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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 06.12.2017

Judgment delivered on: 13.12.2017

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W.P.(C) 8538/2015 and CM Nos. 18385/2015 & 33995/2017

DEEPAK KUMAR GUPTA

..... Petitioner

Through: Mr Anurag Ojha, Mr Kamlesh Kumar
Mishra, Mr Lal Babu Lalit and
Mr Sanjay Baniwal, Advs.

Versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr Mohinder J.S. Rupal and
Ms Slomita Rai, Advs for DU.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The petitioner is a student of Ph.D w.e.f. 01.06.2012 working with the Department of Philosophy, University of Delhi. His guide was Ajay Verma, (an Assistant Professor).

2. The petitioner is aggrieved by the impugned order dated 20.03.2015 (received by him on 01.04.2015) issued by respondents No. 1 & 2 wherein the petitioner's candidature to the Ph. D. course was cancelled. This was for an alleged violation of Ordinance VI B of the respondent university. No prior notice or a show cause had been issued to the petitioner before issuing this

cancellation order; the petitioner already having almost completed his Ph. D as the pre Ph. D thesis has also been prepared by him under his guide; this order dated 20.03.2015 is a wholesome illegality; it is liable to be set aside.

3. The averments in the petition disclose that the petitioner had joined his Ph. D course with the Department of Philosophy, University of Delhi on 01.06.2012. The petitioner had been appointed as an Assistant Professor (Ad-hoc) in Lakshmibai College in July, 2013 for a period of four months. This was after a due permission/NOC has been granted to him from his Supervisor. The Departmental Research Committee (DRC) of the Department of Philosophy has also granted him approval for the said appointment and an intimation had been sent to the Board of Research Studies (BRS) for their approval.

4. On 09.02.2015, the petitioner submitted his pre Ph. D. thesis to the satisfaction of his supervisor. On the same date when he approached respondent No.2 for the submission of his thesis, the respondent appended the remark "*Ph. D admission cancelled due to violation of VI via note to Dean Research, Pro Vice Cancell*". The petitioner was denied the submission of his industrious research which he had conducted on his pre Ph. D thesis.

5. On 23.02.2015, the petitioner addressed a communication to respondent No.2 for revoking this file noting which has sought to cancel his Ph. D. No action was taken on his representation.

6. On 20.03.2015, a letter was received by the petitioner from respondent No.3 informing him that his Ph. D stood cancelled w.e.f. 15.01.2015 for violation of the provisions of Ordinance VI B. This was without any show cause notice or after giving any opportunity to the petitioner to make a representation. Submission of the petitioner being that this was a colossal high-handedness on the part of the respondents who had malafides against the petitioner.

7. Respondent No.3 has denied a re-admission to the petitioner on the ground that the petitioner had joined the ad-hoc appointment as an Assistant Professor in Lakshmibai College during the two years mandatory residency period for which reason his Ph. D stood cancelled.

8. On 18.11.2014, the petitioner was constrained to file a writ petition in this Court. He had disclosed all true facts including the fact that he has taken an ad-hoc appointment at Lakshmibai College which was with the permission of the Supervisor and the approval of the DRC. The decision communicated to the petitioner was even otherwise illegal for the reason that

it was a decision of the Vice-Chancellor whereas it is the Chancellor alone who can take a decision to cancel the admission of the petitioner. The Ordinances of the respondent have been violated. Learned counsel for the petitioner has taken this Court to the various provisions of Ordinance VI B with particular reference to the terms of eligibility contained in Clause 4. Submission of the petitioner is that his case falls under clause 6 of the said Ordinance which has to be read along with sub-clause (xiii) of clause 11. A residency period of two years is not mandatory for an ad-hoc employment; this is as long as permission has been taken from the Supervisor and the (DRS) Departmental Research Committee and reported to the BRS; all of which has been followed by the petitioner. To substantiate this argument, learned counsel for the petitioner has drawn attention of this Court to the various documents filed by him which reflect his stand that he had been granted permission by the Supervisor and the DRC to pursue his ad-hoc employment as an Assistant Professor in the Lakshmibai College and the same had been communicated to the BRS. The inter-se provisions of Ordinance VI B have to be interpreted harmoniously and in case there is a contradiction between two statutory provisions, the latter must prevail; this is a settled rule of the interpretation of Statutes.

