**(1998) 06 GAU CK 0005****Gauhati High Court****Case No:** Civil Rule No. 192 of 1998

Bhogirath Patowari

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

**Date of Decision:** June 2, 1998**Acts Referred:**

- Constitution of India, 1950 - Article 22
- Gauhati University Act, 1947 - Section 6, 7, 8B, 8B(4), 8B(5)

**Citation:** (1998) 2 GLT 385**Hon'ble Judges:** D.N. Chowdhury, J**Bench:** Single Bench**Advocate:** P.C. Deka, G.K. Bhattacharyya, B. Chakraborty, B. Dutta Das and B.C. Kalita, for the Appellant; H.N. Sarma, Add. Sr. G.A. and D.C. Mahanta and A. Hazarika, for the Respondent**Final Decision:** Allowed

### **Judgement**

D.N. Chowdhury, J.

The extent and content of power under Sub-section (4) of Section 8-B of the Gauhati University Act, 1947 is the issue raised in this proceeding.

2. By an order dated 25.10.95, the Petitioner was appointed as Treasurer of the Gauhati University for a period of five years from the date of joining or till the age of sixty years, whichever was earlier. It seems there was a serious controversy regarding the age of the Petitioner and the University Workmen's Union, hereinafter referred to as the Union, agitated over the matter. The matter was deliberated upon by the Executive Council and the Executive Council in its meeting resolved to superannuate the Petitioner with effect from 1.1.98 on his attaining the age of superannuation. The Petitioner was intimated about this decision by a letter dated 6.8.97 and advised him to explain as to why the above resolution should not be given effect to. By a letter dated 11.8.97, the earlier communication dated 6-8-97,

was superseded and the Petitioner was asked to show cause as to why actions, as proposed, should not be taken against him to implement the resolution of the Executive Council. The Petitioner submitted his show cause. The Executive Council in addition, also heard the Petitioner in person on 16-12-97 and thereafter by its resolution dated 26-12-97, revoke." the earlier resolution dated 19-7-97, and decided to seek die opinion of the Advocate General. Accordingly, An Executive Council constituted a Committee to extend its assistance to the leaned Advocate General. The decision of the Executive Council was not to the liking of the Union and, therefore, the Union decided to continue with its agitation by a fresh programme and die University was accordingly informed by a Notice. Situated thus, the University by its office order dated 10.1.98 asked the Petitioner to proceed on leave with effect from 10.1.98 Until further orders. Subsequently, the Registrar by his letter dated 12.1.98, superseded his earlier office communication dated 10.1.98 and served the Petitioner with the office order dated 12.1.98 as per order of the Vice Chancellor. The office order of the Vice Chancellor which is impugned in this writ proceeding reads as follows:

Whereas the University has not been functioning properly for a continuous period of time of more than two weeks and this time period has been a crucial one for taking emergent decision regarding administration, examination and other welfare measures concerning the students, the teachers, the workmen and officers and the University in general,

Whereas the Vice-Chancellor is satisfied and is of the opinion that an emergency has arisen which requires emergent decision which are ordinarily taken by officers, authority or other body to deal with these measures,

and whereas the Vice-Chancellor is empowered u/s 8B(4) of the Gauhati University Act, 1947, as amended upto-date the following immediate action are taken:

In view of the present situation prevailing in the University, Sri Bhagirath Patowari presently working as Treasurer be asked to proceed on leave with immediate effect.

Further, in exercise of powers conferred u/s 8B(4) of the Gauhati University Act., 1947, as amended upto date, the Vice Chancellor is satisfied that Shri Bhagirath Patowari, presently working as Treasurer be given compulsory retirement with effect from 10th January, 1998 (Afternoon).

The Registrar is directed to take necessary action immediately.

Sd/- H.L. Duorah

Vice Chancellor,

Gauhati University.

The legitimacy of the aforesaid impugned order is assailed in this proceeding as being arbitrary, capricious and discriminatory. The power and the competence of the Vice-Chancellor to compulsorily retire die Petitioner is also questioned in this

proceeding. Furthermore, the impugned order is also attacked on the ground of unauthorised and mechanical exercise of power, that too at the behest of the employees" Union.

