
(2006) 05 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Revision Petition No. 28 of 2006

Kamlesh Purohit (Dr.)

APPELLANT

Vs

The Jai Narayan Vyas University and Others

RESPONDENT

Date of Decision : 31-05-2006

Acts Referred:

Citation : (2006) 3 RLW 2389

Hon'ble Judges : S.N. Jha, C.J.;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : M.C. Bhoot, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—By this petition the petitioner, Dr. Kamlesh Purohit seeks review of the order dated 27.4.2006 in D.B. Civil Special Appeal No. 1 18 of 2006. Three appeals were disposed of by the said order, the appeals had arisen from identical orders of the learned Single Judge confirming an interim order staying the appointment of Heads of Department (HOD) in different subjects/faculties in Jai Narayan Vyas University, Jodhpur (in short, "the University") Case of the appellants including the University inter alia was that as a result of stay, the concerned departments had become "headless" as the order of stay by itself could not result in revival of appointment of the previous incumbents on the post. Having regard to the urgency involved, counsel for the parties agreed that the appeals may finally be disposed of at the admission stage and accordingly the appeals were heard on 26.4.2006 and 27.4.2006, and finally disposed of.

2. As indicated above, the dispute related to the appointment of HODs and the controversy revolved around interpretation of Clause (c) of Statute 8 of the University Statutes. Statute 8(1)(c) which deals with appointment of HOD lays down the manner in which the appointment shall be made. The provision has been quoted in the basic order dated 27.4.2006. In order to make this order self contained, it may again be quoted as under:

8.(1) (a)....

(b)....

(c) Each department shall have a Head who shall be appointed in the following order preference:

(1)(i) Professor in the subject by rotation by seniority.

If a professor who is Head of the Department under Clause (1)(i) above goes on leave without pay/EOL, deputation or he goes on any type of leave for a period of not less than 1 month, the next senior-most Professor shall be appointed Head of Department for such period as the person appointed under Clause (1)(i) is on leave. This period shall not count towards the term.

(ii) in case there is no professor or all Professors are on leave, Readers by rotation by seniority. If a Reader who is Head of Department under Clause 1 (ii) above goes on leave without pay/EOL, deputation or he goes on any type of leave for a period of not less than 1 month, the next senior-most Reader shall be appointed Head of the Department for such period as the person appointed under Clause 1 (ii) is on leave. This period shall not count towards the term.

(iii) In case there is no Professor or Reader or all Professors or Readers are on leave, Lecturers by rotation by seniority.

If a Lecturer who is Head of the Department under Clause 1 (iii) above goes on leave without pay/EOL deputation or he goes on any type of leave for a period of not less than 1 month, the next senior-most Lecturer shall be appointed Head of the Department for such period as the persons appointed under Clause 1 (iii) is on leave. This period shall not count towards the term.

3. The Court also noticed Statute 8(2) which prescribes the tenure of appointment as under:

2 (i) The term of appointment shall be 3 years.

(ii) A person appointed as Head of a Department can decline or resign his position as Head at any time during his, tenure.

4. The Court observed that a combined reading of Statute 8(1)(c)(ii)(i) and Statute 8(2)(i) makes it evident that appointment of HOD is to be made by rotation on the basis of seniority. And such appointment is to continue for a period of three years.

5. It may not be out of place to mention here that the dispute had arisen on account of non-availability of regularly selected/directly recruited Professors and Readers in the university, and the Court took the view that in view of large-scale non-availability of regularly selected/directly recruited Professors and Readers, the university has no option but to appoint HODs from amongst those who have been promoted under the Career Advancement Scheme (CAS) or Personal Promotion Scheme, as the case may be, and a regularly selected/directly

recruited Professor/ Reader cannot continue as HOD merely because another regularly selected Professor/Reader was not available. As regards tenure, the Court observed as under:

... We have no doubt in our mind, having regard to the mandate of Statute 8(2)(i) read with 8(1)(c)(1)(i) that the tenure cannot be more than three years. Statute 8(1)(c)(1)(i) lays down in no uncertain terms that the appointment shall be made by rotation by seniority and Statute 8(2)(i) fixes the tenure as three years. The university has no option but to appoint the Professor (or in case of non-availability of Professor, an Associate Professor/Reader) going by the rule of seniority by rotation for a period of three years.

