

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.151 of 2021 (O&M)

Date of Decision: August 17th, 2021

Dr. Rajiv Kumar

...Appellant

Versus

Panjab University, Chandigarh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Krishan Singh Dadwal, Advocate
for the applicant-appellant.

Mr. Subhash Ahuja, Advocate
for the respondents.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment dated 27.01.2021 passed by the learned Single Judge, whereby writ petition preferred by the appellant, challenging the corrigendum dated 05.08.2020 (Annexure P-11) issued by the Registrar and Returning Officer, Panjab University, Chandigarh (respondent No.2), whereby the name of the appellant stands excluded from the list of voters relating to the election of Eight Ordinary Fellows of the University to be elected by the Heads of affiliated Arts College from amongst the Principals and the subsequent decision in the minutes of meeting dated 13.08.2020 (Annexure P-13) of the Committee constituted by the Syndicate of the University rejecting the appeals/claims of the appellant against the said order of the Registrar and Returning Officer, stands dismissed.

2. It is the contention of learned counsel for the appellant that the name of the appellant was included in the list of voters in the category of Principals of the affiliated Arts Colleges for electing ordinary fellows of the

Senate of the Panjab University in the Final Register of Electors at Sr. No.39 on 03.08.2020 (Annexure P-9) in place of the earlier Principal of the College namely Gurdeep Kumar Sharma of Goswami Ganesh Dutt Sanatan Dharam College (GGDSD), Haryana, District Hoshiarpur, who retired as Principal on 30.06.2020 and, therefore, could not cast his vote, so, the name of the appellant was rightly included by the competent authority. The deletion/omission of the name of the appellant vide the impugned corrigendum dated 05.08.2020 (Annexure P-11) is unsustainable.

Counsel states that appellant was appointed as Principal of the College on 31.07.2020, which appointment was confirmed/approved by the University on 03.08.2020 along with one Dr. Vandana Lunyal, who was appointed as a Regular Director at Regional Institute of English, Sector-32, Chandigarh. Along with the name of the appellant, names of two other Heads of the Institution were included in the list of voters i.e. Rupinder Kaur, Principal, Guru Nanak Khalsa College, Abohar and Dr. Vandana Lunyal, Director, Regional Institute of English, Sector-32, Chandigarh vide amendments dated 03.08.2020 (Annexure P-9). The name of these two other Heads of the Institutions were not excluded from the list of voters while that of the appellant had been excluded vide corrigendum dated 05.08.2020 (Annexure P-11), which has led to the discrimination having been meted out to the appellant as he has been treated separately from the two other persons, who are similarly placed as the appellant. Counsel has further pressed into service an argument that the plea of discrimination has not been responded to by the respondent-University as to why the names of the two other similarly placed Heads of the Institutions being retained in the voter list while the name of the appellant has been

excluded from the list of voters, thus, violating Article 14 of the Constitution of India as the appellant has a right to be treated equally with the other similarly placed persons.

That apart, it is asserted by the counsel for the appellant that principles of natural justice have been violated as the issuance of the corrigendum dated 05.08.2020 (Annexure P-11) is without any notice or granting an opportunity to the appellant to clarify his position prior to exclusion of his name from the voters' list. His vested statutory right of casting a vote has been taken away arbitrarily and unilaterally, which is not sustainable in law. Rule of *audi alteram partem* having been violated, the action of the respondent-University cannot sustain and deserves to be set aside. The learned Single Judge has failed to appreciate the said aspect and has passed the impugned judgment without appreciating the true mandate of the principles of natural justice and the result on violation thereof.

3. On the other hand, learned counsel for the respondent-University has referred to the pleadings in CM No.1056-LPA of 2021 in the present LPA, where in para 7 of the said application, the appellant has put forth his assertion with regard to the discrimination being meted out to the appellant vis-a-vis the two other Heads of the Institutions. Referring to the reply, which has been filed by the respondent-University to the said paragraph, it has been submitted that Mrs. Rupinder Kaur was appointed as Principal of Guru Nanak College, Abohar on 05.06.2020, who joined her duties on 06.06.2020 and her appointment was approved by the University on 06.07.2020. As regards Dr. Vandana Lunyal, it has been mentioned that she was appointed as Director of Regional Institute of English, Sector-32, Chandigarh on 09.03.2017 and joined her duties on 09.03.2017. Her

appointment was approved by the University vide order dated 03.08.2020. He asserts that these two persons were appointed much prior to the last date for inclusion of the teachers on the rolls of affiliated colleges i.e. 07.07.2020 and for which the claims were to be submitted on or before that date. Since the appellant was not working as the Principal of the College but was working as Assistant Professor of the College, his name was included in the list at category of Assistant Professor at Sr. No.1164 of the Voters' list. At the relevant time, Shri Gurdeep Kumar Sharma was working as the Principal of the College, whose name appeared at Sr. No.39 of the voters' list of Principals. Appellant was appointed on 31.07.2020 as Principal of the College and his appointment was approved by the University on 03.08.2020, so on the last date when the claims could be made for inclusion of the names in the voters' list i.e. 07.07.2020, appellant was neither appointed nor working as the Principal of the College and, therefore, his name could not be included in the list of Heads of Institutions.

