

## CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*S. K. SOOD,—*Petitioner.**versus*THE PUNJABI UNIVERSITY, PATIALA,—*Respondent.*

Civil Writ No. 2034 of 1963.

1965

December, 24th.

*Punjabi University Act (XXXV of 1961)—Regulation 7—Examiner—Disqualification of—Whether an administrative act or exercise of quasi-judicial function.*Shamsher  
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*Held* that the appointment of an examiner lies solely within the discretion of the University and it is not a matter which is justiciable. But the imposition of a disqualification involves the exercise of quasi-judicial functions and it is necessary for the University authorities to give the examiner concerned an opportunity of showing cause against the proposed action before passing the order of disqualification. By such an order the examiner concerned suffers a professional disgrace as far as the University imposing the disqualification is concerned apart from the fact that the disqualification imposed may or may not weigh with the other universities in appointing him as an examiner in future.

*Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate*

(1) 1963, S.F.C., 821.

*writ, order or direction be issued quashing the decision of the Punjab University in cancelling the appointment of the petitioner and debarring him from examinership for three years.*

RAJINDER SACHAR, ADVOCATE for the Petitioner.

F. C. MITTAL, SENIOR ADVOCATE WITH G. P. JAIN, ADVOCATE for the Respondent.

#### ORDER

SHAMSHER BAHADUR, J.—Shri S. K. Sud, who is an Assistant Professor in Mechanical Engineering in the Thapar Institute of Engineering and Technology at Patiala, has questioned the decision (Annexure A 19) of the respondent Punjab University (hereinafter referred to as the respondent) conveyed to him on 22nd of July, 1963, cancelling his appointment as internal examiner for practical and *viva voce* examination in "Strength of Materials" for the 2nd and 3rd Engineering Examinations and debarring him "from examinership for three years."

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The petitioner has been working as a Lecturer first at the Benaras Hindu University from 1954 to 1956, and from October, 1956 till 1958 at the Thapar Institute of Engineering and Technology, Patiala. He was promoted to the post of an Assistant Professor in 1958, which post he is occupying today. The petitioner, who claims to have acquired foreign qualifications also has been a Paper Setter and Examiner in "Strength of Materials, theory of Machines etc." both at Roorkee and Delhi Universities, and since 1957 has been working as an internal Examiner for Practical Examination in "Strength of Materials" for the 2nd and 3rd Engineering Examinations of the Punjab University. On the inception of the Punjab University by the Punjab University Act, 1961, the petitioner became an examiner in the newly created University.

In a letter sent by the Registrar of the Punjab University to the Principal of the Thapar Institute on 12th of April, 1963, it was mentioned that as there was only one Engineering College affiliated to the respondent University, the external examiner should not be associated with the work of internal assessment and the awards should be sent directly by the College to the University.

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The external examiner for the "Strength of Materials" in the Second Engineering Examination was Professor Gurbax Singh of Delhi Polytechnic, while the petitioner was the internal examiner. The petitioner was pressed both by the Principal of the Thapar Institute and respondent to send the internal assessment to the Principal. The petitioner demurred and argued with the Principal as well as the University and favoured the Principal advancing his own views on this matter. The Registrar eventually felt obliged to send the letter of 22nd of July, 1963 (A.19) cancelling the appointment of the petitioner as an internal examiner and disqualifying him from examinership for three years.

It is indisputable that the appointment of an examiner lies solely within the discretion of the University and it is not a matter which is justiciable. Mr. Sachar, the learned counsel for the petitioner, has frankly conceded this proposition. What he has contended for is that the disqualification for a period of three years involves a stigma and the decision could not have been made without affording the petitioner an opportunity to show cause against the action proposed. The respondent-University purports to have exercised its powers under Regulation 7 of the Statutes of the Punjabi University annexed to the Punjabi University Act, 1961. Clause (1) of regulation 7 says that executive authority of the University shall vest in the Syndicate, and the decision to disqualify the petitioner has been taken by this body.

The only question to determine is whether the imposition of the disqualification is purely an administrative task or is one which called for the exercise of quasi-judicial functions? If the order had not been communicated and the appointment of the petitioner as an internal examiner had been withheld, no one could have found fault with the action taken. Mr. Sachar has very forcibly contended before me that the respondent-University having communicated its decision of disqualification has publicised the disgrace of the petitioner who may be subjected to similar treatment by other Universities and his name may be tarnished for ever. It may be that the wiser course for the petitioner was to submit to the directions given by the University and the Principal. I do not feel called upon to adjudicate upon the merits of the dispute, nor do

I feel competent to say anything about the issue which was raised by the petitioner that the question of internal assessment did not require the intervention of the Principal of the College. Can it be said that a mere refusal on his part to comply with the directions of the respondent-University or the Principal of the College in which he was an Assistant Professor was sufficient to warrant the action which has been taken without affording him an opportunity to show cause against it? I have reflected long over this matter after hearing the arguments of the learned counsel and am of the view that the respondent-University in disqualifying the petitioner has taken a step which involved the exercise of quasi-judicial functions. There was a dispute between the petitioner and the University and it behoved the authorities concerned to give him an opportunity before imposing the disqualification in writing. To reiterate once again, there was nothing to prevent the respondent-University from taking a note of the intransigent attitude shown by the petitioner and to express its displeasure by withholding examinership from him in future, but when the disqualification for three years has been reduced to the form of an order in writing, it cannot be gainsaid that something more than administrative action has been taken. This action of the Punjabi University may or may not weigh with the other Universities in appointing the petitioner as an examiner in future, but he has suffered a professional disgrace by being subjected to the disqualification so far as the Punjabi University is concerned.

In these circumstances, I am of the view that the petitioner was entitled to an opportunity and this having been denied, the impugned order must be set aside. As the petitioner was not entirely free from blame, I would make no order as to costs of this petition.

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