

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 595 of 2018

- Subir Sen Professor D. P. Vipra College Bilaspur S/o Shri R. B. Sen Aged About 56 Years. R/o 17/361, Sarju Bagicha Azad Nagar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, To The Govt. Of Chhattisgarh, Department Of Higher Education Mantralaya Mahanadi Bhawan, Naya Raipur, P. S. Rakhi, Raipur, Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of C. G. Vishwavidyalaya Adhinium 1973 Of D. P. Vipra College) Through The Secretary, To The Governing Body Office Of Principal D. P. Vipra College Old High Court Road, Bilaspur, Chhattisgarh.
3. D. P. Vipra College, Through The Principal D. P. Vipra College Old High Court Road Bilaspur, Chhattisgarh.
4. The Principal, D. P. Vipra College Old High Court Road Bilaspur, Chhattisgarh.

---- Respondents

Writ Appeal No. 598 of 2018

- Dr. Durga Sharan Chandra Professor, D P Vipra College Bilaspur, S/o Shri I. L. Chandra, Aged 49 Yrs R/o D-259, Rama Green City Khamtarai, Bilaspur District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary To The Government Of Chhattisgarh Department Of Higher Education Mantralaya Mahanadi Bhawan Naya Raipur Police Station Rakhi Raipur Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of Chhattisgarh Vishwavidyalaya Adhinium 1973 Of D P Vipra College) Through The Secretary To The Governing Body Office Of Principal, D P Vipra, College Old High Court Road Bilaspur Chhattisgarh.
3. D P Vipra College Through The Principal D P Vipra College Old High Court Road Bilaspur Chhattisgarh.
4. The Principal D P Vipra College Old High Court Road Bilaspur Chhattisgarh.

---- Respondents

For Appellants	: Shri A.D. Shrivastava and Shri Y.C. Sharma, Advocates
For Respondent/State	: Shri Gagan Tiwari, Deputy Government Advocate
For Respondent/College	: Shri B.P. Sharma and Shri Manay Nath Thakur, Advocates

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

22.01.2019

1. Two writ applications were heard and decided together by a common order dated 09.05.2018. They approached the writ Court challenging the decision of the governing body to put them under suspension. The two Petitioners, who are also Appellants before us, failed to beget any relief from the writ Court because the learned Single Judge refused to interfere with the decision of the governing body on the ground that the members of the governing body, who took the decision, had no authority to continue being a member of the governing body after the completion of their term of two years.
2. The two Appellants are teachers working in what is known as D.P. Vipra College, an affiliated College, having its own managing committee or governing body which runs the administration of the College in question.
3. For certain so-called serious omissions and commissions committed by the two teachers, the governing body decided to put them under suspension which came to be challenged by filing the two writ applications on the ground that two of the members of the governing body could not have continued to be a member of the governing body as they were last elected for a term of two years on 13.12.2015 and when the decision was taken on 23.12.2017 or 17.01.2018, their term had already expired, therefore, any decision taken in the meeting of which they too were members are *per se* illegal and *void ab initio*.
4. The same argument is also sought to be placed before us which was urged before the learned Single Judge, but it was negated by the learned Single Judge for the following reasons :

“8. According to the learned counsel for the respondents statute 28 of the college code does not envisage a clause, wherein it says that immediately beyond the period of two years, the members of the governing body would cease to be members and therefore impliedly the members would continue till fresh elections are conducted. The counsel for the respondents further referring to clause 7 (7) submitted that the action of the respondents otherwise also stands protected under the said clause, wherein it has been held that no action or proceeding of the governing body shall be invalid merely by reason of any vacancy in its membership or any defect or irregularity in the appointment, nomination or election of a member. It was lastly submitted by the counsel for the respondents that since the two petitioners have been prosecuted in a criminal case for the offence under Section 354A, 34 of the Indian Penal Code, and the nature of the allegations being serious and keeping in view the guidelines laid by the Hon’ble Supreme Court dealing with the issue of sexual harassment of women at work place in the case of **“Vishaka and others v. State of Rajasthan and others” (1997) 6 SCC 241** has taken a decision and the criminal case also is still pending consideration and in the given factual background, the respondents were compelled to take a decision against the petitioners and the present writ petition has been filed challenging the order of suspension not on merits, but on hyper technical grounds and reasons. Thus, prayed for the rejection of the petition.

