

(2013) 09 DEL CK 0546

In the Delhi High Court

Case No : Writ Petition (C) No. 5568 of 2013 and CM No. 12362 of 2013

Prof. Sharda Sharma

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0546

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Saumyajit Pani, for the Appellant; M.J.S. Rupal, for R-1, Ms. Mamta Tiwari, for Mr. Amitesh Kumar, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner is working as a Professor in the Department of Sanskrit of the respondent no. 1-University of Delhi. By this writ petition, petitioner seeks the relief that she should be appointed as Head of the Department of Sanskrit in the respondent no. 1-University. Petitioner claims this entitlement on the ground that petitioner will now be the senior most person in the Department of Sanskrit. Admittedly, the relevant provisions with respect to appointing of Head of the Department of Sanskrit are Statute 9 (2) (d) and Ordinance XXIII which read as under:-

Statute 9(2)(d)

2. xxx

(d) (i) Each Department shall have a Professor as its Head provided that when in a Department there is only one Professor or no Professor eligible to be the Head, a Reader may be appointed as its Head and when there is no Professor or Reader eligible to be the Head, the Dean of the Faculty concerned shall act as the Head of the Department.

(ii) No person shall ordinarily be appointed or continue as the Head of a

Department on his attaining the age of sixty two years.

(iii) Subject as aforesaid, the duties and functions, terms and conditions and method of appointment of the Head of a Department shall be prescribed by the Ordinances.

Ord. XXIII. Heads of Departments

1. The Head of the Department shall be appointed by the Vice-Chancellor by observing, as far as possible, the principle of rotation. Such appointments shall be reported to the Executive Council.

2. Notwithstanding anything contained in Clause 1, if for any reason it has not been possible to appoint a person as Head of the Department who is senior to the person (persons) who has already served or is serving as Head of the Department, it shall be open to the Vice-Chancellor to appoint that person as Head of the Department whenever a vacancy next occurs if he can otherwise be so appointed.

3. The Head of the Department shall hold office for a period of three years. A person shall not ordinarily be appointed as Head of the Department for a second consecutive term.

QUALIFICATIONS OF UNIVERSITY TEACHERS

4. Notwithstanding anything contained in Clause-2, pending the appointment of a Head of the Department or during his absence on leave, the Vice-Chancellor may ask any Professor or any Reader in the Department either to discharge the current duties of the Head of the Department or to act as Head of the Department, as the case may be, as a purely temporary measure.

Note: The Principle of rotation will apply from the persons who is next in order of seniority to the person who has already served or is serving as Head of the Department.

2. I put it to counsel for the petitioner as to where it is provided in the Ordinance XXIII that it is only the senior most person who has necessarily to be appointed as the Head of the Department, and to which, counsel for the petitioner draws attention to sub-Ordinance (2) of Ordinance XXIII above.

3. In my opinion, the contention raised on behalf of the petitioner that only the senior most person can be appointed as the Head of the Department is misconceived because the provision of Ordinance XXIII gives entitlement to the Vice-Chancellor to appoint any person, provided the principle of rotation is observed i.e. one person cannot be re-appointed unless there is no other person available and qualified for being appointed as Head of the Department.

4. So far as sub-Ordinance (2) of Ordinance XXIII is concerned, all that is provided is that there is an option given to the Vice-Chancellor to consider the senior most person. Existence of an option is much different from a compulsory

statutory mandate for a senior most person to be necessarily appointed as Head of the Department. This provision does not say that only the senior most person should compulsorily be appointed as the Head of the Department. Therefore, the provisions quoted above do not support the petitioner that it is only a senior most Professor who has to be necessarily appointed as Head of the Department.

5. Counsel for the petitioner then urged that even if Vice-Chancellor is entitled to take a decision under the aforesaid Statute and Ordinance, however, that decision must be actuated by reason and therefore petitioner has been wrongly overlooked as no reasons have been given to the petitioner. In my opinion, since the decision in question of appointing a Head of the Department is only an administrative decision, and not a quasi judicial decision, principles of natural justice do not have to be followed including of passing of a speaking order communicating the reasons for appointing a particular person and not appointing another person. Courts ordinarily do not substitute themselves for the decisions taken by the administrative authorities with respect to administrative decisions inasmuch as the administrative authorities know best how the organization-public institution is run. In an extreme case of clear cut malafides or some other equally strong reason, Courts can step in, however, I do not find that merely on the principle of the seniority being pleaded that automatically strong grounds exist to question the administrative decision for the reason that relevant Statute and Ordinance do not require the senior most person to be appointed as the Head of the Department.

6. Counsel appearing for respondent no. 1 states that the respondent no. 1-University does not compulsorily follow any policy that only the senior most person is appointed as Head of the Department. In view of the above, I do not find any merit in the writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.