

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

CWP-13384-2020 (O&M)
Date of decision : 27.01.2021

Dr. Rajiv Kumar

...Petitioner

Versus

Panjab University, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Krishan Singh Dadwal, Advocate for the petitioner.

Mr. Subhash Ahuja, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Through this petition, the petitioner calls in question the correctness of Corrigendum dated 05.08.2020 deleting his name from the electoral roll prepared for electing ordinary fellows of the Senate of the Panjab University under category of the Principals of the Affiliated Arts College under Regulation 2(vii) of the Regulations framed under Sections 13, 14, 15 and 31(2)(a) of the Panjab University Act, 1947 (hereinafter to be referred as “the 1947 Act”). The petitioner has also challenged the correctness of the order dismissing his representation/appeal by the Committee.

Dispute in this writ petition is whether the petitioner is entitled to vote in the category of the Principals of the Affiliated Arts Colleges for electing ordinary fellows of the Senate of the Panjab University or not?

The Registrar of the respondent-University issued a communication dated 11.03.2020 notifying that election of ordinary fellows is required to be held and for that purpose, a register of the Electors has to be prepared. The information was sought with regard to the additions/deletions in the list already prepared by the stipulated date i.e. 03.04.2020. In other words, revision of electoral roll was proposed. In the aforesaid communication, it was notified that the preliminary register of electors would be made available on 22.06.2020 and the last date for receipt of claims for inclusion as electors would be 07.07.2020. The schedule as notified in the aforesaid communication is extracted as under:-

1	Preliminary Register of Electors to be made available	90 days before the date of election	22.06.2020 (Monday)
2	Last date for receipt of claims	75 days before the date of election.	07.07.2020 (Tuesday)
3	Last date for receipt of objections	60 days before the date of election	22.07.2020 (Wednesday)
4	Last date for receipt of intimation of change of address.	60 days before the date of election	22.07.2020 (Wednesday)
5	Final Register of electors to be made available	50 days before the date of election	03.08.2020 (Monday) (01.08.2020 & 02.08.2020 being Saturday & Sunday)
6	Notice inviting nomination to be issued.	49 days before the date of election	03.08.2020 (Monday) (02.08.2020 being Sunday)
7	Last date for receipt of nomination forms.	Not later than 3 o' clock of the 40 th day before the date of election.	11.08.2020 (Tuesday)
8	Date of publication of the list of candidates seeking election.	38 days before the date of election	13.08.2020 (Thursday)
9	Date of scrutiny of nomination papers and publication of the list of candidates whose papers have been found valid.	35 days before the date of election	17.08.2020 (Monday) (16.08.2020 being Sunday)
10	Last date for receipt of objections to the nomination papers.	30 days before the date of election	21.08.2020 (Friday)

11	Last date for withdrawal of candidature.	Not later than 3 o' clock of the 25 th day before the date of election.	26.08.2020 (Wednesday)
12	Date of election		20.09.2020 (Sunday)
	Counting of votes		22.09.2020 (Tuesday)

At this stage, it would be appropriate to note that Section 11 of the 1947 Act, provide for a Senate consisting of the Chancellor, Vice-Chancellor, Ex-Officio Members and ordinary fellows. As per Section 12, the maximum number of Ex-Officio fellows can be 12, whereas as per Section 13, ordinary fellows can be 85 maximum. At this stage, it would be apt to extract Section 13 of the 1947 Act:-

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

(a) Fifteen shall be elected by the Registered Graduates from amongst themselves, among whom -

[(i) two 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, and one to represent the Union Territory of Chandigarh; and

(ii) the remaining twelve shall be elected from any area including any of the areas mentioned in sub-clause (i)]

(b) two shall be elected by Professors on the staff of the Teaching Departments of the University from amongst themselves, provided that one member each from the Arts and Science Departments shall be elected.

(c) two shall be elected by Readers and Lecturers on the staff of the Teaching Departments of the University from amongst themselves provided that one member each from the Arts and Science Departments shall be elected.

[(d) three shall be elected by the Principals of Technical and Professional Colleges from amongst themselves among whom one 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 remaining one to represent any of the areas mentioned above and three shall be elected by the staff of such colleges from amongst themselves, among whom one shall be elected to represent the districts of Ferozepur, Hoshiarpur and Ludhiana in the State of Punjab, one to represent the Union Territory of Chandigarh and the remaining one to represent any of the areas mentioned above;]

[(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;]

[(f) eight shall be elected by the Professors, Senior Lecturers and Lecturers 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 areas mentioned above;]

(g) omitted by Government of India Notification dated 6.12.1969.

(h) six shall be elected by the various Faculties of the University;

[(i) two shall be elected by the members of the Punjab Legislative Assembly from amongst themselves provided that the member elected is a holder of any University Degree; and]

(j) The remainder shall be nominated by the Chancellor.

[Explanation.- A person seeking election to represent a particular State or Union Territory, under Sub-clause (i) of clause (a), clause (d), clause (e) or clause (f) shall be a person whose address according to the entry in the appropriate register of electors published finally by the University after the publication in the Gazette of India of the notification of the Government of India in the Ministry of Home Affairs No. 17/79/66-SR. dated the 9th July, 1969, is at a place in that State or Union Territory.]

