

(2012) 11 DEL CK 0033

In the Delhi High Court

Case No : Writ Petition (C) No. 497 of 2012

Ashvin Chadha

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

University Grants Commission Act, 1956 — Section 12, 14, 2(f), 26, 26(1)(g)

Citation : (2013) 133 DRJ 264

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sandeep Sethi with Mr. Amit Sethi, Mr. Ishan Khanna and Ms. Preeti Gupta, for the Appellant; Dhruv Mehta, with Mr. Mohinder Rupal and Mr. Sriram Krishna for R1 and Mr. Amitesh Kumar and Mr. Sudhanshu Shekhar, for the Respondent

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner seeks the following reliefs:-

a) Issue appropriate writ/order/direction in the nature of writ of certiorari thereby declaring that the very appointment of respondent No. 2 as OSD by respondent No. 1 is illegal, unwarranted, unlawful, arbitrary and is violative of Ordinance XVIII Clause 7 (3)(c).

b) Issue appropriate writ/order/direction in the nature of writ of certiorari or mandamus thereby holding that continuance of respondent No. 2 at the post of Office on Special Duty despite decision of Governing Body vide Resolution dt. 01.10.2011 to the effect that his services are no more required, and furthermore on expiry of tenure of six months in terms of Ordinance XVIII clause 7(3) 3(c) is illegal, unlawful and arbitrary and therefore the University of Delhi-respondent No. 1 is required to relieve the respondent No. 2 (OSD) immediately from Atma Ram Sanatan Dharma College, to enable the petitioner & even Governing Body to function properly;

c) Issue appropriate writ/order/directions in the nature of writ of mandamus thereby directing the University of Delhi-respondent No. 1 to immediately approve any of the two names proposed by the Governing Body for the post of Vice Principal and simultaneously call back the office on Special Duty-respondent No. 2 as per Resolution/Minutes of Meeting dat. 01.10.2011 of the present Governing Body.

d) Issue appropriate writ/order/directions in the nature of writ of mandamus thereby directing the respondent No. 1 to mandatorily adhere to and strictly follow the University Grants Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for Maintenance of Standards in Higher Education), Regulations, 2010 published in Gazette of India on 18.09.2010 for the purposes of appointment of Principal as per Clause 5.6.1 of said Regulations.

Brief facts of the case are that the process for appointment of Principal was initiated by the then Governing Body, by giving advertisement for the post of Principal. Sh. C.M. Chadha, the then Chairman of the Governing Body informed the Vice Chancellor of respondent No. 1 to suggest the names of Nominees for Selection Committee so that interview for the post of Principal could be conducted. On 03.05.2010, respondent No. 1 provided the names of Nominees as well as Panel of Experts for conducting the interview for the said post. Thereby, letters were issued on 02.07.2010 to various candidates requesting them to appear before the Selection Committee for interview on 31.07.2010. Pursuant to information from respondent No. 1, the University Grants Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for Maintenance of Standards in Higher Education), Regulations, 2010 has been enacted, therefore, the interview was postponed till further directions.

2. Vide communication dated 16.12.2010, the then Chairman of Governing Body sought clarification from respondent No. 1 as to whether it can start the process of appointment of Principal as per UGC Regulations, 2010. Thereafter, again a request was made on 16.02.2011 for necessary intimation.

3. The names proposed by Atma Ram Trust & Sanatan Dharam Sabha (for short "ARSD") for Governing Body of the college were not deliberately approved by respondent No. 1 thereby creating situation of non-existence of regularly constituted Governing Body which situation continued till 06.07.2011 when the respondent No. 1 ultimately approved the fresh names. On 30.04.2011, the tenure of the then Vice Principal Dr. Rajesh Mohan working as Acting Principal was expired. Truncated Governing Body comprising of two members of the University and two members of Teachers of ARSD College on 01.05.2011 approved the name of the Senior Most Teacher i.e. Dr. M.S. Sethi under Ordinance XVIII Rule 7(3) to enable him to function as an Acting Principal of the college.

4. On 02.05.2011, respondent No. 1 in utter violation of the said Ordinance XVIII Rule 7(3) appointed Dr. Rakesh (another Lecturer of ARSD College) as Officer on Special Duty (OSD) of the college in an arbitrary manner, who continued as OSD till his superannuation i.e. upto 30.06.2011.

5. Being aggrieved, the Trust and Sabha filed a W.P. (C) bearing No. 3425/2011 before this Court, in which notice was issued to respondent No. 1 for 27.07.2011. The respondent No. 1 while not approving the names of members of the Trust and the Sabha, hastily and again in utter violation of Ordinance of the University, appointed respondent No. 2 as OSD w.e.f. 01.07.2011 without even considering the legitimate claim of the Senior Most Teacher Dr. Vinod Sethi and second Senior Most Teacher Sh. V.K. Arora for Officiating Principal as per Ordinance XVIII Rule 7(3).

6. On 06.07.2011, the names of the members proposed by the Trust and Sabha were approved by respondent No. 1 thereby leading to creation of regularly constituting Governing Body. However, the first meeting of newly constituted Governing Body was not called by respondent No. 2 despite requests by members of the constituted Governing Body.

7. The aforesaid writ petition was disposed of without venturing into merits of the matter as it was apprised to this Court by learned counsel for respondent No. 1 that the meeting of regularly constituted Governing Body has been convened on 20.08.2011.