4. As regards violation of the principles of natural justice as also the aspect of there being violation of *audi alteram partem*, counsel for the respondent has pointed out that since the appellant was not eligible for inclusion of his name in the voter list of the Heads of Institutions, his name was wrongly included vide amendment dated 03.08.2020 (Annexure P-9). Because of an error, no right can be sought to have been conferred on him and, therefore, he was not required to be issued a show cause notice nor any explanation required to be sought from him, especially when there was no dispute with regard to the factual aspects. Exclusion of the name of the appellant from the list of voters for being not eligible to vote in the said category of Heads of Institutions of affiliated Arts Colleges through

corrigendum dated 05.08.2020 (Annexure P-11) cannot be said to be violative of the said principle.

Counsel for the University has also asserted that as per the schedule notified vide communication dated 11.03.2020 relating to the election of ordinary fellows, the date of election fixed was 20.09.2020. Preliminary register of electors was to be made available on 22.06.2020 and the last date for receipt of claims was 07.07.2020. Objections could be received by 22.07.2020 and the final register of electors was to be made available on 03.08.2020. He on this basis contends that the relevant date for receipt of claim for inclusion of the name as elector in the list was 07.07.2020. The name of the appellant could not be included in the list as on the said date admittedly appellant was neither appointed nor working as the Principal of the College.

5. Counsel for the appellant while referring to Appendix (F) (ii), which is attached with Chapter II (B) relating to the election of ordinary fellows (Annexure P-14) submits that with the postponement of the election because of the corona virus pandemic, the last date for receipt of the claims as well as the other schedule including the final register of electors to be made available stood postponed accordingly. Referring to the said Appendix, he contends that since the election is now scheduled for 18.08.2021, the last date for receipt of claims would be 75 days before the date of election by which date the appellant had all the requisite eligibility conditions as his appointment had taken place on 31.07.2020 and the approval thereof was on 03.08.2020 by the University. The name of the appellant, thus, was required to be included in the final register of electors, which has to be seen according to the Appendix and made available 50 days

before the date of election. The exclusion of the name of the appellant by way of corrigendum, therefore, is unsustainable and his name now deserves to be included in the list of voters.

6. Responding to this argument, learned counsel for the respondent has referred to the notice dated 16.08.2020 (Annexure MR-5) issued by the Registrar-cum-Returning Officer, which relates to clarification regarding Senate Elections 2020, which states in continuation of the office order dated 15.08.2020 passed by the Vice Chancellor postponing the elections, that only the date of voting/polling has been postponed and rest of the dates/schedule will remain the same. He contends that the said clarification was known to one and all and despite the said fact, this communication has neither been challenged nor put to question by the appellant. This makes it amply clear that the argument of the counsel for the appellant is fallacious and cannot be accepted.

7. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings as also the impugned judgment of the learned Single Judge.

8. The facts in brief, which are required to be noted here to understand the sequence of events in the context of which the impugned decisions of the respondent-University have to be tested as also the statutory provisions applicable, need to be mentioned.

The Registrar of the respondent-University notified the election of ordinary fellows vide communication dated 11.03.2020 giving therein the schedule to be followed starting from the preliminary register of electors to be made available on 22.06.2020 till the date of election i.e. 20.09.2020 followed by counting of votes on 22.09.2020. According to the said

schedule, information was sought with regard to the addition/deletion in the list already prepared by the stipulated date i.e. 03.04.2020. Electoral rolls were sought to be revised and for that purpose, claims were invited up to 07.07.2020. Last date for receipt of objections was fixed as 22.07.2020 and the final register of electors was to be made available on 03.08.2020. The further details related to the invitation of nomination to be issued as also the schedule for the persons, who were seeking elections followed by the date of election, which was fixed as 20.09.2020.

