

(2021) 12 DEL CK 0061

In the Delhi High Court

Case No : Civil Writ Petition No. 5961 Of 2021, Civil Miscellaneous No. 18821, 20848, 20849, 23790, 35746, 42850 Of 2021

Prof. R. K. Sharma

APPELLANT

Vs

University Of Delhi And Ors.

RESPONDENT

Date of Decision : 09-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 12 DEL CK 0061

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM. No. 20849/2021 (on behalf of respondent Nos. 1 and 2 seeking exemption from filing a notarized copy of affidavit)

Exemption allowed subject to all just exceptions.

CM. No. 23790/2021 (on behalf of respondent Nos.1 & 2 seeking condonation of 11 days delay in filing counter affidavit),

For the reasons stated in the application, the same is allowed and a delay of 11 days in filing the counter affidavit is condoned. Application is disposed of.

CM. No. 35746/2021 (on behalf of respondent Nos.1 & 2 seeking condonation of 16 days delay in filing the affidavit)

For the reasons stated in the application, the same is allowed and a delay of 16 days in filing the affidavit is condoned. Application is disposed of.

CM. No. 42850/2021 (by petitioner for filing additional documents)

For the reasons stated in the application, the same is allowed. Additional documents filed by the petitioner are taken on record. Application is disposed of.

W.P.(C) 5961/2021

1. This petition has been filed by the petitioner with the following prayers:-

It is therefore, most respectfully prayed that this Hon"ble Court may graciously be pleased to pass appropriate writ/order/directions to:

a) allow the present writ petition and quash the Notification No.CNC-I/101/2020/CHEM/225 dated 10.06.2021 passed by the Respondent No.1 University of Delhi which is arbitrary and void ab initio;

b) allow the present writ petition and annul or quash the EC Resolution No.60-13/- passed in the emergent meeting dated 20.02.2021 by the Respondent No.2 Executive Council of the University of Delhi which is arbitrary and legal malice;

c) declare that the petitioner is eligible for Headship since there is no adverse material against him and he should be appointed as Head of Department of Chemistry as per Ordinance XXIII of the University Calendar;

d) declare that the EC Resolution No. 60-13/-passed in the emergent meeting dated 20.02.2021 and other pending inquiry will not come in the way of petitioner for his future career advancement;

e) direct the University to produce the original official note sheet and other original documents on record related to the appointment of Prof. P.C. Joshi as Vice Chancellor or acting Vice Chancellor or VC (I/C) signed by the Visitor, University of Delhi after his superannuation;

f) award the costs of the petition to the Petitioner;

g) Pass any other order(s) which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice."

2. In substance, the petitioner has challenged the appointment of respondent No.3 as Head of the Chemistry Department in respondent No.1 / University of Delhi (hereinafter, "University"). Suffice to state, it is the case of the petitioner that he is the senior-most Professor in the University and as such, entitled to be appointed as an HoD, Chemistry Department.

3. The case of the respondent is that pursuant to a complaint of sexual harassment made by a Teacher with regard to certain Professors, including the petitioner, who were part of the Interview Committee, the Internal Complaint Committees were formed, which have not found anything against the petitioner inasmuch as, they have exonerated him. It may be stated here that pursuant to a finding of a third Committee, the University has issued a communication dated October 01, 2021, which reads as under:-

"1st October, 2021

Prof. R.K. Sharma,

Department of Chemistry,
University of Delhi,
Delhi- 110007.

Sir,

Please refer to letter dated 15.06.2018 jointly signed by you with regard to report of the Internal Complaint Committee (ICC) on the complaint of Dr. Ruchi Sharma Pandey against you. In this connection, it is inform you that the Executive Council in its meeting held on 31.08.2021 vide Resolution No. 14(14-1) resolved to accept the recommendations of the ICC. Therefore, you hereby are:

i. Warned for the misconduct and

ii You shall not participate in the interviews of the complainant in future, in order maintain fairness in the selection process.

This is issued with the approval of the Competent Authority."

4. It is the submission of Mr. Sanjoy Ghose, learned Senior Counsel appearing on behalf of the petitioner that warning is not a penalty under the Conduct Rules and as such, there is no bar for the University to consider the case of the petitioner for appointment as an HoD and even on (ii) above, the same has been stipulated for maintaining fairness. He has relied upon the judgment in the cases of Dr. Gopal Bhagat v. Municipal Corporation of Delhi, 1995 (34) DRJ (DB); Yuvraj Gupta v. Union of India, 2016 SCC OnLine Del 3938 and; Madhavan v. Commissioner of Income Tax, 1983 KLT 549. He has also relied upon the judgments in the case of J.P. Shrivastava v. University of Delhi both of the learned Single Judge and the Division Bench being W.P.(C) No. 4738/2014 decided on April 10, 2015, and LPA No. 378/2015 decided on November 17, 2015 in support of his submission, that seniority is an important aspect, which cannot be overlooked for appointment as HoD. Mr. Ghose has also stated that there is an inordinate delay in accepting the recommendations of the ICC Report, contrary to the UGC POSH Regulations, 2016, which has prejudiced the case of the petitioner.