8. On the said date, 135th meeting of the regularly constituted Governing Body was held at 4.00 PM in the college premises. However, instead of starting the process for electing the Chairman and Treasurer, the respondent No. 2 and representative of the University objected and created hurdles in the election. But the members with majority held the election and elected the petitioner as Chairman and Ms. Sujata Kashyap as Treasurer of the regularly constituted Governing Body. To this effect, the minutes of the meeting dated 20.08.2011 were duly recorded in the Minute Book maintaining in the college. However, the Ex-Chairman and Ex-Treasurer left the meeting and falsely started propagating that the meeting was adjourned.

9. On 21.09.2011, an emergent meeting was called by the Chairman of the Governing Body, however, the respondent No. 2, acting as mouthpiece of respondent No. 1, locked the room of the Principal and went away. Nevertheless, the meeting of the Governing Body took place in the college premises and Dr. G.K. Arora, the then Senior Most Teacher of ARSD College was appointed as Acting Principal of the college by the Governing Body.

10. Since the respondents No. 1 and 2 and even the Ex-Chairman and Ex-Treasurer continued to project themselves at their said position and did not even allow Dr. G.K. Arora to act as an Officiating Principal, resultantly, suit for Declaration and Injunction was filed by the Trust and petitioner as Chairman of the Governing Body against the University, respondent No. 2 and others before

Senior Civil Judge, Central, Tis Hazari Courts, Delhi. In that suit, pursuant to statement by the counsels for the parties, certain directions were issued by the learned Judge inter alia including the directions for re-election of Chairman and Treasurer on 01.10.2011 and for appointment of Principal and Vice Principal etc.

11. Being aggrieved, respondents No. 1, 2 and others filed an appeal bearing RCA No. 18/2011, which was disposed of by the learned Additional District Judge with certain modifications and directions to comply with directions of the Trial Court while giving consent for convening a meeting of the Governing Body. On 01.10.2011 at 4.00 PM, meeting of the Governing Body as such took place in the college premises under the supervision of the Court Observer and petitioner was again unanimously elected as Chairman and Ms. Sujata Kashyap was appointed as Treasurer.

12. On that very date i.e. 01.10.2011, the Governing Body also decided to forward two names of eligible persons i.e. Dr. Rajesh Mohan and Dr. V.K. Arora for the post of Vice Principal to respondent No. 1 for its approval, also approved for appointment of regular Principal and further decided that the services of respondent No. 2 are no longer required in the college.

13. Vide letter dated 04.10.2011 sent by the petitioner to respondent No. 1 informing about the decision taken by Governing Body inter alia including request for approving either of the names for the post of Vice Principal and simultaneously calling back the OSD/respondent No. 2. However, no reply to the same and even to the reminder letters dated 17.10.2011, 01.11.2011 and 22.12.2011 etc. were sent to the respondent No. 1.

14. Vide the aforesaid letter dated 04.10.2011, the petitioner enquired from respondent No. 1 for current procedure to be adopted for appointment of full time Principal.

15. In its reply dated 25.10.2011, respondent No. 1 frivolously stated that respondent No. 1 has not yet adopted the guidelines and regulations 2010 issued by the University Grants Commission nor amended Ordinances of the University.

16. The petitioner informed respondent No. 1 on 02.11.2011 that another college i.e. Mata Sundri College for Women has in fact already advertised for the post of Principal in terms of UGC Regulations, 2010. The respondent No. 1, vide its letter dated 09.11.2011 reiterated that the reply given on 25.10.2011 was correct. Being aggrieved by the concurrent findings of the learned Trial Court and First Appellate Court, respondents No. 1, 2 and others preferred RSA No. 188/2011 before this Court on 05.11.2011. Thereafter, Atma Ram Trust filed a detailed reply to the said RSA and even informed this Court that respondents No. 1, 2 and others have deliberately concealed about the minutes of the meeting held on 01.10.2011, where substantial decision was taken by the Constituted Governing Body including decision of appointment of Vice Principal and recalling of OSD i.e. respondent No. 2 etc. The said appeal was disposed of by this Court vide its order dated 24.11.2011 directing that that order/directions issued shall not have

any reflection on merits of the issues in question for and against any of the parties and all the issues of dispute including validity or otherwise decision of the parties will be tested and answered by the Competent Court before which substantial proceedings would come on these aspects.

17. The petitioner is aggrieved with the appointment of respondent No. 2 as OSD despite the decision of the Governing Body whereby it requested respondent No. 1 to call back the OSD, who is still illegally continuing even after expiry of period of six months on 31.12.2011 as per the Ordinance XVIII Clause 7(3) and further more the University has not approved the name for Vice Principal.

18. Mr. Sandeep Sethi, learned senior counsel appearing on behalf of the petitioner has submitted that the University in the month of February, 2011 deliberately did not clear the names of five members of Trust i.e. Atma Ram Trust and five members of Sanatan Dharam Sabha of Governing Body of ARSD College, not exceeded to the request of the senior most Teacher of the college for his appointment as Officiating Principal and by brushing aside all such requests, appointed Dr. Rakesh, another Lecturer of the same college in an arbitrary manner, who continued as OSD till his superannuation.