9. For the purpose of the present appeal, where the appellant is seeking inclusion of his name in the list of voters relating to election of eight fellows to be elected by the Heads of the affiliated Arts Colleges, the relevant section would be Section 13 (1) (e) of the Panjab University Act, 1947 (hereinafter referred to as the '1947 Act'), which reads as follows:-

“13. Ordinary Fellows.- (1) The number of Ordinary Fellows shall not exceed eighty five and of such number -

[(e) eight shall be elected by the Heads of affiliated Arts Colleges, from amongst themselves, among whom three shall be elected to represent the districts of Ferozepur, Hoshiarpur, Ludhiana and the tehsils of Muktsar, Moga and Malout in District Faridkot in the State of Punjab, one to represent the Union Territory of Chandigarh and the remaining four to represent any of the area mentioned above:]”

This clause (e) provides for eight ordinary fellows to be elected from the constituency consisting of affiliated Arts Colleges. Regulations have been framed in exercise of the powers under Sections 13, 14, 15 and 31 (2) (a) of the 1947 Act under which the election of ordinary fellows is regulated by Chapter II (B). Copy of the said Chapter II (B) has been

appended as Annexure P-14 with the appeal. Regulation 2 casts a responsibility on the Registrar to maintain a register of electors in respect of the various category of electors indicating the name, father's name, address and designation of each elector. Category (vi) in Regulation 2 is of the Principals of affiliated Arts Colleges and explanation lays down the eligibility conditions of categories (iv), (v), (vi) and (vii). The relevant regulation 2 along with explanation thereto is reproduced below:-

“CHAPTER II (B)

ELECTION OF ORDINARY FELLOWS

2. For purposes of election under Regulation 1, the Registrar shall maintain a Register of Electors in respect of each of the following categories of electors indicating the name, father's name, address and designation of each elector-

(i) Registered Graduates;

(ii) Professors on the staff of the Teaching Departments of the University;

(iii) Readers and Lecturers on the staff of the Teaching Departments of the University;

(iv) Principals of the Technical and Professional Colleges;

(v) Members of the staff of Technical and Professional Colleges;

(vi) Principals of affiliated Arts Colleges;

(vii) Professors, Senior Lecturers and Lecturers of affiliated Arts Colleges;

(viii) Members of various Faculties.

Explanation:- *Persons mentioned in categories (iv), (v), (vi) and (vii) shall be those whose appointment as such have been approved by the University and who, at the time of registration, are performing whole-time duties of such office”*

A perusal of the above would show that the names of the electors for each category had to be maintained by the Registrar in the

register of electors. As far as categories mentioned in (iv) (v) (vi) and (vii) explanation would govern the inclusion of their names.

For the purpose of the present appeal, category (vi) would be relevant, where the appellant is seeking inclusion of his name. For inclusion of a person's name as an elector in category (vi) i.e. Principals of affiliated Arts Colleges, the mandatory condition is that the said person should have not only been appointed on the post of Principal but should be performing whole time duties of the said post at the time of registration and the said appointment should have been approved by the University. Meaning thereby that at the time of registration, the person should be performing whole time duties of the office of the Principal of an affiliated Arts College after appointment. The appointment should have been approved by the University.

As per the schedule which was published, name of the appellant could not have been included in the said list as the last date for receipt of the claims was 07.07.2020. By that time, the appellant had admittedly not been appointed as the Principal of the College as his date of appointment is 31.07.2020. Although the approval of the appointment of the appellant is 03.08.2020, which is the date fixed for final register of electors to be made available but since on the date of receipt of the claims i.e. 07.07.2020, the appellant was not appointed to the post of Principal, he would not be eligible for inclusion of his name in the list of electors, which is the mandate of the explanation to Regulation 2 of Chapter II (B) reproduced above.

10. An argument has been raised by the counsel for the appellant that since the elections have been postponed from 22.09.2020 vide order dated 15.08.2020 (Annexure MR-4) passed by the Vice Chancellor,

Panjab University, Chandigarh and the date now fixed for elections is 18.08.2021, the schedule also will automatically be postponed and for this, reliance has been placed by the counsel for the appellant on Appendix F (ii), according to which the last date of receipt of claims would be 75 days before the date of election and final register of electors should be made available 50 days before the date of election. He accordingly has asserted that now at the relevant date i.e. 75 days from the date of elections, the appellant would be eligible for inclusion of his name in the elector list.

11. This contention of learned counsel for the appellant cannot be accepted in the light of the clarification dated 16.08.2020 (Annexure MR-5) issued by the Registrar-cum-Returning Officer, Panjab University, Chandigarh, which reads as follows:-

“In continuation of the office order no.910/Election dated 15/08/2020, it is for the information of all concerned that only the date of voting/ polling has been postponed and rest of the dates/ schedule will remain the same.”

A perusal of the above would leave no manner of doubt that except for the postponement of the date of voting/polling, rest of the dates/schedule remained the same. The argument, therefore, of learned counsel for the appellant is without any basis and cannot be accepted, especially when this clarification dated 16.08.2020 has not been questioned or challenged by the appellant.

