
(1994) 01 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 3179 of 1982

S.C. Bajpai

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Citation : (1994) 1 AD 473 : (1994) 53 DLT 349 : (1994) 28 DRJ 338

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : A.K. Goel, D.R. Mahajan, J.K. Dass and Arjun Bhandari, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This writ petition filed on behalf of the petitioner challenges the decision of the second respondent the Governing Body of Bhagat Singh College dated August 30, 1982, whereby the decision of the Selection Committee dated July 9, 1982 was not accepted and consequently the petitioner was not appointed to the post of Vice Principal In-Charge, Evening Classes.

(2) The facts giving rise to this petition are as under;-

Sometime in the year 1981 the post of the Vice Principal, Bhagat Singh College (Evening classes) was advertised. The petitioner who was the senior most lecturer in the college applied for the post. On May 15, 1982 the petitioner was interviewed by the Selection Committee Along with other candidates. The Selection Committee selected the petitioner for the post of Vice Principal and accordingly recommended his case for appointment to the Governing Body. However, according to the letter of the Principal dated June 28, 1982 it appears that the Selection Committee's recommendation was not accepted on the ground of the Selection Committee not being properly constituted as the Chairman of the Governing Body, who is also an ex-officio member of the Selection Committee, was not present in the said meeting.. The petitioner protested on the ground that

he was duly selected by the Selection Committee and there was no flaw in the Constitution of the Committee. Notwithstanding the protest, there was a fresh selection and the petitioner also appeared again before the Selection Committee on July 9, 1982 Along with six other candidates. After interviewing the candidates the Selection Committee, which was constituted in accordance with Ordinance xviii (4)(4) of the Ordinance framed u/s 30 read with Section 31 of the Delhi University Act, 1922, again selected the petitioner for being appointed to the post of the Vice Principal. A perusal of the minutes of the Selection Committee, however, reveal that the Chairman did not agree with the decision of the Selection Committee. Thereafter on August 30, 1982 the matter came up before the Governing Body but it did not agree with the selection made by the Selection Committee and decided to re-advertise the post. The only reason given for not accepting the recommendation of the Selection Committee was that the teacher members of the Governing Body opposed the appointment of the petitioner as they were dis-satisfied with the style of functioning of the petitioner. It is pertinent to point out that the petitioner because of his seniority had already been functioning as the Acting Vice Principal in charge of the Evening college. This appointment of the petitioner had been duly approved by the University. But pursuant to the decision of the Governing Body the petitioner was directed to be relieved from the post of the Acting Vice Principal on August 31, 1982. On September 4, 1982 the petitioner filed the present writ petition whereby he challenged the decision of the Governing Body dated August 30, 1982. By order dated September 7, 1982 status -quo regarding the petitioner's posting as the Vice Principal was directed to be maintained by this court.

(3) However, on September 7, 1983 this court permitted the second respondent to make regular appointment to the post of the Vice Principal in charge, Evening Classes subject to the final decision in the writ petition. In this order it was further directed that this fact should be expressly stated in the appointment order of the person who may be appointed against the post of the Vice Principal In charge, Evening Classes. Armed with this direction, the said respondent proceeded to make fresh selection. This time the Selection Committee, which met on April 21, 1984, recommended the appointment of the intervener, Dr.S.P.Sharma, who came to be appointed as Vice Principal in charge Evening classes on April 25, 1984 but his appointment was specifically made subject to the result of the writ petition.

(4) Learned counsel appearing for the petitioner submits that according to Ordinance xviii(4)(4) the selection made by the Selection Committee was binding on the Governing Body. He further submits that twice the petitioner was selected by the Selection Committee for being appointed as the Vice Principal in charge of the Evening Classes but due to extraneous consideration was not given the appointment. He has laid emphasis on the constitution of the Selection Committee, which comprises of the following members, and has urged that normally the selection made by it cannot be Interfered with:

- 1) Chairman of the Governing Body
- 2) one expert nominated by the Academic Council.
- 3) Two University representatives on the Governing Body.
- 4) Two members of the Governing Body nominated by it.
- 5) Principal of the College.

