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

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Date of Judgment: 09.05.2019

+ **LPA 694/2016 & CM APPLN. 46147/2016**

UNIVERSITY OF DELHI

..... Appellant

Through: Mr. Mohinder JS Rupal and Mr. Prang
Newmai, Advocates

versus

AMAR NATH JAH & ANR.

.....Respondents

Through: Mr. A.K. Thakur, Mr. R.K. Mishra,
Mr. Rishi Raj and Ms. Kavita Singh,
Advocates for respondent No.1
Ms. Monika Arora, Mr. Kushal
Kumar and Mr. Harsh Ahuja,
Advocates for respondent No.2
Mr. Sanjoy Ghose, ASC with Mr.
Ayush Sharman, Advocate for
GNCTD

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The University of Delhi, appellant herein, is aggrieved by the order dated 10th November, 2016 passed by the learned Single Judge of this Court in a writ petition filed by the respondent No.1 (*hereinafter referred to as 'Jha'*). The writ petitioner sought a direction to the University of Delhi, appellant herein (*hereinafter referred to as 'the University'*), to grant

approval to his appointment as the Vice-Principal of respondent No.2 (*hereinafter referred to as 'the College'*). Jha also sought quashing of three letters dated 13.01.2016, 19.01.2016 and 27.01.2016 by which the University declined the request for grant of approval to the appointment of Jha as Vice-Principal, of the College.

2. Some undisputed facts are that Jha was selected for appointment as Vice-Principal by the Selection Committee in its meeting held on 28th December, 2015. This appointment was made by the Governing Body of the College and the minutes were signed by fourteen members. The College thereafter issued a letter to Jha on 29th December, 2015 appointing him as Vice-Principal of the College. Simultaneously, approval was sought from the University of Delhi by Communication dated 28th December, 2015. The approval was declined. The learned Single Judge has extracted this letter of 13th January, 2016. We do so as well, as it has a bearing on the outcome of this appeal. This letter is extracted as under: -

"No.CS.I/114/P/VP(TS)/SSN/2013/50 *13.01.2016*

The Chairman,
Governing Body,
Swami Shradhanand College,
Alipur,
Delhi-110036

*Subject: Arrangement for the post of Principal of the College-
regarding*

Sir,

The University is in receipt of letter No.SSC/56/2015-16/1466 dated 28.12.2015 on the above subject vide which the approval of the University has been sought on the recommendation of the Governing Body to the appointment of Dr.A.N. Jha,

Associate Professor in History as Vice-Principal of the College.

In this regard, your attention is invited to the provision of Ordinance XVIII, Clause 7(3) which is re-produced hereunder:-

‘...In case of casual vacancy in the Office of the Principal, the Vice-Principal, if any, shall until the appointment of Principal, act as the Principal. In case there is no Vice-Principal, the senior most teacher shall act as Principal. The teacher so as to act as Principal shall fulfill the minimum eligibility requirements for appointment as Principal of the College.

Such temporary arrangements shall be made ordinarily for a period not exceeding six months and shall require the prior approval of the University.’

Earlier in the year 2014, the College sought the approval of the University to appoint Vice-Principal of the College at the time when there was a regular Principal in the College. The University conveyed its approval for appointment of Dr. Parveen Garg as Vice-Principal of the College duly recommended by the Governing Body. Consequent upon the superannuation of Dr. S.K. Kundra on 31.12.2014, Dr. Parveen Garg was given the charge of Acting Principal w.e.f. 01.01.2015.

Subsequently, the Governing Body in September, 2015 decided not to recommend the extension of appointment of Dr. Parveen Garg to act as Principal of the College and recommended the name of senior most teacher i.e. Dr. Pankaj Bhan to act as Principal. Now again, the Governing Body of the College on its own without seeking prior approval of the University as mandated under clause 4(4) of Ordinance XVIII of the University, recommended the appointment of Dr.A.N. Jha as Vice-Principal of the College. It is evident that the Governing Body of the College is interpreting and using the rules suiting their vested interest. Further, the decision is not only arbitrary but also is in utter violation of the various provisions of Ordinance XVIII of the University.