9. Having heard the contentions put forth by the counsel for the parties and on perusal of records let us first consider the provisions of statute 28. Part III of the said statute deals with the governing body. Clause (c) refers to the constitution of the governing body consisting of Chairman and other members. Sub-clause (f) of clause (c) envisages two representatives elected by the teachers from among the teachers of the college. Clause 6(2)(i) deals with the tenure of the members of the governing body wherein it has been held that the Chairman and the members of the governing body shall hold office for a period of two years. The said statute does not envisage a provision wherein it has been mentioned that beyond the period of two years, they shall cease to remain or hold office of the members of the governing body. Likewise, clause 7(7) also grants a protection to the extent of an act or proceeding of the governing body cannot be held invalid merely by reason of a vacancy in its membership or any defect or irregularity in the election of a member.

10. In the instant case the allegation is that the members were duly elected in 2015. The tenure was for two years. Beyond that they ceased to hold office of a member. If we read clause 11, it envisages that the governing body also has been clothed with the powers to take decision otherwise which are not provided under the Code. For ready reference clause 11 is reproduced herein under:-

“11. The Governing Body shall exercise all powers not otherwise provided for in this code and not inconsistent with the provisions of the Adhiniyam, Statutes and Ordinances.”

11. Given the aforesaid facts and circumstances of the case, particularly keeping in view the provisions of statute 28, moreover when there is no specific provision holding that beyond the tenure of 2 years, the members of the governing body would cease to hold the office of a member, the contention raised by the petitioners is unacceptable, particularly in the backdrop of the other provisions under the statute i.e. clause 7(7) and clause 11. So far as the judgment cited by the counsel for the petitioners is concerned, the same also has been decided under entirely different factual matrix and the issues raised and decided in the said judgment also were also entirely different and the principles of law laid down in the said judgment, deals with the issue of jurisdiction of a Court, which may not be applicable in the present facts of the case, for the reason that here undisputedly the two members were duly elected members from an election held and as long as the two members are not replaced, they would continue to discharge as members of the governing body. Moreover, a vacuum cannot be created in the governing body till a fresh election is conducted. Even otherwise for the smooth functioning of the day to day affairs of the college, the existence of the governing body is required and its decisions taken under such situations taken by the governing body stands protected under clause 7(7) and clause 11 of the statute.”

5. The submissions and the grounds which were urged before the learned Single Judge and negated by him which in turn formed the basis for dismissal of the writ applications are again the grounds which are being repeated before us.
6. In absence of any other precedent being placed into service which would demonstrate or show that the interpretation so given by the learned Single Judge as to the status of the two elected members on completion of their term was an erroneous view to take, we do not feel inclined that the view so urged at the bar on behalf of the Appellants that the moment two years term of the elected members came to an end, they become *functus officio* is an acceptable position.

7. Since the interpretation given by the learned Single Judge was an effort made to meet the mischief which could be created by non-conduct of election by the authorised person in time and the consequential vacuum which could be created due to such inaction or indecision. The view taken by the learned Single Judge, in our opinion seems to be correct that the members will continue to hold office and will cease to do so the moment their position is filled up by the next incumbent.
8. The line of argument taken on behalf of the Appellants that there will be automatic cessation of the elected members from the governing body even at the cost of vacuum being created may do more mischief and harm than the view taken by the learned Single Judge in interpreting the statutory provisions which have been taken note of by him in his order dated 09.05.2018.
9. The appeals have no merit. They are dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge