

(2022) 08 DEL CK 0067

In the Delhi High Court

Case No : Letter Patent Appeal No. 68 Of 2022, Civil Miscellaneous Application
No. 4877, 4879 Of 2022

Delhi Technological University

APPELLANT

Vs

B S Rawat

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Delhi Technological University Act, 2009 — Section 13, 22, 23(2)(ix), 23(3)(f), 53

Citation : (2022) 08 DEL CK 0067

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Avnish Ahlawat, N. K. Singh, Tania Ahlawat, Palak Rohmetra,
Lavanya Kaushik, Aliza Alam, R. K. Saini, Sunil Beniwal

Final Decision : Disposed Of

Judgement

1. The instant appeal has been filed against the Judgment dated 15.12.2021, passed by the learned Single Judge of this Court in W.P.(C) 2611/2019, whereby the following directions had been given by the learned Single Judge:

"51. Accordingly, writ petition is allowed. Order dated 25.05.2016, whereby the resignation tendered by the Petitioner was accepted as well as order dated 31.05.2016, whereby Petitioner was relieved and order dated 03.11.2016, whereby the request of the Petitioner for withdrawal of resignation was rejected, are quashed and set aside. Respondent is directed to reinstate the Petitioner into service within a period of four weeks from today. Petitioner shall be entitled to all consequential benefits including continuity of service. Petitioner shall also be entitled to fullback-wages along with interest at the rate of 9% p.a. from the date he was relieved from the services of the Respondent till the date of reinstatement, except for the period he was gainfully employed"

2. The facts, in brief, leading to the instant appeal are as under:

a) It is stated that the Appellant-University invited applications for the post of Assistant Registrar (Legal) under the Unreserved category. On 10.08.2010, interviews were conducted for five posts of Assistant Registrar, and on the basis of the recommendation of the Selection Committee, the Vice-Chancellor of the Appellant-University offered the post of an Assistant Registrar to the Respondent herein. Accordingly, on 23.08.2010, the Respondent joined the Appellant-University as Assistant Registrar (Legal).

b) Vide Delhi Technological University (Amendment) Act, 2012, Section 22 of the Delhi Technological University Act, 2009 (hereinafter referred to as the "DTU Act") was amended, and Section 53 was added to the DTU Act. By way of newly amended Section 22, the Board of Management (hereinafter referred to as the "BOM") was to consist of the following persons:

"The Board of Management shall consist of the following persons:-

(a) Chairperson shall be eminent educationist or an eminent scientist or eminent engineer/technologist or eminent industrialist to be nominated by the Chancellor.

(b) The Vice Chancellor of the University

(c) Three eminent persons in the disciplines of science, engineering, technology and management, nominated by the Government

(d) Two Professors of the University nominated by the Government.

(e) Two Deans of the University nominated by the Government

(f) A representative of an Industry Association, nominated by the Government

(g) Principal Secretary or Secretary (Finance) to the Government ex-officio;

(h) Principal Secretary or Secretary (Higher Education) to the Government ex-officio;

(i) Principal Secretary or Secretary (Technical Education) to the Government ex-officio;

(j) Such other member or members as may be prescribed by the Statutes"

Section 53 was also added which stated that the Chancellor could either suo moto or on the recommendation of the BOM issue such directions as may be necessary or expedient in the interest of administration, financial or academic functioning of the University and, in particular, to ensure peace and tranquillity in the University as well as to protect the property of the University.

c) The amended Section 22 of the DTU Act mandated for the BOM to be headed by a Chairman, however, no one was appointed to this post. On account of the vacancy, the Appellant was facing problems with getting approvals in matters pertaining to academic, administration, financial and other matters of routine nature, and therefore, in its 16th Meeting, vide agenda item No. 16.6, the BOM

proposed for the powers of the BOM to be exercised by the Vice-Chancellor in order for a smooth functioning of the University in terms of clause (o) of Section 10(2) of the Delhi Technological University (First) Statutes, 2009(hereinafter referred to as the "Statute").

