

(1992) 01 DEL CK 0050

In the Delhi High Court

Case No : Civil Writ Appeal No. 3674 of 1990

B.L. Kapur

APPELLANT

Vs

Madan Lal Khurana

RESPONDENT

Date of Decision : 20-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 47 DLT 32

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : V.P. Chaudhary, Rajender Dhawan, Sushma Sachdeva, Arun Jaitley, Rajiv Nayar and Maninder Singh, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this writ petition is to the letter issued by respondent No. 1, who was the Chairman of the Governing Body of the Rajdhani College, New Delhi, whereby he had directed a senior teacher of that College to officiate as Principal of the College till the issue of re-employment of the petitioner as the Principal was decided by the Governing Body of the institution.

(2) Briefly stated the facts are that Rajdhani College (respondent No.3) is an affiliated College of the Delhi University and every year members of its Governing Body are nominated. It is the Governing Body, with whose constitution we are not concerned in the present case, which takes decisions with regard to the employment and re-employment of teachers and Principals.

(3) The petitioner had originally been appointed as a Principal of this College by the Governing Body on 5/08/1985. It is not in dispute that the age of superannuation of a teacher/principal is 60 years and accordingly the petitioner was scheduled to retire on 31st October, 1990. Ordinance XII Rule 3-A of the Delhi University, inter alia, contains a provision providing for re-employment of any distinguished teacher after he has attained the age of 60 years. The said Rule

3-A reads as under :

"3-A.(1) Subject to the provisions of Clauses 6, 7 and 8 of the Agreement of Service, a person appointed permanently as a Principal of a College or Institution or as a teacher there in shall be entitled to be in the service of that College or Institution until he completes the age of sixty. Provided that a Principal or a teacher as the case may be, who has completed the age of sixty years and is still in the service of the College or Institution by virtue of the provisions which were in force prior to 1-4-1975, shall continue to be in such service for the unexpired period of the extension already given to him.(2) The Governing Body of a College or an Institution may, with the approval of Vice-Chancellor, re-employ any distinguished teacher after he has attained the age of 60 years for a period not exceeding 5 years on the whole but not beyond his completing the age of 65 years, if the Governing Body is satisfied that such reemployment is in the interest of the College or Institution.(3) Subject to the provisions of Sub-clause (2), the terms and conditions of service of a re-employed teacher including his salary, leave and other benefits admissible to him will be in accordance with the rules prescribed by the Government of India from time to time .Explanation : A Principal who has been a distinguished teacher may also be re-employed under the provisions of this clause".

(4) On 30/03/1990 the petitioner made an application to the then Chairman of the College seeking re-employment after his attaining the age of superannuation .We are informed that the Executive Council of the University vide its resolution of 11/04/1981 had laid down guidelines for taking up the case for re-employment of teachers in the University and Colleges. According to this the proposal for re-employment or otherwise was required to be initiated atleast six months before the date of superannuation of the teacher concerned .The guidelines clearly say that the decision had to be taken by the Governing Body of the College whether re-employment was to be granted or not .The Vice-Chancellor was authorized by this resolution to refer cases to an Advisory Committee to assist him as to whether re-employment should be granted or not. Guidelines do not envisage any person continuing as a teacher,after re-employment, beyond the age of 65 years. Furthermore, re-employment in the first instance is to be for a period not exceeding 3 years and the guidelines further provide that the Governing Body or the University, at its discretion, may terminate the services of a Principal/teacher by giving him three months "notice during the period of re-employment. Another notable statement made in the guidelines is that the. re-employment of the teacher/principal is to be treated as an entirely fresh employment.

(5) It is in furtherance to the aforesaid Executive Council resolution that the process for consideration of re-employment of the petitioner beyond the age of superannuation commenced with the petitioner filing an application on 30/03/1990, In its meeting held on 8/04/1990 the Governing. Body resolved to re-appoint the petitioner as the Principal of the College subject to his being found

medically fit and, secondly, subject to the grant of approval by the Vice-Chancellor. On 27/04/1990 another meeting of the Governing Body was held whereby the minutes of the earlier meeting were confirmed .

