

(2006) 11 DEL CK 0037
In the Delhi High Court
Case No : LPA 1028 of 2004

Madhu Rathour

APPELLANT

Vs

The V.C. Delhi University

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 93 DRJ 489

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : S.P. Singh Rathore, for the Appellant; S.K. Luthra, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—This LPA has been preferred against the judgment dated 18.8.2004 delivered by learned Single Judge dismissing the writ petition of the appellant herein and another petition in which they both had claimed re-employment by the University of Delhi on the basis of being distinguished teachers.

2. Briefly the facts are that the petitioner served for about 33 years as teacher in Vivekanand College, Delhi. It is pleaded that she discharged her duties diligently, honestly and has an unblemished record of service. She has done doctorate in Hindi from Delhi University, is a law graduate, has done post doctorate research, got a scholarship, has teaching experience for a number of years under various positions, had been taking part in extra curricular activities of the College, helped in administration, and handled volatile situations created by students. She has also written four books.

3. The governing body of the college recommended her name for re-employment for three years after the date of superannuation. The said recommendation was to be approved by the Vice-Chancellor. The Vice-Chancellor declined the recommendation of the governing body of the college. It is alleged that the

university guidelines were not followed. Her grievance is that other teachers who are not as qualified as she is, have been given re-employment after superannuation. She has alleged that her fundamental rights have been violated, under Article 14 of the Constitution of India. It is prayed that order dated 10.6.2004 passed by the Vice-Chancellor be set aside and a writ of mandamus be issued directing her re-employment for a period of three years.

4. In the counter affidavit preliminary objections have been raised that the petitioner has no vested right for re-employment after superannuation and the writ petition is not maintainable. Ordinance XII Clause 3-A (2) of the University provides that the governing body of the college, may with the approval of the Vice Chancellor, re-employ any distinguished teacher after he/she has attained the age of 62 years, for a period not exceeding three years but not beyond age of 65 years if the governing body is satisfied that such re-employment is in the interests of college. It is mentioned that late Hon"ble Mr. Justice T.P. S. Chawla (former Chief Justice of High Court of Delhi) had filed a writ petition in the High Court for quashing the rules relevant to re-employment of teachers in the universities/colleges. The High Court of Delhi vide interim order dated 12.5.2003 directed the University of Delhi not to grant re-employment without the permission of the court. The said order was modified and the University was permitted to re-employ teachers with the conditions that their re-employment shall be subject to the order that may be passed by the Court and further directed that the application shall be made by University in this behalf for approval of the re-employment, by the court. The above said interim order was challenged by the University of Delhi. The Hon"ble Supreme Court of India vide its order dated 13.10.2003 modified the interim order passed by Division Bench of the High Court of Delhi. The Supreme Court order is reproduced hereunder:

... These appeals are against an interim order passed by the High Court. We modify the interim order to the following extent:

Pending disposal of the writ petition, the University and Colleges would be entitled to re-employ on the basis of Ordinance XII Rule 3-A (2). But it is clarified that such re-employment is not to be in a routine manner, of almost all teachers. The mere fact that a teacher has served for a long period does not by itself makes him a distinguished teacher. For this Ordinance to apply there must be outstanding merit in the teacher. The revised guidelines issued by the University of Delhi and guidelines issued by the University Grants Commission must be strictly followed. Reasons must be recorded as to how and why the person being re-employed is a distinguished teacher.

We further direct that at the time of re-employment it shall be clarified to the teacher that the re-employment is subject to the result of the writ petition. Every teacher who is re-employed must give an undertaking to court that in the event of the High Court ultimately holding that such person was not entitled to re-employment he/she shall repay all the salary and benefits (including perks) which have been received by his/her in the meantime.

In the event, it is found that the re-employment is not strictly in accordance with the Ordinance, liberty to apply for variation of this order.

The appeal stand dies posed of. No order as to costs.

Sd/- S.N. Variava J. New Delhi Sd/- October 13, 2003 H.K. Sema J.

5. It is submitted on behalf of the University of Delhi that as per rules the advisory committee of the re-employment inclusive of a subject expert examines the various aspects e.g. bio-date, teaching experience, academic record, research work and publication, involvement in extra curricular activities and physical fitness etc. along with the recommendations of the governing body of the college and thereafter the recommendations of advisory committee are placed before the Vice Chancellor for approval. The cases of the incumbents were considered in the light of directions of the Supreme Court and in consonance with the Ordinance XII clause 3-A (2) and executive counsel resolution No. 22 dated 11.4.81/ No. 159 dated 22.1.1991.

