

(2016) 11 DEL CK 0049

In the Delhi High Court

Case No : Writ Petition (C) No. 965 of 2016

Amar Nath Jha

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 ADDelhi 529 : (2016) 235 DLT 99

Hon'ble Judges : Valmiki J.Mehta, J.

Bench : Single Bench

Advocate : Mr. A.K. Thakur, Advocate with Ms. Rajeshwari, Advocate, for the Petitioner; Mr. V.P. Singh, Senior Advocate with Mr. Mohinder J.S. Rupal, Advocate and Ms. Simran Jeet, Advocate for University of Delhi, for the Respondents

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J. (Oral)—By this writ petition filed under Article 226 of the Constitution of India, petitioner/Sh. Amar Nath Jha seeks directions against the respondent no.1/University of Delhi to grant approval to the appointment of the petitioner as the Vice-Principal of the respondent no.2/college, namely Swamy Shraddhanand College. Petitioner also seeks quashing of the Letters dated 13.1.2016, 19.1.2016 and 27.1.2016 of the respondent no.1/University of Delhi declining the request to grant of approval to the appointment of the petitioner as the Vice-Principal of the respondent no.2/college.

2. Petitioner was selected for appointment as a Vice-Principal by the Selection Committee of the respondent no.2/college in terms of its meeting dated 28.12.2015, and minutes of which meeting for appointment of Vice-Principal are filed as annexure P-1 to the writ petition. The Governing Body of the respondent no.2/college held an emergent meeting on 28.12.2015, and minutes of which meeting are signed by 14 members of the Governing Body. The agenda of the meeting of the Governing Body was with respect to appointment of Vice-Principal

i.e the Vice-Principal in terms of the minutes of the Selection Committee meeting of the same date i.e 28.12.2015. Respondent no.2/college thereafter issued its Letter dated 29.12.2015 to the petitioner stating that he was appointed as the Vice-Principal of the respondent no.2/college and that acceptance must be given by the petitioner.

3. Respondent no.2/college then wrote its Letter dated 28.12.2015 to the respondent no.1/University of Delhi seeking its approval to the appointment of the petitioner to the post of Vice-Principal of the college. To this letter the respondent no.1/University of Delhi wrote its Letter dated 13.1.2016 declining the grant of approval. Since the Letter dated 13.1.2016 is relevant, the same is reproduced in its entirety as under:-

"No.CS.I/114/P/VP(TS)/SSN/2013/50 13.01.2016

The Chairman,

Governing Body,

Swami Shradhanand College,

Alipur,

Delhi-110036

Subject:Arrangement for the post of Principal of the College-regarding

Sir,

The University is in receipt of letter No.SSC/56/2015-16/1466 dated 28.12.2015 on the above subject vide which the approval of the University has been sought on the recommendation of the Governing Body to the appointment of Dr.A.N. Jha, Associate Professor in History as Vice-Principal of the College.

In this regard, your attention is invited to the provision of Ordinance XVIII, Clause 7(3) which is re-produced hereunder:-

"?In case of casual vacancy in the Office of the Principal, the Vice-Principal, if any, shall until the appointment of Principal, act as the Principal. In case there is no Vice-Principal, the senior most teacher shall act as Principal. The teacher so as to act as Principal shall fulfill the minimum eligibility requirements for appointment as Principal of the College.

Such temporary arrangements shall be made ordinarily for a period not exceeding six months and shall require the prior approval of the University."

Earlier in the year 2014, the College sought the approval of the University to appoint Vice-Principal of the College at the time when there was a regular Principal in the College. The University conveyed its approval for appointment of Dr. Parveen Garg as Vice-Principal of the College duly recommended by the Governing Body. Consequent upon the superannuation of Dr. S.K. Kundra on

31.12.2014, Dr. Parveen Garg was given the charge of Acting Principal w.e.f. 01.01.2015. Subsequently, the Governing Body in September, 2015 decided not to recommend the extension of appointment of Dr. Parveen Garg to act as Principal of the College and recommended the name of senior most teacher i.e. Dr. Pankaj Bhan to act as Principal. Now again, the Governing Body of the College on its own without seeking prior approval of the University as mandated under clause 4(4) of Ordinance XVIII of the University, recommended the appointment of Dr.A.N. Jha as Vice-Principal of the College. It is evident that the Governing Body of the College is interpreting and using the rules suiting their vested interest. Further, the decision is not only arbitrary but also is in utter violation of the various provisions of Ordinance XVIII of the University.

In view of the above, the decision of the Government Body to appoint Dr.A.N. Jha as Vice-Principal of the College is not approved. Further, you may kindly suggest the name of senior most teacher of the College to act as Principal of the College who fulfills the minimum eligibility requirement for appointment as Principal of the College, abiding the provisions of the University of Delhi.

Kindly take immediate action in the matter.