d) On 24.09.2015, Professor Yogesh Singh, Director of Netaji Subhash Chandra Institute of Technology (NSIT), assumed additional charge as a Vice-Chancellor of the Appellant-University. This additional charge was given on account of the then Vice-Chancellor, DTU, being relieved on 23.09.2015, and was by virtue of the Chancellor of DTU exercising his power under Section 53 of the DTU Act vide order dated 18.09.2015. On 14.07.2016, Professor Yogesh Singh joined as a whole-time salaried Vice-Chancellor.

e) In the meanwhile, on 19.05.2016, the Respondent tendered his resignation which was accepted on 22.05.2016 by Professor Yogesh Singh, who at the relevant time was holding the additional charge of the Appellant-University, and a formal order on the same was issued on 25.05.2016. The notice period of the Respondent was waived off and he was thereafter relieved from his services of the Appellant on 31.05.2016. The experience certificate, as requested by the Respondent, was given to him on 19.07.2016, along with a last pay certificate and a no dues certificate on 26.07.2016.

f) It is stated that on 23.09.2016, the Respondent submitted an application dated 22.09.2016 to the Vice-Chancellor for withdrawal of resignation. The same was considered at the 20th meeting of the BOM held on 26.09.2016 wherein the resignation of the Respondent was ratified, and on 03.11.2016, the Respondent's request for withdrawal of his resignation was rejected. The minutes of the 20th meeting of the BOM was confirmed in the 21st meeting held on 23.11.2016.

g) The Respondent herein preferred a writ petition in 2019 seeking a declaration that a Vice-Chancellor holding additional charge is not competent to exercise statutory powers, and also seeking quashing of the order dated 25.05.2016, whereby resignation of the Petitioner was accepted, as well as the consequential order dated 31.05.2016, relieving the Respondent from his duties. Challenge was also laid to the order dated 03.11.2016, whereby request of the Respondent for withdrawal of his resignation had been rejected by the Appellant herein.

h) Vide Judgment dated 15.12.2021, the learned Single Judge of this Court allowed the writ petition of the Respondent herein, and directed the Appellant herein to reinstate the Respondent into service within a period of four weeks from the date of the Judgement. Furthermore, the learned Single Judge stated that the Respondent would be entitled to all consequential benefits, including continuity of service, and would also be entitled to full back-wages along with interest at the rate of 9% p.a. from the date he was relieved from the services of the Appellant till the date of reinstatement, except for the period he had been gainfully employed.

i) Aggrieved by the aforesaid Judgement dated 15.12.2021, the Appellant has

preferred the instant appeal.

3. Ms. Avnish Ahlawat, learned Standing Counsel for DTU, submits that the learned Single Judge has failed to consider the fact that the newly added Section 53 of the DTU Act empowered the Chancellor, who is the Lt. Governor of the National Capital Territory of Delhi [Section 11(1)], to either suo moto, or on the advice of the BOM, issue any direction as may be necessary or expedient in the interest of administration, and/or to ensure peace and tranquillity in the University. Therefore, the act of the Chancellor to bestow additional charge of Vice-Chancellor upon Dr. Yogesh Singh was in consonance with the statutory provisions. She further relies upon Section 23(2)(ix) of the DTU Act to state that the BOM has the power and function "to appoint persons in teaching, administrative and ministerial posts". She states that the BOM vide its 16th meeting had delegated the powers to Dr. Yogesh Singh. Ms. Ahlawat argues that the power exercised by Dr. Yogesh Singh in accepting the resignation of the Respondent was not illegal, and that the BOM had subsequently ratified the same. Furthermore, the appointment of Dr. Yogesh Singh also stood regularized as he was appointed as full-time VC on 14.07.2016.

4. Ms. Ahlawat brings to the notice of this Court that after resigning from the Appellant-University, the Respondent had joined NIT, Calicut, as a Deputy Registrar on 08.02.2017. He had resigned from NIT, Calicut, on 11.01.2019. She submits that even at NIT, Calicut, the Respondent had attempted to withdraw his resignation, which was rejected by NIT, Calicut, and thereafter, he had challenged this rejection by way of W.P.(C) No. 14345/2019 before the Kerala High Court. Ms. Ahlawat states that the petition of the Respondent had been allowed, but was subsequently dismissed by the Division Bench in Appeal W.A. No. 809/2020 vide Order dated 01.12.2020. The learned Standing Counsel states that the fact that the Respondent was working with NIT, Calicut, as a Deputy Registrar in the duration between his resignation from DTU and the filing of the writ petition, was concealed initially, and this demonstrates the mala fides of the Respondent.