9. Learned counsel for the petitioner additionally points out that there has been a discrimination qua the case of the petitioner. It is pointed out that the (BRS) Board of Research Studies had 9 candidates before it. Attention has been drawn to page 33 of the paper book. This is an inter-departmental noting by the respondent university wherein the names of 9 candidates (Ph. D scholars) and their requests seeking permission to work as Guest/ad-hoc lecturer had been noted. At the end of the aforementioned document, there is a hand-written noting wherein it has been noted as under:-

“The DRC at its meeting held on 05.12.2014 has recommended the grant of ex-post-facto approval for the leave of above nine students. If approved, we may forward the same to Chairperson Board for doing the needful.”

10. Submission being that permission had been granted to the aforementioned 9 candidates for working as guest/ad-hoc lecturers. Out of these nine candidates, all eight candidates (except the petitioner) have submitted their Ph. D thesis and they have been granted the Ph. D degree. The petitioner alone has been singled out. A case of discrimination and violation of Article 14 of the Constitution of India has been made out. For this proposition, reliance has been placed upon a judgment of the Apex Court reported as

2015 SCC OnLine SC 1385 The Kerala Bar Hotels Association & Another Vs. State of Kerala & Others. Submission being that the principles of equality have to be adhered to.

11. Counter affidavit has been filed by the respondents. The respondents have negated the submissions of the petitioner. The stand of the respondent being that the petitioner has flouted Ordinance VI B and therefore the cancellation of his Ph. D course is proper and valid. It is admitted that the petitioner was registered with his Ph. D course on 01.06.2012. He however took employment in Lakshmibai College as an ad-hoc teacher w.e.f. 24.07.2013. This act of the petitioner in undertaking an employment was violative of clause 11 (viii) of Ordinance VI B which provides that “*Every candidate shall pursue research in the university or a recognized institution in Delhi for not less than 2 calendar years after the date of provisional registration*”. Clause 4 E of the said Ordinance VI B provides that “*Candidates sponsored by their employees shall be considered only if they get study leave for a period of 2 years to fulfill residency requirement of the University of Delhi*”. The aforementioned clause of Ordinance VI B makes it clear that no Ph. D student can take employment during the residency period of 2 years which is a mandatory requirement. The act of the petitioner, in not

having completed the residency period of 2 years and before that having obtained an ad-hoc employment, has violated the provisions of Ordinance VI B. It is denied that sub-clause (xiii) of Clause 11 of Ordinance VI B applies in the case of the petitioner and the residency period of two years is not mandatory. Clause 11 (viii) is applicable qua the residency period of two years; failing which sub-clause (xiii) of Clause 11 of the said Ordinance would become redundant and which was not the intent of the said legislation. A full effect of all the clauses of Ordinance VI B has to be given. The petitioner having worked as an ad-hoc lecturer prior to the completion of the two years residency period has violated the said Ordinance. His admission to the Ph. D course was validly cancelled. Qua the question of discrimination, it is pointed out that although this has not been pleaded in the writ petition yet pursuant to the directions of this Court a sur-rejoinder had been directed to be filed by the respondent university. In this rejoinder, the plea of discrimination set up by the petitioner has not been answered. It is however not denied that names of the candidates who were similarly placed as the petitioner have since been granted permission to complete their Ph. D course and they have obtained the Ph. D degree.

12 Learned counsel for the respondents on this score submits that a

wrong which has been committed by the Department qua some candidates would not enure in favour of the petitioner and this is not the interpretation to be attached to Article 14 of the Constitution. Reliance has been placed upon a judgment of the Apex Court reported as (1996) 2 SCC 459 Gursharan Singh and Others Vs. New Delhi Municipal Committee and Others to support this submission. Submission being that before a claim based on equality is upheld, it must be established by the petitioner that his claim is just and legal; he cannot set up a claim which is otherwise not sanctioned by law; it shall amount to giving permission to continue to perpetuate an illegal procedure for extending a similar benefit which should not have been granted in the first instance to others. Learned counsel for the respondent has also placed reliance upon a Division Bench judgment of this Court reported as 2012 II AD (DELHI) 469 Twinkle Wadhwa Vs. University of Delhi and Others. Submission being that in that case also, the petitioner had applied for a Ph. D program which had been denied to her by the University; Ordinance VI B has been interpreted in that judgment; the matter had been remanded back to the Academic Council/Executive Council in terms of Clause X (C) for an appropriate decision. This Court should not take upon itself the task to interfere in the matter and at best the matter be

remanded back to the Academic Council/the Executive Council.

