

(1997) 03 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 2927 of 1994

S. Bala Bawa

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 01-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 70 DLT 233 : (1997) 41 DRJ 487

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mukul Rohatagi, Amrita Sanghi, Keshav Dayal, S.K. Kaul and C.S. Vaidhyanathan, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The petitioner has sought direction from this Court that she be appointed as Principal in pursuance to the recommendations of the Selection Committee dated 12.2.1993. She has further prayed that the decision of respondent No. 2 by which the candidature of the petitioner was rejected, be quashed.

(2) It is alleged that the petitioner is a highly qualified teacher with a Doctorate in Botany from the University of Delhi and has been a rank holder in the Delhi University during her studies in BSc. and MSc. in Botany.

(3) The main grievance of the petitioner in this petition is that despite the fact that she has been selected twice by the Governing Body and thereafter her name having been approved by the University for the post of the Principal, she has not been so appointed on the ground that according to the then Vice Chancellor of the University, she is not eligible for the said post, as she does not possess the Master's Degree in the subject which is taught in the College. According to the petitioner, the decision of the Vice Chancellor, of declaring her ineligible, to be appointed as Principal is totally erroneous, untenable, illegal and without jurisdiction.

(4) The petitioner submitted that it is not within the domain of the jurisdiction of the Vice Chancellor to scrutinise eligibility of the candidates. The eligibility of the candidate as per the ordinance is to be decided or is to be governed by a decision of the Governing Body and the University. It is only after eligibility is approved that the matter is sent to the Selection Committee for Final appointment/selection. The Governing Body as well as the university scrutinise the eligibility of the candidates who have specialised knowledge of the concerned subjects. The matter of eligibility cannot be determined and decided by the Vice Chancellor.

(5) It is submitted by the petitioner that according to the University statutes and ordinances, the Vice-Chancellor has a very limited role. He can exercise his powers only in the following situations: I .When there is an emergent need for appointment and there is not enough time to go through the entire selection process. II. Where in the opinion of the Vice- Chancellor it would be unnecessary to constitute the Selection Committee for the said purpose. Even in such a case the ultimate authority for appointment vests with the Governing Body which is the employer. The only other case where the Vice Chancellor can exercise powers is under Clause "7" of the Ordinance. Clause "7" of Ordinance xviii is set out as under: Clause 7 "(1) The appointment of. the Principal and other members of the teaching staff shall be made after advertisement. The Principal should, in addition to his duties, as Principal, be also required to undertake some teaching work in the College, or the University. (2) The appointment of the Principal shall be made by the Governing Body of the College on the recommendation of a Selection Committee consisting of the Chairman of the Governing Body, two representatives of the University on the Governing Body, one expert nominated by the Academic Council for the purpose and two members of the Governing Body nominated by it, provided that prior to final selection and appointment (a) the Governing Body shall submit to the University a list of persons who have applied for the post of Principal, as also names of persons, who may not have applied but whose names the Governing Body may desire to consider for the post, in a form as prescribed by the University and shall indicate the persons from which, in their opinion, the Final selection may be made; (b) the list thus submitted by the Governing Body shall be considered by a Selection Committee constituted for the purpose and consisting of the following: i) Vice-Chancellor; ii) Pro-Vice Chancellor; iii) A nominee of the Visitor; iv) Chairman of the Governing Body of the College concerned; and v) Two members of the Executive Council nominated by it. and (c) on the recommendation of the Selection Committee the University shall transmit to Governing Body a list of persons mentioned in the order of preference whom the University would be prepared to recognise as Principal or, if none of the applicants are considered suitable, shall refrain from sending a list, in which case the post shall be re-advertised: Provided that where in the opinion of the Vice-Chancellor, emergency action for where in his opinion, it would be unnecessary to adopt the procedure prescribed in (b) and (c) above, the Vice Chancellor may indicate merely which of the candidates included in the

list submitted by the Governing Body under sub-Clause 2(a) of Clause 7 of Ordinance XVIII, will not be acceptable to the University, briefly indicating ground for the decision. In such a case, the Governing Body will be free to appoint any person from any of the candidates against whom no such disapproval has been indicated."

(6) Qualification required for the post of Principal is specified in Ordinance XVI. "QUALIFICATION Of University TEACHERS: Principal (i) Good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University with Doctor's Degree or equivalent published work and teaching experience of degree classes of not less than 10 years or ii) Good academic record with at least second class (C in the seven point scale) Master's Degree in a relevant subject from an Indian University or an equivalent degree from a foreign University with teaching experience of degree classes of not less than 15 years."

(7) In this clause the eligibility for appointment to the post of Principal are enumerated. As per the eligibility, it is essential to possess at least a second class in the Master's Degree in a relevant subject from an Indian University or equivalent Degree from a Foreign University with the Doctor's Degree or equivalent "Published Work" and teaching experience of Degree Classes of not less than 10 years. It is submitted that if the Clause "7" as set out as above is closely examined, then it becomes abundantly clear that the petitioner fulfills the requisite qualifications for appointment to the post of the Principal.

(8) It is also submitted by the petitioner that there is also no dispute that the petitioner has been selected by the Selection Committee in terms of the advertisement. The other part of clause "2" states that in addition to the duties as Principal, the Principal is also required to undertake some teaching work in the college, or the university. The language of this clause is clear that the petitioner even after becoming the Principal shall be required to teach either in the college or the university meaning thereby that the Principal should undertake teaching work along with his/her administrative responsibilities either in his/her own college or any other affiliated college of the university. According to the said clause, it is clear that the Principal can teach either in his/her own college or the University. The Delhi University has a very large number of affiliated colleges and precisely for this reason it is incorporated that the Principal can teach either in his/her college or the University.

(9) According to the sub clause (2) of Clause 7, it is clear that the appointment of the Principal shall be made by the Governing Body of the College on the recommendations of the Selection committee. The Selection Committee consists of the Chairman of the Governing Body, two representative of the University on behalf of Governing Body and one expert nominated by the academic counsel.

(10) It is alleged that the petitioner is a highly qualified teacher with a Doctorate

in Botany from the University of Delhi. She possesses an extremely impressive academic career. It is also averred in the petition that the petitioner has been a Post Doctoral Research Associate with Harvard University, Usa and at Cambridge University, U.K.

(11) It is also averred that the petitioner has taught Post-Graduate students at North Eastern University, Boston, Usa and also held the office of the Head of Department of Biology at the College of Education, Cross River State, Nigeria. It is also averred that the petitioner has also taught Botany in the University of Colabar, Nigeria. The petitioner is presently a Reader in Botany at S.G.T.B. Khalsa College, Delhi.

(12) According to Clause "7" the appointment of the Principal is to be made by the Governing Body of the College on the recommendation of the Selection Committee. The Selection Committee consists of the Chairman of the Governing Body, two representatives of the University on the Governing Body, one expert nominated by the academic council for the purpose and two members of the Governing Body nominated by it. In fact this is the highest selecting body where there is adequate representation of the University and the Academic Council. The petitioner has been selected twice from this body thereafter the approval from the university has also been received. Thereafter the Vice-Chancellor opined that the petitioner is ineligible for the post of the Principal of the college. In the instant case, there is a conflict of opinion between the view taken by the Governing Body and the then Vice-Chancellor. Before this court, Mr. Keshav Dayal, learned counsel appearing for the University has supported the view taken by the then Vice-Chancellor. It is submitted by Mr. Dayal that the then Vice-Chancellor was within the domain of his jurisdiction to scrutinise the eligibility of the petitioner. He submitted that Statute II-G (2) of the Delhi University indicates that it is the duty of the Vice-Chancellor to see that the Acts, Statutes, Ordinances and Regulations are duly observed and the Vice-Chancellor has necessary powers for taking action towards that object.

(13) In my considered opinion, it is not really necessary to decide the issue, whether the Vice-Chancellor was competent to adjudge the eligibility of the petitioner or not? The real issue before this court is whether the interpretation of the Statute which has been given by the Governing Body on two occasions or the interpretation given by the Vice-Chancellor was correct?

(14) Mr. Dayal, learned counsel for the University placed reliance on Osmania University and others Vs. A.V. Ramana and others, R. Radhakrishen and Others Vs. Osmania University and Others, , J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, . He also placed reliance on para 17 of Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, , These judgments were cited to hammer the point that the courts should not substitute its judgments for that of academicians. Generally speaking there is no quarrel with this proposition but it is the duty and the obligation of the Court to critically examine the issues arise for the consideration and adjudication. In the said

judgment of the Allahabad University itself, the court has observed as under:

"BUT to respect an authority is not to worship it unquestioningly since the bhakti cult is inept in the critical Field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. Moreover, the present case is so simple that profound doctrines about academic autonomy have no place here."

(15) This is not a case for evaluation of the comparative merit of various candidates where the court is likely to substitute its judgment of that of academicians. In the instant case, only the petitioner was selected as a Principal by the Governing Council body twice and thereafter approved by the University. No one else was selected.

(16) These cases cited by the learned counsel for the University have no application to the facts of this case for the simple reason that in the instant case, there is clear difference of opinion in the stand taken by the Governing body and the then Vice-Chancellor of the University on the question of the eligibility of the petitioner to the post of Dr. (Mrs.) 493 the Principal. This controversy has to be decided by an authoritative pronouncement by this Court. As a matter of fact it is the duty and obligation of the Court to resolve this controversy. There is no question of interference in the academic matters by the Court as urged by Mr. Dayal.

(17) The petitioner is a highly qualified academician. She has experience of teaching in various renowned Universities of the world. She has been selected twice by the Governing Council and her name was approved by the University. The only ground on which she had been found ineligible by the then Vice-Chancellor was that she does not possess the qualification for teaching any relevant subject in the college. The relevant portion of clause 7(1) is again reproduced here. "(1) The appointment of the Principal and other members of the teaching staff shall be made after advertisement. The Principal should, in addition to his duties, as Principal, be also required to undertake some teaching work in the College, or the University.

(18) According to the petitioner, the proper construction of this clause is that apart from the petitioner's own college, she can also teach in the university. In clause (1), it is categorically mentioned that the Principal be required to undertake some teaching work in the college or the University. In the instant case, the claim of the petitioner is that she can teach in the college in which she wants her appointment. Assuming there is no relevant subject in the college, in that event she can teach that relevant subject in the University meaning thereby in any of the affiliated colleges of the University. The significance of the words incorporated in the statute has to be understood in the context of respondent No. 1 the Delhi University which has hundreds of affiliated colleges. Teaching of some classes by the Principal in any of the affiliated colleges or in the University is

neither impractical nor unusual. As a matter of fact in this case according to the petitioner, she is already teaching M.Sc. (Part 1) in Agro Chemical and Post Management in the University. In case the claim of the petitioner is not correct, the Delhi University can ensure that in consonance with the spirit of the Statute, the petitioner is given requisite teaching work in the University or in any of the affiliated colleges of the university.

(19) The intention of the legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said as also to what has not been said. *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another*, . The Court observed as under- it is said, indeed rightly, that in seeking legislative intention, Judges not only listen to the voice of the legislature but also listen attentively to what the legislature does not say."

(20) As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.

(21) The Privy Council in *Crawford v. Spooner* (1846) 6 Moore Pc 1, has stated "We cannot aid the legislature"s defective phrasing of an Act. We cannot add or mend and, by construction make up deficiencies which are left there." The principle laid down in this case has been followed in a large number of cases, including *State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others*,

(22) In *Pinner v. Everett*, (1969) 3 All Er 257 , the House of Lords observed that it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly, the Court cannot reframe the legislation for the very good reason that it has no power to legislate.

(23) In *Blyth v. Blyth*, (1966) 1 All Er 524, the House of Lords on the same principle, refused to read the word "satisfied" in section 4 of the Matrimonial Causes Act, 1950 to mean "satisfied beyond reasonable doubt".

(24) In *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, Bhagwati, J.* speaking for the court said, "It was unfortunate that when the legislature came to amend the old section 70 of the Act, it forgot to amend section 90 in conformity with the amendment of section 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon. No doubt, it is the duty of the court to try and harmonise the various provisions of an Act passed by the legislature. But it is certainly not the duty of the court to stretch the word used by the legislature to fill in gaps or omissions in the provisions of an Act.

(25) In *Gladstone v. Bower*, (1960) 3 All Er 353 , Deviin, L.J. observed: "The court will always allow the intention of a statute to override the defects of wording but the court"s ability to do so is limited by recognised canone of

interpretation. The Court may, for example, prefer an alternative construction which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for casus omissus. I may be sure in this case that I know exactly what Parliament would do if it perceived a gap. But, if this rule were to be relaxed, sooner or later the court would be saying what Parliament meant and might get it wrong and thus usurp the law-making function."

(26) The court cannot usurp the legislative function under the thin disguise of interpretation. [Punjab Land and Development Corporation v. Presiding Officer, Labour Court, 1990 (3) Scr 3.

(27) In *Magor & St Motions R.D.C. v. Newport Corporation*, (1951) 2 All Er 839, the court observed, "The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited."

(28) In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, Das Gupta, J. observed, "It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application." "In the interpretation of statutes, the court observed that, "the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect."

(29) In *Quebec Railway, Light, Heat and Power Co. v. Vandry* Air 1920 Pc 181, the court observed, The Legislature is deemed not to waste its words or to say anything in vain."

(30) In *Crawford v. Spooner* (1846) 4 Mia 179 , the Court observed, "The words of a statute are First understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.

(31) Lord Atkinson in *Corporation of the City of Victoria v. Bishop of Vancouver Island* Air 1921 Pc 240, has mentioned, "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used; to show that they were used in a special sense different from their ordinary grammatical sense.

(32) In *Nokes v. Doncaster Amalgamated Collieries Ltd.* (1940) 3 All Er 549 , Viscount Simon L.C. said, "The golden rule is that the words of a statute must prima facie be given their ordinary meaning." Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context

in which the words are used requires a different meaning." Such a meaning cannot be departed from by the judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy."

