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

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Reserved on: 12th December, 2023

Pronounced on: 12th March, 2024

+ **W.P.(C) 208/2023**

SHREEKANT GUPTA

..... Petitioner

Through: **Mr. Shikhar Khare and Ms. Bhavini
Chaurasia, Advocates.**

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: **Mr. Mohinder J. S. Rupal, Mr. Hardik
Rupal and Ms. Sachpreet Kaur,
Advocates for R-1 and R-2
Mr. B. K. Singh and Ms. Niharika,
Advocates for R-3**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A. Issue an appropriate writ, order or direction in the nature of certiorari or such other appropriate writ, order or direction to call for the relevant records and quash and set aside the

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BHAMOO VERMA
Signing Date: 19.03.2024
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Resolution No. E.C. (1260) dated 25.03.2022 passed by Executive Council of Respondent No.1 in so far as it permits the Respondent No.2 to continue as Head of Department of the Economics Department;

B. Issue an appropriate writ, order or direction in the nature of mandamus or such other appropriate writ, order or direction directing the Respondent No.1 to take all steps to appoint the Petitioner as Head of Department of the Economics Department;

C. Pass any such order(s) as this Hon'ble Court deems fit in the interest of justice..."

FACTUAL HISTORY

2. The petitioner had joined the respondent no. 1, i.e., University of Delhi as a Reader in the year 1997.
3. Respondent no. 1 is the University of Delhi (hereinafter "DU"), which has been established under the Delhi University Act, 1992 (hereinafter "the Act"). Respondent no. 2, Professor Surender Kumar, was appointed as Head of the Department (hereinafter "HOD") on 17th December, 2020. Respondent no. 3 is the University Grants Commission (hereinafter "UGC") which is the nodal agency responsible for formulation and implementation of the UGC Regulations, 2018.
4. On 1st July, 2015, the petitioner was promoted to the rank of Professor w.e.f. 16th October 2003 in the Department of Economics. The petitioner was granted all the consequential benefits except *inter se* seniority.



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5. The genesis of the dispute in the instant matter is that the petitioner has alleged that DU purportedly failed to recognize the *inter se* seniority of the petitioner. In this regard, the petitioner met the Vice Chancellor of DU on 17th October, 2017 and thereafter, made several representations stating that his seniority must be reckoned as per the UGC Regulations, moreover, he was eligible to be appointed as the HOD.

6. Aggrieved by the inaction on behalf of DU, the petitioner filed a writ petition bearing no. W.P (C) 13219/2018 before the Coordinate Bench of this Court, during the pendency of aforesaid writ petition, DU appointed the respondent no. 2 herein as the HOD.

7. The aforesaid action of DU was challenged by the petitioner before this Court in another writ petition bearing no. W.P (C) 1008/2021.

8. Meanwhile, the UGC vide notification dated 18th July, 2018 recommended various amendments in the existing regulations under the head of '*UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018*' ("hereinafter "Regulations 2018"). The subject matter of the present petition is concerned with Clause 16.3 of the above said amended regulations.

9. The above said writ petitions were dismissed vide judgment dated 15th March, 2021 and aggrieved by the same, the petitioner filed an appeal vide LPA bearing nos. 158/2021 and 159/2021 before the Division Bench of this Court.



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10. During the pendency of the aforementioned appeals, the Executive Council of DU passed a resolution bearing no. EC (1260) dated 25th March, 2022, whereby, Resolution no. 71 and thereunder Regulation 16.3 of the UGC Regulations, 2018 (hereinafter “the Resolution”) was adopted which stated that seniority lists are to be revised. By way of the said resolution, under sub clause (b) of Clause 16.3, it was also decided that the existing HOD shall continue till his tenure comes to an end.

11. Since the issue in the writ petition bearing no. W.P (C) 13219/2018 stood answered in terms of the above said Resolution and the only grievance of the petitioner now pertained to his appointment to the post of HOD, the petitioner withdrew both the appeals with liberty to file a fresh writ petition challenging the Resolution.

12. Subsequently, the petitioner, by way of an RTI application dated 24th May, 2022 obtained the revised seniority list and as per the said list, the petitioner stood 3rd in the revised seniority list and the present HOD, i.e., the respondent no. 2 herein, stood 11th in the said revised seniority list.

13. In light of the above stated revised seniority list, the petitioner made a representation to DU on 6th July, 2022 challenging the Resolution and further sought appointment as the HOD as purportedly, he is the only candidate eligible in terms of the twin criteria of seniority and rotation.

14. Aggrieved by the fact that no response was given to the petitioner in terms of his above mentioned representation, the petitioner has approached this Court seeking quashing of the EC (1260) dated 25th March, 2022, since it permits the respondent no. 2 to continue as HOD of the Department of



Economics. The petitioner has further sought for directions to be given to the respondent no. 1 to appoint the petitioner as the HOD of the Department of Economics.

