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

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Date of Decision: 17th December, 2024

+ W.P.(C) 4231/2017 and CM APPL.18487/2017

SUDHIR BUDAKOTI

.....Petitioner

Through: Petitioner in person.

versus

VICE CHANCELLOR I/C IGNOU AND ORS

.....Respondents

Through: Mr. Varun Jain, Advocate for
Respondents No.1 and 3.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition is preferred by the Petitioner under Article 226 of the Constitution of India, laying a challenge to his repatriation to the parent organisation, with immediate effect.
2. Facts to the extent relevant are that Petitioner was appointed to the post of Registrar (Administration), Indira Gandhi National Open University ('IGNOU') vide offer letter dated 01.09.2014 for a 5-year tenure as per decision of the Board of Management ('BoM') of IGNOU taken in its 120th Meeting held on 12.04.2014. The selection was through an open selection process and the post carried Grade Pay of Rs.10,000/- in PB-4. Petitioner was a regular employee of Kumaun University, Nainital and on being selected for deputation, he applied to his parent organization on 03.09.2014 for deputation lien, which was granted to him vide letter dated 10.09.2014.



3. Petitioner assumed charge of Registrar (Administration), IGNOU on 11.09.2014 and a formal letter of appointment was issued on the same day. The appointment was initially for a period of 5 years from 11.09.2014, subject to the given terms and conditions as per the applicable Statutes and Ordinances of IGNOU. Petitioner avers that when he joined IGNOU, the environment was volatile as several investigations were ongoing into alleged misdeeds committed by the officials of the University and even the Vice Chancellor was sent on long leave to facilitate the inquiries.

4. Petitioner states that instead of continuing the Petitioner for the initial period of 5 years, he was suddenly relieved vide letter dated 18.10.2016 and repatriated to his parent organization without any reason or show cause notice or an inquiry and he was paid salary only upto September, 2016. As per the impugned letter, repatriation was pursuant to a decision of the BoM taken in 126th meeting held on 18.10.2016. Petitioner filed an appeal against his repatriation to the Appellate Authority i.e. the Visitor on 30.11.2016 but there was no response, compelling the Petitioner to approach this Court.

5. Petitioner appears in person and argues that the impugned order of repatriation dated 18.10.2016 cannot be sustained in law. It is urged that one of the reasons to repatriate the Petitioner that he was ineligible for the post of Registrar (Administration) as he did not meet the essential criteria of at least 15 years' experience as Assistant Professor in AGP of Rs.7,000/- and above or 08 years of service in AGP of Rs.8,000/- and above including as Associate Professor along with experience in Educational Administration since he was drawing Rs.22,220/- in PB-3 (Rs.15600-39100) with Grade Pay Rs.6600/-, cannot be sustained as this criteria was applicable for the teaching faculty and not administrative posts. Petitioner was eligible



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under the second and alternate part of the advertisement i.e. 15 years of administrative experience of which 8 years shall be as Deputy Registrar or on an equivalent post. The other reason was an Action Taken Report pertaining to some allegations of misfeasance, but no inquiry was held to establish the allegations and in fact, even a show cause notice was not issued.

6. Moreover, the impugned order is also illegal as the same was passed by an incompetent authority. Repatriation of the Petitioner was pursuant to a decision taken by BoM in its meeting held on 18.10.2016 chaired by Vice Chancellor-in-charge as the regular Vice Chancellor was on leave. The statutory powers relating to appointment, termination and disciplinary action cannot be delegated and therefore, the power to repatriate the Petitioner could only be exercised by a Vice Chancellor and not the Vice Chancellor-in-charge.

7. Learned counsel for IGNOU, *per contra*, submits that as per the advertisement No.49/2013 dated 05.09.2013, whereby applications were invited for the post of Registrar (Administration), the essential eligibility criteria was 15 years' experience as Assistant Professor in AGP of Rs.7,000/- and above or with 08 years of service in AGP of Rs.8,000/- and above including as Associate Professor along with experience in Educational Administration while the Petitioner was only drawing Rs.22,220/- in PB-3 (Rs.15600-39100) with Grade Pay Rs.6600/-. This information was concealed by the Petitioner when he applied for deputation as he had stated that he was working with Kumaun University, Nainital in PB-4 with Grade Pay of Rs.10,000/-. Upon verification of the documents after the offer letter was issued, it was found that as per the last pay certificate issued by the said



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University, he was working in PB-3 with Grade Pay Rs.6600/- and this fact was fortified by the Registrar, Kumaun University vide communication dated 18.03.2016 forwarding his service book and last pay certificate upto 10.09.2014. Therefore, Petitioner was not only ineligible for the post but also guilty of concealing material facts.