(5) Learned counsel submits that the intention of the trainers of the ordinance was that the recommendations of the Selection Committee should be binding on all concerned. He further submits that the decision of the Governing Body rejecting the Selection of the petitioner was illegal, arbitrary, unjust, unfair, unreasonable and violative of the statutory provision. Learned counsel contends that the decision of the Governing Body also infringes Article 14 of the Constitution. Besides no worthwhile reason has been given by the Governing Body to reject the recommendation of the Selection Committee. He points out that in the first Selection Committee the Chairman had nominated Shri Chitkara, a Member of the Governing Body, treasurer of the College, Joint Secretary, Ministry of Education, Government of India to attend the meeting of the Selection Committee as his nominee. He canvasses that the decision of Governing Body dated August 30, 1992 smacks of mala fides,

(6) On the other hand learned counsel for the respondent submits that the decision of the Governing Body was in keeping with Ordinance xviii(4)(4) and valid reasons were spelt out for not accepting the recommendation of the Selection Committee dated July 9, 1982. According to the learned counsel the Governing body took the decision dispassionately and in the interest of the institution. He also points out that Dr. Sharma has been functioning as the Vice Principal of the Evening Classes for the last ten years and his selection was validly made. Learned counsel further submits that the recommendation of the first Selection Committee could not be accepted as it was not properly constituted because of the absence of the Chairman of the Governing Body on the date when the meeting took place and there was no provision in the Ordinances or the Statutes which could have authorised the Chairman to appoint a nominee for attending the meeting of the Selection Committee in his place.

(7) Learned counsel appearing for the intervenor, (Dr. Sharma) submits that his client was selected by the Selection Committee as he was the most meritorious candidate. He points out that the petitioner also appeared before the Selection Committee on April 24, 1984 but was not selected. Apart from these contentions he has echoed the submissions advanced by the learned counsel for the second and third respondents.

(8) In order to appreciate the submissions of the learned counsel for the parties relating to the interpretation of Ordinance xviii(4)(4), it is necessary to reproduce the same. The said ordinance reads as under:-

"(4) If the Governing Body wish to appoint a Vice Principal, it should do so with the prior approval of the University. The appointment of the Vice Principal shall be made from among the lecturers in the Senior Grade/Reader's grade in the College or in the absence of any lecturer in the Senior Grade/Reader's Grade, from among the Senior Lecturers. The appointment of the Vice-Principal shall require the approval of the University. Provided that the appointment of Vice Principal in charge of the Evening Classes shall be made by the Governing Body of the College after advertisement and on the recommendation of the Selection Committee consisting of the following:

1. Chairman of the Governing Body,
- 2 .One expert nominated by the Academic Council,
3. Two University representatives on the Governing Body,
4. Two Members of of the Governing Body nominated by it,
5. Principal of the College.

(9) According to the ordinance, the appointment of a Vice Principal has to be made from amongst the lecturers in the Senior Grade/Reader's Grade in the college or in the absence of any Lecturer in the Senior Grade/Reader's Grade, from amongst the senior Lecturers. It is not disputed that the petitioner was in the requisite grade and was qualified for being appointed as the Vice Principal. The petitioner was appointed as Lecturer in the said College on October 24, 1973 and is a M.A. in Hindi, M.A. in Sanskrit. M.A. in English and also holds a Post Graduate Diploma in Geography. Besides the petitioner holds a Ph.D.degree in Hindi. Having regard to the experience and qualifications of the petitioner, it is not-disputed that the petitioner was fully qualified to be appointed as the Vice Principal.

(10) From a reading of the proviso to the said Ordinance it is clear that the appointment of Vice Principal In-charge of the Evening Classes shall be made by the Governing Body of the College after advertisement and on the recommendation of the Selection Committee. The constitution of the Selection Committee is also provided in the Ordinance itself. As is apparent the Committee is composed of eminent persons including the Principal of the College and the Chairman of the Governing Body. The Committee has also academicians as its members. The Ordinance leaves the task of selecting a candidate for the post of Vice Principal to the Selection Committee, Learned counsel appearing for the second and third respondents submits that the word "wish" occurring in the opening line of the Ordinance xviii(4)(4) is very significant and confers an absolute power on the Governing Body to appoint or not to appoint a Vice Principal as recommended by the Selection Committee. I am unable to accept the submission of the learned counsel for the respondent. The expression wish used in the said Ordinance does not authorise the Governing Body to act arbitrarily. It also cannot be construed as arming the Governing Body with an