PLEADINGS

15. The petitioner has filed the instant writ petition on 4th January, 2023 and submitted the below stated arguments:

*“..A. **FOR THAT** the Delhi University, by way of the Resolution, has completely ignored the provisions of statute 37 of the Act, which clearly stipulates that a person shall be eligible for being appointed as the HOD only if he/she meets the twin criteria of seniority and rotation. Thus, the senior-most person, who has not previously served as HOD, is considered as eligible.*

*B. **FOR THAT** the Resolution is clearly in the teeth of statute 37, for it completely ignores the twin-principles of seniority and rotation. In fact, the Resolution completely gives a go-by to the cardinal rule of seniority. The Resolution permits a junior rank-holder to officiate as the HOD even when there are other senior eligible rank holders. There is no provision either in Act or the Statutes / Ordinances framed thereunder that permit such junior rank-holder to act as HOD.*

*C. **FOR THAT**, the Resolution on the one hand revises seniority as per the UGC Regulations but on the other hand, it defers its effect (and the stated object) by permitting the existing HOD to continue, irrespective of whether that person meets the aforesaid twin criteria of seniority and rotation under statute 37.*



*I. **FOR THAT** Delhi University has not implemented UGC Regulations despite the same having been implemented with effect from the year 2010, and then in 2015 and in 2018. There has been an abysmal delay on the part of the Delhi University in giving effect to the UGC Regulations, which has resulted in grave prejudice to the Petitioner having lost the benefit of due seniority that was to be given to him since the very inception of the UGC Regulations. In this regard, the UGC ought to take appropriate action against the Delhi University for its failure to implement the UGC Regulations in time. Now, by giving effect to the impugned part of the Resolution, the Delhi University is further causing prejudice to the Petitioner....”*

16. In response to the present petition, the respondent no. 1 has filed a short counter affidavit dated 24th January, 2023 wherein, the contentions advanced in the present petition have been opposed by way of the following arguments:

“...8. The University before implementing Clause 16.3 of UGC Regulations 2018 considers the seniority while appointing HoDs from the date of approval by the Executive Council/ Vice Chancellor of University of Delhi on the promotion/appointment in the level of Professor recommended by the duly constituted Selection Committee for promotion/ appointment and in his case date of approval was 29.06.2015.

9. On perusing the seniority list of the Professors in the Department of Economics, it emerged that the Respondent No. 2 i.e., Prof. Surender Kumar has joined as Professor from the process of Direct recruitment in the University with the approval of Vice Chancellor on 13.04.2015.



14. However, the present Writ Petition has been file by the Petitioner seeking quashing and setting aside of the said Executive Council Resolution No. 71 dated 25.03.2022 passed by the Executive Council of the University of Delhi in so far as it approves the Respondent No. 2 to continue as Head of Department of Economics. There is no cogent ground raised to challenge the said EC Resolution. The petitioner has also sought directions from this Hon'ble Court to take all steps to appoint the Petitioner as Head, Department of Economics. The Petitioner has not impleaded the Faculty which shall be effected by laying a challenge to the said EC Resolution and hence the Writ Petition is bad for non joinder of necessary parties..."

17. In response to the counter affidavit of the respondent no. 1, the petitioner has filed a rejoinder dated 16th March, 2023, refuting the submissions advanced by the respondent no. 1. Relevant extracts of the rejoinder are as under :

"...5. With reference to paragraph 4 of the Short Affidavit, it is denied that the captioned Writ Petition is not maintainable as alleged. In fact, Respondent No.1 has failed to articulate how the present petition is not maintainable. On this ground alone, this objection of Respondent No.1 must be rejected.

7. With reference to paragraph 6 of the Short Affidavit, it is submitted that Regulation 16.3 of the UGC Regulations was first enacted in the year 2010, then reiterated in 2015 and finally it is contained in the 2018 UGC Regulations in the same avatar. However, it is Respondent No.1 that has failed to implement and give effect to said Regulation 16.3 till March, 2022.