In view of the above, the decision of the Government Body to appoint Dr.A.N. Jha as Vice-Principal of the College is not approved.

Further, you may kindly suggest the name of senior most teacher of the College to act as Principal of the College who fulfills the minimum eligibility requirement for appointment as Principal of the College, abiding the provisions of the University of Delhi.

Kindly take immediate action in the matter.

Yours faithfully,

Sd/-

Assistant Registrar (Colleges)”

3. Relying upon the contents of this letter, the learned Single Judge opined that except that the College had not followed Clause 4(4) of Ordinance XVIII of the University, there was nothing in the Communication which suggested that the appointment of Jha as Vice-Principal was illegal or that he was ineligible. The learned Single Judge accordingly allowed the writ petition with the rider that Jha would not become Vice-Principal of the College pursuant to the letter of the College dated 29th December, 2015, but his appointment would take effect from the date of approval by the University.

4. The University had opposed the writ petition and has filed the present appeal. Mr. Rupal submits that on 18.12.2014, the Governing Body of the College had recommended the name of Dr. Parveen Garg as Vice-Principal of the College and sought approval from the University, which was duly accorded. The appointment of Dr. Parveen Garg as Vice-Principal was done during the tenure of Dr. Kundra, who was the Principal of the College. Dr.Garg was initially appointed as Vice Principal for six months, but his

tenure was extended by further three months and hence he was to continue at least till 30.09.2015. When Dr. Kundra superannuated on 31.12.2014, Dr.Garg being the Vice-Principal became the Acting Principal. When the tenure of Dr. Garg ended as a Vice-Principal, the senior-most teacher, Dr.Pankaj Bhan, was recommended by the Governing Body for the appointment as Acting Principal w.e.f. 01.10.2015. The University approved the appointment of Dr. Bhan as Acting Principal w.e.f. 1.10.2015 for three months. This, Mr. Rupal, submits is in conformity with the Ordinance XVIII Clause 7(3). Mr. Rupal next contends that as per Ordinance XVIII Clause 7(3), the post of Vice-Principal could not have been filled-up till a regular Principal was appointed and, in the *interregnum*, the senior-most teacher was to fulfil the duties and responsibilities of the Principal. Mr. Rupal, while elaborating his arguments, further contends that the fear of the University is that once the Vice-Principal is appointed, then he would continue to discharge the duties of an Acting Principal and would not allow the appointment of a regular Principal and this would also displace the senior-most teacher, who is acting as a Principal.

5. In this backdrop, Mr. Rupal submits that the Principal should be appointed first and only thereafter the University could grant approval to the Vice-Principal recommended by the Governing Body. Additionally, it is submitted that the process for appointing the Principal has been stalled as fresh Governing Body is to be appointed. Names have been suggested to the Delhi Government, but the approval has not been granted by the Delhi Government.

6. Mr. Thakur, learned counsel appearing for Jha, submits that the submission and stand of the University is completely misplaced. There is absolutely no bar in Ordinance XVIII Clause 7 (3) in appointing a Vice-Principal, when the post of regular Principal is vacant. He submits that the Governing Body appointed Jha as the Vice-Principal by following the regular procedure for appointment as per the Ordinance XVIII Clause 4(4). He submits that four persons, including the senior-most teacher, namely, Dr.S.P.Tyagi, Dr. P.V.Khatri, Dr. Jagbir Singh and Dr. A.N.Jha, had applied for the post of Vice-Principal. The Selection Committee in their meeting dated 28th December, 2015 recommended Dr. A.N.Jha for appointment as Vice-Principal. This meeting was attended by fourteen members. Minutes of the meeting have been filed bearing signatures of each of the members. Mr. Thakur submits that post this meeting, the approval was sought, which is the normal procedure and not unknown to the University. Attention of this Court is drawn to a chart, which has also been filed by the University, which we extract below, to show that since the year 1975 upto 2015, 17 appointments had taken place and out of these, only one appointment was made with prior approval, while rest were approved post appointment: -

