
(2000) 01 DEL CK 0054
In the Delhi High Court
Case No : CW. No. 3646 of 1997

B.K. Bhattacharya (Dr.)

APPELLANT

Vs

Mr. V.R. Mehta (Vice-Chan Delhi University, Delhi)

RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 AD 661 : (2000) 84 DLT 165 : (2000) 53 DRJ 391

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Arun Kumar Verma, for the Appellant; Ms. Shyamla Pappu, Senior Advocate, Mr. A.P.S. Ahluwalia, Mr. M.R., for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner has prayed for the following reliefs:-

"In the aforesaid facts and circumstances of the case, it is most respectfully prayed that this Hon"ble Court may be pleased to:

(a) issue a writ, direction or order in the nature of mandamus, certiorari or any nature against the respondents quashing the decision taken by respondent Nos. 2 and 3 as contained in minutes of the Governing Body meeting held on 29.8.1997, filed herein as Annexure P/10;

(b) issue a writ, direction or order in the nature of mandamus, certiorari or any other nature against the respondent No.1, quashing the order of approval, if any, passed by the said respondent in ratification of the decision taken by respondents Nos. 2 and 3 contained in minutes of the meeting held on August 29, 1997 as aforesaid;

(c) to issue writ, direction or order in the nature of mandamus or any other nature against respondents to extend the re-employment of the petitioner for a further period of two years w.e.f. 1.9.1997 to the post of Additional Principal, Desh Bandhu College (Evening), Kalkaji, New Delhi."

2. A brief statement on facts, necessary for the disposal of the matter, is as under :

3. On the 7th of March, 1987, the petitioner was appointed as Vice- Principal In-charge, Evening Classes, Desh Bandhu College, the second respondent. On the 1st of September, 1994, the petitioner was re-employed as Additional Principal. On the 1st of February, 1997, the petitioner applied for extension of his re-employment. In the application, he stated that he would be completing 63 years on the 31st of August, 1997. He made a request that he could be appointed, on his re-employment, as Additional Principal for a period of two years as the re-employment could be up to the age of 65 years.

4. On the 4th of July, 1997, through the matter was in the agenda of the Governing Body, it was deferred. Again, the matter was placed before the Governing Body on the 24th of July, 1997 and it was deferred. On the 1st of August, 1997, the petitioner wrote to the Secretary of the Governing Body for consideration of his matter for re-employment. There was no reply. Again, he wrote on the 11th of August, 1997. On the 12th of August, 1997, the petitioner sent a notice, through counsel, for the consideration of his matter of extension of his re-employment. On the 22nd of August, 1997, the petitioner filed the CWP.3478/97. On the 29th of August, 1997, this Court passed an order directing the respondents to maintain the status quo. On the 29th of August, 1997, the Governing Body, considering the matter, declined to grant extension. On the 1st of September, 1997, the status quo order, passed on the 29th of August, 1997, in CWP. 3478/97, was extended till 5.9.1997.

5. On the 3rd of September, 1997, the present writ petition was filed. On the 5th of September, 1997, this Court passed an order in C.M. 7033/97 in present writ petition that any appointment made will be subject to the outcome of this writ petition.

6. The petitioner has stated in the writ petition that the Governing Body had taken into account the matters totally irrelevant for the purpose of considering the petitioner's case for re-employment. Under normal circumstances, the petitioner would be entitled to re-employment having regard to the services rendered by him. The learned counsel for the petitioner, Mr. Arun Kumar Verma, submitted that the Governing Body had not acted in accordance with the principles applicable to the re-employment and the decision taken by the Governing Body is vitiated. The petitioner has stated that under the circumstances having regard to his service, it was legitimately expected that he would be given re-employment.

7. The respondents in their counter have stated that the Governing Body had considered the question of re-employment of the petitioner and had taken a decision, taking into account the services rendered by the petitioner, declining to grant re-employment, and it is at the discretion of the Governing Body and that is not subject to judicial review at the instances of the petitioner.

8. The petitioner has also challenged the view expressed by the Governing Body about some acts of commission and omission on the part of the petitioner.

9. The minutes of the meeting of the Governing Body held on the 29th of August, 1997 is as under :

"The application of Add. Principal, Dr. B.K. Bhattacharya for extension of his re-employment for a further period of two years w.e.f. 1st September, 1997, was considered by the Governing Body.