8. *With reference to paragraph 7 of the Short Affidavit, the contents thereof are a matter of record and merit no response.*

9. *With reference to paragraph 8 of the Short Affidavit, the contents thereof are denied. Regulation 16.3 is self-explanatory and it requires that seniority of a promotee is reckoned from the date of his eligibility. There is no provision for reckoning the same from the date of approval of the Executive Council/Vice Chancellor as alleged.*

10. *With reference to paragraph 9 of the Short Affidavit, the contents thereof are misconceived and irrelevant to the issue at hand. The latest seniority list produced on record by the Petitioner, and not denied by Respondent No.1, shows that the Petitioner is senior to Respondent No.2.*

11. *With reference to paragraph 10 of the Short Affidavit, it is submitted that the contents thereof are once again immaterial to the issue at hand in the present matter. The same has no bearing on either the applicability of Regulation 16.3 of the UOC Regulations nor Statute 37 of the Delhi University Act, 1922.* 12. *With reference to paragraph 11 of the Short Affidavit, it is reiterated that as per the latest seniority list maintained by Respondent No.1, it is the Petitioner that is senior than Respondent No.2 and only candidate that is qualified to be the HOD as per Statute 37 read with Ordinance XXIII of the Delhi University Act, 1922...*

18. A short counter affidavit dated 18th September, 2023 has also been filed on behalf of the respondent no. 2, relevant extracts of which are as under:

“...8. The University of Delhi before implementing Clause 16.3 of UGC Regulations 2018 considers the seniority while appointing HODs from the date of approval by the Executive



Council/ Vice Chancellor of University of Delhi on the promotion/ appointment in the level of Professor recommended by the duly constituted Selection Committee for promotion/ appointment.

9. On perusing the seniority list of the Professors in the Department of Economics, it emerged that the Respondent No. 2 i.e., Prof. Surender Kumar has joined as Professor from the process of Direct recruitment in the University with the approval of Vice Chancellor on 13.04.2015.

10. While the Petitioner has been promoted from reader to Professor on 29.06.2015 by the Vice Chancellor as per the recommendation of a duly constituted Selection Committee of the Respondent and meeting held on 30.03.2015. Hence the answering Respondent is senior to the Petitioner and is therefore rightly appointed as Head of the Department of Economics. There is no illegality in the same...”

19. The petitioner has also filed written submissions dated 28th September, 2023, submitting the below stated arguments:

“...3.1 The Impugned Resolution is contrary to Statute 37 and Ordinance XXIII framed under the Act, which admittedly is the only criteria for appointment as HOD. As per Statute 37 read with Ordinance XXIII, the twin criteria of seniority and rotation are sine qua non for being appointed as the HOD. To put it simply, the senior- most person, who has not previously served as HOD, is considered as eligible. There is no provision, even for the interim, that permits a junior faculty member to officiate as the HOD.



3.2 During the hearing, a query had fallen from this Hon'ble Court as to whether the appointment of a junior ranking candidate can be justified in view of clause (2) of Ordinance XXIII With respect, it is submitted that the Impugned Resolution cannot be justified by resorting to the exception made in clause (2) of Ordinance XXIII for 3 reasons:...

3.3 The Impugned Resolution is in teeth of Delhi University's own understanding of the eligibility criteria for HOD. In the first round of litigation before this Hon'ble Court, when the Petitioner's seniority was yet to be revised in terms of Regulation 16.3, the Delhi University had stated on affidavit¹⁶ that the goal post for deciding eligibility for HOD is the twin test of seniority and rotation. Now when the Petitioner's due seniority has been recognised, the Delhi University has shifted the goal post (of the twin test of seniority & rotation) by adopting the Impugned Resolution. On the face of it, the Impugned Resolution, in its application, is arbitrary..."

SUBMISSIONS

(submissions on behalf of the petitioner)

20. Learned counsel appearing on behalf of the petitioner submitted that the impugned Resolution is in violation of the settled principles of law and the same is liable to be set aside.

21. It is submitted that DU, by way of the impugned Resolution, has completely ignored the provisions of Statute 37 of the Act, which clearly stipulates that a person shall be eligible to be appointed as HOD only if he/she meets the twin criteria of seniority and rotation. Thus, the senior-most person, who has not previously served as HOD, is considered eligible.



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22. It is submitted that the impugned Resolution is clearly in the teeth of Statute 37 read with Ordinance XXIII, as it completely ignores the twin principles of seniority and rotation. The Resolution permits a junior rank holder to officiate as HOD even when there are other eligible senior rank holders. There is no provision, neither in the Act or the Statutes, nor in the Ordinances framed there under that permits such junior rank holder to act as HOD.

23. It is submitted that the impugned Resolution on the one hand revises seniority as per the UGC Regulations, on the other, it defers its effect by permitting the existing HOD to continue, irrespective of whether that person meets the afore stated twin criteria of seniority and rotation under Statute 37.

24. It is submitted that the Resolution is *ultra vires* the Act and the Statutes/Ordinances framed thereunder as there is no such provision which would permit the respondent no. 2, a junior rank holder to officiate as HOD when a senior rank holder is eligible.