*Swami Shraddhanand College
University of Delhi,
Alipur, Delhi-110036*

List of Vice-Principals w.e.f. 1975 to till date

S.No.	Name	Period		Approval from D.U. Dated
		<i>From</i>	<i>To</i>	
1	Dr.J.L. Bhat	20.10.1975	18.01.2001	18.10.1975
2	Sh.O.K. Yadav	19.01.2001	18.01.2002	

3	<i>Dr.R.P.Singh</i>	<i>01.04.2002</i>	<i>31.03.2004</i>	<i>12.06.2002</i>
4	<i>Dr.Sukhdev</i>	<i>01.04.2003</i>		
5	<i>Dr.R.B.Sharma</i>	<i>01.04.2004</i>	<i>30.09.2004</i>	<i>16.06.2004</i>
6	<i>Dr.A.N.Roy</i>	<i>18.10.2004</i>	<i>30.09.2005</i>	
7	<i>Dr.P.K. Bhardwaj</i>	<i>01.10.2005</i>	<i>30.09.2006</i>	
8	<i>Dr.Anita Marwah</i>	<i>01.04.2007</i>	<i>31.03.2008</i>	<i>23.04.2007</i>
9	<i>Dr.S.C.Anand</i>	<i>05.04.2008</i>	<i>04.04.2009</i>	<i>16.09.2008</i>
10	<i>Dr.S.K. Dhingra</i>	<i>05.04.2009</i>	<i>04.04.2010</i>	<i>03.11.2009</i>
11	<i>Dr.R.N. Garg</i>	<i>20.04.2010</i>	<i>19.04.2011</i>	
12	<i>Dr.Rekha Dhingra</i>	<i>05.05.2011</i>	<i>13.08.2012</i>	
13	<i>Dr.D.K.Joshi</i>	<i>14.08.2012</i>	<i>31.07.2013</i>	
14	<i>Dr.Pankaj Bhan</i>	<i>01.08.2013</i>	<i>31.07.2013</i>	
15	<i>Dr.Parveen Garg</i>	<i>01.01.2015</i>	<i>30.06.2015</i>	<i>30.12.2014</i>
16	<i>Dr.Parveen Garg</i>	<i>01.07.2015</i>	<i>30.09.2015</i>	<i>01.07.2015</i>
17	<i>Dr.Pankaj Bhan (Acting-Principal)</i>	<i>01.10.2015</i>	<i>31.12.2015</i>	<i>10.12.2015</i>

7. Mr. Thakur further submits that there is nothing wrong with the proposition sought to be raised by Mr. Rupal, that in terms of Ordinance XVIII Clause 4(4), appointment of Vice-Principal is to be made with the prior approval of the University. However, the learned Single Judge has taken this into account and to some extent agreed with the stand of the University and it is for this reason, the learned Single Judge has held that Jha would not become Vice-Principal pursuant to letter of the College dated 29th December, 2015, but appointment would take effect, post approval.

8. We have heard learned counsel for the parties and carefully examined the order passed by the learned Single Judge. The two Ordinances of the University Calendar being Ordinance XVIII Clause 4(4) and XVIII Clause 7(3) have been referred to and relied upon. We thus deem it appropriate to extract the same as under: -

Ordinance XVIII Clause 7(3)

“In case of a casual vacancy in the office of the Principal, the Vice-Principal, if any, shall until the appointment of the Principal, act as the Principal. In case there is no Vice-Principal, the senior most teacher shall act as Principal. The teacher so to act as Principal shall fulfil the minimum eligibility requirements for appointment as Principal of the college.”

Ordinance XVIII Clause 4 (4)

“If the Governing Body wish to appoint a Vice-Principal, it should do so with the prior approval of the University. The appointment of the Vice-Principal shall be made from among the Readers in the College who fulfil the qualifications for the post of Principal. The appointment of such Vice-Principal shall require the approval of the University”

9. The first submission of Mr. Rupal, learned counsel appearing for the University, is that the post of Vice-Principal cannot be filled-up during the period when the post of Principal is lying vacant. Connected to this submission is that in case this post of Vice-Principal is filled-up, the Vice-Principal would not allow the filling-up of the post of Principal and he would take advantage of Ordinance XVIII Clause 7(3), as per which, in case of vacancy in the office of Principal, the Vice-Principal shall act till the appointment of regular Principal and at present, the senior-most teacher has already been appointed as Acting Principal and there should be no reason to displace him.

