

(2000) 05 DEL CK 0047
In the Delhi High Court
Case No : Criminal R. No. 109/99

Tuncay Alankus and Another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 220, 223
Evidence Act, 1872 — Section 10
Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 4(3)

Citation : (2000) 5 AD 812 : (2000) CriLJ 3280 : (2000) 86 DLT 62 : (2000) 54 DRJ 324

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. Herjinder Singh and Ms. Priya Saxena, for the Appellant; Mr. R.N. Trivedi, A.S.G., Mr. S.K. Trivedi and Mr. O.N. Ojha, for the Respondent

Judgement

M.S.A. Siddiqui, J.—The petitioners herein are the University of Delhi and the Executive Council, University of Delhi. Respondent No. 1 is Dr. S.R. Gupta, Reader, Department of Library and Information Science. University of Delhi. Respondent No. 2 is Prof. Krishan Kumar who also is employed in the Department of Library and Information Science, University of Delhi.

2. The petitioners are defendants 1 and 2 in Suit No. 57/98 pending in the Court of Civil Judge, Delhi. Respondent No. 1 Dr. S.R. Gupta is the plaintiff and respondent No. 2 Prof. Krishan Kumar is defendant No. 3 in the said Suit.

3. According to the plaintiff in the above mentioned Suit No. 57/98, he is employed as Teacher with the designation of "Reader" in the Department of Library and information Science of the University of Delhi (defendant No. 1). Under the provisions of the statute and the ordinance of the University, the plaintiff claimed to be eligible and entitled to be appointed as the Head of the Department of Library and Information Science, University of Delhi by virtue of

his turn due to his seniority in the said Department. Alleging that the University authorities wrongly, illegally and unjustifiably denied him the chance to be appointed as the Head of the Department, the plaintiff filed the Suit praying for the following reliefs:

"i) Declaration thereby declaring the impugned Notification No. C-1/4/2/ dated 21st November, 1997, appointing the defendant No. 3 as the Head of the Department of Library & Information Science, University of Delhi, and the appointment of the defendant No. 3 as illegal, null and void, and inoperative.

ii) Permanent Injunction thereby restraining the Defendants Nos. 1 & 2 to appoint any retired Professor as the Head of the Department of Library & Information Science, University of Delhi, either on current duty or regular basis.

iii) Mandatory Injunction thereby directing the Defendants 1 and 2 and other authorities in the University of Delhi to appoint the plaintiff as the Head of the Department of Library and Information Science, University of Delhi, for the period prescribed in the University Statutes and Ordinances.

Any other orders as this Hon"ble Court may deem fit and proper in the circumstances of the case may kindly be passed in favour of the plaintiff and against the defendants."

Along with the plaint, the plaintiff filed an application under Order 39, Rules 1 and 2 read with Section 151 C.P.C. with the following prayer:

"It is, Therefore, humbly prayed that this Hon"ble Court be pleased to pass an ad interim exparte injunction against the defendants 1 and 2 and the other authorities in the University of Delhi, thereby restraining them from appointing the defendant No. 3 on regular basis and the defendant No. 3 is restrained from officiating as the Head of the "Department. and the Delhi University authorities are directed to ask only an eligible person to officiate as the Head of the Department DURING THE PENDENCY OF THE PRESENT SUIT."

On behalf of defendants, a written statement was filed opposing the claims of the plaintiff. In paragraph 8-9 of the said written statement, the defendants contended as follows:-

"8-9. That in reply to the averments contained in paras No. 8 and 9 of the plaint, it is submitted that under ordinary circumstances the plaintiff would have been appointed the Head of the Department but in view of the pendency of an enquiry against him, his case cannot be considered for appointment as Head of the Department and under these circumstances the University has the discretion and the duty to appoint any other Professor or reader in the department either to discharge the current duties of the Head of the Department or to act as the Head of the Department, as the case may be, as a purely temporary measure as provided under Clause 4 of Ord. XXIII. And accordingly in accordance with provisions of the Statute 9(2)(d) read with clause (4) of the Ordinance XXIII of the Ordinances of the University, Professor Krishnan kumar has been appointed

to discharge the current duties of the Head of the Department of Library & Information Science, with immediate effect till further orders vide notification is illegal, baseless, wrong, unjustified or violative of long prevalent practice in the Department or ultravires the provisions of the University Statutes and Ordinance. It is further wrong and denied that the said act of the University has been done in exercise of power not vested in the Vice Chancellor or is a colourable exercise or misuse of the authority or an act of highhandedness on the part of the officers of the University or has been issued by the authorities at the behest of any vested interest in the University opposed to the plaintiff with any mala fide intention or to the victims the plaintiff as alleged or otherwise. It is further wrong and denied that the said notification is liable to be set aside by this Hon'ble Court as alleged or otherwise."

In this context, it may be mentioned that the plaintiff filed the suit when the Vice Chancellor, in accordance with the provisions of Statute 9(2)(d) read with Clause (4) of Ordinance XXIII appointed Defendant No. 3 Prof. Krishan Kumar to discharge the current duties of the Head of the Department of Library and Information Science till further orders.