19. The University of Delhi, which never in fact wanted the Governing Body to function and take control of the college, deliberately created the situation which led to litigation between Atma Ram Trust and it. He further submitted that the first issue for determination before this Court is as to whether the appointment of OSD is in accordance with Rules and Regulations or not?

20. He submitted that the position of OSD is an interim arrangement where there is specific need or grave fraud etc. None of the situation existed at any point of time in ARSD College. However, the University deliberately did not approve the names of members of the Governing Body and appointed its own person as OSD. The letter dated 29.06.2011 of appointment of OSD, on the face of it, is contrary to the aforesaid Ordinance as the said letter do not disclose any reason or circumstance for appointment of OSD and no tenure has been mentioned in the said letter, despite specific mention of tenure in the Ordinance. It is clearly made out from the language of the letter dated 29.06.2011 that the University, at the time of issuance of the same had already pre-planned that come what may OSD shall remain in the college and with this intention only the aforesaid appointment letter was issued with indefinite tenure.

21. Learned counsel submitted that if the University had bona fide intention of limited the tenure of OSD, then it would have definitely adhered to its own Ordinance which prescribes the tenure of six months. No reason whatsoever has been specified in the letter for giving unspecified period and giving a go-bye to the Ordinance of University.

22. Learned senior counsel has raised second issue regarding the power of appointment. As per the Ordinance, it is the prerogative of the Governing Body to recommend the names for appointment of OSD and in the absence of

Governing Body, Vice Chancellor has the power to appoint, that too subject to circumstances so warrant and such other provisions of Ordinance XVIII Rule 7(3) which provides for appointment of Senior Most Teacher as Officiating Principal. But the University has tried to justify the appointment of OSD i.e. respondent No. 2 on the basis of another letter dated 29.06.2011, which in fact is an act of collusion between the University and the then Chairman of the Governing Body, who also happened to be the representative of University in Governing Body.

23. It is submitted that the provisions of aforesaid Ordinance do not recognize the power of Governing Body. Since there is no recommendation by the Governing Body for appointment of OSD, the very appointment of respondent No. 2 by the University is illegal. In this manner, the University has imposed its OSD in ARSD College against the wishes of the Governing Body.

24. Further submitted that University of Delhi, acting in a most autocratic manner, has again not cleared the names of members of Governing Body of ARSD College, as such, again creating same situation of having a Truncated Governing Body. The said situation is suitable for University as the University directly controls the college through its OSD, who works at the whims and fancies of the Vice Chancellor.

25. Learned counsel submitted, recently the Governing Body of Kirori Mal College has suspended the services of Regular Principal on account of allegations of fraud against him and in terms of Ordinance XVIII of University Ordinance, the University has consented for appointment of Dr. S.P. Gupta, Vice Principal of the college as Officiating Principal. Even in such situation, the University did not opt to appoint any OSD and has allowed the Vice Principal to take over the charge. Therefore, the act of the University as the present college is concerned is perverse and illegal and thus, the OSD is required to be called back from ARSD College immediately even his appointment is liable to be quashed.

26. Mr. Sethi, Id. Sr. Counsel appearing for the petitioner has submitted that the College and University are bound to the Act as per the UGC Regulations. The University cannot arbitrarily thrust upon over and above the Regulations of the UGC.

27. On the appointment of the Principal, there is a conflict between the University Rules and UGC Regulations 2010 as under:-

28. Id. Counsel for the petitioner has relied upon a case University of Delhi v. Raj Singh and Ors. 1994 Suppl. 3 SCC wherein it is held as under:

We now turn to analyse the said Regulations. They are made applicable to a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, every institution, including a constituent or an affiliated college recognised by the U.G.C. in consultation with the University concerned, and every institution deemed to be a University. The said Regulation are thus intended to have the widest possible application, as indeed they must have if

they are to serve the purpose intended, namely, to ensure that all applicants for the post of lecturer, from whichever University they may have procured the minimum qualificatory degree, must establish that they possess the proficiency required for lecturers in all Universities in the country. This is what clause 2 of the said Regulations mandates, thus:

No person shall be appointed to a teaching post in university in a subject if he does not fulfill the requirements as to the qualifications for the appropriate subject as provided in the Schedule 1.

The first proviso to clause 2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the U.G.C. This is because the said Regulation, made under the provisions of Section 26 (I)(e), define the qualifications that are ordinarily and not invariably required of a lecturer. The second proviso to clause 2 makes the application of the said Regulations prospective. Clause 3 of the said Regulations provides for the consequence of the failure of a University to comply with the recommendation made in clause 2 in the same terms as are set out in section 14 of the U.G.C. Act. The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfill the requirements as to qualifications for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause, it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations.

It is now appropriate to clarify the direction that the Delhi High Court issued in allowing the writ petition. It held that the notification dated 19th September, 1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said regulations. As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said regulations: or it may seek prior approval for the relaxation of this requirement in a specific case, or it may appoint as lecturer one who does not meet this

requirement without having first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C., forfeit its grant from the U.G.C. If, however, it did show cause to the satisfaction of the U.G.C. it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.'s prior approval would stand regularised.

29. Further relied upon a case of Bhupendra Singh Vs. University of Delhi and Others, wherein it is held as under:

13. When the record does not show the nature of emergency that existed, the exercise of emergency powers by the Vice-Chancellor on January 18, 2000 under Clause 11-G(4) of the statutes cannot be countenanced in law.