(2) The election of any Ordinary Fellow shall be subject to the approval of the Chancellor.

(3) The Ordinary Fellow shall, save as hereinafter provided, hold office for four years.

(4) An Ordinary Fellow who has vacated his office may, subject to the provisions of this Act be again elected or nominated as an Ordinary Fellow.

(5) No person elected in his capacity as a member of any of the categories enumerated in Sub-Section (1) shall continue to hold his office after he has ceased to possess the requisite qualification.

[(6) If in the case of any election a dispute arises whether any person is or is not a Principal, Professor, Reader, Senior Lecturer, or Head of a College within the meaning of clauses (b), (c), (d), (e) and (f) of Sub-Section (1) the question shall be determined by the Vice-Chancellor whose decision shall be final.]”

On careful perusal thereof, it is apparent that ordinary fellows are required to be elected from various constituencies like registered Graduates, Professors of Teaching Department of the University, Readers and Lecturers of the Teaching Departments, Principal of Technical and Professional Colleges etc. This case pertains to Clauses E and F of Section 13(1). Clause E provides that 8 ordinary fellows shall be elected from the constituency consisting of Heads of Affiliated Arts Colleges whereas Clause F provide for election of 8 ordinary fellows from the Professors, Senior Lecturers and Lecturers of Affiliated Arts Colleges.

The petitioner, in this writ petition, claims that he is entitled to vote in the category covered by Clause E whereas it is the stand of the respondents that he is entitled to cast his vote in category falling in Clause F.

In exercise of powers under Sections 13, 14, 15 and 31(2)(a) of the 1947 Act, the Regulations have been framed and the election of ordinary fellows is regulated by Chapter II(B) "Election of Ordinary Fellows". Regulation 2 provide that the Registrar shall maintain a register of Electors in respect of each of the categories, as is provided under Section 13 which reads as under:-

"2. For purposes of election under Regulation I, 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”

At this stage, it would be appropriate to extract Regulation 4, which reads as under:-

“4. For the election of Ordinary Fellows by the various categories mentioned in Section 13, Sub-section (1) Clauses (b), (c), (d), (e), (f) and (h) of the Act, the Registrar shall issue to the institutions or electors of the category concerned, as the case may be, a notice in writing (Appendix B) setting forth the directions in this respect, if any, given by the Syndicate and intimating -

i) date of election;

ii) the number of vacancies to be filled; and

(iii) asking for relevant information in regard to the electors.

A copy of the Notice shall also be affixed on the Notice Board in the Registrar's office.”

It is not in dispute that the petitioner came to be selected and appointed as the Principal of Goswami Ganesh Dutta Sanatam Dharam

College (GGDSD), Haryana, District Hoshiarpur on 31.07.2020 which was approved by the University on 03.08.2020.

There is no dispute that the name of the petitioner figures in the list of Electors under category VII of Regulation 2. The name of the petitioner was included in the register of Electors in category provided under Regulation 2(vi). Subsequently, by the Corrigendum issued, the name of the petitioner was deleted from the category of Electors representing the Principals of the Affiliated Arts Colleges on the ground that the petitioner was not the Principal till last day i.e. 03.04.2020. It is the case of the respondents that even the petitioner was not the Principal of the College even on the last date for receipt of claims i.e. 07.07.2020.

On the other hand, it is the case of the petitioner that since the petitioner has been appointed as Principal on 31.07.2020, therefore, the petitioner is entitled to cast vote from the constituency of the Principals.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel for the petitioner has contended that the action of the respondents is discriminatory as the name of various Assistant Professors have been included in electoral rolls after 07.07.2020. Hence, he submits that the petitioner is being discriminated. He further submits that the recruitment notice for the post of the Principal of GGDSD College was issued on 20.03.2020. However, there was delay in nominating VC nominee and experts resulting in delay. Hence, he submits that the petitioner would be deemed to be Principal from the date the previous incumbent retired i.e. on 30.06.2020. He further submits that the name of the petitioner has been

deleted by issuing Corrigendum without granting opportunity of hearing and, therefore, the order is in violation of principles of natural justice. He also submitted that the Committee had no power to decide the appeal filed by him and, therefore, the Vice Chancellor who is the competent authority under Section 13(6), be directed to re-decide the appeal.

Per Contra, learned counsel for the respondents has submitted that the petitioner was not appointed before the last date fixed for making additions and deletions i.e. 03.04.2020, therefore, the petitioner is not entitled. He further submitted that in any case, the last date for receipt of claims was 07.07.2020. Even on that date, the petitioner was not holding the post of Principal. He further contended that there is no discrimination as the names of only those Assistant Professors in the constituency covered by the Regulation 2(vii) have been included who were eligible and were undisputedly Assistant Professors before 03.04.2020 but their names could not included in the Electoral Rolls in absence of their record which after having been made available, necessary additions were made in the Electoral Rolls. He further submitted that there is no requirement of opportunity of hearing as the name of the petitioner was included by mistake, which was corrected. He further submitted the representation of the petitioner has already been considered by the Committee constituted for this purpose and, therefore, the principles of natural justice stand complied with. He further submitted that there is no appeal provided to the Vice Chancellors as the appeal under Sub-Section 6 of Section 13 is confined to the disputes enlisted therein. He submitted that therefore, the Committee has correctly considered the appeal as a representation and decided the same.