4. The application filed by the plaintiff for interim relief was heard and disposed of by the learned Civil Judge on 1st August, 1998 directing the defendants to take necessary steps within 15 days from the date of the order to consider the claim of the plaintiff for the post of Head of Department of Library & Information Science. In the said order dated 1st August, 1998, the learned Civil Judge observed that the eligibility of the plaintiff for appointment to the post of Head of the Department had not been disputed by the defendant in the written statement and that the only reason given by the defendant for not appointing him was the pendency of some enquiry against him. The learned Civil Judge further observed that the only significant question for disposing of the application was whether on the date of consideration of the claim of the plaintiff for the post of Head of the Department, any enquiry could be said to have been pending on the basis of which the claim of the plaintiff could not be considered. According to the learned Civil Judge, even though Shri I.P. Singh was appointed as Enquiry Officer to enquire into certain incident of alleged misbehaviour by the plaintiff towards Professor P.B. Mangla and Professor J.C. Sardana of the same department and there was some preliminary investigation in the matter, the preliminary enquiry had not been concluded and no charge sheet had been served on the plaintiff. The learned Civil Judge also observed that the defendants were not certain about the possible outcome of the preliminary enquiry and whether the defendants would be willing to initiate any action against the plaintiff. On that basis, the learned Civil Judge concluded that it could not be considered that on the date of issuing the impugned Notification dated 21st November, 1997 appointing Professor Krishan Kumar to discharge current duty of the Head of the Department. Any enquiry was pending against the plaintiff. According to the learned Civil Judge, the stand of the defendants denying the post of Head of the Department to the plaintiff on the ground of pendency of an enquiry against him is not in conformity

with the law laid down by the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., .

5. Aggrieved by the order dated 1st August, 1998 of the learned Civil Judge, the defendants filed an appeal (MCA No. 221/98) in the Court of Senior Civil Judge, Delhi. The said appeal was dismissed by the learned Senior Civil Judge on 19th August, 1998. While dismissing the appeal, the learned Senior Civil Judge held that only a fact finding enquiry was initiated against the plaintiff and no formal charge sheet was given to him and Therefore it could not be said that enquiry had been initiated against him. He further held that the enquiry was not being properly conducted as it was ordered by the Vice Chancellor only and not by the Vice Chancellor acting with the Executive Council of the University. The learned Senior Civil Judge also relied on the judgment of the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., and held that promotion etc., could not be withheld on the ground of pendency of some disciplinary or criminal proceedings against the employee. According to the learned Senior Civil Judge it cannot be said that the plaintiff was not entitled to be considered for promotion as Head of the Department by rotation due to the pendency of enquiry that too at very initial stage.

6. Challenging the order dated 1st August, 1998 of the learned Civil Judge and the order dated 19th August, 1998 of the learned Senior Civil Judge, the petitioners have filed this Revision Petition. According to the revision petitioners, the direction given by the learned Civil Judge in the impugned order dated 1st August, 1998 was beyond the scope of the application of the plaintiff under Order 39, Rules 1 and 2 read with Section 151 C.P.C., and the relief granted was not even prayed for by the plaintiff in his application. It is contended that by directing the defendants to consider the claim of the plaintiff for the post of the Head of the Department within 15 days from the date of the order, the trial court virtually decreed the suit in favor of the plaintiff. It is also contended that both the trial court and the appellate court failed to correctly understand and apply the provisions contained in Statute 9(d) and Ordinance XXIII of the University. It is further contended that the courts below erred in holding that no enquiry was pending against the plaintiff. According to the revision petitioners, the University has the power and discretion to withhold the appointment of the plaintiff to the post of Head of Department till the enquiry proceedings against him are completed. It is contended that the appointment of Professor Krishan Kumar as per Notification dated 21st November, 1997, was purely a temporary measure and the said appointment did not amount to ignoring the claim of the plaintiff and that it amounted only to postponing the decision on the question of appointment of the plaintiff to the post of Head of the Department till the enquiry pending against him was completed. It is further contended that the appellate court went wrong in examining the legality of the enquiry as the legality of the enquiry is not the subject matter of the suit and the plaintiff had no case that the enquiry was illegal. According to the revision petitioners, the appointment of Head of the Department is not a promotion but only a rotational appointment.

The seniormost person is appointed as Head of the Department for a period of three years and thereafter the next in seniority is normally appointed as the Head of the Department. The appointment of the Head of the Department is not a case of promotion or selection. The Judgment of the Supreme Court in UOI Vs. Janaki Raman has no application to the facts of this case. It is also contended that the enquiry proceedings cannot be said to be not pending merely because charge sheet has not been served on the delinquent employee.

7. Before proceeding further in this case it is necessary to see the relevant statutory provisions. Statute 9(2)(d) provides as hereunder:

"(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 Read 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 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."

Ordinance XXIII reads thus:

"Ord. XIII. Head 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.