10. The second submission of Mr. Rupal is that the Ordinance XVIII Clause 4(4) has not been complied with as no prior approval was sought. Mr.

Thakur, learned counsel appearing for the respondent No.1, has submitted that there is no infirmity in the order passed by the learned Single Judge. Proper procedure was followed. Out of four eligible teachers, the Governing Body recommended Jha as Vice-Principal and the argument that he would not allow the appointment of a Principal is baseless, unfounded and fanciful. Nothing has been pointed out to show that there is a bar in appointing the Vice-Principal when the post of Principal is lying vacant.

11. As far as the first submission of Mr. Rupal is concerned, we find no force in the same. Ordinance XVIII Clause 7(3) has been relied upon. A reading of this Ordinance does not show nor could it be pointed out that there is any express bar or even an indirect prohibition that in the absence of a regular Principal, the post of Vice-Principal cannot be filled-up. As far as the second submission of Mr. Rupal pertaining to prior approval is concerned, we deem it appropriate to reproduce paragraphs No.4 to 6 of the order passed by the learned Single Judge. The same are reproduced as under:

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“4. A reading of the aforesaid letter does not show that the respondent no.1/University of Delhi has at all stated that petitioner was not fit for the job on account of lacking the eligibility criteria for being appointed as the Vice-Principal of the respondent no.2/college. Respondent no.1/University of Delhi only raise the issue of the prior approval of the University lacking to the appointment of the petitioner as the Vice-Principal of the respondent no.2/college and which is required as per Clause 4(4) of the Ordinance XVIII of the University. In the counter affidavit of the respondent no.1/University of Delhi to the writ petition, as also in an additional affidavit which has been filed by the respondent

no.1/University of Delhi dated 26.10.2016, the respondent no.1/University of Delhi has justified its action in declining the grant of approval by referring to the same Clause 4(4) of the Ordinance XVIII of the University. There are also certain aspects urged on behalf of the respondent no.1/University of Delhi by reference to its affidavits and its Letter dated 13.1.2016 that the appointment of the petitioner as Vice-Principal of the respondent no.2/college is malafide because if there is no Principal of a college, then, the Vice-Principal automatically becomes the Acting Principal of the college i.e malafides are imputed against the petitioner being appointed the Acting Principal of the respondent no.2/college by being appointed as Vice-Principal of the respondent no.2/college. In the additional affidavit, the respondent no.1/University of Delhi also states that petitioner has been acting illegally as the Acting Principal of the respondent no.2/college and has been wrongly denying access to the Governing Body members for holding of their meetings in the college. In sum and substance, the main defence of the respondent no.1/University of Delhi is that by exercise of appointment of the petitioner as the Vice-Principal, actually the petitioner is straightaway acting as the Acting Principal of the respondent no.2/college.

5(i). In my opinion unfortunately the respondent no.1/University of Delhi seems to have gone into a complete off-tangent in the present case because the only case/cause of action pleaded in the present writ petition, and the only relief claimed in the writ petition, is seeking the appointment of the petitioner to the post of Vice-Principal of the respondent no.2/college. There is no case of the petitioner wanting to act and making a prayer in this writ petition that the petitioner be declared as the Acting Principal of the respondent no.2/college. There is no challenge by the respondent no.1/University of Delhi to the lack of any eligibility criteria

in the petitioner for being appointed as the Vice-Principal of the respondent no.2/college. The only aspect which is urged is lack of prior approval and of the petitioner being appointed as the Vice-Principal by the respondent no.2/college vide its Letter dated 29.12.2015 without waiting for the prior approval of the respondent no.1/University of Delhi.