6. The advisory committee did not recommend the name of the petitioner for re-employment. The vice-chancellor Therefore rejected the application of the petitioner and the rejection was conveyed to her. Precedent in case of Dr. V.K. Aggarwal was cited. In the rejoinder, the contentions of the University of Delhi are in a way not disputed and as regards the similarity with the case of Dr. V.K. Aggarwal, it is submitted that his case was based on different footing and it is further submitted that the case of the present appellant involves violation of Article 14 of the Constitution of India.

7. The Learned Counsel for the appellant has vehemently emphasized the above said contentions on behalf of the appellant and has argued that she was the most suitable person for re-employment and that the single Bench has not properly appreciated the matter. It is argued that the decision of the Vice Chancellor is arbitrary.

8. As against this Learned Counsel for the respondent has submitted that in similar facts and circumstances the petition of Dr. V.K. Aggarwal was dismissed vide judgment dated 20.7.2005 passed by learned single Judge and the LPA No. 1973/2005 titled Dr. V.K. Aggarwal v. University of Delhi and Ors. against the said judgment has also been dismissed by the Division Bench of the High Court of Delhi vide judgment dated 28.11.2005. We have perused the judgment dated 20.7.2005 as also the judgment in the LPA and may briefly refer to the facts of the said case which are as under:

Dr. V.K. Aggarwal had joined service as a lecturer in Motilal Nehru College, Delhi, on 16.10.1969 (service of more than 33 years as is the case of the present appellant). He was promoted to the post of Reader in the college in view of his unblemished service record. He had worked as head of the department, by rotation. He had taken part in extra curricular activities and served in several institutions under difference positions. He was selected and sent to United

Kingdom under the exchange programme and served in Warwick University for three months. He was also selected to do the research at the Institute of Space Research Sao, Jose Dos Campos Sao Paulo, Brazil. He guided M. Phil students. Appreciating his work he was invited by said Institute of Space Research to join it on permanent basis in the year 1982 but he preferred to remain in the University of Delhi and declined the said coveted post. He had been Ph.D. supervisor; guided Ph.D. Scholars for award of their Degrees; he had written 32 research papers in various international science journals; he claimed to be a scientist of international repute and was nominated in about 30 Committees of the Executive Council and 10 committees of the Academic Committees of University of Delhi. He attained the age of 62 years on 15.7.2004 and submitted an application to his college for re-employment. The principal of the college recommended his name for re-employment on 24.11.2003. The governing body of the college also approved the same and the recommendation was forward to the Vice Chancellor for approval. He has also referred to the writ petition filed by Hon"ble former Chief Justice of Delhi High Court late Hon"ble Mr. Justice T.P.S. Chawla. The Advisory Committee did not recommend his name. The Vice Chancellor Therefore did not accord approval for his re-employment. He filed writ petition which was dismissed by the learned Single Judge and the LPA was also dismissed by the Division Bench vide judgment dated 28.11.2005 (supra).

9. After perusing files of both the matters we are of the clear view that the facts are almost similar, rather Dr. V.K. Aggarwal is more qualified and has more varied and vast experience of teaching and research than the present appellant. We fail to understand as to how the case of the petitioner is on a different footing and how and where there has been violation of Article 14 of Constitution of India in the present appellant's case and if so, why not in the case of Dr. V.K. Aggarwal as well.

10. Article 14 refers to the equality before law and explains that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In the present case the various colleges of Delhi recommended the names of the teachers whom they considered fit for re-employment and all these names and their bio-data etc. were examined and scrutinized by the advisory committee of the University of Delhi and on their further recommendation the Vice Chancellor gave approval. Out of 52 applicants 22 applicants were selected. Such an exercise cannot be said to be arbitrary, uncanalized or discriminatory because the case of each prospective candidate for re-employment has been looked into by the experts, eminent scholars and educationists.

11. The Division Bench of the High Court of Delhi in Dr. V.K. Aggarwal's case (supra) after examining all aspects of the matter and referring to several Supreme Court's judgments held that the court could not ordinarily interfere with the decision of the selection committees consisting of experts and could not sit in appeal over the said decisions and finally dismissed the appeal. The said

judgment is squarely applicable to the facts of this case and we follow and reiterate the same.

12. In the present case the learned Single Judge has thoroughly examined the matter and has even gone to the extent of comparing the qualifications of the appellant and those who were selected for re-employment. He has also examined the fairness of the procedure followed by the University and has passed a well reasoned judgment supported with established precedents.

13. Considering all the facts and circumstances we do not find it a fit case for interference and dismiss the appeal accordingly. Parties are left to bear their own costs.