

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 4738/2014

% **10th April, 2015**

PROFESSOR J.P. SHRIVASTAVA Petitioner
Through Mr.Som Dutta Sharma with
Mr.Gaurav Bhardwaj, Advocates.
versus

UNIVERSITY OF DELHI AND ANR Respondents
Through Ms.Beenashaw N. Soni, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner seeks the relief that he should be appointed as the Head of the Department of Geology and he also be held entitled to act as the Dean of the Faculty of Science. Claim of the petitioner is based on his being the senior most.

2. Petitioner places reliance upon Ordinance XXIII of the respondent no.1/University and Statute 12 (1) of the respondent no.1/University. These provisions being Ordinance XXIII and Statute 12 (1) of the respondent no.1/University read as under:

“ Ordinance XXIII. Heads 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 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.

Statue 12(1)

The Deanship of a Faculty will rotate amongst the Departments of that faculty. For that purpose a list of such Departments, in the order reckoned from the date of their establishment, the oldest Department being put first and so on, shall be prepared. Where two or more departments have been established on the same date, their relative place in the list will be determined by draw of lots.

Any person who is the Head of that Department whose turn comes according to the list, shall be the dean for a period of three years provided that if that person ceases to be the Head before completing the said term, his successor in the Department shall be the Dean for the remainder of the

term and provided further that in a case where the turn of such a department comes where the Dean is to act as the Head, that Department will be bypassed by the one immediately next to it in the list.”

3. I have had an occasion to examine this very issue as to whether a person who claims to be senior must necessarily be appointed as the Head of the Department, in the case of ***Prof. Sharda Sharma Vs. University of Delhi & Ors.*** in W.P.(C) No.5568/2013 decided on 04.9.2013. The judgment dated 04.9.2013 reads as under:-

“1. Petitioner is working as a Professor in the Department of Sanskrit of the respondent no.1-University of Delhi. By this writ petition, petitioner seeks the relief that she should be appointed as Head of the Department of Sanskrit in the respondent no.1-University. Petitioner claims this entitlement on the ground that petitioner will now be the senior most person in the Department of Sanskrit.

2. Admittedly, the relevant provisions with respect to appointing of Head of the Department of Sanskrit are Statute 9 (2) (d) and Ordinance XXIII which read as under:-

Statute 9(2)(d)

“2. xxx

xxx

xxx

(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 Reader 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 two 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.”

Ord. XXIII. Heads 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.”

QUALIFICATIONS OF UNIVERSITY TEACHERS

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 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 persons who is next in order of seniority to the person who has already served or is serving as Head of the Department.”

3. I put it to counsel for the petitioner as to where it is provided in the Ordinance XXIII that it is only the senior most person who has necessarily to be appointed as the Head of the Department, and to which, counsel for the petitioner draws attention to sub-Ordinance (2) of Ordinance XXIII above.

4. In my opinion, the contention raised on behalf of the petitioner that only the senior most person can be appointed as the Head of the Department is misconceived because the provision of Ordinance XXIII gives entitlement to the Vice-Chancellor to appoint any person, provided the principle of rotation is observed i.e one person cannot be

re-appointed unless there is no other person available and qualified for being appointed as Head of the Department.

5. So far as sub-Ordinance (2) of Ordinance XXIII is concerned, all that is provided is that there is an option given to the Vice-Chancellor to consider the senior most person. Existence of an option is much different from a compulsory statutory mandate for a senior most person to be necessarily appointed as Head of the Department. This provision does not say that only the senior most person should compulsorily be appointed as the Head of the Department. Therefore, the provisions quoted above do not support the petitioner that it is only a senior most Professor who has to be necessarily appointed as Head of the Department.

6. Counsel for the petitioner then urged that even if Vice-Chancellor is entitled to take a decision under the aforesaid Statute and Ordinance, however, that decision must be actuated by reason and therefore petitioner has been wrongly overlooked as no reasons have been given to the petitioner. In my opinion, since the decision in question of appointing a Head of the Department is only an administrative decision, and not a quasi judicial decision, principles of natural justice do not have to be followed including of passing of a speaking order communicating the reasons for appointing a particular person and not appointing another person. Courts ordinarily do not substitute themselves for the decisions taken by the administrative authorities with respect to administrative decisions inasmuch as the administrative authorities know best how the organization-public institution is run. In an extreme case of clear cut malafides or some other equally strong reason, Courts can step in, however, I do not find that merely on the principle of the seniority being pleaded that automatically strong grounds exist to question the administrative decision for the reason that relevant Statute and Ordinance do not require the senior most person to be appointed as the Head of the Department.

7. Counsel appearing for respondent no.1 states that the respondent no.1-University does not compulsorily follow any policy that only the senior most person is appointed as Head of the Department.

8. In view of the above, I do not find any merit in the writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.”

4. The issue in the present case is the same and I am bound by the ratio of the judgment given in the case of *Prof. Sharda Sharma (supra)*, and since I agree with the same, therefore there is no reason for this Court to refer this case to the Larger Bench as is prayed for by the counsel for the petitioner. In fact, in my opinion, administrative authorities must have necessary leeway, and which is found in Ordinance XXIII of the respondent no.1/University to appoint or not to appoint a person as the Head of the Department because the Head of the Department is indeed an important person from whom various aspects with respect to administration and discipline flows.

5. So far as the argument raised on behalf of the petitioner by placing reliance upon Statute 12 of the respondent no.1/University is concerned, a reading of that Statute shows that a person can be appointed as a Dean of the faculty, if firstly he is the Head of the Department, and in case a person is not the Head of the Department, such a person obviously will have no entitlement to be considered for being appointed as a Dean.

6. In view of the above, and the ratio laid down in the case of *Prof. Sharda Sharma (supra)*, merely because the petitioner is senior, he cannot claim the appointment as the Head of the Department of Geology, and this

Court is ill-equipped to substitute its decision for that of the department/authority for issuing a direction to appoint the petitioner as the Head of the Department of Geology by quashing the appointment of the respondent no.2 who has been so appointed.

7. Dismissed.

APRIL 10, 2015
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VALMIKI J. MEHTA, J.