8. It is further argued that the decision to repatriate the Petitioner was taken by the BoM as per the Ordinance 10(2) of '*Ordinance on Emoluments, Terms and Conditions of Service of Registrars*', which provides that Appointing Authority for the Registrar is the BoM and the impugned repatriation order was issued pursuant to a decision of the BoM and not the decision of Vice Chancellor-in-charge alone and there is no legal infirmity in the impugned decision. Professor Ravindra Kumar, who was the Vice Chancellor-in-charge, correctly chaired the meeting in terms of Statute 1(6) of Second Schedule under Section 24 of the Indira Gandhi National Open University Act, 1985 ('1985 Act'). Statute 1(6) provides that if the office of Vice Chancellor becomes vacant due to death, resignation or otherwise, or if he is unable to perform his duties due to ill health or any other cause, the senior-most Pro-Vice Chancellor shall perform the duties of the Vice Chancellor and if there is no Pro-Vice Chancellor, senior-most Professor from amongst Directors of the School shall perform the functions of the Vice Chancellor until new Vice Chancellor assumes his office or until the existing Vice Chancellor attends to the duties, as the case may be. Relying on Office Orders, which are handed over in Court and are taken on record, learned counsel submits that Professor Nageshwar Rao was appointed as Pro-Vice Chancellor w.e.f. 05.12.2013 after Professor M. Aslam, Vice Chancellor of IGNOU proceeded on long leave w.e.f. 28.11.2014 on the



directions of Ministry of Human Resource Development. Professor Nageshwar Rao requested for being relieved to join Uttarakhand Open University as Vice Chancellor and was relieved w.e.f. 28.04.2016 handing over the charge to Professor Ravindra Kumar, Professor of History and Director-in-charge of SOTHSM, as per Statute 1(6) and it was he who chaired the 126th meeting of BoM held on 18.10.2016 and the action impugned herein is in consonance with the said Statute. It is strenuously urged that deputation is not a matter of right and on ground of ineligibility as well as *prima facie* evidence of malfeasance in the Action Taken Report, decision was taken by the BoM to repatriate the Petitioner.

9. Heard learned counsels for the parties and examined their contentions.

10. Challenge in the present writ petition is to the decision of IGNOU to repatriate the Petitioner *albeit* strictly speaking there is no challenge to the repatriation order dated 18.10.2016, whereby Petitioner's deputation tenure of 5 years was truncated and he was prematurely repatriated to his parent organisation i.e. Kumaun University, Nainital. Two-fold grounds have been raised by IGNOU to repatriate the Petitioner. The first ground is the ineligibility of the Petitioner as he did not fulfil the essential criteria stipulated in the advertisement and concealed his actual pay drawn in the parent organisation and second is *prima facie* evidence of malfeasance brought forth in an Action Taken Report. As far as the first ground is concerned, Petitioner may be right that the first part of the advertisement pertained to essential qualifications for the teaching faculty and he was required to fulfil the second condition, which provided 15 years of administrative experience of which 8 years shall be as Deputy Registrar or an equivalent post. Assuming in favour of the Petitioner that he was required



to fulfil the second criteria, even then the Petitioner has no case as admittedly he did not have 8 years' experience as Deputy Registrar having been appointed on the said post in the parent organisation in 2009 and the advertisement in question was issued on 05.09.2013. There is, however, merit in the contention of Respondent No.1 that Petitioner concealed material facts and misrepresented that he was working in Kumaun University in Pay Band Rs.37600-67000/- in Grade Pay of Rs.10000/-, whereas in fact, his last pay certificate on verification reflected that he was actually drawing a pay of Rs.22,220/- in PB-3 (Rs.15600-39100 in Grade Pay Rs.6600/-). Material concealment or misrepresentation, while applying for deputation was indeed a serious issue. Moreover, there was some evidence of malfeasance against the Petitioner and thus a conscious decision was taken to repatriate the Petitioner. It is settled law that deputation is not a matter of right *albeit* premature repatriation must be based on sound and plausible reasoning and should not be an act of arbitrariness. Petitioner has failed to make out a case that the decision to repatriate him is illegal or arbitrary.

11. The argument that Petitioner was repatriated by an incompetent authority is also without merit. Ordinance 10(2) of '*Ordinance on Emoluments, Terms and Conditions of Service of Registrars*' issued under Clause (2) of Statute (5) leaves no doubt that the Appointing Authority in IGNOU for the post of Registrar is the BoM. In the present case, the decision to repatriate the Petitioner was taken by the BoM in its meeting held on 18.10.2016, which is evident from the copy of the minutes handed over in Court by counsel for IGNOU with copy to the Petitioner and on his showing, Petitioner was repatriated upon a decision by the BoM. It is the



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case of the Petitioner that repatriation can be done by the Appointing Authority and therefore, it cannot be held that the repatriation of the Petitioner was by an incompetent Authority.

12. Last but not the least, coming to the issue of the meeting of BoM being chaired by Professor Ravindra Kumar, Vice Chancellor-in-charge, counsel for IGNOU has clearly brought forth that under Statute 1(6) if the office of Vice Chancellor becomes vacant for reasons mentioned therein, the senior-most Pro-Vice Chancellor shall perform the duties of Vice Chancellor and if there is no Pro-Vice Chancellor, senior-most Professor shall perform the functions. Office Orders indicate that Professor Nageshwar Rao was appointed as Pro-Vice Chancellor w.e.f. 05.12.2013 after Professor M. Aslam, Vice Chancellor of IGNOU proceeded on long leave w.e.f. 28.11.2014 on the directions of MHRD. However, Professor Nageshwar Rao requested for being relieved to join Uttarakhand Open University as Vice Chancellor and was relieved w.e.f. 28.04.2016 handing over the charge to Professor Ravindra Kumar, Professor of History and Director-in-charge of SOTHSM, as per Statute 1(6) and it was he who chaired the 126th meeting of BoM held on 18.10.2016. Therefore, even this contention of the Petitioner is without any basis.

13. Accordingly, the writ petition is dismissed being devoid of merit. Pending application also stands disposed of.

JYOTI SINGH, J

DECEMBER 17, 2024

B.S. Rohella/shivam