5. On the other hand, Mr. Santosh Kumar, learned counsel appearing for the University would submit that, in terms of Ordinance XXIII of the University, there is no compulsion to appoint the senior-most Professor if there are good valid reasons. He has placed reliance on the said proposition in the judgment of Prof. Sharda Sharma v. University of Delhi, W.P. (C) No. 5568/2013, decided on September 04, 2013. He has also relied upon the judgment in the cases of J.P. Shrivastava (supra), and University of Delhi v. S.R. Gupta, MANU/DE/0973/2000. That apart, he has also stated, in the absence of any enforceable legal right, no writ can be issued. In this regard, he has relied upon the judgment in the case of Dr. Rai Shivendra Bahadur v. Governing Body of the Nalanda College, Bihar Sharif and others, AIR 1962 SC 1210. That apart, he also justifies the

appointment of respondent No.3 as the Head of the Department of Chemistry, more specifically in view of the complaint made by the complainant. In this regard, he has relied upon the judgment in the case of Baidyanath Yadav v. Aditya Narayan Roy and Others, (2020) 16 SCC 799.

6. Mr. Feroz Ahmed, learned counsel for respondent No.3 also makes similar submissions, as has been made by Mr. Kumar. He justifies the appointment of respondent No.3 as the Head of the Department, Chemistry, in view of the serious nature of the complaint made by the complainant. According to him, in any case, it is not a case of clear exoneration of the petitioner. Rather, a warning has been issued to the petitioner, which would disentitle him any consideration and also appointment as HoD of the Chemistry department.

7. Having heard the learned counsel for the parties, the short issue, which arises for consideration is, whether in the facts, the petitioner is entitled to be appointed as HoD, Department of Chemistry. It is noted, in view of the communication dated October 01, 2021, which I have reproduced as above, based on the complaint made by the complainant, resulting in the report of the Internal Complaint Committee, against certain Teachers, who were part of the Interview Board including the petitioner, the decision of the Executive Council is that the petitioner be warned for the misconduct committed by him.

8. That apart, it has also been decided that he shall not participate in the interview of the complainant in the future in order to maintain fairness in the selection process. Concedingly, the petitioner has accepted the communication dated October 01, 2021 and not challenged the same in the Court of law. The conduct of a Professor / Teacher as an HoD, who is required to involve himself in various activities of the Department, which includes interacting with the students and the teachers, need to be blemish-free. Ordinance XXIII of the University is very clear that it gives discretion to the Vice-Chancellor to appoint a Head of the Department. The position of law has been well settled by this Court in the case of J.P. Shrivastava (supra) wherein this Court has held though the Vice-Chancellor cannot overlook the seniority, but he can for good and valid reason, refuse to appoint a person as the Head of the Department.

9. The plea of Mr.Ghose by placing reliance on the judgment in the cases of Dr. Gopal Bhagat (supra), Yuvraj Gupta (supra) and Madhavan (supra) is that warning is not a punishment, which can effect right of the petitioner to become HoD. The reliance placed is clearly misplaced. The judgments cited are in the context of promotion, entailing higher status, higher pay, etc, which is not the case for HoD. The same is a temporary appointment for a fixed period without any extra remuneration and after the period is complete, he / she comes back to his / her original designation. In that sense, it is not a permanent position like a promotion, the denial of which causes great prejudice. No such prejudice is caused on being denied the post of HoD, for good and valid reasons.

10. I did ponder on the issue, whether the matter need to be remanded back to

the Vice-Chancellor for him to take a call in the given facts of this case, but in view of the above and the petitioner has not challenged the communication dated October 01, 2021, this Court is of the view that in the exercise of its power under Article 226 of the Constitution of India, the prayers as prayed for by the petitioner, cannot be granted. The writ petition is dismissed. No costs.

CM Nos. 18821/2021 (for interim relief) & 20848/2021 (on behalf of respondent Nos. 1 & 2 for issuance of notice to respondent No.3 separately)

In view of the order passed in the writ petition, the applications have become infructuous and are dismissed.