6. It is relevant to mention here that there was a general consensus among counsel appearing for the parties about the legal position emanating from the provision of statutes, and no counsel seemed to have any grievance against the order which was dictated in open Court after the hearing concluded.

7. As regards the petitioner herein, a special mention was made of his case. He had been appointed as HOD in Mechanical Engineering Department vice Dr. R.K. Karva who had proceeded on leave, and it was submitted that the appointment being against leave vacancy, he cannot continue as HOD on return of Dr. Karva. After hearing Shri S.D. Purohit who represented the petitioner as respondent in D.B. Civil Special Appeal No. 118 of 2006, the Court passed the following order:

In Course of hearing specific mention was made of the case of Dr. Kamlesh Purohit, respondent in D.B, Civil Special Appeal No. 118 of 2006. It was stated that he was appointed as Head of the Department in Mechanical Engineering vice Dr. R.K. Karva who had proceeded on leave. Appointment of Dr. Purohit being against leave vacancy of Dr. R.K. Karva, Dr. Kamlesh Purohit cannot continue as Head of the Department. Dr. Karva will be reappointed as Head of the Department provided he has not already completed tenure of three years. However, the period of leave will not be counted while counting his tenure for the purpose of appointment/continuance as Head of the Department.

8. The present petition has been filed through another Counsel making grievance that while disposing of the special appeal which was directed against an interim order of the learned Single Judge, the Division Bench went beyond the scope of writ petition. It was stated that Shri S.D. Purohit had no instructions to make submission on the point and therefore, disposal of the appeal on a point beyond the scope of the writ petition amounted to denial of opportunity of hearing to the petitioner. It was also urged that this Court proceeded on the hypothesis that the appointment of Professors/Readers under the CAS was promotion which is not true. It is merely a designation and therefore, those appointed under the CAS are not eligible for appointment as HOD. Counsel referred to a few decisions of the Supreme Court on the scope of power of review of the High Court.

9. The issue, so far as the petitioner is concerned lies in a narrow compass. It is not the case of the petitioner that he was not appointed as HOD vice Dr. R.K.

Karva who had proceeded on leave. His appointment being a leave vacancy appointment, there can be no doubt that on return of Dr. Karva, the petitioner cannot continue as HOD and. Dr. Karva has to be reappointed as HOD provided he had not already completed tenure of three years, as clarified by this Court in the impugned order.

10. The larger question as to whether the CAS Professor/Reader can be appointed, as HOD does not arise for consideration in the case of petitioner. If Dr. R.K. Karva was duly appointed as HOD- and the appointment was never challenged by the petitioner or any other person, it is difficult to appreciate as to how the petitioner can claim any right to continue as HOD even after return of Dr. Karva from leave. The larger question whether a CAS Professor/Reader can be appointed as HOD therefore does not arise for consideration at the instance of the petitioner. The controversy sought to be reopened by then lies in a narrow compass and the order passed by the Court does not warrant any reconsideration.

11. We do not agree with the counsel that the order sought to be reviewed was beyond the scope of the writ petitions. The dispute as seen above, related to appointment of HODs and this Court simply explained the legal position interpreting the relevant statutes of the university having direct bearing on the dispute.

12. Counsel then submitted, referring to the provision "this period shall not count towards the term" in Clauses (i), (ii) and (iii) of statute 8(1)(c), that the provision saves stopgap appointment against leave vacancy. It is not possible to accept the submission. The words "this period" have to be read alongwith the words "for such period" occurring in the preceding sentence. Reading the clauses as a whole it is manifest that if a Professor/Reader/Lecturer, as the case may be, goes on leave for a period not less than one month, the . next senior-most Professor/Reader/Lecturer, as the case may be, shall be appointed as HOD "for such period" i.e. the period for which the regular HOD is on leave and the period of such temporary appointment will not be counted towards the term of three years either in the case of regular incumbent or the person who has been appointed in his place for the simple reason that the appointment made as temporary stopgap arrangement cannot be counted to their prejudice.

13. It is not necessary to make further observations on the contentions raised on behalf of the petitioner. As mentioned above, the controversy so far as the petitioner is concerned. Being a leave vacancy appointee, he has no option but to make room for the incumbent on the post namely Dr. R.K. Karva on return from leave.

14. The review petition, it would thus appear, is frivolous and misconceived, and the same is accordingly dismissed.