5. Mrs. Ahlawat relies upon National Institute of Technology and Anr. v. Pannalal Choudhury and Anr., (2015) 11 SCC 669, to submit that the effect of ratification is that even if the acceptance of resignation was irregular, it has been retrospectively validated by the ratification of the same by the BOM. Ms. Ahlawat further relies upon Air India Express Ltd. v. Captain Gurdarshan Kaur Sandhu, (2019) 17 SCC 129, and Director General of Police and Anr. v. M. Jeyanthi, (2019) SCC OnLine 1645, to contend that resignation once accepted cannot be withdrawn. She states that in the instant case, the Respondent's resignation had been accepted by Dr. Yogesh Singh, and that he had also received his last pay certificate, no dues certificate and employment certificate, as had been sought by him, and that he could not now turn around and seek withdrawal of his resignation.

6. The learned Standing Counsel for the Appellant further submits that the

Respondent herein had not satisfactorily explained his reason for the huge delay on the part of the Respondent in filing the writ petition. She submits that the learned Single Judge had failed to appreciate the same and, the writ petition ought to have been dismissed on the ground of delay and laches.

7. Per contra, Mr. R.K. Saini, learned Counsel for the Respondent, along with the Respondent-in-Person, submits that the resignation of the Respondent had been accepted by the person, i.e. Dr. Yogesh Singh, who had been given additional charge as VC of the Appellant. It was only subsequently that Dr. Singh was appointed as a whole-time salaried officer of the Appellant. Mr. Saini submits that the forwarding of the resignation of the Respondent by Professor Yogesh Singh after he had become full time VC of the Appellant- University indicates that the acceptance of resignation could have only been done by a VC whose tenure had been regularised. The learned Counsel for the Respondent further submits that there was no suppression or concealment of facts on the part of the Respondent as the factum of the Respondent having worked at NIT, Calicut, from 08.02.2017 to 11.01.2019, was brought on record by the Appellant by way of an additional affidavit, to which the Respondent had filed a Reply, and that the learned Single Judge had directed for back-wages to be awarded to the Respondent for the term excluding this period.

8. It is the contention of the Respondent the Petitioner's reliance upon Section 53 of the DTU Act is misplaced as it is only a general power given to the Chancellor and this cannot override a specific power. He states that when there is a specific provision providing the power of the VC, then it can only be overcome by a necessity or an urgency must be shown. He states that despite the post of Assistant Registrar (Law) being vacant, the sole reason for resistance on the part of the Appellant in reinstating the Respondent is that the Respondent exercised his knowledge against the Appellant, and the Appellant was embarrassed and vindictive.

9. Mr. Saini submits that the Appellant cannot raise the ground of "delay and laches" in an appeal as the same had not been done before the learned Single Judge who has not adjudicated upon it. He further states that there is no strict limitation in filing of a writ petition, and that delay and laches have to be appreciated on his conduct. Further, the doctrine has to be applied by discerning as to whether the delay has caused any prejudice to the other party. Mr. Saini further states that under equity, the Respondent should not be non-suited. He relies upon *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405, to submit that when an order is based on certain, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh grounds in the shape of an affidavit or otherwise.

10. Heard Ms. Avnish Ahlawat, learned Standing Counsel for DTU, Mr. R.K. Saini, appearing for the Respondent, along with Respondent-in-Person, and perused the material on record.

11. The two broad issues which arose before the learned Single Judge were:

- i. Whether the resignation tendered by the Respondent vide letter dated 19.05.2016, which was accepted by Dr. Yogesh Singh, who had been given additional charge of VC, constituted a valid acceptance in law?
- ii. If the resignation was accepted by a person who did not have the requisite authority, whether in facts and circumstances of the case, could reinstatement have been ordered, accompanied with a direction for payment of past dues along with interest?