(6) According to the petitioner a letter dated 18/05/1990 under the signatures of the then Chairman of the Governing Body of "the College was written to the Vice-Chancellor seeking his approval to the re-employment of the petitioner. On 19/05/1990 the term of some of the members of the Governing Body who were the nominees of the Delhi Administration expired. The truncated Governing Body continued to exist till September, 1990 when new members were nominated, including respondent No 1. On 26/09/1990 the first meeting of the newly constituted Governing Body was convened and the meeting was held on 17/10/1990. In the meeting so held respondent No. 1 was elected as Chairman of the Governing Body. Prior to this date of letter dated 25/09/1990 had been received from the Vice-Chancellor conveying his approval to the re-employment of the petitioner as the Principal of the College. The ease of the petitioner is that this letter was delivered to the newly elected Chairman viz., respondent No. 1 at the meeting itself. The next meeting of the Governing Body was scheduled to be held on 24/10/1990 but the same was cancelled. On 29/10/1990 the petitioner attained the age of 60 years and on 31/10/1990 he attained the age of superannuation. On that very day viz., 31/10/1990 the Dean of Colleges also wrote a letter to the petitioner informing him that the Vice-Chancellor had already granted his approval to the petitioner's reemployment as Principal of the College.

(7) The resolution of the Governing Body granting re-employment clearly stipulated that the re-employment will be w.e.f. 1st November, 1990. The approval by the Vice-Chancellor was granted before the petitioner attained the age of superannuation. The case of the petitioner is that he continued to work as the Principal after 31/10/1990 till 12/11/1990 when the following letter was written by respondent No. 1 to Shri O.P. Verma, Senior Teacher of Rajdhani College :

"YOU are hereby directed to officiate as Principal, Rajdhani College being a Senior Most Teacher in the absence of the Vice Principal till the issue of re-employment of Dr. B.L. Kapoor is decided by the Governing Body of the Rajdhani College."

(8) Being aggrieved by the aforesaid communication the petitioner filed the present writ petition. The main contention of the petitioner is that a vested right had accrued in his favor with the approval having been granted by the Vice-Chancellor to the re-employment of the petitioner. There are allegations of mala fide levied against respondent No. 1 who had issued the letter dated 12/11/1990,

(9) Before dealing with the rival contentions we may, at this stage take note of the fact that there appeared to be some sort of an agitation which was taking place against the petitioner before he had superannuated. Allegations have been leveled against him by some of the teachers and also by the Karamcharis.. An

Inquiry Committee had been constituted who submitted its report in favor of the petitioner. The Governing Body prior to its decision to re-employ the petitioner, had accepted that report in its 150th meeting which was held on 4/03/1990. It seems that when reference was made to the Vice-Chancellor seeking his approval for the re-employment of the petitioner, a copy of the representation made by the Duta against the petitioner was also received by him. This representation was also considered by the Governing Body in its 150th meeting. Nevertheless the Vice-Chancellor, pursuant to the; aforesaid guidelines, referred the matter to the Counsel for their opinion. Both the Counsel Mr.P.P.Rao and Mr. V.P.Chaudhary recommended to the Vice-Chancellor that it was a fit case where the University should approve the re-employment of the petitioner. The University in its affidavit states that the matter was also referred to the Advisory Council who also recommended to the Vice-Chancellor for according his approval to the re-employment of the petitioner. It is thereafter that the Vice-Chancellor decided that there would be no justification for withholding the approval of re-employment of the petitioner and he accordingly accorded the approval vide his letter of 25/09/1990.

(10) It has been contended by Shri Jaitley, on behalf of the College, that after respondent No. 1 assumed office of the Chairman of the Governing Body he again received representations from the teachers and the Karamcharis against the petitioner. It is under these circumstances that the Chairman decided that the matter should be looked into afresh by the Governing Body and a meeting to this effect was also sought to be called for 21/11/1990. Before the meeting could be held the present writ petition was filed and, therefore, the matter was not considered by the Governing Body.