untrammelled power to make appointment to the post of the Vice Principal at its whim and caprice. Such interpretation placed by the learned counsel for the respondent would fall foul of Article 14 of the Constitution. It is well settled that an Executive Authority must act in a just, fair and reasonable manner. Arbitrary power is anti-thesis of the equality clause enshrined in Article 14 of the Constitution. A rule which confers such a power on the authority is violative of Article 14 and cannot be allowed to remain on the Statute book and Therefore an interpretation which would render the Ordinance as ultra vires of the Constitution must be avoided. Sufficient indication in the rule is available to show that the Governing Body cannot act arbitrarily and capriciously. As already noticed the Ordinance specifically states that appointment of the Vice Principal "shall" be made by the Governing Body on the recommendation of the Selection Committee. The word "shall" has a mandatory force. The Ordinance assigns the function of the selection of the Vice Principal to the Selection Committee and rightly so. The Selection Committee as already noted, is a mix of academicians, representatives of the university, members of the Governing Body and the Principal. The Governing body while examining the recommendations of the Selection Committee has normally to accept the recommendations but wherever the Governing Body is satisfied after due enquiry that Selection has been vitiated on account of violation of the procedural requirement as prescribed in the Statute or the Selection is infected with favoritism and nepotism, the selection can be overturned by it but only after recording the reasons for such a decision. The Governing Body cannot claim an absolute power to disprove the selection made by the Selection Committee.

(11) Examining the decision of the Governing Body dated August 30, 1982 it is clear that the selection of the petitioner was not approved on the ground that the teacher members of the Governing Body opposed his appointment and they were dissatisfied with his working and his style of functioning. It is significant to note that the Principal of the college was present on both the occasions when the petitioner was selected by the Selection Committee. The Principal, who is the head of the Institution did not oppose the candidature of the petitioner nor protested against his selection by the Selection Committee. If the petitioner was not getting on well with his colleagues and his style of functioning was not proper, there is no reason why the Principal would not have objected to the selection of the petitioner. It is also clear that there are only two teacher members of the Governing Body who are nominated by it from the staff of the evening classes. Since they are merely nominated on the Governing Body they cannot be said to have the mandate of the other staff members of the college to speak on their behalf. The views expressed by these two teachers at the meeting of the Governing Body would at best be their own personal views. No attempt was made by the Governing Body to ascertain the views of the staff members of the evening classes. There was no due inquiry in this regard at all. Learned counsel for the petitioner has brought to my notice an unanimous resolution of the staff of the evening classes whereby the Staff Association urged the

Governing Body to withdraw its order of removal of the petitioner as the Acting Vice Principal In charge of the Evening classes and to appoint him as a Vice Principal In charge, Evening classes on permanent basis in accordance with the recommendation of the Selection Committee. The function of the Selection Committee under the said Ordinance is no different from the role of the Public Service Commission in making the selections under Article 320 of the Constitution. In *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, , the Supreme Court while interpreting Article 320 of the Constitution observed as under:-

"5. Ill these appeals, it is submitted by the learned counsel for the appellants that once the Public Service Commission prepares and recommends a select list, the Government has no power to sit in judgment over it. It is bound to approve the list as recommended. The function of the Government under Rule 39 of 1967 Rules is merely ministerial and formal. Even otherwise, the Government has not disclosed any reasons for not approving the seven names while approving the first thirteen. The Government's action is arbitrary and capricious. It is indeed vitiated by inadmissible and extraneous consideration. The Government cannot be allowed an absolute power in the matter. On the other hand, it is contended by Shri Dipankar Gupta, learned Solicitor General appearing for the State of Jammu & Kashmir that the function of the Government under Rule 39 is not merely formal or ministerial. The Government being the appointing authority, is entitled to scrutinise the list prepared by the Public Service Commission. It is open to the Government either to approve or disapprove the list, either wholly or in part. As a matter of fact, a large number of complaints were received by the Government against the said selection and many of them were also found to be not without substance. However, in view of the pressing need expressed by the High Court, the first thirteen candidates in the list were approved in the interest of judicial administration. The remaining seven names were not approved inasmuch as no vacancies were available at that time. In all the circumstances of the case, the Hon'ble the Chief Minister took a decision on March 28, 1988 not to approve any further names and to go in for fresh selection. In as much as the vacancies at the end of the year 1986 were not more than thirteen, the refusal to approve the remaining seven is a valid and bona fide exercise of power and discretion on the part of the Government. The appellants have no legal right to be appointed just because their names have been included in the select list prepared by the Public Service Commission. The first requisition by the High Court was sent in May 1984. The written test was held in 1985. The select list was recommended in March, 1986. After a lapse of more than seven years, the said list cannot now be directed to be given effect to, the learned Solicitor General submitted. Such a direction would deprive a large number of persons, who have become qualified and eligible to apply and compete for the said post meanwhile of the opportunity of applying for the said post. Many of them may even become age bar meanwhile, be submitted. 6. It is true that the Government is the appointing authority for the Munsif but it is misleading to assert that in the

