

(2018) 04 DEL CK 0390

In the Delhi High Court

Case No : Civil Writ Petition No. 1837 Of 2016, Civil Miscellaneous No. 7894 Of 2016

Vinay Kaushik

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Citation : (2018) 04 DEL CK 0390

Hon'ble Judges : Gita Mittal, J;C.Hari Shankar, J

Bench : Division Bench

Advocate : Soumyajit Pani, Chittaranjan Singh, Kirtiman Singh, Prateek Dhanda, Waize Ali Noor, Avnish Ahlawat, Arunav Patnaik, Karun Pahwa

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

1. After hearing arguments on behalf of both sides, we had, on 11th April, 2018, dismissed the present writ petition, stating that the reasons for our decision would follow. This judgement proceeds to record the said reasons.

2. The petitioner, who is a student pursuing his Vidyavaridhi (Ph.D.) with the Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeetha (Respondent No 4 herein, and referred to, hereinafter, as "the Vidyapeetha") claims to be aggrieved by the appointment, of Respondent No. 5 [who, at that time, was working as Vice Chancellor (I/C) of the Vidyapeetha] as regular Vice Chancellor of the Vidyapeetha. The petitioner prays, therefore, for issuance of a writ of quo warranto, quashing Office Memorandum (OM), dated 26th August, 2015 issued by the Secretariat of the Appointments Committee of the Cabinet (ACC) and Order, dated 28th August, 2015, issued by the Language Division in the Department of Higher Education, Ministry of Human Resource Development of the Government of India (Respondent No. 1 herein). The OM, dated 26th August, 2015, issued by the ACC communicates, to the Department of Higher Education,

the approval of the ACC, to, inter alia, the appointment of Respondent No. 5 as Vice Chancellor (hereinafter referred to as "VC") of the Vidyapeetha. The Order dated 28th August, 2015, issued by Respondent No. 1, is in the nature of a sequel to the OM dated 26th August, 2015, noting the approvals accorded by the ACC and communicated thereby (including, that is, the approval to the appointment of Respondent No. 5 as VC of the Vidyapeetha).

3. The writ petition contains several averments and allegations which are totally irrelevant, for the purposes of the prayers made therein; we, accordingly, eschew any reference to the said averments, and limit our peregrinations to examining the validity of the impugned OM dated 26th August, 2015 and Office Order, dated 28 August, 2015 supra. We would, indeed, be transgressing our jurisdiction were we to do otherwise, in view of the settled position, in law, that public interest petitions are ordinarily proscribed in service matters, save and except in cases where issuance of a writ of quo warranto is sought, on the ground that the appointment, to the public office under challenge, is alleged to be violative of some statutory provision. [Hari Bansh Lal vs Sahodar Prasad Mahto, (2010) 9 SCC 655] Our examination has, therefore, to limit itself to assessing the validity of the approval, by the ACC, to the appointment of Respondent No. 5 as VC of the Vidyapeetha, qua the rules/executive instructions governing the same.

4. Apparently conscious of this legal position, learned counsel appearing for the petitioner has also limited his challenge, to the appointment of Respondent No. 5 as VC of the Vidyapeetha, urging that the said appointment violated (i) OMs dated 3rd July, 2006 and 30th July, 2007, issued by the Department of Personnel and Training (DOPT) and (ii) Clause No 29 of the Memorandum of Association (hereinafter referred to as "the MOA") of the Vidyapeetha. Though, *stricto sensu*, it would not be possible to elevate the OMs issued by the DOPT, or, indeed, the MoA of the Vidyapeetha, to the status of statutory rules, we have, nevertheless, chosen not to non-suit the petitioner on this technicality, and have examined the challenge raised by the petitioner, on its merits.

5. Having said that, the petitioner has not chosen, while alleging infraction of the OM dated 3rd July, 2006, of the DOPT, either to annex the said OM, or extract the relevant clause thereof, in the writ petition. We, therefore, are limiting our consideration, qua this aspect of the matter, to the OM dated 30th July, 2007; in any case, the averments in para 7 of the writ petition seem to indicate that the OMs dated 3rd July, 2006 and 30th July, 2007 are more or less akin to each other, insofar as the relevance, to the cause ventilated by the petitioner in the present case, is concerned.

6. The OM, dated 30th July, 2007, of the DOPT, contains "the principles ... (to) be kept in view by all concerned while setting up Search Committees and Search-cum-Selection Committees (for posts in autonomous organisations)." The challenge of the petitioner, insofar as the OM dated 30th July, 2007, issued by the DOPT, is concerned, relates to clause (iv) of paragraph 5 of the said OM, which reads as under:

"The panel recommended by the committee will be valid for one year. If no selection is made from the panel within a period of one year, a fresh committee shall be constituted to prepare a fresh panel. Such a committee may also consider the names of persons recommended in the earlier panel."