14. In M.N. Gupta and another v. University of Delhi and others, a Division Bench of this Court in somewhat similar fact situation took the same view and held as follows:-

18. When the very existence of emergency on which the impugned action is sought to be based, has been questioned, it is the duty of the respondents to plead necessary facts and place material on record, at least to prima facie show existence of emergency in order to justify the exercise of emergency powers. To this extent the issue is justiciable. The respondents have failed to discharge this burden, therefore, we are of the view that there was no such grave emergency prevailing in the university to justify exercise of powers under statute 11(G)(4) by the Vice Chancellor. It is worth pointing out here that the Executive Council was meeting on the same date, i.e., 13th August, 1991 when the impugned action was taken by the Vice Chancellor against petitioner No. 2. The matter could have been placed before the Executive Council in the first instance.

16. But it is equally true that when the exercise of power rests on fulfillment of conditions precedent, it must be shown that the existence of such conditions led to the exercise of that power. It must also be shown that exercise of power was based on relevant grounds. In other words, the authority must show of the conditions precedent for exercise of power as no order passed by an authority even on the basis of its subjective opinion is above judicial scrutiny. The opinion of the authority originating from its own subjective satisfaction regarding the existence and satisfaction of the conditions precedent for exercise of power under the statute is subject to judicial review. Though the satisfaction was of the Vice-Chancellor, it related to facts which were capable of being proved objectively. These facts have not been proved. As already noted the counter-affidavit of the University makes it clear that there is nothing on record to show the existence of the emergency which called for action by the Vice-Chancellor under Clause 11(G)(4) of the Statutes.

30. Counsel for the petitioner has relied upon a case of Dr. D.K. Sharma v. University of Delhi & Ors.(112 2004) DLT 1998 deals with the emergency power and it has been held therein as under:

33. In my opinion whether the Selection Committee had acted rightly or wrongly and whether the Governing Body of the College had forwarded the names correctly or wrongly is a matter distinct from exercising emergency power. What is relevant is the existence of a situation attracting exercise of emergency power. None has been shown.

34. The scheme of the Act, Statutes and Ordinances of the University of Delhi would reveal that the Vice-Chancellor of the University is an office of the University. The Executive Council is a statutory body of the University. The Vice-Chancellor has been conferred with executive powers to act in emergent situations. Save and except an emergency action, the nominal course of conduct has to be followed.

35. Without there being any ground requiring emergency action to be taken, Vice-Chancellor appropriated to himself the power to by-pass the Selection Committee consisting of himself, the Pro-Vice-Chancellor, Visitor's nominee, Chairman of the Governing Body of the College and two members of the Executive Council. Under normal circumstances it was for the said Body to have considered whether the Chairman of the Governing Body had a casting vote or whether the proceedings of the Selection Committee which met on 7.3.2003 are valid or not. It was for said body to have taken a final decision.

36. The democratic norm of collective decision contemplated by sub-clause 2 of clause 7 of Ordinance xviii has to be given full force. This normal course can be avoided provided an emergency situation exists.

37. It was for the Vice-Chancellor to disclose as to what emergent situation existed. None have been disclosed.

31. On the other hand, Mr. Dhruv Mehta, learned senior counsel appearing on behalf of the University of Delhi/respondent No. 1 has taken a preliminary objection that the instant petition has been filed by the petitioner as Member and Chairman of the Governing Body. However, he has not filed any resolution of the Governing Body of ARSD College authorising him to file the present writ petition. In fact the majority of the members of Governing Body of the college mentioned above have stated that they never authorised the petitioner, in any of the matter, to file the present writ petition in this Court as Chairman of the Governing Body of the college.

32. Learned senior counsel has further submitted that the petitioner had earlier filed W.P. (C) No. 3425/2011, wherein the removal of OSD was sought. The said writ petition was withdrawn unconditionally by the petitioner and the same was disposed of vide order dated 05.08.2011. The prayer (c) in the said writ petition was similar to the present relief sought in the instant petition.

33. He further submitted that there are three limbs of arguments on the part of the petitioner:-

(a) The appointment of Principal as per UGC Regulations 2010.

(b) Removal of OSD.

(c) Appointment of Vice Principal in place of OSD till regular appointment of the Principal is made.

34. Learned senior counsel for the respondent No. 1 submitted that as far as the first limb of the argument is concerned, the appointment of Principal is to be made as per the Ordinance XVIII Rule 7(3). It is relevant to point out that the said Regulations have been passed by the University Grants Commission (UGC) under Clause (e) and (g) of subsection (1) of Section 26 of the University Grants Commission Act, 1956. Clause 3 of the said Regulations specifically provides the consequences of failure of the Universities to comply with the recommendations of the Commission as provided u/s 14 of the University Grants Commission Act, 1956. As per the said provision, it is clear that UGC in the worst scenario may withhold the grants proposed to be made out of the funds of the Commission from the University. Thus, the UGC Act itself provides for the consequences of the Commission, therefore, mandamus cannot be issued by this Court while exercising its extraordinary original writ jurisdiction as otherwise sought by the petitioner herein.