matter of selection and appointment the Government has an absolute power. Such an argument does violence to the constitutional scheme. The Constitution has created a Public Service Commission and assigned it the function of conducting the examination for appointments to the services of the Union or to the services of the State, as the case may be. According to Article 320(1) this is the primary function of the commission. The Government is directed to consult the Public Service Commission on all matters relating to the method of requirement to civil services and to civil posts and on the principles to be followed in making the appointment to the civil services and posts and on the suitability of the candidates for such an appointment, among other matters. An examination of Articles 317 to 320 makes it evident that the Constitution contemplates the commission to be an independent and effective body outside the Governmental control. This is an instance of application of the basic tenet of democratic form of Government viz. diffusion of governing power. The idea is not to allow the concentration of governing power in the hands of one person, authority or organ. It is in the light of this constitutional scheme, that one has to construe Rules 39 and 41 of 1967 Rules."

(12) Having regard to the Ordinance xviii (4)(4) and the above discussion, I am of the view that normally the Governing Body is bound to accept the recommendation of the Selection Committee unless there are cogent reasons to disregard the same. Since in the present case, there was no cogent reason for the Governing Body to have acted contrary to the recommendation of the Selection Committee, the recommendation of the latter was binding on the former. Therefore, the decision of the Governing Body stands vitiated on account of the violation of Ordinance xviii(4)(4). It is, also manifest from the minutes of the Governing Body dated August 30, 1982 that there was no allegation against the petitioner of incompetency, corruption, indiscipline or not being qualified for the post. The respondent has not pointed out any previous complaint against the petitioner of his having acted in breach of his duties or of having conducted himself in a manner which would cause annoyance to his colleagues. It is the first time that the resolution of the Governing Body mentions about the petitioner's style of functioning. This allegation is merely an allegation without any proof. The career of the petitioner cannot be marred on a mere allegation. He has a service of 21 years to his credit and the second respondent has not been able to point out any blemish in his service record. It is surprising how all of a sudden the allegation about his style of functioning was made when in the two previous Selection Committees of which the Principal of the institution was a member did not hear even a whisper about the petitioner's style of functioning.

(13) A comment is also needed with regard to the Selection of the petitioner by the Selection Committee on May 15, 1982. It is argued by the learned counsel for the respondent that the first selection of the petitioner was vitiated on account of the fact that (he Chairman of the Governing Body was not present at the meeting. In my view the submission of the learned counsel is not well founded. It seems to me that it is not necessary that all the members of the

Selection Committee should be present at the meeting. If the members are informed about the meeting and they choose to remain absent, the deliberation of the Selection Committee cannot be vitiated because of the absence of a member. This principle is well settled. The Supreme Court in *The Punjab University, Chandigarh Vs. Vijay Singh Lamba and Others*, , while adumbrating the said principle held as under:-

"WHENEVER a committee is scheduled to meet, due notice of the meeting has to go to all the members of the committee and it is left to each individual member whether or not to attend a particular meeting. Every member has thus the choice and the opportunity to attend every meeting of the committee. If any member considers the matter which is to be discussed or determined in a particular meeting as of such importance that he must make his voice heard and cast his vote. it is open to him and indeed he is entitled to attend the meeting and make his presence felt. Though a faint attempt was made in these appeals for the first time to suggest that the notice of the meetings of the stand ing committee was not served on all the three members of the committee, we are satisfied that such a notice was in fact given am. someone or the other three members choose to remain absent at the meetings of the Standing Committee. There is, therefore ,no warrant for the hypothesis that had the third member attend the meetings he would have dissented from the decision of the two other embers so as to necessitate the reference to the Vice Chancellor under Regulation 32.1".

(14) Again in *Ishwar Chandra Vs. Satyanarain Sinha and Others*, , the Supreme Court held that if for one reason or the other a member of the Committee was not able to attend the meeting that does not make the meeting of the Selection Committee constituted by the University for selection of panel of names for the appointment of Vice Chancellor invalid.

(15) Having regard to the above discussion, I am of the opinion that the second respondent was not justified in not accepting the recommendation of the Selection Committee dated July 9,1982.Accordingly the writ petition succeeds and the decision of the Governing Body dated August 30,1982 is hereby quashed. The petitioner will be entitled to all the consequential benefits due to him because of quashing of the order of the Governing Body. There will be no order as to costs.