(11) Shri Jaitley submitted that according to Rule 3-A of the Ordinance XII no employee has a right for re-employment. It was further contended that the decision of the Governing Body to grant re-employment was only a proposal and the matter was not concluded with the approval of the Vice-Chancellor and the Governing Body had, even after approval had been granted, to satisfy itself that the petitioner should be re-employed. It was further submitted that the Governing Body has a right to re-consider the question of re-employment and this right has to be exercised on certain principles.

(12) There can be no doubt that a teacher or a Principal who superannuates on attaining the age of 60 years has no right of re-employment. According to Ordinance XII, Rule 2 every teacher who is appointed on whole-time basis has to enter into a regular agreement with the College or the University, as the case may be. According to Rule 3-A(1) a teacher superannuates on attaining the age of 60 years. The use of the word "may" in Sub-rule (2) of Rule 3-A clearly shows that the Governing Body of a College may or may not decide to re-employ a teacher or a Principal. Furthermore, the power to grant re-employment is to be exercised in the case of a distinguished teacher. The Explanation to Rule 3-A provides that the Principal who has been a distinguished teacher, may also be re-

employed under the provisions of the said clause. The further requirement of sub-Rule (2) of Rule 3-A is that the reemployment has to be in the interest of the College or institution.

(13) In actual fact the re-employment under Sub-rule (2) of Rule 3-A has, in Delhi University, become a rule rather than an exception. The teachers' solidarity and power is evident from the guidelines which have been issued which make it incumbent upon the Governing Body to write to the Vice-Chancellor even in cases where the Governing Body decides not to grant re-employment. In this state of affairs perhaps it may be better to increase the age of superannuation rather than to go through, at least in some cases, the farce of the Governing Body purporting to apply its mind and coming to a conclusion that reemployment of a teacher is in the interest of the College and further assuming every teacher to be a distinguished teacher. We would not like to comment any further on this aspect and leave it to the University and the Governmental authorities to take a fresh look in the matter, irrespective of the pulls and pressures which are invariably there specially with regard to the teaching community.

(14) Reverting back to the arguments of the learned Counsel for the College we have no hesitation in holding, as we have already indicated, that there is no right of re-employment to a retiring teacher. We are also not satisfied that respondent No. 1 has, in the present case, acted in a mala fide manner or for ulterior purposes. We have no reason to doubt that faced with the agitation from a section of the teachers and Karamcharis, respondent No. 1 bona fide believed, immediately on assuming charge, that the matter requires consideration. Unfortunately no meeting of the Governing Body was actually held on or before 31/10/1990.

(15) All that Rule 3-A of Ordinance XII requires is, where re-employment is to be granted, for the Governing Body to pass a necessary resolution and seek approval of the Vice-Chancellor. It is not in dispute that the petitioner was found to be medically fit. When reference was made to the Vice-Chancellor for his approval. The resolution of the Governing Body was in the following terms:

"THE Governing Body after considering the facts and circumstances including application dated 30.3.1990 submitted by Dr. Kapur for his re-employment as well as Dr. Mishra's letter dated 8.4.90, unanimously resolved that it is in the interest of the College that Dr. Kapur be re-employed as Principal of the College for a period of 3 years w.e.f. 1/11/1990, subject to : (a) Dr. Kapur being found medically fit, and (b) the re-employment being approved by the Vice-Chancellor. After passing of the aforesaid resolution the Principal was asked to participate in the meeting."