13. In rejoinder, learned counsel for the petitioner points out that the case of the petitioner is not different from the aspirants who had already been granted the Ph. D degree; Ordinance VI B not having been interpreted legally, no illegality has been perpetuated; i.e. qua the aforementioned persons who have already been granted Ph. D degree and if the same benefit is extended to the petitioner, it is reiterated that no illegality would be perpetuated. Another aspect pointed out by the learned counsel for the petitioner is that even presuming that the petitioner had flouted Ordinance VI B, this would not be a fit case where his entire Ph. D research which he has carried out for more than two years and which was an industrious and painstaking task should be set to a complete naught; the proportionality of the punishment, even presuming there has been flouting of Ordinance VI B, has to be on a rational basis. For this proposition, reliance has been placed upon (2007) 4 SCC 669 Coimbatore District Central Cooperative Bank Vs. Coimbatore District Central Cooperative Bank Employees Association and Another.. The doctrine of proportionality has to be adhered to.

14. Arguments have been heard. Record has been perused.

15. Relevant at this stage would it be to extract the highlighted provisions

of Ordinance VI B of the University of Delhi Act, 1922.

Clause 4 contains the eligibility criteria. It reads as under:-

“The following categories of candidates can be registered for the degree of Doctor of Philosophy by the Departmental Research Committee, provided that they fulfil the eligibility conditions:

4D. The University/College teachers holding a permanent, temporary or ad hoc positions and having completed two years of service as teacher in a Department/Constitution Colleges of the University of Delhi.

4E. Candidates sponsored by their employers shall be considered only if they get study leave for a period of two years to fulfil residency requirements of the University of Delhi.

4F. Permanent teachers/ employees who are in service in any other recognized University/ college/ Research Institute in India and have a minimum of three years teaching / research experience, will be considered if they get study leave for a period of two years to fulfil residency requirements of the University of Delhi.

Clause 6 reads as under:-

Students who were initially registered for the M.Phil. programme of the University and who obtain a score of 60% or more marks in Part I examination of the M.Phil. programme would be eligible for admission to the doctoral programme without completing their M.Phil. degree on the specific recommendation of the Department Research Committee. Such Students shall be granted fellowship as provided in 4B.

Clause 11 (viii) reads as under:-

Every candidate shall pursue research in the University or a recognized institution of Delhi for not less than two calendar years after the date of provisional registration. The student may be permitted by the Board of Research Studies, on the recommendation of the Supervisor(s), to be absent from Delhi for ordinarily not more than 2 semesters on the ground that it is in the interest of her / his research.

Clause 11 (xiii) reads as under:-

No candidate shall undertake any employment during the period of her/his study without the permission of the Supervisor(s) and the Departmental Research Committee which will then be reported to the Board of Research Studies.

Clause 13 reads as under:-

Any issues concerning procedure or interpretation of the provisions contained in this ordinance shall be referred to the Vice-Chancellor whose decision shall be final. All such cases shall be reported to the Academic Council.

16. These clauses of the said Ordinance have to be read harmoniously; the full intent and meaning of each clause has to be given effect to; this is the settled rule of interpretation of a statute.

17. Clause 4D states that a University/College teachers holding a permanent, temporary or ad-hoc position and having completed two years of service as teacher in a college of the University of Delhi is eligible for an admission to the M. Phil program.

18. Clause 4E speaks of a candidate sponsored by his employer; he must

obtain a study leave of two years for fulfilling the residency requirement of University of Delhi. So also Clause 4F which speaks of permanent teachers/employees who are in service in any other recognized University in India and having minimum of three years teaching/research experience will be considered if they get study leave for two years to fulfill the requirements of the University of Delhi.

19. Clause 4D is distinct from Clauses 4E and 4F. Whereas Clauses 4E and 4F each require a residency period of two years for which a study leave has to be obtained, Clause 4D has no such requirement; it does not speak of a residency period of two years. It applies to those college teachers who holding either a permanent, temporary or ad-hoc position and having completed two years of service as a teacher in a college of University of Delhi; such a candidate does not have to fulfill the requirement of two years of a residency period.

20. Under Clause 6 students who were initially registered for an M. Phil program and had obtained a score of 60% or more marks in part I of the said examination would be eligible for admission to the Ph. D program on the specific recommendations of the Departmental Research Committee (DRC) and such a student would then be granted a fellowship.

21. Learned counsel for the petitioner had highlighted this clause making a submission that the case of the petitioner fits into this clause. This Court is not in agreement with this submission of the learned counsel for the petitioner. Although the petitioner had initially been registered in the M. Phil course and he had a score of 60% marks yet it is not the case of the petitioner that he was granted admission on the specific recommendations of the DRC. The petitioner does not fulfill this qualification.