25. It is submitted that there is no provision under the Act that permits DU to make an exception like sub-clauses (b) and (c) of the Resolution no. 71. It is further submitted that the petitioner, as per the revised seniority list, is the 3rd senior most Professor. Since the other two senior Professors (*viz.* Professor Pami Dua and Professor Aditya Bhattacharjea) have already served as HOD earlier, thus, as per the Statute, only the petitioner is eligible to be officiated as HOD.

26. It is submitted that DU has not implemented UGC Regulations despite the same having been implemented w.e.f. the year 2010, and thereafter, in



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the year 2015 as well as in the year 2018, however, the respondent no. 1 failed to give it effect until passing of the Resolution in the year 2022.

27. It is further submitted that there has been an abysmal delay on part of DU in giving effect to the UGC Regulations which has resulted in grave prejudice to the petitioner having lost the benefit of due seniority that was to be given to him since the very inception of the UGC Regulations.

28. It is submitted that to decide the eligibility for HOD, it is the twin test of seniority and rotation which needs to be followed and adhered to. The petitioner's due seniority has now been recognised and DU shifted the goal post (of the twin test of seniority and rotation) by adopting the impugned Resolution as per which the existing HOD, i.e., the respondent no. 2 continues to be appointed to the post of HOD. Hence the impugned Resolution, is arbitrary, perverse, irrational, and has no basis whatsoever in law, equity or justice.

29. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs may be granted as prayed for.

(submissions on behalf of the respondent no. 1 and 2)

30. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 1 and 2 vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed as being devoid of any merit.

31. It is submitted that in the year 2018, Clause 16.3 of the UGC Regulations, 2018 were enforced under the Career Advancement Scheme,



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2010 (hereinafter “CAS”) prescribing mode and manner of promotion from various posts in the University.

32. It is submitted that the petitioner vide administrative approval dated 29th June, 2015 was promoted to the post of Professor by the respondent University w.e.f. 16th October, 2003.

33. It is submitted that the University, prior to implementing Clause 16.3 of the Regulations, 2018, considered the seniority while appointing HODs from the date of approval by the Executive Council/Vice Chancellor of DU on the promotion/appointment in the level of Professor recommended by the duly constituted Selection Committee for promotion/appointment and in the petitioner’s case, the date of approval was 29th June, 2015.

34. It is submitted that upon perusing the seniority list of the Professors in the Department of Economics, it could be concluded that respondent no. 2 joined as Professor by way of direct recruitment in the University with the approval of Vice Chancellor on 13th April, 2015.

35. It is also submitted that the petitioner, on 29th June, 2015, as per the recommendation of a duly constituted Selection Committee of the respondent in a meeting held on 30th March, 2015, was promoted from Reader to Professor w.e.f. 16th October, 2003 by the Vice Chancellor.

36. It is further submitted that since the name of the petitioner comes after the name of the respondent no. 2 in the seniority list of the Department of Economics as per the provision of Statute 37, the post of HOD was given to the respondent no. 2 w.e.f. 9th December, 2020 to 8th December, 2023.



37. It is submitted that the respondent University after implementing Clause 16.3 of the Regulations, 2018, passed by the Executive Council meeting vide the Resolution no. 1260, revised the seniority list of all the departments.

38. It is further submitted that vide the above stated Resolution, while approving Clause 16.3, the Executive Council of DU also approved that the seniority list of all the departments accordingly be revised and the existing HODs shall continue to serve till the end of their term and thus, no HOD would be displaced on the basis of the revised seniority list; and if a person who has been reckoned senior and has not been appointed, it shall be open for the Vice Chancellor to appoint the said person as the HOD whenever a vacancy next occurs.

39. It is submitted that the present petition has been filed seeking quashing of the Resolution since the said Resolution approves the respondent no. 2 to continue as the HOD. Hence, there is no cogent ground raised to challenge the same.

40. It is submitted that there is no illegality in the impugned Resolution and by way of the instant petition, the petitioner is merely abusing the process of law.

41. Therefore, in view of the submissions made above, it is submitted that instant petition being devoid of any merit may be dismissed.

ANALYSIS AND FINDINGS

42. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire



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material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.

43. Upon hearing of the arguments and perusing the record, this Court needs to adjudicate the present petition by deciding as to *Whether Clause (C) of the impugned Resolution is illegal?*

44. The case of the petitioner is that he is aggrieved by Clause (c) and (d) of Resolution 71 of EC No. 1260 dated 25th March, 2022 passed by the Executive Council of the University of Delhi, by virtue of which the respondent no. 2 has been permitted to continue as HOD of the department of Economics. It has been submitted by the petitioner that the same is in contravention of Statute 37 and Ordinance XXIII framed under the Act.

45. The petitioner had joined DU as a Reader in the year 1997 and on 1st July, 2015, the petitioner was promoted to the rank of Professor w.e.f. 16th October, 2003 viz. from the date of his eligibility. The petitioner was entitled to seniority w.e.f. 16th October, 2003 in terms of Clause 16.3 of the UGC Regulations, 2018. The said Clause was adopted by DU by way of Resolution No. 1260 passed on 25th March, 2022 and it was resolved that the seniority list in terms thereof shall stand revised.

46. The seniority list of the Economics Department got revised and as per the said revision, the petitioner's seniority was reckoned from the date of his eligibility. In terms of the said revised seniority list, the petitioner is the third most senior member whereas the respondent no. 2 is at serial no. 11.



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47. It has been submitted on behalf of the petitioner that, despite the aforesaid revision of seniority, by virtue of the impugned Resolution, the respondent no. 2 has been permitted to continue as the HOD even though he is no longer eligible to continue on the said post. The petitioner's representation dated 6th July, 2022 was ignored and DU remained non responsive in this regard.

48. It has been contended on behalf of the petitioner that the impugned Resolution is contrary to Statute 37 and Ordinance XXIII framed under the Act, which admittedly is the only criteria for appointment as HOD. As per Statute 37 read with Ordinance XXIII, the twin criteria of seniority and rotation are *sine qua non* for being appointed as the HOD. The senior most person, who has not served as HOD previously, is considered eligible. There is no provision, even for the interim, that permits a junior faculty member to officiate as HOD.

49. The petitioner has contended that the impugned Resolution is arbitrary and capricious as on the one hand it revises seniority as per the UGC Regulations, on the other, it defers its effect by permitting the existing HOD, i.e., the respondent no. 2 to continue, irrespective of whether or not respondent no. 2 meets the aforesaid twin criteria of seniority and rotation under Statute 37 read with Ordinance XXIII.

50. It has been further contended that the impugned Resolution seeks to merit the respondent no. 2, who is at least 12 years junior to the petitioner, to officiate as HOD even though his continuance in office is in patent violation of the Statute and the Ordinance. The other two senior faculty members, i.e.,



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Professor Pami Dua and Professor Aditya Bhattacharjea have already served as HOD, therefore, the petitioner is the only eligible candidate to be appointed as HOD.

51. During the course of hearing, this Court had made a specific query to the petitioner as to '*Whether the appointment of a junior ranking candidate can be justified in view of Clause 2 of Ordinance XXIII?*' In regard to the same, it has been submitted on behalf of the petitioner that the impugned Resolution cannot be justified by resorting to the exception made in Clause 2 of the Ordinance. It has been submitted that *firstly*, the said provision requires the Vice Chancellor of DU to give 'reasons' for not appointing the senior most eligible candidate as HOD, which is *ex facie* absent in the impugned Resolution. *Secondly*, such reason has to be based on a criterion that is not related to seniority. Clearly, that is not the criteria under the impugned Resolution as it is premised on a general classification, and not a specific decision *qua* fitness of a particular candidate as is required under Clause 2. *Lastly*, the discretion under Clause 2 is vested with the Vice-Chancellor. The impugned Resolution, however, has been passed by the Executive Council and as such, the impugned Resolution cannot be said to be in exercise of the discretion vested with the Vice Chancellor.

52. In rival submissions, the learned counsel appearing on behalf of respondents no. 1 and 2 have vehemently opposed the instant petition and submitted that the same is liable to be dismissed since it is bereft of any merit. It has been contended on their behalf that before implementing Clause 16.3 of the Regulations, 2018, the University, while appointing HODs, used



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to consider the seniority from the date of approval by the Executive Council/Vice Chancellor on the promotion/appointment in the level of Professor recommended by the duly constituted Selection Committee for promotion/appointment.

53. It has been further contended that the date of approval of the petitioner's promotion was 29th June, 2015. Moreover, the respondent no. 2 joined as Professor by way of direct recruitment in the University with the approval of Vice Chancellor on 13th April, 2015. Accordingly, the name of the petitioner came after the name of the respondent no. 2 in the seniority list of the Department of Economics as per the provision of Statute 37 and therefore, the position of HOD was granted to the respondent no. 2 w.e.f. 9th December, 2020 to 8th December, 2023 based on the date of approval of his recruitment which is earlier than that of the petitioner.

54. The respondent's bone of contention lies in the fact that the petitioner has challenged the impugned Resolution in so far as the same approves the respondent no. 2 to continue as HOD which is not a legally tenable ground and hence, cannot be accepted as being cogent.

55. At this stage, it becomes pertinent to refer to Clause 16.3 of the Regulations, 2018; Clause 16.3 and its sub clauses as per the impugned Resolution; Statute 37 and Ordinance XXIII of the Act, relevant portions of which are as under:

Clause 16.3 of the Regulations, 2018:

“..16.3 Inter-se seniority between the direct recruited and teachers promoted under CAS



The inter-se seniority of a direct recruit shall be determined with reference to the date of joining and for the teachers promoted under the CAS with reference to the date of eligibility as indicated in the recommendations of the selection committee of the respective candidates. The rules and regulations of the respective Central/State Government shall apply, for all other matters of seniority..."

Clause 16.3 and its sub clauses as per the impugned Resolution:

"...71. The Executive Council considered the Report dated 15.03.2022 of the Committee constituted for implementation of Clause 16.3 of UGC regulation 2018 related to inter-se seniority between direct recruited and teachers promoted under CAS vis-à-vis Statute 37 of the Statutes of the University and resolved as under:

.a) Clause 16.3 of UGC Regulations 2018 as reproduced below:

"16.3 Inter-se seniority between the direct recruited and teachers promoted under CAS

The Inter-se seniority of a direct recruit shall be determined with reference to the date of joining and for the teachers promoted under CAS with reference to the date of eligibility as indicated in the recommendations of the selection committee of the respective candidates. The rules and regulations of the respective Central/State Government shall apply, for all other matters' of seniority." be implemented in letter and spirit for deciding 'seniority in consonance with Statute 37 of the University of Delhi for all purposes.

b) The seniority list of all the Departments may accordingly be revised. The revised list shall be



considered for appointment of next Head of the Department.

c) The HoDs appointed as on date (before this decision of Executive Council) shall continue till the completion of their term, thus no Head of the Department would be displaced on the basis of revised Seniority List.

d) Notwithstanding anything referred to above, if for any reason, the said person who has been reckoned senior by implementation of this decision and has not been appointed as the Head of the Department, it shall be open for the Vice Chancellor to appoint the said person as Head of the Department whenever a vacancy next occurs if he/she cannot otherwise be so appointed...”

Statute 37 of the Delhi University Act, 1992:

*“...**Seniority 37.** (1) Whenever, in accordance with these Statutes, any person is to hold an office or be a member of any Authority of the University by rotation, according to seniority such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such other principles as the Executive Council may, from time to time, prescribe.*

(2) It shall be the duty of the Registrar to prepare and maintain, in respect of each class of persons, to whom the provisions of this Statute apply, a complete and up-to-date seniority list in accordance with the provisions of the foregoing clause.

(3) If two or more persons have equal length of continuous service in a particular grade or post, or the relative seniority of any person or persons is otherwise in doubt, the Registrar may



on his own motion, and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereof shall be final...”

Ordinance XXIII of the Delhi University Act, 1992:

“...Ord. XXIII. Heads of Departments

- 1. The Head of the Department shall be appointed by the Vice Chancellor by observing, as far as possible, the principle of rotation. Such appointments shall be reported to the Executive Council.*
- 2. Notwithstanding anything contained in Clause 1, if for any reason it has not been possible to appoint a person as Head of the Department who is senior to the person (persons) who has already served or is serving as Head of the Department, it shall be open to the Vice-Chancellor to appoint that person as Head of the Department whenever a vacancy next occurs if he can otherwise be so appointed.*
- 3. The Head of the Department shall hold office for a period of three years. A person shall not ordinarily be appointed as Head of the Department for a second consecutive term.*
- 4. Notwithstanding anything contained in Clause-2, pending the appointment of a Head of the Department or during his absence on leave, the Vice-Chancellor may ask any Professor or any Reader in the Department either to discharge the current duties of the Head of the Department or to act as Head of the Department, as the case may be, as a purely temporary measure.*

Note: The Principle of rotation will apply from the person who is next in order of seniority to the person who has already served or is serving as Head of the Department...”



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56. Perusal of Clause 16.3 of the Regulations, 2018 reveals that the UGC issued a notification where the regulation of *inter se* seniority between the directly recruited teachers and teachers promoted under CAS was amended. Therefore, it now states that the seniority of a direct recruit shall be determined with reference to the date of joining and for the teachers promoted under the CAS with reference to the date of eligibility as indicated in the recommendations of the selection committee.

57. Sub clause (b) of Clause 16.3 as per the impugned Resolution states that the seniority list of all the departments may be revised and the said revised list shall be considered for appointment of the next HOD. Sub clause (c) of Clause 16.3 further states that the HODs appointed as on date (before this decision of Executive Council) shall continue till the completion of their term, thus, no HOD would be displaced on the basis of the revised seniority list. Sub clause (d) of Clause 16.3 states that in case a person has been reckoned to be a senior and has not been appointed as HOD, then it shall be open for the Vice Chancellor to appoint the said person as HOD whenever a vacancy next arises.

58. Upon reading of Statue 37 of the Act, it is inferred that the said provision requires that seniority of a person is to be determined according to his tenure of continuous service in a grade or post as the case may be. Additionally, such other principles as the Executive Council of the University may, from time to time, prescribe would also be applicable.



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59. Furthermore, perusal of Ordinance XXIII of the Act, with respect to the facts of the present petition states that the HOD shall be appointed by the Vice Chancellor by observing the principle of rotation and if for any reason it has not been possible to appoint a person as HOD who is senior to the person who has already served or is serving as HOD, it shall be open to the Vice Chancellor to appoint that person as HOD whenever a vacancy next arises.

60. Now adverting to the facts of the instant case.

61. It is pertinent to note that the seniority of the petitioner and the consideration of his seniority status to grant him the post of HOD is not in dispute herein. Furthermore, a bare perusal of the reply given in response to the petitioner's RTI application dated 24th May, 2022 explicitly states that as per the revised seniority list, the petitioner stands 3rd in the seniority list and the present HOD, i.e., the respondent no. 2 herein, stands 11th in the seniority list.

62. This Court is of the considered view that Clause 16.3 of the UGC Regulations, 2018 is self-explanatory wherein it requires that seniority of a promotee is reckoned from the date of his eligibility and in the instant case, the date of eligibility of the petitioner as per the office order dated 18th December, 2015 is 16th October, 2003.

63. Therefore, the above said date has to be considered for the petitioner's seniority as there is no provision for reckoning the same from the date of approval of the Executive Council/Vice Chancellor as has been alleged by the respondents. The contentions of the respondents that before



implementing the impugned Resolution, the University used to determine the seniority from the date of approval from the recommending authority is in the opinion of this Court, baseless, without any merit, and the same is hereby rejected.

64. Hence, it will be appropriate to state that neither the petitioner's seniority status is disputed nor is his position in the list or is his eligibility.

65. Moving further, the issue which has been posed before this Court is that Clause (c) of Clause 16.3 in the impugned Resolution dated 25th March, 2022 is illegal as purported by the petitioner.

66. This Court is of the view that while exercising the powers of judicial review of an administrative action; Courts should not interfere with the administrative decision unless it suffers from the vice of illegality, irrationality or procedural impropriety which can be made out from a bare perusal of the record. In this regard, this Court has referred to the judgment of the Hon'ble Supreme Court in the case of *Tata Cellular v. Union of India*¹, wherein the following was observed:

"....77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*

¹ (1994) 6 SCC 651



5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

79. To quote again, Michael Supperstone and James Goudie; in their work Judicial Review (1992 Edn.) it is observed at pp. 119 to 121 as under:

“The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in



which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In Kruse v. Johnson [(1898) 2 QB 91 : (1895-9) All ER Rep 105] a specially constituted divisional court had to consider the validity of a bye-law made by a local authority. In the leading judgment of Lord Russell of Killowen, C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn [(1948) 1 KB 223 : (1947) 2 All ER 680] . This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not'. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At p.



229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in *Short v. Poole Corpn.* [(1926) 1 Ch 66, 91 : 1925 All ER Rep 74] , as an example of a 'frivolous and foolish reason') was, in another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also *R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.* [1988 AC 858, 873 : (1988) 2 WLR 654 : (1988) 1 All ER 961] (Chapter 4, p. 73, *supra*). He summarised the principles as follows:

'The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.'

This summary by Lord Greene has been applied in countless subsequent cases.

"The modern statement of the principle is found in a passage in the speech of Lord Diplock in Council of Civil



Service Unions v. Minister for Civil Service [(1985) 1 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174] :

‘By “irrationality” I mean what can now be succinctly referred to as “Wednesbury unreasonableness”. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680]) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.’ ”..”

67. Perusal of the above stated judgment states that the Hon’ble Supreme Court has held that the Courts can interfere with the decision of an executive committee tasked with administrative function only if there is an illegality or patent irregularity, or *mala fide* in its constitution or decision which is apparent on the face of it.

68. The above said principle has also been reiterated by the Hon’ble Supreme Court in ***Dilip Kumar Garg v. State of U.P.***². It was held by the Hon’ble Court that an administrative authority is in the best position to take decisions pertaining to the functioning of its department and unless there is a clear violation of any constitutional provision or a statute, the writ Courts should not interfere. Relevant extracts of the said judgment are as under:

“...15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion

² (2009) 4 SCC 753



from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See Union of India v. Pushpa Rani [(2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851] and Official Liquidator v. Dayanand [(2008) 10 SCC 1] .)

16. The decision to treat all Junior Engineers, whether degree-holders or diploma-holders, as equals for the purpose of promotion is a policy decision, and it is well settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

17. In Tata Cellular v. Union of India [(1994) 6 SCC 651 : AIR 1996 SC 11] it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a rule under Article 309 of the Constitution...”

69. Accordingly, this Court observes that the Executive Council of the respondent no. 1 while adopting Clause 16.3 of the UGC Regulations, 2018 inserted clause (c) in order to avoid any administrative lapse and/or setback since respondent no. 2 was already appointed on the post of HOD and was executing its role as HOD, Department of Economics.

70. The said clause, in the opinion of this Court, was inserted to smoothen the administrative exigency and there is no substance in the arguments of the petitioner that the same is illegal because in the impugned Resolution, the Executive Council has also inserted clause (d) as per which it was clarified that if for any reason, a person who has been reckoned senior by



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implementation of the decision vide Resolution no. 1260 and has not been appointed as the HOD, it shall be open for the Vice Chancellor to appoint the said person as HOD whenever a vacancy next occurs if he/she cannot otherwise be so appointed.

71. Therefore, it is crystal clear that there is no *mala fide* involved in passing of the Resolution no. 1260, more particularly *qua* clause (c) as sufficient powers have been already given to the Vice Chancellor to appoint an eligible candidate as HOD whenever a vacancy next occurs, if the Vice Chancellor deems it fit. Further, as discussed above, it is a settled position of law that it is not for the Courts to determine whether a particular decision by an administrative authority to effectuate a decision is fair. It is only concerned with the manner in which those decisions have been taken.

72. Moreover, this Court has perused Statute 37 as well as Ordinance XXIII of the Act in the foregoing paragraphs and upon perusal of the same, it is found that the contentions of the petitioner do not have any merit since the decision rendered in the impugned Resolution is in accordance with the provisions enshrined under the above said Statute and Ordinance.

73. The abovementioned statement can be inferred upon reading of latter part of Clause (1) of Statute 37 which grants the power to Executive Council to prescribe and narrate principles of seniority. Also, Clause (2) of Ordinance XXIII is similar to Clause (d) of the impugned Resolution whereby the Vice Chancellor has been given power to appoint the senior most person as HOD whenever the next vacancy arises. On the basis of the said inference, it can be observed that there is no arbitrariness as alleged by



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the petitioner and the decision to continue the existing HOD till the expiration of his tenure is merely an administrative decision which has been made in order to avoid any lacunae in the administrative functioning of the University. The relevant extracts are as under:

Statute 37 of the Delhi University Act, 1992:

*“...**Seniority 37.** (1)and in accordance with such other principles as the Executive Council may, from time to time, prescribe...”*

Ordinance XXIII of the Delhi University Act, 1992:

*“...**Ord. XXIII. Heads of Departments***

2. Notwithstanding anything contained in Clause 1, if for any reason it has not been possible to appoint a person as Head of the Department who is senior to the person (persons) who has already served or is serving as Head of the Department, it shall be open to the Vice-Chancellor to appoint that person as Head of the Department whenever a vacancy next occurs if he can otherwise be so appointed....”

74. At this juncture, this Court shall briefly revisit the scope of this Court’s power under Article 226 of the Constitution of India. The jurisdiction, of the High Court in matters where Article 226 has been invoked, is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned



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authority is constituted under special legislations to resolve the disputes of a kind.

75. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. Similarly, a writ may be issued, where in exercise of jurisdiction conferred on it, the Court or Tribunal or the Authority below acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in adjudicating the dispute is opposed to principles of natural justice.

76. Tersely stated, *firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the writ Court to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a writ Court shall intervene only in cases where there is a gross violation of the legal rights of the petitioner and the decision of the authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the



Court to intervene. *Fifthly*, if the writ Court observes that there has been a gross violation of the principles of natural justice.

77. Hence, this Court is of the considered view that there is no illegality *qua* sub clause (c) of the impugned Resolution by virtue of which the respondent no. 1's Executive Council has allowed the respondent no. 2 to continue as HOD. The same is valid in the eyes of this Court and there is no *mala fide* of any kind thereto.

CONCLUSION

78. In regard to the discussions of facts of the instant case as well as the law, this Court is not inclined to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India as there is no force in the propositions put forth by the petitioner.

79. In light of the above discussions of facts as well as law, this Court has observed that there is no infirmity with respect to the impugned Resolution and the clauses inserted therein is merely to smoothen the administrative process of adopting the amended Clause 16.3 of UGC Regulations, 2018. The case of the petitioner that by allowing the existing HOD to continue at the post even after the revised seniority list, is perverse, is hereby rejected, as the said decision is made in order to avoid any administrative lapse.

80. It is held that the petitioner has been unable to make out his case with respect to the illegality in the impugned Resolution as alleged by him. Therefore, the instant writ petition is liable to be dismissed being bereft of any merit.



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81. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stands dismissed.

82. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MARCH 12, 2024
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