After having heard learned counsel for the parties, this Court now proceeds to adjudicate upon the respective contentions of the learned counsels. It may be noted here that there is no dispute that the petitioner was selected on 31.07.2020 and his appointment came to be approved on 03.08.2020. There is also no dispute about the fact that vide communication dated 11.03.2020, the Registrar of the University had circulated a communication indicating that the elections will take place on 20.09.2020 and a register of the Electors has to be prepared. The claims/suggestions were invited for additions and deletions. As per the communication, the stipulated date was 03.04.2020. The relevant part of the communication dated 11.03.2020 is extracted as under:-

“The election will take place on 20.09.2020.

A register of the Electors has to be prepared. I am sending herewith a copy of the list available with this office as per latest Teacher's Return with the request to forward the same to Sh. Ram Parkash, Assistant Registrar (Election Cell) after making necessary additions/deletions in the list by the stipulated date, i.e. 30.04.2020 and at least fifteen days before the final list of voters is made public.

Explanation: “Principals, Professors, Senior Lecturers and Lecturers of the Affiliated Arts Colleges shall be those whose appointments as such have been approved by the University and who at the time of registration, are performing whole time duties of such office.”

Thus, the stipulated date for considering the claim for inclusion in the register of the Electors was notified as 03.04.2020. The writ petitioner was not the Principal at that time. The petitioner was not even the Principal on last date of receipt of claims i.e. 07.07.2020. Keeping in view the

aforesaid facts, there is hardly any doubt that the petitioner is not eligible to be amongst the Electors in the constituency of the Principals of the Affiliated Arts Colleges of the University.

Next argument of learned counsel for the petitioner that the order is discriminatory has been explained by the University in para 18 of the written statement. It has been pointed out that the names of Assistant Professors quoted by the petitioner were on the rolls of Assistant Professors on 07.07.2020 but their names were not included in the Elector Rolls in absence of their record. Hence, the claim of the petitioner with regard to discrimination is without substance.

Now, next argument of learned counsel is with respect to violation of principles of natural justice. It may be noted here that the name of the petitioner already exists in the Electoral Rolls for the constituency under Clause VII. The Electoral Roll is prepared for casting votes in each of the category specified. Still further, the allegation of violation of principles of natural justice is to be applied in the facts of the case. Such principle cannot be applied in each and every case to set at naught whatever inevitable. In any case, the petitioner did file a representation which has been decided by the Committee. Still further, this Court has also given an opportunity of hearing to the counsel for the petitioner.

Audi Alteram Partem is a Rule of natural justice. The Rule of natural justice is a tool to rectify injustice, if any, caused to a party. The Courts before setting aside an order, directing re-decision, are required to examine whether a party complaining, has suffered prejudice or not. Natural justice is not an empty formality. The ultimate aim of the Courts is to do

justice between the parties. Where a party does not dispute the facts against it, then the Court would not insist on futile exercise of Rule of Audi Alteram Partem. In such circumstances, the Court is required to analyze the facts of the case and assess the likelihood of the prejudice. The Courts are required to apply Rules of natural justice to remedy injustice. The breach of Audi Alteram Partem Rule cannot by itself, without more, lead to the conclusion that prejudice has been caused. These are the guidelines laid down by the Supreme Court in a 3 Judges Bench Judgment in **State of U.P. Vs. Sudhir Kumar Singh and others, 2020 SCC Online Supreme Court 847.**

Further, it is also well settled that on admitted undisputable facts, only one conclusion is possible, then the Writ Court may not compel observance of natural justice because the Court do not issue futile writ. Reference in this regard can be made to **S.L. Kapoor Vs. Jagmohan, (1980) 4 SCC 379.** Further, the result of non-observance of principle of natural justice has undergone a change, as noticed in **P.D. Aggarwal Vs. State Bank of India and others, (2006) 8 SCC 776.** The Court held that where there was mere technical infringement of the principle, the Court would not apply same in a vacuum. Rather the Court held that it is no unruly horse. It cannot be put in a straightjacket formula.

Next argument of learned counsel is with regard to maintainability of the appeal before the Principal. On careful reading of Section 13(6), it is apparent that when a dispute arises whether a person is or is not a Principal, Professor, Reader, Senior Lecturer or Head of College only then the question shall be required to be determined by the Vice Chancellor in an appeal. In the present case, the dispute is not whether the

petitioner is the Principal or not. In the present case, the dispute is whether the petitioner on a particular date was the Principal of the College or not, therefore, his case does not fall within the scope of Sub-Section 6.

Keeping in view the aforesaid facts, there is no ground to issue the writ as prayed for. Hence, the writ is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.01.2021

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No