35. Learned counsel has relied upon a case of *Raj Singh Vs. University of Delhi*, 1994 Supp 93) SCC 516, wherein the Supreme Court has observed as under:-

It is now appropriate to clarify the direction that the Delhi High Court issued in allowing the writ petition. It held that the notification dated 19th September, 1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said regulations. As analyzed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said regulations: or it may seek prior approval for the relaxation of this requirement in a specific case, or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C., forfeit its grant from the U.G.C. If, however, it did show cause to the satisfaction of the U.G.C. it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.'s prior approval would stand regularised.

36. Learned counsel further submitted that the Governing Body of ARSD College, whose chairman is the petitioner had resolved that the appointment of the Principal shall be as per the University Statutes/Rules. The petitioner has not filed any resolution of the Governing Body for appointing the Principal as per UGC Regulation. Therefore, the petitioner cannot take the stand contrary to what has been resolved by the Governing Body of the college to which the petitioner was a

signatory.

37. The UGC has filed its counter-affidavit and additional affidavit accepting the position that Regulations 2010 are under review. The answering respondent with its counter-affidavit has also filed a letter dated 01.12.2011 sent by UGC to the Vice Chancellor of answering respondent. A bare perusal of the said letter also makes it clear that UGC had constituted a Committee to revisit the UGC Regulations, 2010. Hence, when the Regulations itself are under reconsideration, there is no occasion for the petitioner or even for UGC to press for the said Regulations 2010.

38. As far as second limb of the petitioner's arguments challenging the appointment of OSD is concerned, learned counsel has submitted that it is clear from the bare reading of the Ordinance XVIII Clause 7 (3) that the Vice Chancellor of the University, "where circumstances so warrant" may appoint OSD to officiate as Principal in either of the following two circumstances:-

(a) The Governing Body may recommend a panel of at least three names to the Vice Chancellor for approval of the candidate for appointment as OSD.

(B) In case there was no appointing authority to recommend such a panel, Vice Chancellor shall appoint OSD "ordinarily" for a period of six months which may be extended or terminated with the prior approval of the Vice Chancellor.

39. It was pointed out that the appointment of OSD in the ARSD College was challenged in the earlier W.P. (C) No. 3425/2011, which was unconditionally withdrawn by the petitioner on 05.08.2011. Hence, the instant petition, seeking the same reliefs again, is not maintainable. Moreover, the appointment of OSD was made way back on 29.06.2011.

40. Learned counsel for respondent No. 1 further submitted that as per the Ordinance mentioned above, the tenure of OSD is ordinarily for six months but that does not restrict to six months, if the circumstances warrants. In fact, it was not necessary at all to have an OSD for six months if the Principal had been appointed in compliance of the judgment dated 26.09.2011 of the Trial Court, the OSD will automatically cease to function once the Principal has been appointed by the college. Since the petitioner was not cooperating with the majority members of the Governing Body of ARSD College and did not give effect to the resolution dated 01.10.2011 for appointment of Principal as per the University Rules/ Statutes, therefore, the petitioner directly flouted the order dated 26.09.2011 passed by the learned Civil Judge which merged in the judgment passed by this Court in RSA No. 188/2011 dated 24.11.2011, thereby, finally holding that the Principal of ARSD College was to be appointed within three months w.e.f. 26.09.2011.

41. He has clarified that the petitioner has relied upon Mata Sundri College for appointment of Principal, but when directed by the University to withdraw its advertisement, the said college immediately withdrew the same.

42. Learned counsel has further submitted that OSD was appointed by the Vice Chancellor due to the circumstances prevailing in the college. In this regard, University has filed an additional affidavit, wherein it is clearly stated about the relevant circumstances which gave rise to the appointment of OSD by the Vice Chancellor.

43. Respondent No. 3, University Grants Commission (UGC) has filed response to the instant petition wherein it is stated that the UGC has been constituted under the provisions of the University Grants Commission Act, 1956. The Act was enacted to make provisions for coordination and determination of standards in Universities.

44. For the said purpose, the Commission has been vested with the power to recommend to any University, the measures necessary for the improvement of the university education and advise the universities upon the action to be taken for the purpose of implementation of such recommendation.

45. Section 2(f) of the said Act defines the University as under:

University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the Regulations made in this behalf under this Act.

46. Section 12 of the UGC Act provides that it shall be the general duty of the Commission to take, in consultation with the Universities or other Bodies concerned, all such steps as it may think fit for the promotion and coordination of University Education and for the determination and maintenance of standards of teaching, examination and research in Universities.

47. Section 26 of the University Grants Commission deals with the powers of the Commission to make Regulations. It provides that Commission may, by notification in the Official Gazette, make Regulations consistent with this Act and Rules made there under, among others, defining the minimum standards of instructions for the grant of any Degree by any University as regulating the maintenance of standards and coordination of work or facilities in Universities.

48. Section 26 (1)(e), (f) & (g) of the Act is as under:

26(1) The Commission (may, by notification in the Official Gazette, make regulations) consistent with this Act and the rules made there under -

(a)...

(b)...

(c)...

(d)...

(e) defining the qualifications that should ordinarily be required of any person to

be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

(f) defining the minimum standards of inspection for the grant of any degree by any University;

(g) regulating the maintenance of standards and the coordination of work or facilities in Universities.

