

LPA No.659 of 2021 (O&M)

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

(PROCEEDINGS THROUGH VIDEO CONFERENCING)

LPA No.659 of 2021 (O&M)
Date of Decision: 09.08.2021

Ashok Kumar

...Appellant

Versus

Ch. Bansi Lal University, Bhiwani & others

...Respondents

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

Present: Mr. Saurabh Dalal, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

CM-1632-LPA-2021

Exemption is granted from filing certified copy of the impugned judgment dated 12.02.2021 and copy of the same is taken on record, subject to all just exceptions.

Application stands disposed of.

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In this intra Court appeal, challenge has been posed to the order dated 12.02.2021 passed by the learned Single Judge dismissing the writ petition filed by the appellant challenging the letter dated 08.02.2019 (Annexure P-4) accepting the nomination papers of Dr. Neeraj Kumar Garg – respondent No.5 for election of Teaching Member of Academic Council; decision dated 12.02.2019 (Annexure P-5) taken by the Chaudhary Bansi Lal University, Bhiwani – respondent No.1 (hereinafter referred to as

'University') rejecting the representation of the appellant challenging the nomination of respondent No.5 and notification dated 28.02.2019 (Annexure P-7) issued by respondent No.1 – University declaring respondent No.5 as elected member of the Academic Council of respondent No.1 – University as having become infructuous in the light of the fact that the appellant had seized to be a faculty of Janta Vidya Mandir Ganpat Rai Rasiwasia College, Charkhi Dadri (hereinafter referred to as 'JVMGRR College, Charkhi Dadri') as he has been appointed and is presently working with the State Government as an Assistant Professor and his one year lien has come to an end on 23.12.2020.

2. It is the contention of the learned counsel for the appellant that although the factual aspects as mentioned in the impugned order dated 12.02.2021 passed by the learned Single Judge cannot be disputed, however, he asserts that the issue which has been raised by the appellant with regard to the eligibility of Dr. Neeraj Kumar Garg – respondent No.5, who is working as a Librarian, being an Academic Non-vocational Member, cannot be allowed to participate in the election process for the post of Teaching Member of Academic Council as per Clause 14 (II) (iv) of the Chaudhary Bansi Lal University Act, 2014, which permits only members of regular teaching faculty to participate in the election for the post of Teaching Member of Academic Council. The said issue having not been decided by the learned Single Judge would lead to perpetuating the illegality subsequently as well. He, thus, contends that the impugned order cannot sustain and deserves to be set aside and the case remanded to the learned Single Judge for fresh decision on merits.

3. Having considered the submissions made by the learned counsel for the appellant, we do not find ourselves in agreement with him.

4. The undisputed facts are that the appellant was teaching as an Assistant Professor of Geography at JVMGRR College, Charkhi Dadri, when the nominations were called for election as Teaching Member of Academic Council. Apart from the appellant, Dr. Neeraj Kumar Gupta – respondent No.5 also submitted his nomination papers for election as Teaching Member of Academic Council from constituency of non-governmental colleges (other than colleges of education). Both of them were declared eligible vide letter dated 08.02.2019 (Annexure P-4) by the Registrar-cum-Returning Officer, Chaudhary Bansi Lal University, Bhiwani. Appellant submitted a representation challenging the acceptance of nomination of respondent No.5. The Committee constituted of Registrar-cum-Returning Officer, Chaudhary Bansi Lal University, Bhiwani and two other members considered the said representation and filed the same.

After the election, Dr. Neeraj Kumar Gupta – respondent No.5 was declared as elected member from the constituency of non-governmental colleges (other than colleges of education) and a notification to that effect was published on 28.02.2019 (Annexure P-7) by the Registrar-cum-Returning Officer. It would not be out of way to mention here that the term of office on the Academic Council was fixed as two years i.e. from 28.02.2019 to 27.02.2021. This had led to the filing of the writ petition by the appellant challenging the aforementioned decisions/notification dated 08.02.2019 (Annexure P-4), dated 12.02.2019 (Annexure P-5) and 28.02.2019 (Annexure P-7).

5. While serving JVMGRR College, Charkhi Dadri, appellant applied for the post of Assistant Professor in Government of Haryana through proper channel, on which post he was selected. On his selection, appellant informed through his application dated 20.12.2019 to the Principal of the College about the said factual aspect and sought approval for lien of one year from the date of his joining the Government service. The said request of the appellant was considered by the Governing Body of the JVMGRR College, Charkhi Dadri, which was accepted and a communication dated 04.02.2020 was sent to him that extraordinary leave without pay for one year along with lien against the post of Assistant Professor of Geography has been sanctioned w.e.f. 24.12.2019 to 23.12.2020.

These facts having been admitted by the appellant's counsel before the learned Single Judge, learned Single Judge proceeded to pass the order dated 12.02.2021, operative part whereof reads as follows:-

“Learned counsel for the petitioner is unable to deny that the petitioner’s lien has indeed come to an end on 23.12.2020 and he no longer remains on the faculty of JVMGRR College, Charkhi Dadri and is presently working with the State Government, though his appeal against order dated 04.02.2020 is pending with respondent no.3.

In this view of the matter, present writ petition is indeed rendered infructuous and is disposed of accordingly.

The question raised for consideration in this writ petition, needless to say, is kept open, to be adjudicated upon in appropriate proceedings.”

6. The above observation of the learned Single Judge cannot be said to be, in any manner, not based on facts and ground realities as it existed. The relief which the appellant is now craving in the present appeal and has been argued by the learned counsel for the appellant is to seek a declaration to the effect that the nomination of respondent No.5 could not have been accepted for election to the Teaching Member of Academic Council against the seat meant for a constituency of non-governmental colleges being academic non-vocational member of JVMGRR College, Charkhi Dadri i.e. Librarian, which, in our opinion, would at the best be an academic exercise, where no effective relief can be granted to the appellant by this Court. This we say on two counts, firstly as has been observed by the learned Single Judge, the appellant, is no longer a member of the faculty of JVMGRR College, Charkhi Dadri, as he is presently working with the State Government as an Assistant Professor especially when the lien has come to an end on 23.12.2020 and secondly, in the light of the fact that as per the notification dated 28.02.2019 (Annexure P-7), term of office on the academic council was for a period of two years which has come to an end on 27.02.2021. Obviously, appellant now being an employee of the Government of Haryana, even if he desires to be a member of the Academic Council cannot be one against the constituency which relates to non-governmental colleges (other than colleges of education) apart from the fact that he is no more a faculty member of JVMGRR College, Charkhi Dadri. It may be added here that the learned Single Judge has left the question, as raised by the appellant, with regard to the entitlement of a academic non-vocational member to participate in election process of the post of Teaching

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Member of the Academic Council open to be adjudicated upon in appropriate proceedings.

7. In view of the above, this appeal stands dismissed.

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In the light of the dismissal of the main appeal, no orders are required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(ASHOK KUMAR VERMA)
JUDGE**

09.08.2021

Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No