22. Sub-Clause (xiii) of Clause 11 heavily relied upon by the petitioner preordains a situation that a candidate during his Ph. D program may take employment but this employment must necessarily have to be with the permission of the Supervisor and the DRC which shall then be reported to the Board of Research Studies (BRS). This sub-clause starts with a non-obstante clause. The meaning and intent however is clear. The intent being that if a candidate has obtained the permission of the Supervisor and the DRC which is then reported to the BRS, he may take an employment.

23. So far so good. The respondent is not disputing this position. Submission of the respondent however being that this sub-clause (xiii) does not take away the other mandatory requirement which is the mandate of the two year residency period which has not been followed by the candidate in

the instant case. Submission of the respondent being reiterated that until and unless the two years residency period is completed, the petitioner cannot seek employment; Clause (xiii) would apply only after the two year residency period is over.

24. The facts of the instant case elicit that the petitioner had obtained his admission in the Ph. D Program on 01.06.2012. He had taken an ad-hoc employment in the Lakshmibai College w.e.f. 24.07.2013. This was for a period of four months. There is no dispute on these dates. There is also no dispute to the communications relied upon by the petitioner which are dated 07.02.2014 and 21.11.2014. These are a part of the record. The letter dated 07.02.2014 is a letter written by the petitioner to the Head of his Department seeking a No Objection Certificate on the information that he is seeking a no objection for ad-hoc employment taken by him as an Assistant Professor in the Department of Philosophy at Lakshmibai College w.e.f. 24.07.2013. This letter bears the endorsement of the Supervisor / guide of the petitioner namely Dr. Ajay Verma noting that the progress of the candidate is satisfactory. The second letter dated 21.11.2014 is another letter written by the petitioner to the Head of his Department requesting for a No Objection Certificate for continuing as an Assistant Professor at the said College on an

ad-hoc basis. In this letter it has been stated that the petitioner had taken employment at the Lakshmibai College w.e.f. 24.07.2013 after obtaining permission from his Supervisor and he wishes to continue with the same. There is an endorsement at the end of the letter by his Supervisor reflecting the fact that the work of the petitioner is satisfactory and permission was accordingly granted to him.

25. Annexure P-2 is the minutes of the meeting dated 12.02.2014 of the DRC held on 11.02.2014 wherein in para 8, the application received from the petitioner had been directed to be forwarded to the Board of Research Studies (BRS).

26. The document at page 33 of the paper book is a document of the BRS wherein the letter dated 21.02.2014 of the DRC was considered. The names of 9 candidates including the petitioner (at serial No.1) were considered. This document reads as under:-

The DRC at-its meeting held on 05.12.2014 has recommended the grant of ex-port-facto approval for the leave of above nine students. If approved, we may forward the same to Chairperson Board for doing the needful.

27. This Board Resolution of the BRS clearly states that these cases may be referred back to Head of the Department of Philosophy requesting the

matter to be placed in the next meeting of the DRC for an ex-post facto approval of the BRS. The latter handwritten note at the end of the document appended on 09.12.2014 states that the DRC in its meeting of 05.12.2014 has recommended the grant of an ex-post facto approval for leave of the aforementioned 9 students and the same may accordingly be forwarded to the Chairperson of the BRS for doing the needful.

28. As rightly pointed out by the learned counsel for the petitioner, this note seals the defence of the respondent. The respondent on 09.12.2014 had granted an ex-post facto approval for the leave of the petitioner (including 8 others) for their ad-hoc employment pending their Ph. D program. The ex-post facto approval already having been granted, the same only had to be forwarded to the Chairperson of the BRS.

29. Sub-clause (xiii) of Clause 11 of the Ordinance speaks of the word reported to the Board of Research Studies. It is only an intimation/information which has to be passed on to the BRS. The permission (as is contained in sub-clause xiii) has to be obtained from the Supervisor and the DRC. Once that permission is obtained (as is so in the instant case), the matter only had to be reported/intimated to the BRS. No permission had to be taken from the BRS. The document at page 33 satisfies

this criteria. Permission already having been obtained by the petitioner candidate from the Supervisor as also from the DRC and ex-post facto approval having been granted; this information was duly sent to the Chairperson of the BRS.

