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

% Date of Decision : November 17, 2015

+ **LPA 378/2015**

PROFESSOR J P SHRIVASTAVA Appellant

Represented by: None

versus

UNIVERSITY OF DELHI & ANR Respondents

Represented by: Mr.Aakash Yadav, Advocate for
Ms.Beenashaw N.Soni, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The conclusion reached by the learned Single Judge is correct, but not the route. Thus, a little clarification on the law is required and therefore we are penning a short opinion.

2. Ordinance XXIII and Statute 12(1) framed by the University of Delhi came up for interpretation before the learned Single Judge. The two 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.

Statute 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 than 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. Staking claim under seniority, the appellant filed a writ petition pleading that his seniority had been violated. The appellant claimed a right to be appointed as the Head of the Department of Geology in the University of Delhi.
4. The learned Single Judge has interpreted the Ordinance to be giving a leeway to the Vice Chancellor by ignoring the principle of seniority.
5. Whilst it may be true that the Ordinance and the Statute do not mandate that headship of a department by rotation would be strictly by seniority, but the requirement of seniority being honoured, as far as possible, cannot be overlooked.
6. It simply means this. If there is some reason to overlook seniority, then headship of a department need not be by following the principle of seniority. In other words an objective fact must exist for the Vice Chancellor not to follow the principle of seniority, because the initial mandate is that the Vice Chancellor would as far as possible honour seniority.
7. On facts there was a good reason not to appoint the appellant as the Head of the Department because due to administrative lapses an inquiry was initiated which resulted in a decision being taken, because appellant was indicted at the inquiry, that he should not be given administrative responsibilities for five years.
8. Clarifying on the legal position and differing from the reason given by

the learned Single Judge in reaching the conclusion arrived at, reaching the same destination but through a different route, we dismiss the appeal.

9. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 17, 2015
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