Yours faithfully,

Sd/-

Assistant Registrar (Colleges)"

4. A reading of the aforesaid letter does not show that the respondent no.1/ University of Delhi has at all stated that petitioner was not fit for the job on account of lacking the eligibility criteria for being appointed as the Vice-Principal of the respondent no.2/college. Respondent no.1/University of Delhi only raise the issue of the prior approval of the University lacking to the appointment of the petitioner as the Vice-Principal of the respondent no.2/college and which is required as per Clause 4(4) of the Ordinance XVIII of the University. In the counter affidavit of the respondent no.1/University of Delhi to the writ petition, as also in an additional affidavit which has been filed by the respondent no.1/ University of Delhi dated 26.10.2016, the respondent no.1/University of Delhi has justified its action in declining the grant of approval by referring to the same Clause 4(4) of the Ordinance XVIII of the University. There are also certain aspects urged on behalf of the respondent no.1/University of Delhi by reference to its affidavits and its Letter dated 13.1.2016 that the appointment of the petitioner as Vice-Principal of the respondent no.2/college is malafide because if there is no Principal of a college, then, the Vice-Principal automatically becomes the Acting Principal of the college i.e malafides are imputed against the petitioner being appointed the Acting Principal of the respondent no.2/college by being appointed as Vice-Principal of the respondent no.2/college. In the additional affidavit, the respondent no.1/University of Delhi also states that petitioner has been acting illegally as the Acting Principal of the respondent no.2/college and has been wrongly denying access to the Governing Body members for holding of

their meetings in the college. In sum and substance, the main defence of the respondent no.1/University of Delhi is that by exercise of appointment of the petitioner as the Vice-Principal, actually the petitioner is straightaway acting as the Acting Principal of the respondent no.2/college.

5(i). In my opinion unfortunately the respondent no.1/University of Delhi seems to have gone into a complete off-tangent in the present case because the only case/cause of action pleaded in the present writ petition, and the only relief claimed in the writ petition, is seeking the appointment of the petitioner to the post of Vice-Principal of the respondent no.2/college. There is no case of the petitioner wanting to act and making a prayer in this writ petition that the petitioner be declared as the Acting Principal of the respondent no.2/college. There is no challenge by the respondent no.1/University of Delhi to the lack of any eligibility criteria in the petitioner for being appointed as the Vice-Principal of the respondent no.2/college. The only aspect which is urged is lack of prior approval and of the petitioner being appointed as the Vice-Principal by the respondent no.2/college vide its Letter dated 29.12.2015 without waiting for the prior approval of the respondent no.1/University of Delhi.

(ii) In this regard, it is relevant to note that no doubt the respondent no.2/college could not have issued its Letter dated 29.12.2015 appointing the petitioner as the Vice-Principal of the respondent no.2/college without the prior approval of the respondent no.1/University of Delhi as per Clause 4(4) of Ordinance XVIII of the respondent no.1/University of Delhi, and therefore, the effect would be that the Letter dated 29.12.2015 will not operate for appointing the petitioner as the Vice-Principal till approval is given by the respondent no.1/University of Delhi. However, the respondent no.1/University of Delhi is also completely unjustified in declining the approval on irrelevant considerations of the petitioner not being justified in acting as the Acting Principal of the respondent no.2/college. The issue in the present case is appointment of the petitioner as the Vice-Principal, and, if the petitioner thereafter is wrongly acting as the Acting Principal of the respondent no.2/college, then if the action of the respondent no.2/college in allowing the petitioner to officiate as the Acting Principal is incorrect, the respondent no.1/University of Delhi is always at liberty to take appropriate action in accordance with law and its applicable Ordinance, but, that cannot be a ground for this Court to hold that the respondent no.1/University of Delhi is entitled to refuse the grant of approval to the appointment of the petitioner as the Vice-Principal of the respondent no.2/college once there is no issue with respect to petitioner lacking in any eligibility criteria for being appointed as the Vice-Principal of the respondent no.2/college and the fact that the Governing Body of respondent no.2/college as per the decision of the Selection Committee has decided to appoint the petitioner as the Vice Principal.

6. Accordingly, this writ petition is allowed by observing that the petitioner did not become the Vice-Principal of the respondent no.2/college pursuant to the Letter of the respondent no.2/college dated 29.12.2015, but, respondent no.1/

University of Delhi will now grant approval to the petitioner for the appointment as the Vice-Principal of the respondent no.2/college within two weeks from today. In case, respondent no.1/University of Delhi has any other grievance including of petitioner allegedly not being entitled to act as the Acting Principal of the respondent no.2/college, then, respondent no.1/University of Delhi in accordance with law as applicable and its rules and Ordinances can always take appropriate action, and which are not the issues before this Court in this writ petition.

7. At this stage, on behalf of the respondent no.1/University of Delhi, it is stated that the petitioner has already been removed as the Acting Principal of the respondent no.2/college in terms of the minutes of the meeting of the Governing Body of the respondent no.2/College dated 29.2.2016, and if that be so, such issue is left open to be decided in appropriate independent proceedings as to whether the said aspect is correct or not because this Court in this writ petition is only deciding the entitlement of the petitioner to be appointed as the Vice-Principal of the respondent no.2/college.

8. Writ petition is accordingly allowed and disposed of in terms of the aforesaid observations.