49. So far as the minimum qualification or the post of Principal is concerned, the UGC in exercise of its power conferred u/s 26 of UGC Act, 1956 has framed UGC (Minimum Qualifications Required For The Appointment and Career Advancement Of Teachers in Universities And Institutions Affiliated to it), Regulations, 2000, which provides qualification for the appointment of Principal.

50. The Regulation 3.5.0 provides for the composition of Selection Committee for the post of Principal. Clause (e) & (g) of Sub-Section 1 of Section 26 of UGC Act, 1956 specifically confers on UGC to frame guidelines regulating the maintenance of standards and coordination of the work or facilities in Universities.

51. The purpose of prescribing the minimum qualifications and Selection Committees under the aforesaid UGC Regulation is the maintenance of standard in the higher education. Accordingly, the aforesaid Regulation is binding on the University and College (including University of Delhi, which is the Central University and the Colleges affiliated thereto, which are maintained by the UGC) and of the selection to the teaching posts or to the post of Principal must be on the basis of minimum qualifications as prescribed under the UGC Regulations.

52. On the other hand Id. Counsel for the respondent has relied upon Dr. R.K. Sharma (Supra) wherein it is held as under:

32. Counter affidavit filed by the University does not indicate as to what was the emergent situation which led the Vice-Chancellor not to adopt the procedure prescribed of submitting the list forwarded to the University for being placed before the Committee consisting of himself, Pro-Vice Chancellor, Visitor's nominee, Chairman of the Governing Body of the College and two members of the Executive Council. The entire thrust of the counter affidavit is that the Selection Committee was to recommend a panel of persons it considered fit for being appointed as Principal of the College and thereafter the Governing Body was to submit the said names to the University. Sine there was a flaw in what the Selection Committee did, matter was not required to be placed before the Selection Committee, consisting of the Vice-Chancellor, Pro-Vice Chancellor, Visitor's nominee, Chairman of the Governing Body and two members of the Executive Council.

37. It was for the Vice-Chancellor to disclose as to what emergent situation existed. None have been disclosed.

53. He further relied upon Bhupendra Singh, Adv. (Supra) wherein it is held as

under:

10. Clause 11-G(4) of the Statutes empowers the Vice Chancellor to take such action as he deems necessary, if in his opinion an emergency has arisen which requires him to act immediately. Action taken because of an emergency is required to be reported by him for confirmation at the next meeting of the Authority which in the ordinary course would have dealt with the matter. It is not disputed that the present term of the Governing Body of Dayal Singh College expired on October 27, 1999. The Executive Council of the University met on November 30, 1999 and January 5, 2000, but the matter relating to the appointment/nomination of the members of the Governing Body of Dayal Singh College was not placed in its aforesaid meetings. On January 18, 2000, the Vice-Chancellor, however, on his own nominated the members of the Governing Body of Dayal Singh College w.e.f. January 14, 2000. A question arises why the matter was not placed before the Executive Council in its meeting held on November 30, 1999 and January 5, 2000. As is evident from clause 11-G(3) of the Statutes and as already noted it is the Vice-Chancellor who had the power to convene the meetings of the Executive Council and is required to perform all such acts as may be necessary to carry out the provisions of the Act, the Statutes and the Ordinances. According to the Statutes, admittedly it was the Executive Council who has been entrusted with the power to appoint members of the Governing Council. This being so, the Vice-Chancellor should have brought the matter relating to appointment of members of the Governing Body of the college to the Executive Council well in time before he himself made the appointment of the members of the Governing Body of the college. A question arises why this was not done. Mr. Chaudhary, learned counsel for the Governing Body, had no worthwhile explanation. He merely stated that the Vice-Chancellor invoked provisions of clause 11-G(4) of the Statutes as there was immediate necessity to appoint the members of the Governing Body so that they could in turn appoint a new Principal of Dayal Singh College as the term of the then serving Principal was expiring on March 27, 2000. We wonder how the members of the Governing Body, whom Mr. Chaudhary represents, could make prognosis of the reasons for exercise of the power by the Vice-Chancellor under clause 11-G(4) of the Statutes. In fact it was for the University to state why emergency powers were exercised by the Vice-Chancellor. The University does not have an answer because the record is silent. The then Vice-Chancellor on record of the University could explain the nature of emergency which impelled him to exercise power u/s 11-G(4) of the Statutes. The Vice-Chancellor of the time did not pen down any reasons.

54. Therefore, Id. Counsel has submitted that this Judgment is not relevant to the issue raised in the instant petition.

55. In addition to that, Id. Counsel for the respondent has also relied upon a case of Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, wherein it is held as under:

42. This Court is not very much impressed with the aforesaid contention. The word "ordinarily" must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word "ordinarily" has been used in the context of promotional opportunities of the Officers concerned. In such a situation the word "ordinarily" has to be construed in order to fulfill the statutory intent for which it has been used.

43. The word "ordinarily", of course, means that it does not promote a cast iron rule, it is flexible (See *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*,).

It excludes something which is extraordinary or special [*Eicher Tractors Limited, Haryana vs. Commissioner of Customs, Mumbai*-(2001) 1 SCC 315 319 (para 6)]. The word "ordinarily" would convey the idea of something which is done "normally" [*Krishan Gopal Vs. Sri Prakashchandra and Others*,] and "generally" subject to special provision [*Mohan Baitha and Others Vs. State of Bihar and Another*,].