3. The University contested the case, submitted its affidavit and defended its action. According to die University, the Petitioner could not have continued in service and ought to have superannuated as far back as on 31st March, 1996 but for the deceitful act of the Petitioner. In die Matriculation Certificate issued by the University on 4th July, 1955, the age of the Petitioner was recorded as 18 (eighteen) years 11 (eleven) months on 1st March, 1955, Subsequently, the Petitioner managed correct his age showing as 13 (thirteen) years 10 (ten) months and 16(sixteen) days as on March, 1955 by playing fraud. The Union coming to know about rectification of the age of the Petitioner, requested the University authority for appropriate action and accordingly adopted and forwarded a resolution to that effect. The University took a resolution on 9-12-97 requesting the Executive Council, hereinafter referred to as the EC, to finally settle the issue regarding service tenure of the Petitioner. The EC. accordingly on 19.7.97, decided to superannuate the Petitioner with effect from 1.1.98 on his attaining the age of superannuation. Accordingly, notice was issued to the Petitioner asking him for his explanation. The Respondents considered the Show Cause reply and also heard the Petitioner-in-person; and thereafter, decided to revoke the earlier decision dated 19.7.97 and decided to refer the entire matter to the learned Advocate. General for his opinion.

4. The Union resorted to a programme of agitation from 30.12.97, protesting against the revocation of the earlier resolution of the EC taken on 19.7.97. Under compelling circumstances, the Petitioner was asked to go on leave as per office order communicated by Annexure-XV, as annexed to the petition. The Petitioner since did not carry out the order dated 10.1.98 as per Annexure-XV, in order to avoid embarrassing situation, the Vice-Chancellor, the immediate superior authority in the matter of administration of the University, was compelled to resort to Sub-section (4) of Section 8-B of the Act, 1947. The Vice-Chancellor as being the Chief Executive authority, on taking into account all the aspects of the matter, bonafide on compelling circumstances, passed the order impugned in this writ proceeding. The Respondents also contested the maintainability of the proceeding in view of the alternative remedy provided by the Act, 1947.

5. Before entering into the merits of the case, it would be convenient to refer to the Statutory provisions of the Gauhati University Act, 1947.

6. The Gauhati University Act, 1947 is enacted to establish and constitute a teaching, residential and affiliating University at Guwahati. The University is the result of the long felt need of the people of the entire region. In the Statement of Objects and Reasons, it was outlined that:

In the absence of a University, the educational institutions in the Province lack in inspiring traditions. A University must necessarily have higher aims than what have hitherto been followed by our existing educational institutions. The creation of a band of selfless leaders and intelligent workers is the crying demand of the country today. It is, therefore, intended that on the one hand the Proposed University, as far as possible, will assume teaching functions as well as allow full growth of the residential system and on the other hand in respect of the existing institutions, which the Province cannot ignore, it shall also act as an affiliating and directive body. It will be the aim of the proposed University to intensify the study of the age-long spirit of the Assamese life and culture and to bring in them in necessary adjustments in relation to Indian civilisation and to the different and new impulses of the West. The study of the language and problems of the Hill Tribes of Assam will be made a special feature of this University.

The proposed University aims at inspiring to create and enlarge the bounds of human knowledge, which will develop the spirit of courageous criticism and of the scientific investigation and which will produce a correct outlook. Such aim and ideals can only be by establishing a separate University in Assam, capable of dealing with the public requirements and problems of the Province, and of satisfying the legitimate aspirations of its people.

Section 7 of the Gauhati University Act, 1947, hereinafter referred to as the Act, delineates authorities and officers of the University, viz.-

- (i) the Chancellor,
- (ii) the Vice-Chancellor,
- (iii) the Rector
- (iv) the Court,
- (v) the Executive Council,
- (vi) the Academic Council,
- (vii) the Faculties,
- (viii) the Standing Finance Committee,
- (ix) the Construction Committee,
- (x) the Selection Committee,
- (xi) the Registrar,
- (xii) the Treasurer, and
- (xiii) such other Authorities and Officers as may be provided for by the Statutes.

The Governor of Assam is the Chancellor of the University. The Chancellor by virtue of his office, is the Head of the University and the President of the Court and shall, when present, preside at any Convocation of the University.