7. Infraction of the OM dated 30th July, 2007, issued by the DOPT, is alleged to have occurred because, while the said instructions limited the life of any panel, drawn up on the basis of the recommendations of a Search-cum-Selection Committee, to one year from the date of the panel, approval to the appointment of Respondent No. 5 as VC was accorded, by the ACC vide the impugned OM dated 26th August, 2015, four years after the issuance of the advertisement, advertising the said post, in 2011.

8. The second limb of the challenge, by the petitioner, to the appointment of Respondent No. 5 as VC of the Vidyapeetha, alleges transgression of Clause No 29 of the MoA governing the Vidyapeetha, for the reason that the said Clause requires the VC of the Vidyapeetha to be a "distinguished academician, with a minimum of 10 years experience as Professor in a University system or 10 years experience in an equivalent position in a reputed research and/or academic administrative organisation" which requirement, the petitioner would urge, Respondent No. 5 did not fulfil. The specific ground, in the writ petition, on this issue, reads as under:

"Because a clearly perusal of the MoA, Clause No 29, the Vice Chancellor shall be a distinguished academician but the respondent no 5 though appointed professor grade, but was not a teaching staff as the department i.e. Research and Publication deals in publication of magazines and research papers of the PhD and MPhil students. Furthermore, the entire department of "research and publication" consisting of the respondent no 5 as a professor and one research assistant. They were far reach of teaching the students."

(Emphasis supplied)

9. We proceed to examine the twin challenges, urged in the writ petition, *seriatim*.

10. It is obvious that any challenge, predicated on violation of clause (iv) of para 5 of the OM, dated 30th July, 2007, of the DOPT, would necessarily have to identify the date of recommendation of the panel, by the Search-cum-Selection Committee, and urge, thereafter, that the selection itself was made beyond the period of one year from the said date. The present writ petition, however, does no such thing; no date of recommendation of the panel, for the post of VC in the Vidyapeetha (against which Respondent No. 5 ultimately came to be appointed) is even adverted to. All that is averred, in the writ petition, is that the advertisement, advertising the post of VC, was issued in 2011. The writ petition proceeds, thereafter, to compute the "life" of one year, as contemplated in the OMs dated 3rd July, 2006 and 30th July, 2007, *vis-à-vis* the date of the advertisement, rather than the date when the panel, consequent to the

advertisement, was recommended by the Search-cum-Selection Committee. The OM, dated 30th July, 2007, issued by the DOPT, makes no reference to the date of the advertisement; ergo, the allegation, in the writ petition, to the effect that the appointment of Respondent No. 5, as the VC of the Vidyapeetha, transgressed the said OM, as the appointment was effected more than one year after the date of advertisement, and is therefore vitiated, is ex facie misconceived and liable to be dismissed as such.

11. That apart, the Union of India, through the Deputy Secretary, Ministry of Human Resource Development (Respondent No. 1) has filed an affidavit in response to the writ petition, clearly setting out the manner in which the panel was prepared, pursuant to the advertisement issued in 2011 for the post of VC in the Vidyapeetha. It appears that, on 12th December, 2012, the DOPT conveyed, to the Language Division in the Department of Higher Education, its concurrence for reconstitution of the Search-cum-Selection Committee, whereafter the Department of Higher Education forwarded the proposal for the reconstitution of the Search-cum-Selection committee, for selection to the post of VC in the Vidyapeetha, to the DOPT, vide OM dated 18th October, 2012, to which the DOPT conveyed its approval vide letter dated 3rd January, 2013, addressed to the Registrar of the Vidyapeetha. The reconstituted Search-cum-Selection committee, vide communication dated 7th February, 2013 addressed to the learned Chancellor of the Vidyapeetha, recommended a panel of three names, for appointment as VC in the Vidyapeetha, on 7th February, 2013, which included the name of Respondent No. 5.