12. Before delving into the facts of the case and the principles laid down by the Supreme Court governing the same, it would be prudent to reproduce the relevant provisions stipulated in the DTU Act and the State. Section 13 of the DTU Act states that the Vice-Chancellor of the University shall be a "scholar of eminence in one of the areas of applied sciences, engineering and management, having administrative experience in a Post Graduate Degree level institution of higher learning". Section 13(2) states that the VC shall be appointed by the Chancellor in a manner that has been duly prescribed under Clause 3(B) of the Statute. The relevant portion of Clause 3(B) can be read as under:

"3(B) The Vice Chancellor. -

- (1) The Vice-Chancellor shall be a whole- time salaried officer of the University.
- (2) The Vice-Chancellor shall be appointed by the Chancellor from a panel of three names (written in the alphabetical order) recommended by the search-cum- selection committee constituted under sub-clause (3).
- (3) The search-cum-selection committee referred to in sub-clause (2) shall comprise of:--
 - (a) an eminent academician-Chairman.
 - (b) former or present Director of a Indian Institute of Technology --Member.
 - (c) former or present Director of Indian Institute of Management ---Member.
 - (d) an academician of the level of a Vice- Chancellor, present or former, as a nominee of the University Grants Commission-Member.
 - (e) Secretary, in the Technical Education, Department of the Government-Member Secretary (ex-officio).
- (4) The search-cum-selection committee shall forward the names (in the alphabetical order) to the member secretary of the committee.
- (5) The Vice-Chancellor shall hold office for a term of five years from the date on which he/she enters upon his office and shall be eligible for reappointment for not more than one term: Provided that the person appointed as Vice- Chancellor shall, on completion of seventy years of age, during his/her term of office, cease

to hold office."

13. Clause 3(B)(7) lays down what is to be done in the event that the office of the VC becomes vacant and until the new VC assumes office or the existing VC resumes the duties of his office, as the case may be:

"(7)If the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise, or if he is unable to perform his duties due to ill health or any other reasons, the senior-most Pro Vice-Chancellor shall perform the duties of the Vice-Chancellor, and if there is no Pro Vice-Chancellor, the senior-most Dean shall perform the functions of the Vice-Chancellor until the new Vice-Chancellor assumes office or until the existing Vice-Chancellor resumes the duties of his office, as the case may be."

14. Section 22 of the DTU Act, as amended by the DTU (Amendment) Act, 2012, enlists for the BOM to, in addition to the persons who are already a part of the BOM, also include a "Chairperson" who is to be nominated by the Chancellor. Further, Section 23(2)(ix) of the DTU Act states that the BOM shall have the power and function to appoint persons in teaching, administrative and ministerial posts. Furthermore, as per Clause 10(2)(o) of the Statute, the BOM also has the power to "delegate any of its powers to the Vice-Chancellor, and on the recommendations of the Vice-Chancellor to the Pro Vice-Chancellors, Registrars, the Controller of Finance or any other Officer, employee or authority of the University or to a Committee appointed by it".

15. Section 23(3)(f) of the DTU Act prescribes that every meeting of the BOM shall be presided over by the Chairperson, and in his absence, by a Member chosen by the Members present. Lastly, Section 53, a newly inserted provision to the DTU Act, empowers the Chancellor, to either suo moto or on the recommendation of the BOM, to issue such directions as may be necessary or expedient in the interest of administration, financial or academic functioning of the University, and in particular to ensure peace and tranquillity in the University.

"53. Power to issue directions: - The Chancellor may either suo moto or on the recommendation of the Board of Management may issue such directions as may be necessary or expedient in the interest of administration, financial or academic functioning of the University and in particular to ensure peace and tranquility in the University and to protect the property of the University."