The Vice-Chancellor is the principal executive and academic officer of the University and is appointed by the Chancellor on the recommendation of an Advisory Board constituted for the purpose.

The various relevant provisions of the Act, 1947 are extracted below:

#### 8B. Powers and duties of the Vice Chancellor-

(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meetings of the Court and any convocation of the University. He shall be an ex-officio member and Chairman of the Executive Council, the Standing Finance Committee, the Construction Committee, and of the Academic Council and shall be entitled to be present and to speak at any meeting of any authority or other body of the University. When present, he shall preside over all such meetings.

(2) It shall be the duty of the Vice-Chancellor to ensure that the provisions of this Act, the Statutes, the Ordinances and the Regulations are faithfully observed.

(3) The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council, the Academic Council, the Finance Committee and the Constructions Committee.

(4) In any emergency which, in the opinion of the Vice Chancellor, requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary, and shall at the earliest opportunity thereafter report his action to the Officer, authority or other- body who or which in the ordinary course, would have dealt with the matter, (emphasis supplied)

(5) When any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer an appeal to the Executive Council through the officer, authority or other body of the University within thirty days from the date on which such action is communicated to him.

(6) The Vice-Chancellor shall give effect to any order of the Executive Council regarding the appointment, dismissal or suspension of an officer or Teacher of the University or regarding the recognition or withdrawal of the recognition of any such Teacher and shall exercise general control in the University. He shall be responsible for the discipline of the University.

(7) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes and Ordinances.

#### 8BA, Rector-

(1) The Rector shall be appointed by the Chancellor on the recommendation of the Vice-Chancellor on such emoluments and allowances as may be fixed by the Chancellor. He shall hold office for a term of five years and shall be eligible for re-appointment.

(2) The Rector shall exercise such powers and perform such duties of the Vice-Chancellor as may, from time to time, be delegated to him by the Vice-Chancellor.

#### 8C. The Registrar-

(1) The Registrar shall be a whole time salaried Officer of the University, and shall be appointed by the Executive Council on such terms, conditions and remunerations as may be prescribed.

(2) The term of office of the Registrar shall be for five years, but may be eligible for reappointment.

(3) The Registrar shall be Secretary ex-officio of the Court, the Executive Council and of the Construction Committee.

Provided that, notwithstanding anything contained in this Act, the Executive Council may, either for specific purpose or in general, appoint any other officer of the University as Secretary of any of the said authorities.

(4) It shall be the duty of the registrar-

(i) to be the custodian of the records, common seal and such other property of the University as the Executive Council shall commit to his charge and to manage such properties;

(ii) to sign and verify all contracts and agreements on behalf of the University and to act as Secretary of such "other Committees as may be prescribed by the Statutes;

(iii) to conduct the official correspondence of the Court and the Executive Council;

(iv) to issue all notices convening meetings of till such Committees or Councils or Boards of which he is the Secretary;

(v) to arrange for and superintend the examination of the University till such time when the University appoint other officers, if any, for this purpose; and

(vi) to perform such other work as may, from time to time, be prescribed by the Executive Council.

#### 8D. The Treasurer-

(1) The Treasurer shall be a whole time salaried officer of the University and shall be appointed by the Executive Council for a period of five years on such terms, conditions and remuneration as may be prescribed. He may be eligible for

reappointment.

(2) The Treasurer shall exercise general supervision over the funds of the University and advise in regard to its financial policy.

(3) Subject to the control of the Executive Council he shall manage the investments of the University and be responsible for the preparation and presentation of the annual estimates and statements of accounts and for proper maintenance of the accounts.

(4) Subject to the power of the Executive Council, the Treasurer shall be responsible for ensuring that all moneys are expended for the purpose for which they are granted or allotted.

(5) The Treasurer shall exercise such other powers as may be prescribed by the Statutes and Ordinances:

Provided that the Chancellor may on the recommendation of the Executive Council in the case of any casual vacancy in the office of the Treasurer, direct that the Registrar shall act as Treasurer and perform all the duties and exercise all the powers of the Treasurer, and when any such direction has been made all references to the Treasurer in this Act, the Statutes, the Ordinances and the Regulations shall be deemed to be references to the Registrar.