12. Another argument, which has been raised by the counsel for the appellant, is that the appellant has been discriminated vis-a-vis two other similarly placed Principal/Director of the Institutions, whose names were also included along with the appellant as per amendment in the final register issued on 03.08.2020 (Annexure P-9). To be precise, not only the name of

the appellant was included in the final register of electors for the election of eight ordinary fellows by the Heads of the affiliated Arts Colleges from amongst themselves but names of two other persons namely Rupinder Kaur, Principal, Guru Nanak Khalsa College, Abohar and Vandana Lunyal, Director, Regional Institute of English, Sector-32, Chandigarh, were included in the list of voters, however, the name of the appellant has been excluded from the list of voters vide corrigendum dated 05.08.2020 (Annexure P-11) while no such exclusion has been made qua Rupinder Kaur and Vandana Lunyal. An explanation has been given by the Panjab University in para 7 of its reply to CM No.1056-LPA of 2021, which reads as follows:-

“7. In reply to this para it is submitted that the last date for submission of objections to wrong inclusion of names was 22.7.2020. The petitioner-applicant never raised any objection to the Voter Lists. Moreover, Mrs. Rupinder Kaur was appointed as Principal of Guru Nanak College, Abohar on 05.06.2020 who joined her duty there on 6.6.2020 and her appointment was approved by the University vide order dated 6.7.2020 ANNEXURE : MR-1. Similarly, Vandana Lunyal, was appointed as Principal/ Director of Regional Institute of English, Sector : 32, Chandigarh on 9.3.2017 who joined her duties on 9.3.2017 and her appointment was approved by the University vide order dated 3.8.2020, ANNEXURE : MR-2. By way of present Misc. Application he cannot make out a new case. He has to plead his case within the confines of his pleadings in writ petition and the un rebutted Written Statement filed by respondent-University.”

A perusal of the above would show that both these persons were appointed as Principals prior to the last date of receipt of claims for inclusion of their names in the electoral register i.e. 07.07.2020.

Mrs. Rupinder Kaur was appointed as Principal of the Guru Nanak Khalsa College, Abohar on 05.06.2020 and she joined as such on 06.06.2020. Her appointment was approved by the University on 06.07.2020. Dr. Vandana Lunyal was appointed as Director of Regional Institute of English, Sector-32, Chandigarh on 09.03.2017, who joined her duties on the same date, although her appointment was approved by the University vide order dated 03.08.2020. It is, thus, apparent that both these persons were appointed as Principals and were performing their duties prior to their registration. The approval of their appointment by the University was before/on the date fixed for making available the final register of electors by the University. On the other hand, appellant as has been stated above, was appointed as Principal on 31.07.2020, which is later than the last date for putting forth the claim for inclusion of the name in the electoral roll i.e. 07.07.2020. Although his appointment has been approved by the University on 03.08.2020, on the same date as Dr. Vandana Lunyal, the plea of discrimination, thus, cannot be pressed into service by the appellant as his case is different from her as well as Mrs. Rupinder Kaur. In fact, the appellant was not eligible for inclusion of his name in the list of electoral rolls in the category of electors representing the Principals of the affiliated Arts Colleges.

13. As regards the assertion of the counsel for the appellant that the principle of *audi alteram partem* has not been complied with, rather the principles of natural justice have been violated, suffice it to say that the inclusion of the name of the appellant in the final register of electors for election of eight ordinary fellows by the Heads of affiliated Arts Colleges from amongst themselves vide amendment dated 03.08.2020

(Annexure P-9) was apparently a mistake, which had occurred which was corrected by way of corrigendum dated 05.08.2020 (Annexure P-11), excluding the name of the appellant from the list of voters being not eligible. This act of the respondent-University cannot be faulted with.

14. As has been held above by us, the appellant was not eligible for inclusion of his name in the list of electors and if an inadvertent error creeps in, the same can be rectified and in such cases, strict rule of *audi alteram partem* is not mandated to be followed as in the considered view of this Court, no prejudice has been caused to the appellant. The learned Single Judge has rightly placed reliance on a three Judge Bench judgment of the Hon'ble Supreme Court in ***State of U.P. Versus Sudhir Kumar Singh and others, 2020 SCC Online Supreme Court 847***, where it has been held that when there are undisputed facts on which the Court comes to a conclusion that it would be a futile exercise to relegate the parties to a fresh decision, the said course needs not be resorted to. No prejudice would be caused to such a party as ultimately it is the Court which is the adjudicator and if the Court on its own comes to a conclusion that no actual prejudice has been caused to the party, mere formality of referring back the matter to the authority for fresh decision need not be resorted to.

15. None of the pleas and the grounds pressed into service by the appellant carry any weight and, thus, are rejected.

16. In view of the above, the judgment passed by the learned Single Judge being based upon proper appreciation of the facts as well as the provisions of the 1947 Act and the relevant applicable regulations framed thereunder do not call for any interference.

17. The appeal being devoid of merit, therefore, stands dismissed.

18. In the light of the dismissal of the appeal, CM Nos.373 and 1056-LPA of 2021 are also dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

August 17th, 2021
Puneet

**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: Yes