44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions

56. Counsel for the respondent has further relied upon the legal dictionary of the Law Lexicon wherein the meaning of ORDINARILY has been discussed as under:

ORDINARILY: The dictionary meaning of "ordinarily" as given in the Shorter Oxford English Dictionary "(1) in conformity with rule: and a matter of regular occurrence; (2) in most cases, usually, commonly, (3) to the usual extent; (4) as is normal or usual.

In common parlance "ordinarily" means in a large majority of cases, the expression is never used in reference to a case to which there are no exceptions.

57. I have heard the learned counsel for the parties.

58. The process for appointment of the Principal was initiated by the then Governing Body, by giving advertisement for the said post. Therefore, Sh. C.M. Chadha, the then Chairman of the Governing Body, informed the Vice Chancellor of the respondent No. 1 to suggest the names of Nominees for Selection Committee so that interview for the post of Principal could be conducted. On 03.05.2010, respondent No. 1 provided the names of Nominees as well as Panel of Experts for conducting the interview for the said post. Thereby, letters were issued on 02.07.2010 to various candidates requesting them to appear before the Selection Committee for interview on 31.07.2010. Pursuant to information from respondent No. 1, the University Grants Commission (Minimum

Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for Maintenance of Standards in Higher Education), Regulations, 2010 has been enacted, thereby, the interview was postponed till further directions.

59. Vide communication dated 16.12.2010, the then Chairman of Governing Body sought clarification from respondent No. 1 as to whether they can start the process of appointment of Principal as per UGC Regulations, 2010. Thereafter, again a request was made on 16.02.2011 for necessary intimation. However, no response from their end.

60. The names proposed by Atma Ram Trust & Sanatan Dharam Sabha for Governing Body of the College were not approved by respondent No. 1 University. By this act of the respondent No. 1, the regularly constituted Governing Body became non-existent. This situation continued till 06.07.2011 when the respondent No. 1 ultimately approved the fresh names. On 30.04.2011, the tenure of the then Vice Principal Dr. Rajesh Mohan working as Acting Principal was expired.

61. Thereafter, the Truncated Governing Body comprising of two members of the University and two members of Teachers of ARSD College on 01.05.2011 approved the name of the Senior Most Teacher i.e. Dr. M.S. Sethi under Ordinance XVIII Rule 7(3) enable him to function as an Acting Principal of the college.

62. However, on 02.05.2011, respondent No. 1 appointed Dr. Rakesh (another Lecturer of ARSD College) as Officer on Special Duty (OSD) of the college, who continued as OSD till his superannuation i.e. upto 30.06.2011.

63. Being aggrieved, the Trust and Sabha filed a W.P. (C) bearing No. 3425/2011 before this Court, in which notice was issued to respondent No. 1 for 27.07.2011. The respondent No. 1 while not approving the names of members of the Trust and Sabha, appointed respondent No. 2 as OSD w.e.f. 01.07.2011 by ignoring the Senior Most Teacher i.e. Dr. Vinod Sethi and second Senior Most Teacher Sh. V.K. Arora for Officiating Principal as per Ordinance XVIII Rule 7(3).

64. On 06.07.2011, the names of the members proposed by the Trust and Sabha were approved by respondent No. 1 thereby leading to creation of regularly constituting Governing Body. Therefore, the aforesaid writ petition was disposed of without venturing into merits of the matter as it was apprised to this Court by learned counsel for respondent No. 1 that meeting of regularly constituted Governing Body was convened on 20.08.2011.

65. As alleged in the instant petition, on the aforesaid date, 135th meeting of the regularly constituted Governing Body was held at 4.00 PM in the college premises. However, instead of starting the process for electing the Chairman and Treasurer, the respondent No. 2 and representative of the University objected and created hurdles in the election. But the members with majority held the

election and elected the petitioner as Chairman and Ms. Sujata Kashyap as Treasurer of the regularly constituted Governing Body. However, the Ex-Chairman and Ex-Treasurer left the meeting propagating that the meeting was adjourned.

66. It is further alleged that on 21.09.2011, an emergent meeting was called by the Chairman of the Governing Body, however, the respondent No. 2, acting as mouthpiece of respondent No. 1, locked the room of the Principal and went away. Nevertheless, the meeting of the Governing Body took place in the college premises and Dr. G.K. Arora, the then Senior Most Teacher of ARSD College was appointed as Acting Principal of the college by the Governing Body. But the respondents No. 1 and 2 and even the Ex-Chairman and Ex-Treasurer did not allow Dr. G.K. Arora to act as an Officiating Principal, resultantly, suit for Declaration and Injunction was filed by the Trust and the petitioner as Chairman of the Governing Body against the University, respondent No. 2 and others before Senior Civil Judge, Central, Tis Hazari Courts, Delhi. In that suit, pursuant to statement made by the counsels for the parties, certain directions were issued by the learned Judge including the directions for re-election of Chairman and Treasurer on 01.10.2011 and for appointment of Principal and Vice Principal etc. Being aggrieved, respondents No. 1, 2 and others filed an appeal bearing RCA No. 18/2011, which was disposed of by the learned Additional District Judge with certain modifications and directions to comply with directions of the Trial Court while giving consent for convening a meeting of the Governing Body. On 01.10.2011 at 4.00 PM, meeting of the Governing Body as such took place in the college premises under the supervision of the Court Observer and petitioner was again unanimously elected as Chairman and Ms. Sujata Kashyap as Treasurer. On that very date i.e. 01.10.2011, the Governing Body also decided to forward two names of eligible persons i.e. Dr. Rajesh Mohan and Dr. V.K. Arora for the post of Vice Principal to respondent No. 1 for its approval, also approved for appointment of regular Principal. It was further decided that the services of respondent No. 2 are no longer required in the college. However, no reply has been received to the same and even to the reminder sent subsequently to the respondent No. 1.