7. The Executive Council is the executive body of the University. It is vested with the duties of control and administration of the property and funds of the University. The Executive Council is authorised to appoint a finance Committee to advise it on matters of finance consisting of six members of whom, the Vice-Chancellor shall be the Chairman and the Treasurer shall be the Secretary, two members to be elected by the Council from amongst its members and two members to be nominated by the Government - one each from its Finance and Education Departments. The Executive Council is the competent authority to appoint officers (other than the Chancellor, Vice Chancellor and the Rector), Teachers, Librarian, the Proctor, the clerical staff and other employees of the University and to define their duties and conditions of service. Subject to the powers conferred by the Vice Chancellor, the Executive Council, the Executive Council can regulate and determine on matters under the Act concerning the University in accordance with the Act as it envisages.

8. From the scheme of the Act, it thus emerges that the Vice Chancellor is one of the authorities of the University. He is one of the key functionaries of the University both as an executive and as an academic officer. The Vice-Chancellor is vested with the overall administrative responsibilities of the University - both scholastic and non-scholastic. He is entrusted with the duty to secure observance of the Act, the Statutes, the Ordinances and Regulations. As the principal executive and academic officer of the University, the Vice-Chancellor is authorised to take immediate action as he deems necessary in certain emergent situations. Section 8B of the Act has

defined the powers and the duties of the Vice Chancellor. In addition to convening meetings of the Court, the Executive Council, the Academic Council, the Finance Committee, and the Construction Committee and to comply with the directions of the Executive Council envisioned in Section 6 of the Act, and other powers prescribed by the Statues and Ordinances, the Vice-Chancellor is also invested with the power to take such action as he deems necessary in any emergency under Sub-section (4) of Section 8B of the Act. In Webster's Third New International Dictionary of the English Language Unabridged, "Emergency" means:

An unforeseen combination of circumstances or the resulting state that calls for immediate action; a: a pressing need; b: a sudden bodily alteration such as is likely to require immediate medical attention; c: usually distressing event or condition that can often be anticipated or prepared for but seldom exactly foreseen.

In Black Law Dictionary (Fifth Edition), "Emergency" is described as:

A sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. Emergency is an unforeseen combination of circumstances that calls for immediate action. *State v. Perry* 29 Ohio App. 2d, 33, 278 N.E. 2d 50, 53

It is a power conferred on the Vice-Chancellor to ensure that all the provisions of the Statute is lawfully observed. The power under Sub-section (4) of Section 8B of the Act is not intended to nullify the statutory provisions. The power is hedged with condition - after formation of an opinion about emergency requiring immediate action to be taken as he (the vice Chancellor) deems necessary (emphasis supplied). "As he deems necessary", however, cannot contemplate a situation in which the vice-Chancellor can defy the will of the legislature conferred by the Statute. To invoke the power under Sub-section (4) of Section 8B of the Act, firstly there must be an emergency because of a sudden and unexpected happening warranting immediate action by the Vice Chancellor.

9. Mr. D.C. Mahanta, learned Counsel for the Respondent/University is justified in his submission that the power conferred on the Vice-Chancellor under Sub-section (4) of Section 8B of the Act is discretionary which can be exercised in any emergency which, in the opinion of the Vice Chancellor, requires immediate action. This purely depends on the subjective satisfaction of the Vice Chancellor. The Court in its judicial review cannot sit in judgment on the question of necessity or expediency or the motive of the Vice Chancellor. But, however, the writ Court can intervene on the ground of malafide, dishonesty or improper motive. An action even if taken in good faith and with the best of the intentions to further the cause of the Act which confers the power, the action will be ultra vires if the authority does not act in accordance with the Act and within the limits of the Act. The order can be equally questioned if the authority acts beyond its limits or on grounds extraneous to the legislation or if

there are no ground at all for passing such an order. Similarly, if no reasonable person properly instructed in law would have held such an opinion, the order would be liable to be quashed. The Privy Council while dealing with a case on Canadian legislation, held that the Court could intervene in a hypothetical case of bad faith or of unauthorised purposes. It said:

Parliament has chosen to say explicitly that (the Governor) shall do whatever things he may deem necessary or advisable. That does not allow him to do whatever he may feel inclined, for what he does must be capable of being related to one of the prescribed purposes, and the Court is entitled to read the Act in this way.