16. The learned Single Judge has held that Clause 3(B) of the Statute prescribes the manner in which the Vice-Chancellor is to be appointed, with Clause 3(B)(7) providing for an arrangement that must be adhered to in the event that the office of the Vice-Chancellor is vacant. When there exists a provision that lays out the procedure for such an appointment to be made as well as the procedure that must be followed in the case of absence of the VC, then it would be improper to exercise any power which is not in consonance with the statute. The reasoning of the Single Judge does not call for any interference. It is well settled that when the statute provides for a thing to be done in a particular way that it

has to be done in that way and in the means provided. Each authority must exercise its functions within the four corners of the statutory provisions [Refer to *M.P. Wakf Board v. Subhan Shah & Ors.*, 2006 (10) SCC 696, *Taylor v. Taylor*, 1875 1 Ch. D 426, *Ramchandra Murarilal Bhattad & Ors. v. State of Maharashtra & Ors.*, 2007 (2) SCC 588]. Therefore, when the VC as of then resigned from his position, as per Clause 3(B)(7), only the senior-most Pro Vice-Chancellor could have appointed and been authorised to perform the functions of a Vice-Chancellor as a stop-gap arrangement, till the regular incumbent was appointed. Further, as has been recorded by the learned Single Judge in the impugned Judgement dated 15.12.2021, the Appellant has been unable to establish or draw attention to any provision that would permit any deviation from the aforesaid procedure.

17. It is further well established that when procedure in a general provision and a special provision overlap, the rule adopted and applied is one of harmonious construction whereby the general provision, to the extent dealt with by the special law, is impliedly overridden. This principle finds its origins in the Latin maxim of *generaliaspecialibus non derogant*, i.e. general law yields to special law should they operate in the same field on same subject [Refer to *Commercial Tax Officer, Rajasthan v. Binani Cements Limited and Anr.*, (2014) 8 SCC 319]. Therefore, there is substance in the contention of the Respondent that Section 53 of the DTU Act cannot be relied upon by the Appellant to state that the Chancellor had overriding powers to bestow authority upon a person who had assumed additional charge as VC when both the DTU Act and the Statute elaborate upon a specific manner for appointment of a VC as well as the specific powers of both the VC as well as the BOM.

18. The contention of Ms. Ahlawat that under Section 53 of the Act, powers have been given to the Chancellor, who either suo moto or on the recommendation of the BOM can issue such directions as may be necessary in the interest of administration, academic functioning of the University, and to ensure peace and tranquility in the University, and to protect the property of the University, and, therefore, Dr. Yogesh Singh was given the additional charge to accept the resignation, cannot be accepted. Section 53 of the Act grants power to the Chancellor to issue directions only in dire necessity and the purport of the provision is to ensure that the Chancellor is in a position to pass directions to ensure peace and tranquility in the University and protect the property of the university. This power cannot be exercised when a procedure has been prescribed under the Statute for acceptance of resignation. The reliance of the Appellant on decision encapsulated in Agenda 16.6 of the 16th meeting of the BOM held on 27.05.2015, that, in consonance with Clause 10(2)(o) of the Statute, the BOM had delegated total powers to the Vice-Chancellor till the appointment of Chairperson of the BOM for the smooth functioning of the University, is of no consequence.

19. The fact that the resignation of the Respondent had been accepted by Dr.

Yogesh Singh who was holding only additional charge would be of no relevance, and the ratification of the decision made by Dr. Singh would also be immaterial because the Respondent had withdrawn the resignation before it was accepted by the BOM.

20. It is well settled that till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant has the option to withdraw his letter of resignation (refer *Raj Kumar v. Union of India*, AIR 1969 SC 180).

21. Furthermore, the contention of Ms. Ahlawat that the resignation of the Respondent had been accepted by the BOM and the BOM had ratified the action of Dr. Yogesh Singh cannot be accepted for two reasons. One, as stated above, on the day when Dr. Yogesh Singh accepted the resignation, he had been given the additional charge of VC and was not a regular VC and, therefore, was not the Competent Authority to accept the resignation. Before the BOM accepted the resignation, which had been forwarded by Dr. Yogesh Singh, the Respondent had already withdrawn the resignation which he was entitled to do under law. The BOM, therefore, could not proceed ahead in accepting the resignation which already stood withdrawn by the Respondent. The fact that Dr. Yogesh Singh forwarded the letter of resignation only after he became a regular Vice-Chancellor demonstrates that Dr. Yogesh Singh was fully cognizant of the fact that he could not have accepted the resignation. The acceptance of the resignation letter by the BOM cannot amount to ratification for the simple reason that the acceptance of resignation by Dr. Yogesh Singh was not an irregular act, but an act done by an authority who had no power to accept the resignation in the first place.