(33) In *Suthendran v. Immigration Appeal Tribunal* (1976) 3 All Er 611, the Court observed as under:-

"PARLIAMENT is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply "the golden rule" of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course. Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."

(34) In *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* Air 1955 Sc 376, S.R. Das, J. mentioned as under:- . .

"IN dealing with order 21, rule 16 of the Code of Civil Procedure, 1908, the Supreme Court applied the rule of literal construction and held that the said provision contemplates actual transfer of a decree by an assignment in writing after the decree is passed. The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary. natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction leads to no apparent absurdity and Therefore, there can be no compelling reason for departing from that gold rule of construction."

(35) In *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, , Das Gupta, J. referred to the rule of construction and mentioned that,

"THE intention of the legislature has always to be gathered by words used to by it, giving to the words their plain, normal, grammatical meaning, and proceeding further, if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the legislature may reasonably be considered to have had, will be put on the words, if necessary even by modification of the language used."

(36) In AIR 1932 165 (Privy Council) their Lordships of the Privy Council, Calcutta, held as under: "But in construing such provisions equitable

considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide."

(37) In the celebrated case, AIR 1939 47 (Privy Council) the Privy Council, following (1857) 6 Hlc 61 and (1891) A C 531, observed as under: "When the meaning of words is plain, it is not the duty of the Courts to busy themselves with supposed intentions. I have been long and deeply impressed with the wisdom of the rule, now I believe universally adopted, at least in the Courts of law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther."

(38) In Provat Kumar Kar and Others Vs. William Trevelyan Curties Parkar, , a Division Bench of Calcutta High Court held as under : "Where the main object and intention of the Act is clear, it should not be reduced to a nullity by inserting words or amending a clause which would be the duty of the Legislature and not of the Court. The grammatical construction should be adhered to, unless it is clearly repugnant to the intention of the Act or unless it leads to some manifest absurdity."

(39) In Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , the Hon"ble Supreme Court held as under :

"IT is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(40) In Jugalkishore Saraf Vs Mis Raw Cotton Co. Ltd. Air 1955 Sc 376 the Hon"ble Court observed as under:

"THE cardinal rule of construction is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

(41) In The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, , the court observed as under:

"IN the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also."

(42) In Express Newspapers (Private) Ltd. and Another Vs. The Union of India

(UOI) and Others, , the Hon"ble Supreme Court held as under:

"IT is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the Legislature."

(43) In Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers" Union, the Hon"ble Supreme Court observed as under:

"IT is well settled that the meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation and the primary duty of a Court is to find the natural meaning of the words used in the context in which they occur, that context including any other phrase in the Act which may throw light on the sense in which the makers of the Act used the words in dispute. The Court ought, Therefore, to give a literal meaning to the language used by Parliament unless the language is ambiguous or its literal sense gives rise to an anomaly or results in something which would defeat the purpose of the Act."

(44) In Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court observed as under: "The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canone of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The First question to be posed is whether there is any ambiguity in the language used in the provision. if there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to."

(45) In Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, , the Hon"ble Supreme Court held as under:

"IT is safe to give words their natural meaning because the framer is presumed to use the language which conveys the intention."

(46) In Prithvi Singh's case (supra), the apex court rightly observed that it is presumed that the legislature speaks its mind by the use of correct expression and in J.K. Cotton (supra), the Supreme Court observed that the courts always presume that the legislature inserted every part thereof for a purpose and the legislature's intention is that every part of the statute should have effect. The Privy Council in Quebec Railway (supra) also observed that the legislature is deemed not to waste its words or saying anything in vain.

(47) On consideration of all the English and Indian judgments, it can be safely concluded that while interpreting the statute, the courts must give expression and meaning to every word which has been incorporated by the legislation. Similar presumption will have to be made even for the Rule Making Authorities.

(48) The language of the said clause is absolutely clear and explicit. There is no ambiguity whatsoever. Therefore, there is no requirement of taking any internal or external aid in interpreting the said clause. When all the words incorporated in clause 7 is given the ordinary, plain, natural and grammatical meaning without addition or subtraction, then the obvious conclusion is that the Principal can undertake teaching work either in the college or the University.

(49) On plain reading of the aforesaid statute, the petitioner cannot be denied her appointment on the ground that she does not possess the qualification for teaching any relevant subject in the college when the statute itself clearly gives the option of teaching in the college Or the University.

(50) In view of the aforesaid interpretation of the Statute, the writ petition deserves to be allowed and the respondents are consequently directed to appoint the petitioner pursuant to the recommendations of the selection committee dated 12.2.1993. There has been an inordinate delay in the appointment of the petitioner, Therefore, this Court directs the respondents to appoint the petitioner within two weeks from today.

(51) The writ petition is allowed and accordingly disposed of. However, in the facts and circumstances of this case, the parties are directed to bear their costs.