12. From the said panel, Dr. Justice Mukundakam Sharma, a retired Judge of the Supreme Court of India and the former Chief Justice of this Court, in exercise of his authority as Chancellor of the Vidyapeetha, recommended, vide letter dated 12th/13th February, 2013 addressed to Respondent No. 1, the name of Respondent No. 5 for appointment as VC of the Vidyapeetha, providing the rationale for such recommendation, in the letter, thus:

"On perusal of the bio-data of the three recommended candidates, it is observed that these candidates have adequate experience in educational administration, teaching, research and publication and also have national/international exposure. However, Prof Ramesh Kumar Pandey maintains a better academic record than the other two candidates. In addition to the above, he has adequate familiarity and awareness of the working of the Vidyapeetha which is the UGC maintained deemed to be University under the administrative control of the Ministry. He has been associated with the academics and other activities of the Vidyapeetha for the last 18 years. Hence, he is expected to have sufficient awareness of the dynamics of the Institution more than the other two candidates. Therefore, the candidature of Prof Ramesh Kumar Pandey appears to be more befitting than the other 2 applicants."

(Emphasis supplied)

13. It is worthwhile to note that, in the aforementioned communication dated 12th/13th February, 2013, the learned Chancellor expressed a clear opinion that, under the UGC (Institutions Deemed to be Universities) Regulations, 2010, read with the MoA of the Vidyapeetha, he was empowered to himself appoint the VC of the Vidyapeetha, out of the panel recommended by the Search-cum-Selection Committee, and that no approval of the ACC, or the Government, was required thereto. Even so, the learned Chancellor, in deference to the request made by Respondent No. 1 in this regard, chose to send the proposal, to appoint Respondent No. 5 as VC of the Vidyapeetha, to Respondent No. 1, for its concurrence. The letter went on to state that the effective order of appointment would be formally issued after receiving the concurrence of the Ministry.

14. It is also important to note that the aforementioned communication, dated 12th/13 February, 2013, from the learned Chancellor of the Vidyapeetha, to Respondent No. 1 also noted that vigilance clearance, to the appointment of Respondent No. 5, as VC of the Vidyapeetha, already stood accorded by the competent authority.

15. It appears that, consequent on receipt of the aforementioned communication, dated 12th/13th February, 2013, from the learned Chancellor, Respondent No. 1 forwarded the name of another candidate, from the panel, to the ACC, for its approval, but that the ACC returned the said proposal, asking Respondent No. 1 to re-examine it. Thereafter, Respondent No. 1 forwarded the name of Respondent No. 5, to the ACC, for its approval. The said approval was accorded, by the ACC, on 26th August, 2015, pursuant to which, vide order dated 28th August, 2015, Respondent No. 5 was appointed VC of the Vidyapeetha.

16. In this scenario, the counter-affidavit of Respondent No. 1 contends that there was no infraction, at any point of time, of the OM, dated 30th July, 2007, issued by the DOPT, as the selection of Respondent No. 5, out of the panel recommended by the Search-cum-Selection Committee, was effected by the learned Chancellor of the Vidyapeetha on 12th/13 February, 2013, a mere five days after the recommendation of the panel for the post, by the Search-cum-Selection Committee, which took place on 7th February, 2013. It is emphasised, by Respondent No. 1, that the limiting period of one year, stipulated in the OM, dated 30th July, 2007, of the DOPT, is for "selection" of the candidate, consequent on finalisation of the panel, and not for "appointment". The fact that the actual appointment, of Respondent No. 5, as VC of the Vidyapeetha, was effected only vide order dated 28th August, 2015 would not, therefore, it is contended, result in any infraction of the OM, dated 30th July, 2007, of the DOPT.

17. We entirely agree.

18. "Selection", it is trite, is different from "appointment". While dealing with selection to the post of Army Commander, the Supreme Court, in U.O.I. vs Lt. Gen. Rajendra Singh Kadyan, (2000) 6 ACC 698, defined the expression "select"

as "chosen or picked up". Applying this definition, the "selection", of Respondent No. 5, to the post of VC of the Vidyapeetha, out of the panel recommended by the Search-cum-Selection Committee, was effected, on 12th/13th February, 2013, as is manifest from the communication, by the learned Chancellor of the Vidyapeetha to Respondent No. 1, of the said date. This was just five days after the recommendation of the panel by the Search-cum-Selection Committee constituted therefor; accordingly, there was, clearly, no infraction, of any kind, with the limitation of one year prescribed in clause (iv) of para 5 of the OM, dated 30th July, 2007, issued by the DOPT.