(A.G. for Canada v. Hallet A Carey Ltd. (1952) ACC 427)

10. Under the Statute, the power of appointment, removal or causing compulsory retirement of an employee is vested with the Executive Council and no other authority. The said power cannot be arrogated by the Vice-Chancellor by taking aid of the emergency power. At the same time, the decision of the Vice Chancellor directing the Petitioner to proceed on leave with immediate effect to tide over the situation on the facts and circumstances of the case, cannot, however, be faulted. The decision was taken as an ad hoc measure without snapping the relation of employer and employee. Every authority which does some act which affects the rights and liberty of a person must have a legal pedigree. What is not authorised by law cannot be said to be lawful.

11. I have already indicated the scheme of the Act. The Scheme of the Act does not envisage any power on the Vice-Chancellor to take disciplinary action for the removal or otherwise to any step, of whatsoever manner, for removal including retirement. Under the Act, the power of appointment is reposed only on the Executive Council which also includes the power to remove. The Act authorises only the Executive Council and the Executive Council alone to exercise control on the Treasurer and no other authority. Any other authority by necessary implication is prohibited from exercising the power unless the same is specifically delegated. No such delegation of power could, however, be pointed out at the time of hearing by the learned Counsel appearing on behalf of the University. Situated thus, it was contended on behalf of the University that the action of the Vice-Chancellor is subject to scrutiny of the Executive Council and so long as the Executive Council does not disapprove the action, the action, of the Vice-Chancellor cannot be labelled as ultra vires. The learned Counsel referring to Sub-sections (4) and (5) of Section 8B of the Act, submitted that Sub-section (5) provides for preferring an appeal to the Executive Council and, therefore, since no appeal is preferred, this Court should refrain from interfering with the exercise of power by the high dignitary of the Institution who exercised the said power bonafide. The bonafide of the Vice-Chancellor is never in question at any point of time. It is assumed that the Vice-Chancellor at all relevant time acted genuinely and honestly. What is questioned is the lawfulness of the action of the Vice-Chancellor in exercising the

power on the fact situation of as the Executive Council does not disapprove the action, the action, of the Vice-Chancellor cannot be labelled as ultra vires. The learned Counsel referring to Sub-sections (4) and (5) of Section 8B of the Act, submitted that Sub-section (5) provides for preferring an appeal to the Executive Council and, therefore, since no appeal is preferred, this Court should refrain from interfering with the exercise of power by the high dignitary of the Institution who exercised the said power bonafide. The bonafide of the Vice-Chancellor is never in question at any point of time. It is assumed that the Vice-Chancellor at all relevant time acted genuinely and honestly. What is questioned is the lawfulness of the action of the Vice-Chancellor in exercising the power on the fact situation of die case. Existence of alternative remedy cannot impede the exercise of power under Article 22 of the Constitution of India where the impugned action per se is unlawful or violative of the principles of natural justice (Ref. [Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar,](#) Similarly what is unlawful per se cannot be made lawful by a subsequent approval.

12. From the facts narrated above, it thus emerges that the matter of superannuation was earlier taken up by the Executive Council and thereafter the Executive Council in its meeting dated 26.12.97, revoked its earlier resolution dated 19.7.97. The decision of the Executive Council is a conscious decision taken after deliberations. The said decision of the Executive Council was holding the field on the day when the impugned decision was taken by the Vice-Chancellor and as such, the said decision was equally binding on the Vice Chancellor. "Emergency" is a sudden or unexpected occurrence or condition calling for ah immediate action. The controversy relating to the actual age of the Petitioner did not crop up all on a sudden warranting exercise of powers under Sub-section (4) of Section 8B of the Act, 1947. Besides, the Statute has not conferred any power on the Vice-Chancellor to sit in-judgment over the Executive Council and annul its decision.

13. For the foregoing reasons, the part of the impugned office order dated 12.1.98, whereby the Petitioner was given compulsory retirement with effect from 10.1.98 in purported exercise of powers under Sub-section (4) of Section SB of the Act, 1947, cannot be sustained and accordingly the same is set aside and quashed. However, the part of the order asking the Petitioner to proceed on leave, is sustained.

14. In the result, the writ petition is allowed to the extent indicated above.

No order as to costs.