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 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 person who is next in order of

seniority to the person who has already served or is serving as Head of the Department."

8. Prime facie, the post of Head of the Department is not a promotion post and appointment to the post of Head of the Department is not by promotion or selection. The Head of the Department is to be appointed by the Vice Chancellor by observing, as far as possible, the principle of rotation. It means that at a given time the senior most Teacher in the Department need not necessarily be the Head of the Department. It is also seen from Statute 9(d)(2) that there is no total prohibition against appointing a person as Head of the Department after his attaining the age of 60 years. The said clause only says that no person shall ordinarily be appointed or allowed to continue as Head of the Department on his attaining the age of 60 years. The said clause only says that no person shall ordinarily be appointed or allowed to continue as Head of the Department on his attaining the age of 60 years. It is also to be pointed out that the appointment of Professor Krishan Kumar was not a regular appointment as Head of the Department but was only a purely temporary measure by which the Vice Chancellor, in exercise of his power under Clause 4 of Ordinance XXIII, has directed him to discharge the current duties of the Head of the Department.

9. Learned counsel for the petitioner is right in pointing out that in the application filed under order 39 Rules 1 and 2 read with Section 151 CPC, the plaintiff had not prayed for any interim order directing the defendants either to appoint the plaintiff as Head of the Department or to consider him for such appointment. Therefore, the direction of the learned Civil Judge to consider the claim of the plaintiff for appointment as Head of the Department within 15 days beyond the scope of the application under Order 39, Rules 1 and 2 read with Section 151 CPC. This material irregularity was not taken into consideration by the learned Senior Civil Judge while dismissing the appeal of the defendants.

10. It is not disputed that barring the four Professors who were reemployed on attaining the age of Superannuation (60 years), the plaintiff was the senior most teacher in the Department. However, under the Statute there is no total prohibition against the appointment of a Teacher as Head of the Department after his attaining the age of 60 years. The appointment to the post of Head of the Department is not by promotion or by selection but by rotation. The Vice Chancellor is not always bound to appoint the senior most Teacher as the Head of the Department. Hence, prime facie the plaintiff had no enforceable legal right to be appointed as Head of the Department. Moreover, learned counsel for respondent No. 1 could not point out any law or provision in the Statute or Ordinance of the University which prevented the vice Chancellor from withholding the decision on the plaintiff's claim for appointment as Head of the Department on the ground that an enquiry was pending against him. From the documents placed on record of the trial court by defendant No. 1, copies of which were produced in this Court also, it could not be said that enquiry was not pending against the plaintiff. Even the Courts below found that enquiry was there though

it was still at initial stages. The delay in completing the enquiry or the failure to serve a formal charge sheet cannot inhibit the Vice Chancellor's power to withhold appointment of the plaintiff as Head of the Department in view of the pendency of the enquiry. The Judgment of the Supreme Court in UOI Vs. Janaki Raman, prima facie has no relevance or application to the facts of this case. The courts below have not given any finding that enquiry was not pending against the plaintiff or that the Vice Chancellor has no power to withhold appointment in View of the pendency of enquiry against the delinquent officer. In these circumstances, the learned Civil Judge was not justified in directing the defendants to consider the claim of the plaintiff for appointment as Head of the Department.

11. The learned Civil Judge failed to correctly understand and apply the statutory provisions and to properly exercise the discretion under Order 39, Rules 1 and 2 read with Section 151 CPC. While deciding the application under Order 39, Rules 1 and 2 read with Section 151 CPC, the learned Civil Judge did not consider whether the plaintiff had made out a strong prima facie case entitling him for interim relief, whether the balance of convenience was in favour of the plaintiff and whether in the absence of an interim order any irreparable injury and loss would be caused to the plaintiff. Hence the order of the learned Civil Judge is wrong and illegal.

12. The courts below erred in going into the question of the legality of the enquiry ordered by the vice Chancellor while considering the application for interim relief. The legality and validity of the enquiry is not even the subject matter of the suit as per the averments in the plaint.

13. The courts below have not given any finding that the action of the Vice Chancellor in directing defendant No. 3 to discharge the current duties of the Head of the Department was illegal. The Courts below also have not given any finding that under the relevant rules at least prima facie the plaintiff had an enforceable right to be appointed as Head of the Department.

14. In the light of the discussion above, I am of the view that the impugned orders of the learned Civil Judge and the learned Senior Civil Judge are wrong and are vitiated by material regularities and that by issuing the impugned direction the learned Civil Judge exercised his discretion wrongly and improperly. Therefore, the impugned orders are liable to be set aside. Accordingly, the order dated 1st August, 1998 of learned Civil Judge and the Order dated 19th August, 1998 of learned Senior Civil Judge are hereby set aside.

15. However, it is made clear that the observations made and the views expressed in this order are only my prima facie observations and views and that they will not in any way prejudice the contentions of the parties in the Suit.

The revision petition stands allowed in the above terms. The parties are left to bear their own costs.