19. The first plank of the challenge, as ventilated by the petitioner, therefore, fails.

20. With respect to the second plank of the challenge, by the petitioner, to the appointment of Respondent No. 5 as VC of the Vidyapeetha, founded on Clause 29 of the MoA of the Vidyapeetha, it is clear that there is no substance, whatsoever, therein, either. What is required, by the said clause is that the VC should be a "distinguished academician, with a minimum of 10 years experience as Professor in a University system or 10 years experience in an equivalent position in a reputed research and/or academic administrative organisation". The writ petition takes exception to the appointment of Respondent No. 5 as VC, on the ground that, "though appointed in professor grade", he "was not a teaching staff" and was "far reach of teaching the students". No specification, in any Rule, Regulation, executive instruction or bye-law, has been referred to, in the writ petition or during the course of arguments before us, which would require the person selected to be VC of the Vidyapeetha, to be a "teaching staff", or have any experience of "teaching students". We have already extracted, hereinabove, the reasons advanced, by the learned Chancellor, for his decision to select, from the panel recommended by the Search-cum-Selection Committee, Respondent No. 5 for appointment as VC of the Vidyapeetha, and we do not propose to sit in appeal over the said decision, which has been arrived at in lawful exercise of the discretion vested, in the learned Chancellor, in this regard. Indeed, it is specifically noted, by the learned Chancellor, that Respondent No. 5 "has been associated with the academics and other activities of the Vidyapeetha for the last 18 years". Selections to high posts in educational institutions are crucial and critical, and the Court is woefully ill-equipped to substitute, for the decision of the competent authority, its own assessment of the suitability of one or the other candidate for appointment to any such post. Judicial interdiction, with any such decision, would be justified only where the Court arrives at the conclusion that the decision is patently arbitrary, contrary to any applicable statutory provision, or vitiated by mala fides. None of these exigencies obtain in the present case; ergo, we refrain from interfering with the decision of the learned Chancellor, as ultimately approved and affirmed by the ACC, to appoint Respondent No. 5 as VC of the Vidyapeetha.

21. The two planks, on which the petitioner rests his challenge to the

appointment of Respondent No. 5 as VC of the Vidyapeetha, cannot, therefore, support, either individually or collectively, the edifice of the said challenge which, therefore, necessarily has to fall.

22. We may, in passing, also note that the petitioner has chosen to question the integrity of Respondent No. 5, referring to certain earlier instances when his candidature, for the post of VC of the Vidyapeetha, was disapproved. These decisions, however, were subsequently reversed; moreover, vigilance clearance, by the competent authority, having been granted to the selection of Respondent No. 5 as VC of the Vidyapeetha, and the said selection having also been accorded the imprimatur of the ACC, this argument of the petitioner, too, fails.

23. We are constrained, therefore, to hold that the challenge, by the petitioner, to the recommendation, selection and appointment of Respondent No. 5 as VC of the Vidyapeetha, has no legs to stand on, and has necessarily, therefore, to be rejected.

24. Before parting with this judgment, we deem it appropriate to note a somewhat disquieting feature of such challenges, several of which are engaging the attention of this Court at present. The general principle, that public interest litigation in service matters is impermissible has, no doubt, been judicially relaxed in cases where writs of quo warranto are sought, challenging the authority, of a holder of a public office, to hold such office. Even while doing so, the Supreme Court has been cautious to prescribe that such writs would lie only where the appointment is alleged to violate one, or the other, statutory rule, and not in any other case. Piggybacking on the said relaxation, public interest litigations are now being filed, galore, challenging appointments effected to various posts, in governmental and quasi-governmental institutions, effectively exhorting the Court to conduct a roving and fishing enquiry into the legality of the appointment under challenge. The present writ petition presents a classic example.

25. Not only does the writ petition not allege infraction of any statutory rule, in the appointment of Respondent No. 5 as VC of the Vidyapeetha; it has, apparently, been filed even without adequate research or preparation, in total ignorance of the process that had taken place before the selection of Respondent No. 5, as VC of the Vidyapeetha was finalised. This Court was merely presented with the date of the advertisement, and the date of final appointment of Respondent No. 5, and left, to ferret out for itself, the specifics of the selection process, thereby undertaking its own enquiry into the manner in which the selection and appointment of Respondent No. 5 as VC in the Vidyapeetha was effected and implemented.

26. Such challenges, which are essentially adventurous in nature, do little service to the institution of public interest litigation, and are thrown up with little regard to the stigma that any such challenge would be bound to entail, in the personal and professional life of the person whose appointment is challenged, apart from

the fact that, till such challenge is ultimately repelled, the sword of Damocles would hover, perilously, over the head of the appointee. They also result in wastage of precious judicial time, which could be engaged in grappling with bona fide causes of litigants who suffer from genuine grievances, warranting judicial redressal. We are constrained to deprecate such a practice.

27. With these remarks, the writ petition is dismissed. Solely for the reason that the petitioner claims to be a student pursuing his doctoral degree, we refrain from awarding costs which, otherwise, would be amply justified in a case such as this.