30. The submission of the respondent being that the mandate of a period of two years residency for such a candidate is negated by their own Clause 4D of Ordinance VI B. As noted supra, Clause 4D of the Ordinance does not require a residency period of two years. A working teacher employed for the last two years in a college of the University of Delhi does not require a two years residency period; meaning thereby that in certain contingencies, the requirement of the two year residency period may be excluded. Sub-clause (viii) of Clause 11 stipulates that the research for a Ph. D program will be pursued by the candidate for a period not less than two calendar years after the date of his provisional registration; meaning thereby that this Clause clearly stipulates a situation where a candidate may complete his research/Ph. D program in two years.

31. Thus a harmonious reading of the various clauses of Ordinance VI B persuades this Court to hold that sub-clause (xiii) of Clause 11 when read with the other preceding provisions of Ordinance VI B supports the case of

the petitioner that where a candidate has obtained the permission of the Supervisor and the DRC and reported the matter to the BRS, he can take on an ad-hoc employment.

32. This is also for the reason that it is not in dispute that a Ph. D program may be completed by certain candidates even within two years. For such a candidate who could complete his Ph. D program in two years, the provisions of clause 11 (xiii) would be redundant if the compulsory two years residency period is required to be attached. Sub-clause (xiii) of Clause 11 would then be rendered nugatory. This was not the intent of the legislation.

33. In the judgment of *Twinkle Wadhwa* (supra) while considering the provisions of Ordinance VI B (although in a different context), the Division Bench of this Court had noted that the candidate in that case (being a Judicial Officer) was gaining experience while discharging her duties being a Mahila Court; she had exposure to litigants; she was getting a better exposure while dealing with them day in and day out in and as such a mandate of a two year study period was taken care of by referring her matter to the Academic Council/Executive Council under Ordinance X (C) of the University Act, 1922.

34. Although in this case learned counsel for the respondent at the outset had made an alternate submission that the case of the present petitioner may also be referred to the Academic Council/Executive Council under Clause X (C) who may take upon itself the task of passing an appropriate order in the case of the petitioner yet this Court is of the view that this may not be necessary.

35. Noting the above narration which is to the effect that sub-clause (xiii) of Clause 11 of Ordinance VI B when read with the other provisions of the said Ordinance and the documents as highlighted by the petitioner clearly evidence the fact that permission from the Supervisor and the DRC had been obtained by the petitioner for seeking a no objection to join his ad-hoc employment at Lakshmibai College; the same having then been intimated/reported to the Chairperson of BRS; the requirement of aforementioned sub-clause stood fulfilled. There was no compulsory requirement of a two years residency period in the case of the petitioner. The argument of the petitioner that in a given case a candidate may be able to complete this Ph. D program in 2 years and the provisions of sub clause (viii) and sub-clause (xiii) of clause 11 would then become redundant has complete force.

36. This Court also notes that the petitioner had already spent 2- ½ years

in his Ph.D program. This was under the guidance of Dr. Ajay Verma. He has submitted his pre Ph. D thesis on 09.02.2015 (evident from Annexure P-5); it was only on the same day that the petitioner was informed that the Ph. D program which he had joined on 01.06.2012 stood cancelled. Obviously this was a huge set-back for the petitioner. The industrious and pain staking work and research undertaken by the petitioner was put at a complete naught. This is more than unfair.

37. Qua the issue of discrimination, another point has been made by the petitioner. Learned counsel for the petitioner had highlighted that there were 9 candidates whose candidature were considered (at page 33 of the paper book) and except the petitioner all other eight candidates have been able to submit their thesis and they have qualified their Ph. D. Article 14 has been infringed. This Court notes that although a sur-rejoinder had been directed to the filed by the respondent but the respondent has not elucidated this stand. Orally in the course of arguments, learned counsel for the respondent does not dispute the fact that some of those eight candidates (stands in the same position as is the petitioner) have since been granted their Ph. D. degree. The fact that these candidates were also working as ad-hoc employees during their course of Ph. D and they have not completed a 2 year

residency period is also admitted. The submission of the respondent that a wrong once perpetuated cannot be allowed to be continued as in the case of Gursharan Singh is an argument which does not come to the aid of the respondent. This Court notes that no wrong has been perpetuated by allowing the aforementioned eight candidates who have submitted their Ph. D thesis pursuant to which they have been granted their Ph. D. degree. There was no requirement of having a compulsory two year residency period before they could obtain an ad-hoc employment. The case of the petitioner must succeed on this ground also.

38. Accordingly, the writ petition is allowed. The petitioner is permitted to submit his Ph. D thesis and the same shall be considered and answered by the respondent and if in order, the Ph. D. degree shall be awarded to the petitioner.

39. Petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

DECEMBER 13, 2017

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