The Chairman first asked Dr. Bhattacharya to present his case. Dr. Bhattacharya said that it is a regular practice that all teachers are given the full time tenure of re-employment and Therefore he may also be given the same. He then read out a letter written by Arun Kumar Verma, Advocate, from R.S. Verma & Co. Advocate addressed to Vice-Chancellor, Chairman of the Governing Body and Member-Secretary (Copy of letter enclosed Appendix-1). After this, Dr. B.K. Bhattacharya withdrew from the committee room so that his re-employment case may be discussed by the members.

The Chairman while clarifying some of the points raised in the meeting stated that re-employment of teachers and Principals are a class-apart. While the re-employment of teachers is granted by the Governing Body on the recommendation of the Principal; it is not the same when it comes to the extension of re-employment of the Principal. The Governing Body while considering the case of Principal's extension looks at the condition of the College in totality. The Governing Body has to ensure that under the leadership of the Principal, the College administration is not malfunctioning, documents are properly kept, Principal enjoys a clean reputation, image and personality. The interest of the Institution is always paramount while considering this case of re-employment of the principal. The leader should not have tarnished image. A number of views were expressed by members relating to P.F. bungling, missing of UTI cheques leading to huge financial losses, sports fiasco, missing of increment register, violation of standard procedures to suit the individual convenience, Library problems and above all total collapse of administration in the College during his tenure. Therefore, after a free and fair discussion which extended well beyond 1-1/2 hours, the Governing Body took the following decisions :-

a) The Governing Body considered the request of Dr. B. K. Bhattacharya for the extension of his re-employment for a further period of 2 years w.e.f. 1.9.97. The Governing Body decided, after detailed discussions, that the request for re-employment was not acceptable and the re-employment was not granted w.e.f. 1.9.1997. Three teacher members disassociated themselves from this decision.

b) This be communicated to Vice-Chancellor for his approval, if necessary.

c) The Governing Body was apprised of the letter dated 29.8.1997 from M/s. R.S. Verma & Co.; Advocates signed by Advocate Shri Arun Kumar Verma concerning

the decision of the Hon''ble High Court to order maintenance of status quo by all the concerned parties. This means that Dr. B.K. Bhattacharya, shall continue to be the Additional Principal of Desh Bandhu College (Evening) till the matter is again taken up by the Hon''ble Court on 1.9.1997.

d) The Governing Body authorised the Member-Secretary to arrange for legal counsel to represent the interest of Governing Body/College and University in the Court.

e) The Governing Body wanted for authorise the Chairman for the appointment of an OSD to look after the College in the meantime but teacher-members (Evening College) requested that the staff should be consulted before taking this step. The Chairman acceded to this request and agreed to the senior most teacher looking after the College for the time being.

The Chairman conveyed to Dr. B.K. Bhattacharya that the Governing Body could not accept his request for extension of re-employment. The Governing Body also said that the order of the Court will be respected in most befitting manner, showing highest regard for the Hon''ble High Court."

10. The learned counsel for the petitioner, Mr. Arun Kumar Verma, submitted that the Governing Body had referred to matters of misuse and violation of the procedure and attributed certain acts to the petitioner without giving any notice to him. The learned counsel submitted that on the basis of the view expressed by the Governing Body, the respondents 1 & 2 cannot, in law, take any action against the petitioner. The learned counsel submitted that the Governing Body, while considering the matter of re-employment of the petitioner had referred to matters which are not germane to the issue, and if any was brought to the notice of the Governing Body, a proper notice should have been given to the petitioner.

11. The learned counsel for respondents 2 & 3, Ms. Shyamla Pappu, submitted that the petitioner cannot claim, as a matter of right, re-employment and it is for the Governing Body to take a decision on that. The Governing Body, on the material placed before it, had come to the conclusion that the petitioner cannot be re-employed. The learned counsel submitted that Governing Body had only referred to a few aspects of the matter in the administration of the college and the Governing Body had only noted the collapse of administration during the tenure of the petitioner.

12. Having regard to the facts and circumstances, when the Governing Body of the second respondent/college has come to a conclusion that no re-employment could be given to the petitioner, I am of the view that the petitioner had not made out any case for interference under Article 226 of the Constitution of India. In any action is taken against the petitioner in accordance with law, it shall be open to the petitioner to urge all point available to him in law. In this writ petition, the correctness, or otherwise, of the view taken by the Governing Body cannot be gone into. Therefore, the writ petition is dismissed.

13. There shall be no order as to costs.