(16) As far as the College was concerned a decision to re-employ the petitioner had been taken with the passing of the said resolution. This decision was to be given effect to subject to the petitioner being found medically fit and approval being obtained from the Vice-Chancellor. Both these conditions were satisfied by

the 25/09/1990. Learned Counsel for the respondents have not been able to bring to our notice any requirement of the Rules, Regulations or Ordinances whereby once an approval of the Vice-Chancellor has been obtained any overt act has to be taken by the College or the Governing Body. It is no doubt true that re-employment means a fresh contract of service. This contract was concluded when the petitioner first applied for reemployment which offer was accepted by the Governing Body passing there solution granting re-employment followed by the approval of the Vice-Chancellor. This re-employment was to take effect from a future date viz., 1/11/1990. That date had been specified in the resolution which resolution had been approved by the Vice-Chancellor. It is possible that circumstances may arise whereby the re-employment of a teacher or Principal is no longer in the interest of the College. We would like to emphasise that under Sub-rule (2) of Rule 3-A it is only if it is in the interest of the College that a distinguished teacher should be granted re-employment when a decision to this effect is taken. Therefore, as on the date of re-employment the two conditions should be satisfied viz., he should be a distinguished teacher and his re-employment should be in the interest of the College. When the process of consideration for re-employment commences six months prior to the superannuation it is possible that during the last six months of employment circumstances may exist, after a decision by the Governing Body has been taken and approval obtained, which may necessitate the Governing Body to re-consider its decision. If no re-consideration takes place it must be assumed that as on the date of re-employment both the conditions stood satisfied. Therefore, in the present case, on or before 31/10/1990 the Governing Body could, possibly, have recalled its earlier decision to grant re-employment, but this was not done in the present case. Furthermore a decision to recall an earlier resolution must be for good and valid reasons.

(17) It has been contended by learned Counsel for the petitioner, with considerable force, that all the allegations which are now brought to the notice of the newly elected Chairman of the Governing Body had already been taken into consideration by the Governing Body in its 150th meeting. Therefore, there was no reason as to why on the same allegations, the matter should be re-considered. It is not necessary for us to go into this aspect because in our opinion when the Governing Body did not re-consider its earlier decision of 8/04/1990, the resolution of that date granting re-employment to the petitioner became effective w.e.f. 1st November, 1990. According to the petitioner he continued to work from 1/11/1990 till the impugned letter was issued. This fact is disputed by the respondents. We need not go into this disputed fact because in our opinion a vested right had accrued in favor of the petitioner w.e.f. 1st November, 1990 and he stood re-employed as on that date. Thereafter if the College wanted to terminate the re-employment it could do so, possibly, in terms of the guidelines by giving him a three months notice.

(18) Before concluding we may notice an argument on behalf of the respondents that the term, of office of the former Chairman had come to an end on

19/05/1990. It has been contended by the respondents that it is on 21/05/1990 that the letter was handed over to the Vice-Chancellor's office regarding the re-employment of the petitioner. It was sought to be submitted that on 21/05/1990 the former Chairman had no authority to write a letter and make a communication to the Vice-Chancellor and, Therefore, the consequent approval was non est. We are unable to agree with this. Firstly the letter written to the Vice-Chancellor bears the date of 18/05/1990. Further, there is no document on the record to show that the communication was received by the Vice-Chancellor on 21/05/1990. Even if we assume that on 21/05/1990 the erstwhile Chairman delivered the letter dated 18/05/1990 to the office of the Vice-Chancellor we find no illegality in this. What was communicated to the Vice-Chancellor was the decision of the Governing Body which had been taken in April, 1990 regarding grant of re-employment to the petitioner. The approval of the Vice-Chancellor is to this resolution of 8/04/1990 and not to the letter of 18/05/1990. This is evident from the letter of the Vice-Chancellor dated 25/09/1990 itself. Therefore, what is material is the resolution of the Governing Body and not the communication of the resolution to the Vice-Chancellor.

(19) For the aforesaid reasons the writ petition is allowed. The communication dated 12/11/1990 from respondent No. 1, copy of which was supplied to the petitioner is quashed. As a result of this the petitioner will be entitled to work as Principal of the College in terms of the aforesaid resolution of 8/04/1990, w.e.f. 1/11/1990 and will be entitled to all consequential benefits.

(20) There will be no order as to costs.