(ii) In this regard, it is relevant to note that no doubt the respondent no.2/college could not have issued its Letter dated 29.12.2015 appointing the petitioner as the Vice-Principal of the respondent no.2/college without the prior approval of the respondent no.1/University of Delhi as per Clause 4(4) of Ordinance XVIII of the respondent no.1/University of Delhi, and therefore, the effect would be that the Letter dated 29.12.2015 will not operate for appointing the petitioner as the Vice-Principal till approval is given by the respondent no.1/University of Delhi. However, the respondent no.1/University of Delhi is also completely unjustified in declining the approval on irrelevant considerations of the petitioner not being justified in acting as the Acting Principal of the respondent no.2/college. The issue in the present case is appointment of the petitioner as the Vice-Principal, and, if the petitioner thereafter is wrongly acting as the Acting Principal of the respondent no.2/college, then if the action of the respondent no.2/college in allowing the petitioner to officiate as the Acting Principal is incorrect, the respondent no.1/University of Delhi is always at liberty to take appropriate action in accordance with law and its applicable Ordinance, but, that cannot be a ground for this Court to hold that the respondent no.1/University of Delhi is entitled to refuse the grant of approval to the appointment of the petitioner as the Vice-Principal of the respondent no.2/college once there is no issue with respect to petitioner lacking in any eligibility criteria for being appointed as the

Vice-Principal of the respondent no.2/college and the fact that the Governing Body of respondent no.2/college as per the decision of the Selection Committee has decided to appoint the petitioner as the Vice-Principal.

6. Accordingly, this writ petition is allowed by observing that the petitioner did not become the Vice-Principal of the respondent no.2/college pursuant to the Letter of the respondent no.2/college dated 29.12.2015, but, respondent no.1/University of Delhi will now grant approval to the petitioner for the appointment as the Vice-Principal of the respondent no.2/college within two weeks from today. In case, respondent no.1/University of Delhi has any other grievance including of petitioner allegedly not being entitled to act as the Acting Principal of the respondent no.2/college, then, respondent no.1/University of Delhi in accordance with law as applicable and its rules and Ordinances can always take appropriate action, and which are not the issues before this Court in this writ petition.”

12. We may also note that Jha was recommended as Vice-Principal by the Governing Body in their meeting dated 28th December, 2015. Till date, the appointment of Jha as Vice-Principal has not been challenged by any of the three persons, who had been considered with him for appointment as Vice-Principal. None of the candidates or senior teachers have even protested that the person recommended did not meet the eligibility criteria or for any other reason was unsuitable for the said post. The learned Single Judge has also safeguarded the interest of the University and rightly held that the appointment of Jha would not be effective from 29th December, 2015, but would take effect after approval by the University. This would also act as a deterrent for Colleges, who do not seek prior approval of the University

before making the appointments. In fact, the University in our view should issue an express circular and also place the same on the website with a word of caution to all colleges to follow the process of prior approval, so that it is uniformly applied and there are no aberrations.

13. In our view, once Jha was recommended as Vice-Principal by the Governing Body, to say that the senior-most teacher would be deprived of acting as the Principal, is unacceptable. If this argument is to be accepted, then there would be no requirement for appointment of a Vice-Principal or even a Principal. Accordingly, we find no ground to entertain this appeal. The same is dismissed.

14. We cannot help but to take note that the regular Principal of this College superannuated on 31st December, 2014. Dr. Parveen Garg, who was the Vice-Principal of the College and whose term was to expire on 30th June, 2015 was given extension of three months w.e.f. 1st July, 2015 till 30th December, 2015 and who acted as the Principal. Post the expiry of the tenure of Dr. Parveen Garg, the senior-most teacher Mr. Pankaj Bhan was recommended by the Governing Body to act the Principal w.e.f. 1st October, 2015. His approval was granted by the University post his appointment, for three months.

15. The chronology given above highlights that regular Principal of this College superannuated way back on 31st December, 2014 and till date, there is no regular Principal. An endeavour was made by the predecessor of this Court to redeem the situation by directing the Delhi Government to approve a list of members of the Governing Body, funded by the University. We are informed that there is some progress. Since this is between the University

and the Delhi Government, and not directly connected with this writ petition, we see no reason to keep the present matter pending any further, but certainly hope that the matter would be resolved and the Governing Body would be formed within a period of one month from today, within which period, the order of the learned Single Judge shall also be complied with. This would be in the larger interest of Education System.

16. The appeal alongwith the pending application is disposed of in above terms.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 09, 2019

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