

(2019) 02 DEL CK 0443

In the Delhi High Court

Case No : Letters Patent Appeal No. 194 Of 2010

University Of Delhi

APPELLANT

Vs

Prof Devendra Mishra & Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 DEL CK 0443

Hon'ble Judges : Vipin Sanghi, J;A. K. Chawla, J

Bench : Division Bench

Advocate : Amit Bansal, Mansha Singh, Shankar Raju, K.R. Chawla, Nilansh Gaur, Santosh K. Jha

Judgement

Vipin Sanghi, J

1. The appellant-University of Delhi assails the judgment rendered by the learned Single Judge in WP(C) 5075/2007 on 16.02.2010. The said writ petition was allowed by the learned Single Judge and the communication dated 20.06.2007, informing the respondent that he was not favourably considered for re-employment till the age of 65 years-on attaining the age of superannuation, was set aside, and the appellant was directed to pay all emoluments to the petitioner that would have been admissible to him under the Rules, by treating him to be in service till 31.01.2010 i.e. till he attained the age of 65 years. In case, the petitioners were not paid the same within 8 weeks, the amounts due were to carry interest @ 12 % p.a. Costs of Rs.50,000/- was also imposed upon the appellant.

2. The respondent was Professor in the Department of Sanskrit, Delhi University. He attained the age of 62 years on 31.01.2007 and retired. Before attaining the age of superannuation, he applied for re-employment in the University as per the then prevalent Rules and Regulations. On 30.10.2006, he submitted application for re-employment in the prescribed format, accompanied by the requisite documents and recommendation of the Head of the Department. Pending

consideration of his such application, the respondent was permitted to continue to serve, till the time the decision was taken on his application by the Executive Council of the University. After the superannuation of the petitioner and while his application was pending consideration, the Ministry of Human Resource Development, Department of Higher Education, Government of India issued a circular on 23.03.2007, the relevant extract whereof is taken note of in the impugned judgment. The same reads as follows :

"Clause 2 :

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.03.2007 in any of the centrally funded higher and technical educations under this Ministry shall be increased from present 62 years to 65 years.

(ii) Persons holding such regular teaching positions who have superannuated prior to 15.03.2007 on attaining the age of 62 years but have not attained the age of 65 years may be re-employed against vacant sanctioned teaching positions till they attain the age of 65 years, in accordance with the guidelines framed by the University Grants Commission.

(iii) All persons holding teaching positions against sanctioned posts may also be considered for re-employment beyond 65 years and up to the age of 70 years, against sanctioned vacant posts, if such posts are not filled up by regular candidates. However, such re-employments beyond the age of 65 years shall be done only after screening at the age of 65 years, under the extant guidelines of the University Grants Commission."

(emphasis supplied)

3. Consequently, the University of Delhi issued a notification on 02.04.2007, notifying to all departments and colleges affiliated to it, that the age of superannuation of all persons holding teaching positions on regular employment against sanctioned posts as on 15.03.2007, in any of the centrally funded Higher and Technical Education Institution, shall stand increased from 62 years to 65 years. At this stage we may observe that the learned Single Judge held that the case of the respondent was covered by Clause 2(i), since as on the date of circular i.e. 23.03.2007, the services of the respondent were continued, though, pending consideration of his application for re-employment. Learned counsel for the respondent Mr.Raju fairly states that he does not support the said finding returned by the learned Single Judge, since Sub-clause(i) of Clause 2 was applicable only to those, who were holding teaching post "on regular employment", as on 15.03.2007, which, the respondent admittedly was not. Mr. Raju has referred to the Model Guidelines framed by University Grants Commission (UGC) on 20.03.2007 with regard to re-employment, which were placed by the respondent on record alongwith an additional affidavit filed on 22.07.2008. It is pointed out by Mr. Bansal, learned counsel for the appellant that, firstly, the said Model Guidelines were issued much after the case of the

respondent had been considered under the then existing guidelines, and the said guidelines were not applicable retrospectively. Even otherwise, University of Delhi had not resolved to adopt the said Model Guidelines framed by the UGC. On both these aspects, Mr. Raju, learned counsel for the respondent has not been able to counter the submissions of Mr. Bansal. The case of the respondent was considered by the Advisory Committee of 04 experts in terms of the then existing guidelines on 14.03.2007. The respondent has not been able to show that the guidelines of the UGC dated 20.03.2007 were adopted by the University of Delhi, or that, the same, in any event, could be applied to cases already substantially processed.

4. Learned Single Judge has thereafter considered the case of the respondent in the light of the existing procedure, which is contained in the Revised Guidelines for taking up cases for re-employment of teachers in colleges. The said document is placed on the record at page 60. Clause 4 (ii) deals with cases of Universities' teachers. The said clause reads, as follows :

"The Vice-Chancellor may, in case of a University teacher, if he so desires refer the case to an Advisory Committee consisting of the following :-

- a) Pro-Vice-Chancellor - Chairman.
- b) Director, South Delhi Campus
- c) Dean of Colleges.

The Vice-Chancellor may, if he so desires, associate with the above Advisory committee one or more experts in the subject concerned, which may include the Head of the Department."

5. Learned Single Judge has proceeded on the basis that the case of the respondent was only considered by the Advisory Committee, and had not been placed before the Executive Council. In this regard, the observation made by the learned Single Judge in the impugned order reads, as follows :

"24. It is not the case of the respondents that they had considered the case of the petitioner for re-employment on the basis of Circular of Ministry of Human Resource Development dated 23.03.2007 and the UGC guidelines dated 23.11.2007. On the date the Advisory Committee held its meeting on 14.03.2007, neither the Circular of the Government of India dated 23.03.2007 nor UGC guidelines of 23.11.2007 were there in existence. Even if for a moment, it is assumed that the case of the petitioner for his re-employment was to be considered under the old rules and the guidelines, still the impugned decision not to grant re-employment to the petitioner cannot stand because it is an admitted case of the respondents that even under the old guidelines, the competent authority to decide the issue of re-employment of a University teacher was the Executive Council and not the Advisory Committee. It is admitted on behalf of the respondents that the case of the petitioner for reemployment was never placed for consideration either before the Vice-Chancellor or before the Executive

Council. The judgment of this Court in Madhu Rathour's Case (supra) relied upon by the counsel for the respondents is not applicable to the facts of this case for two main reasons, the first is that in Madu Rathour's Case (supra), the re-employment was declined by the Vice-Chancellor and for that reason, the case of that teacher was not placed for further consideration before the Executive Council. However, in the present case, the case of the petitioner for his re-employment never went beyond the Advisory Committee and the second reason why Madhu Rathour's Case will not apply to the present case is that in that case the Court had not adjudicated upon the Circulars of the Government of India dated 23.03.2007 by which the age of University teachers was enhanced from 62 years to 65 years or even the guidelines dated 23.11.2007 framed by the UGC pursuant to the said Circular. Even the judgment of the Division Bench of this Court in Dr. V.K. Aggarwal's Case (supra) referred to and relied upon by the counsel for the respondents is not applicable to the facts of the present case because in that case, the Division Bench has ruled that the administrative action of the University to grant or not to grant re-employment cannot be questioned in judicial review unless the procedure and the action of the University is vitiated in mala fides and arbitrariness. In the present case, this Court finds that the respondents have not at all considered the case of the petitioner for re-employment in terms of Circular of the Government of India dated 23.03.2007 enhancing the age of University teachers from 62 years to 65 years and for this complete inaction on the part of the respondents, their decision not to grant re-employment to the petitioner has to be regarded as an arbitrary action and such an arbitrary decision cannot withstand the test of judicial scrutiny. At this stage, I would like to note that this Court vide its order dated 03.02.2010 and again vide order dated 05.02.2010 had directed the respondents to produce the original record containing office notings in the file from time to time, right from the date the application of the petitioner for his re-employment was received in the office of the respondents, till the date the decision thereon was taken by the competent authority. Pursuant to the said directions of this Court, what the respondents have produced before the Court are two files, none of which contains the office notings to show how the application of the petitioner for re-employment was dealt with by various officials in hierarchy in the office of the respondents. Mr. Amit Bansal, counsel appearing on behalf of the respondents, had stated on instructions, that no such record of office notings is maintained in the University. This stand taken on behalf of the respondents lacks transparency in dealing with the official matters. All Government Departments are expected to maintain official record of the office notings and produce the same before the Court, if called for, to justify fair play in the transaction. It is hoped and expected that the respondents will maintain proper record of office notings in future for the purpose of transparency in its functioning. Loose leaflets kept in the files produced before the Court could not satisfy the conscious of this Court and, therefore, I have no hesitation in holding that the procedure followed by the respondents in considering the case of the petitioner for his reemployment is vitiated on account of arbitrariness and cannot stand the test of judicial scrutiny."

6. Mr. Bansal, submits that the learned Single Judge has not proceeded on the correct factual foundation. He submits that the case of the respondent was placed before the Advisory Committee of 04 experts in terms of the aforesaid guidelines, and each of the experts had allocated marks on the scale of 50 against several parameters. He also submits that, thereafter, the aggregate marks were worked out and it was on that basis, that the case of the respondent not found fit for recommendation for re-employment by the Advisory Committee. The said recommendations were signed by the Pro-Vice-Chancellor and, thereafter, placed before the Executive Council, which, vide Resolution No. 18 dated 08.06.2007, recommended only 08 of the applicants for re-employment beyond the age of 62 years and upto the age of 65 years.

7. When the matter was heard on 21.01.2019, time was sought on behalf of the appellant to locate and produce all the relevant record. The same has been produced in original before us, and we have perused the same. The record has also been shown to the learned counsel for the respondent. The said record shows that the application of the respondent dated 30.10.2006 was received in the University on 07.11.2006. The Head of the Department of Sanskrit, University of Delhi, had made a recommendation for re-employment of the respondent. The record also contains the individual marking, on the respective proformas, given by the four members of the Advisory Committee, and it also contains a proforma, wherein, aggregate of the said marking is stated. It is, thus, seen that out of 50 marks, the respondent secured 23.5 marks in aggregate. The proforma signed by the four members of Advisory Committee on 14.03.2007 is also found on record. Record also contains a profoma, wherein, the recommendations of the Advisory Committee in respect of 07 applicants are recorded. Against the respondent's name, which is at serial No.3, the recommendation is in the negative. The said format has been signed by the Pro-Vice-Chancellor. The record also contains the original Executive Council's Resolution No.18 dated 08.07.2007, which shows that the name of the respondent was not accepted for his re-employment.

8. After going through the record, the submission of Mr. Raju is that, firstly, the tabulation contains the recommendation by the Advisory Council, which shows that the word "not" immediately before the word "recommended" (against the respondent's name) appears to have been inserted later. He also submits that the case of the respondent - despite the non-recommendation by the Advisory committee, ought to have been placed before the Executive Council, and the Executive Council should have then taken the final decision in the matter.

9. On the other hand, Mr. Bansal submits that the negative recommendation of the respondent is evident from the marks awarded by the four members of the Advisory Committee, which shows that the respondent was awarded only 23.5 marks out of 50 i.e. even below the 50% marks. He also disputes that there is any tampering of the record.

10. We may observe that the word "not" appears to be disjointed from word

"recommended" in the original record. It is, however, clear that the same has been written in the same hand, and with the same pen. Tabulation also shows that the Advisory Committee had met all the applicants, including the respondent, on 14.03.2007 at 11 a.m. We may observe that though the respondent had not made any allegations of personal malafides against any particular officer in the writ petition, only in the rejoinder, allegations of personal malafide were sought to be raised against one of the members of the Advisory committee, and the learned Single Judge has rightly not examined the said aspect.

11. So far as the submission of Mr. Raju - that the case of the respondent, despite not being recommended by the Advisory Committee, should have been placed before the Executive Council, is concerned, we find no merit in the same. In Prof. P.S. Verma vs. Jamia Milia Islamia University & Ors., (1996) III AD Del. 33, the Advisory Committee had not recommended the name of the applicant. Aggrieved by the denial of re-employment, the petitioner had preferred the writ petition. The Division Bench in this decision observed as follows:

"5. Having considered the respective stand of the parties their submissions and the relevant Ordinance XXXVII-A, we are of the view that there is no legal right vested in a teacher of the respondent-University for being re-employed beyond the age of superannuation. The only right ,if any, which can be said to be available to a teacher on superannuation would be of being considered for re-employment and in case recommendation is made for re-employment, he may be re-employed by the Executive Council. In a case where no recommendation for re-employment is made, the matter has to be referred to the Advisory Committee. In the case of the petitioner there was no positive recommendation for re-employment and no fault can be found in respondents' action in forwarding his case to the Advisory Committee, which also has now given its advice for not re-employing the petitioner. The mere fact that in the past two teachers, after superannuation were re-employed, assuming without any recommendation of the Head of the Department, on the mere forwarding of their applications, the same cannot amount to conferring a right in petitioner's favour and this act cannot be taken as an act of the discrimination thereby giving right in petitioner's favour for being re-employed as a matter of course, when petitioner's case was duly considered and not recommended and approved by the Advisory Committee." (emphasis supplied)

12. From the above extract it would be evident that this court did not find favour that the submission of the petitioner that, despite not being positively recommended by the Advisory Committee, his case should have been placed before the Executive Council. Thus, the submission now raised by Mr. Raju was squarely rejected by the Division Bench in Professor Verma's (supra) case. Even otherwise, we do not find any merit in the said submission of Mr. Raju. Under the Revised Guidelines framed in terms of the Resolution No. 22 dated 11.04.1981, and 151 dated 22.01.1991, the Vice Chancellor is empowered to refer a case for

grant of re-employment to superannuated teacher to an Advisory Committee. Thus, it is the evaluation made by the Advisory Committee, which forms the basis for the decision to grant re-employment. It is for the Advisory Committee to assess the merit of the candidate for the purpose of his re-employment. Pertinently, this Committee consists of 04 experts, and they are best placed and most suited to make the said assessment. When the case of the respondent was not recommended by the Advisory Committee itself, there was no purpose in placing the same before the Executive Council.

13. Mr. Bansal has also drawn our attention to the judgment of Division bench of this court in Dr. V.K. Agrawal vs. University of Delhi & Ors., 125(2005) DLT 468 (DB). In this decision, the Division Bench set out the procedure adopted by the University and observed, as follows :

"11. On receiving the recommendation of the Governing Council for reemploying the appellant the Vice-Chairman sent it to an advisory committee as per Executive Council resolution 22 dated 11.4.1981 and Executive Council resolution 151 dated 22.1.1991. The advisory committee consists of experts in the subject who after examining and scrutinizing the various aspects e.g. bio-data, teaching experience, academic excellence, research publications, research work etc. did not recommend the appellant's case for reemployment. The decision of the Delhi University was conveyed to the college by letter dated 29.7.2004, copy of which is annexed as Annexure R-1 to the counter affidavit.

12. In para 18 of the counter affidavit it is denied that there were any mala fides in the matter. The case of the appellant was considered by the advisory committee and he was not found fit for re-employment." (emphasis supplied)

14. It was held by the Co-ordinate Bench of this court, that it was not for the court to say, whether the teacher is a distinguished teacher or not inasmuch, as, the court is not an expert in the given subject and the court should ordinarily defer to the opinion of the experts. In the present case, the Advisory Committee consisted of experts, who considered the case of the respondent and did not recommend grant of re-employment to him. In the above judgment, the Division Bench observed that the Court should not sit as an appellate authority over the decision of the Advisory Committee, which was approved by the Vice Chancellor. The Division Bench also rejected the argument that the reasons for not recommending re-employment should be recorded. The Division Bench observed as follows:

"16. Learned counsel for the appellant submitted that while reasons have to be recorded in granting reemployment no reasons are required in rejecting the prayer for reemployment. He submitted that this is arbitrary. We cannot agree with this contention in view of the aforesaid decision of the Supreme Court where it has been held that no reasons need be given by the selection committee unless required by the statute.

17. Learned counsel for the appellant submitted that the Vice-Chancellor had to

apply his mind himself instead of referring the matter to the advisory committee. We do not agree. The Vice-Chancellor, though no doubt a man of great academic distinction, cannot possibly be an expert in every subject. Hence he can certainly take the opinion of an advisory committee consisting of experts, particularly when guidelines have been framed for this purpose by the Executive Council." (emphasis supplied)

15. Lastly, we may refer to the decision of the Division Bench in *Madhu Rathour vs. V.C. Delhi University & Anr.*, (2007) 93 DRJ 489 (DB). In this case the appellant's writ petition raising his grievance that he has not been re-employed, was rejected by the learned Single Judge. The Division Bench referred to the decision in the *Dr. V.K. Aggarwal* (supra). The Division Bench observed that the exercise undertaken by the University in which, out of 52 applicants, 22 applicants were favourably considered for re-employment, could not be considered as arbitrary, uncanalized or discriminatory. The only right of the respondent was that of fair consideration of his application for re-employment. Thus, in the light of the aforesaid discussion, and the given facts and circumstances, in our view, the impugned order is patently laconic. We therefore set aside the impugned order, dismiss the writ petition and allow the instant appeal.

16. At this stage, Mr. Raju submits that after superannuation, the respondent, had been serving as a guest lecturer, after 20.06.2007, for which he has not received any payment. Mr. Bansal submits that though payments were offered to him, the respondent did not accept the same, since the respondent was pursuing his claim in the present proceedings. Since we have allowed the appeal and dismissed the writ petition, we direct the appellant to make the payment of the outstanding amount for the services rendered by the respondent within four weeks from today. The respondent may accordingly raise his bills, which shall be settled by the appellant, in accordance with law.