67. The petitioner is aggrieved with the appointment of respondent No. 2 as OSD, despite the decision of the Governing Body whereby it requested respondent No. 1 to call back the OSD, who is still illegally continuing even after expiry of period of six months on 31.12.2011 as per the Ordinance XVIII Clause 7(3). Furthermore, the University has not approved the name for Vice Principal.

68. The issue for determination before this Court is that as to whether the appointment of respondent No. 2 as OSD is in accordance with Rules and Regulations or not?

69. It is not in dispute that the Vice Chancellor has power to appoint an OSD, that too subject to circumstances so warrant and under such other provisions of Ordinance XVIII Rule 7(3) which provides for appointment of Senior Most Teacher as Officiating Principal. It is emerged from the submissions of learned counsel for the parties that there has been dispute in the Governing Body of

ARSD College, therefore, the Vice Chancellor of respondent No. 1 had no option but to appoint respondent No. 2 as OSD of the College. It is also not in dispute that ordinarily the power of the Vice Chancellor to appoint OSD is for six months but if the circumstances so permit that can be extended.

70. The instant petition has been filed by the petitioner as a member and Chairman of the Governing Body of ARSD College, however, the resolution of the Governing Body to file the present petition has not been placed on record.

71. Moreover, the majority members of the Governing Body are also not with the petitioner, which proves that there is an inter se dispute between the members of the Governing Body. In these circumstances, the situation was so grave before the Vice Chancellor of respondent No. 1, which is continued till date. Therefore, the extension of tenure of OSD till date seems to be proper and justified.

72. As per the Ordinance discussed above, the tenure of OSD is ordinarily for six months but that does not restrict to six months, if the circumstances so warrants. This situation would have not come if the Principal had been appointed in compliance of the judgment dated 26.09.2011 of the Trial Court. Since there is a dispute between the petitioner with the majority members of the Governing Body of ARSD College, therefore, the resolution dated 01.10.2011 for appointment of the Principal as per the University Rules/Statutes was not given effect to. Therefore, it amounts to flouting the order dated 26.09.2011 passed by the learned Senior Civil Judge which merged in the judgment passed by this Court in RSA No. 188/2011 dated 24.11.2011, thereby, finally holding that the Principal of ARSD College was to be appointed within three months w.e.f. 26.09.2011.

73. In case of Raj Singh (Supra), the Apex Court has observed in Para 20 that it shall be the general duty of the Commission to take all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. These are very wide ranging powers. It would comprehend the power to require those who possess the educational qualification required for holding the post of Lecturer in Universities and Colleges. Thus, Delhi University mandated to comply with the said Regulations.

74. If the UGC feels its regulations are not complied with, it can forfeit the grant to the concerned Institution.

75. Since the petitioner had already approached this Court and the directions passed by the Trial Court and this Court as well have not been fully complied with, therefore, leaving the question raised in the instant petition open, I am of the opinion that let the Governing Body of the ARSD College should start the process immediately for appointment of the post of Principal. The respondent No. 1, University and respondent No. 2 are directed to take steps accordingly.

76. Undisputedly, the ARSD College, South Campus is running without Principal

since long. The respondent No. 2 was appointed as OSD by ignoring the Senior Most Teachers available in the College. When such a situation arise, then I am of the opinion that UGC has to play a vital role in resolving the situation, as has arisen in the College mentioned above. As law has already been settled in a case of Hemraj Singh Chauhan and Others (supra) wherein it is observed that word "ordinarily" must be given its ordinary meaning. In such a situation, the word "ordinarily" has to be construed in order to fulfill the statutory intent for which it has been used. Certainly, the expression can never be used in reference to a case to which there are no exceptions.

77. UGC Regulations 2010 hold the field till these are reviewed or altered and when there is a conflict between the University and the UGC Regulations, UGC Regulations would prevail over the Regulations of the Universities. Therefore, I am of the considered view that the term of OSD cannot be for an indefinite period.

78. Therefore, the Governing Body of the college is directed to start the process afresh to recommend the name for the post of Principal as per UGC Regulations in force at present within four weeks from today.

79. I direct the respondent No. 1, University of Delhi to take steps accordingly within four weeks thereafter and approve the names as per Regulations of the Commission.

80. I here make it clear that during the period mentioned above, i.e. total 8 weeks, respondent No. 2 shall continue as OSD of the College, but not thereafter in any circumstance.

81. This Court expects from the UGC to play its due role by resolving the situation between the College and the University.

82. In view of the above discussion, the instant petition is disposed of with no order as to costs.

CM Nos. 1044/2012 (for stay) & 7978/2012 (U/s 151 CPC)

With the disposal of the petition itself, both these applications have become infructuous. The same are accordingly disposed of.