22. The Appellant further cannot seek the support of the judgments of the Apex Court in *Air India Express Ltd. v. Captain Gurdarshan Kaur Sandhu* (supra) and *Director General of Police and Anr. v. M. Jeyanthi* (supra) as the ratification of the decision of Dr. Yogesh Singh to accept the Respondent's resignation was done in the 20th meeting of the BOM held on 26.09.2016. However, the Respondent had sought for withdrawal of his resignation vide letter dated 22.09.2016, noting that the resignation of the Respondent had neither been accepted nor ratified. Therefore, the subsequent ratification does not validate the acceptance on the part of Dr. Yogesh Singh who was not the VC of the Appellant-University but was only holding an additional charge.

23. The contention of the Appellant that the instant appeal should be allowed for the reason that the writ petition was filed after a delay of 3 years and is hopelessly barred in time also does not come to the aid of the Appellant. The power of the High Court in exercising power under Article 226 is discretionary in nature, and the rule of laches and delay is not a rigid rule and that High Courts can still grant the desired relief in cases where the demand of justice is compelling and, more particularly, when the action of the Competent Authority is not in accordance with law.

24. With regard to the contention that there had been concealment of facts on behalf of the Respondent, this Court observes that the learned Single Judge has taken into its consideration the fact that the Respondent had been employed as a Deputy Registrar at NIT, Calicut, at a higher pay-scale, and had been relieved from the said Institute only on 11.01.2019. This was brought on record by way of an additional affidavit filed by the Appellant, and the learned Single Judge has considered the same:

"47. Learned counsel for the Respondent, without prejudice to the other contentions, had also opposed the grant of back-wages on the ground that Petitioner had been gainfully employed during the period he was out of service of the Respondent. It was argued that Petitioner was employed as Deputy Registrar with the National Institute of Technology, Calicut at a higher pay-scale and was relieved from the said Institute only on 11.01.2019, as per the communication dated 05.10.2020 sent by the said Institute. Respondent filed an additional affidavit bringing on record the said communication. Petitioner has responded to the additional affidavit and submitted that he is entitled to reinstatement with all consequential benefits including full back-wages except for the period 08.02.2017 to 11.01.2019, the period when he was admittedly gainfully employed"

25. The learned Single Judge has taken a decision to not only reinstate the Respondent, but also direct the Appellant to pay him back-wages by observing that, "If this Court was to deny the relief of reinstatement to the Petitioner (Respondent herein), having held that he has been wronged, it would not only be highly unjust to the Petitioner (Respondent herein) but would also amount to giving a premium to the Respondent for its wrongful acts. In view of the conspectus of the judgements alluded to above, in my view, the Petitioner deserves to be reinstated back in service with the Respondent". The learned Single Judge by the Judgment impugned herein has reinstated the Respondent as well as granted the back-wages in entirety. Ms. Ahlawat contends that the Respondent after withdrawing his resignation, instead of approaching this Court by filing a writ petition contending that the decision of the BOM in accepting the resignation and ignoring the withdrawal of resignation was against the law, chose to work at NIT, Calicut, from 08.02.2017 to 11.01.2019 and drew wages for the said period. It is stated that the Respondent decided to leave NIT, Calicut, and gave his resignation, attempted to withdraw his resignation and when unsuccessful, approached the High Court of Kerala. His plea challenging the action of the NIT, Calicut, in refusing to accept his withdrawal of resignation, failed and then he came back to Delhi to file the writ petition from which the instant appeal arose. She, therefore, contends that the conduct of the Respondent is such that back-wages ought not to have been granted to him.

26. Resultantly, the order of the learned Single Judge in allowing the writ petition does not require any interference. However, this Court is not inclined to grant back-wages to the Respondent on account of his conduct. The Respondent ought

to have approached this Court at the first instance. He chose not to and instead went to NIT, Calicut, joined the said Institute and was drawing a regular salary. This Court is, therefore, of the opinion that the Respondent is not entitled to salary till he is reinstated in service, and therefore, he is also not entitled to the back-wages as has been directed in the impugned Judgement dated 15.12.2021.

27. The Appeal, is, therefore, disposed of as indicated above. Pending application(s), if any, stand disposed of.