

SUPREME COURT OF INDIA

Governing Body Swami Shraddhanand College

Vs.

Amar Nath Jha

C.A.No.580 of 2020

(R.Banumathi and A.S.Bopanna,JJ.,)

23.01.2020

JUDGMENT

A.S.Bopanna,J.,

SLP(Civil) No.20859 of 2019

1. Leave granted.

2. The appellant in LPA No.694/2016 and CM Appln. No.46147/2016 - the University of Delhi is the appellant in the appeal arising from SLP(C) No.20786/2019 while the respondent No.2 in the said LPA - Governing Body of Swami Shraddhanand College is the appellant in the appeal arising from SLP(C) No.20859/2019. In both these appeals the appellants are assailing the judgment dated 09.05.2019 passed by the Division Bench of the High Court of Delhi. By the said judgment the Division Bench has upheld the order dated 10.11.2016 passed by the learned Single Judge and dismissed the appeal

3. The respondent Dr. A.N.Jha was chosen by the Selection Committee for appointment as the Vice-Principal of the Swami Shraddhanand College. The same was approved by the Governing Body and a letter was issued on 29.12.2015. A communication dated 28.12.2015 was addressed to the University of Delhi seeking approval for the appointment made as Vice-Principal. The University of Delhi however declined approval through its letter dated 13.01.2016. The respondent Dr. A.N. Jha, thus being aggrieved by the refusal of approval approached the learned Single Judge of the High Court of Delhi in WP(C) No.965/2016 seeking that the letters dated 13.01.2016, 19.01.2016, 27.01.2016 be quashed and direct the University of Delhi to grant approval for his appointment as the Vice-Principal of the College. The learned Single Judge on making a detailed consideration through the order dated 10.11.2016 allowed the writ petition.

4. In the said process the learned Single Judge has taken note of the contents in the letter dated 13.01.2016 by which approval was declined by the University mainly referring to the

manner in which the College was appointing the Acting Principal and further since the selection of the Vice-Principal was made without seeking prior approval as mandated under Clause 4(4) of Ordinance XVIII of the University. The learned Single Judge therefore took note of the letter dated 13.01.2016 and concluded that the non-approval by the University was not justified inasmuch as the same does not record that he was not fit for the job or was lacking in eligibility criteria for being appointed as the Vice-Principal. The reason indicated about non-compliance of Clause 4(4) of Ordinance XVIII for not approving the appointment was held unjustified, taking into consideration the procedure followed during the earlier appointments when approval was granted post appointment. Hence, a direction was issued to the University to grant approval.

5. The University claiming to be aggrieved by such direction issued by the learned Single Judge filed the LPA before the Division Bench. The College which is one of the appellants herein did not choose to file the appeal before the High Court and assail the order of the learned Single Judge. The Division Bench apart from noticing the reasons assigned by the learned Single Judge has also taken note of the contents of the letter dated 13.01.2016 by which the University had refused approval for appointment of the Vice-Principal. In that background, reference was also made to Clause 7(3) of Ordinance XVIII and the High Court concluded that the same does not suggest that the post of Vice-Principal cannot be filled up when the post of regular Principal is vacant.

6. The Division Bench keeping in view the contents of Clause 7(3) of Ordinance XVIII has arrived at the conclusion that there is no bar to appoint a person to the post of Vice-Principal in the absence of a regular Principal. In that light the Division Bench on upholding the decision of the learned Single Judge has also taken into consideration the fact that the regular Principal had superannuated way back on 31.12.2014 and there is no regular Principal appointed till this date and as such directed that the Governing Body of the College be formed within one month and a decision be taken in that regard.

7. Shri Sachin Datta, learned Senior Advocate appearing on behalf of both, the University as well as the College has taken us through the sequence when one Dr. Kundra who was the Principal had retired on 31.12.2014. Subsequently the Principals have been appointed on the acting basis and at present the senior most Professor Dr. Prakash Vir Khatri is the acting Principal as there was no regularly appointed Vice-Principal either. In that regard, it is contended that the respondent Dr. A.N. Jha even if appointed as the Vice-Principal cannot act as the Principal. It is contended that the prayer in the petition was to quash the communications assailed therein and as such any further relief for Dr. A.N. Jha to act as the Principal would not arise. Reference is made to the communication dated 2/3 February, 2016 addressed by the University to the Governing Body of the College indicating that a Committee is constituted to enquire as to whether the Governing Body of the College is managing the affairs in accordance with the Act, Statutes and Ordinances of the University. The learned Senior Advocate contends that the said letter has not been assailed. The communication dated 2/3 February, 2016 is also referred to indicate that the Governing Body of the College was not appropriately functioning and also the manner in which Dr. A.N. Jha has been conducting himself. In that regard, the learned Senior

Advocate would also refer to the minutes dated 29.02.2016 of the expanded Governing Body of the College wherein the Governing Body has taken note of the action of Dr. A.N. Jha. The Resolution at Item No.2 therein is referred, under which the members have recorded that Dr. A.N. Jha is illegally holding the post of acting Principal and in that view recommended the senior most eligible teacher i.e. Dr. Prakash Vir Khatri to act as the Principal. It is his further contention that Clause 4(4) of Ordinance XVIII provides that the Governing Body is required to secure prior approval of the University to appoint a Vice-Principal. It is contended that in the instant case no such prior approval was taken and as such the University had rejected the request.

8. Shri A.K. Thakur, learned Advocate representing the respondent Dr. A.N. Jha, apart from seeking to sustain the order passed by the learned Single Judge as also that of the Division Bench of the High Court would submit that the entire contention put forth by the learned Senior Advocate for the appellants is misplaced. It is pointed out from the prayer in the writ petition that the respondent herein as the writ petitioner on seeking that the communication rejecting the approval be quashed had sought that a Mandamus be issued to the University to accord approval for the appointment of the respondent herein as Vice-Principal of the College. In that view, it is contended that the entire case as put forth by the appellants herein with reference to the appointment of Principal would not be justified. The entitlement claimed by the respondent in the writ petition is for appointment Page 7 of 16 as Vice-Principal. If in that circumstance a vacancy remains in the post of Principal and no appointment is made, certainly the regulations would take care of such situation and the appellants cannot raise any grouse. It is contended that the learned Single Judge as well as the Division Bench has adverted to that aspect and arrived at a conclusion based on the issue that had arisen for consideration. In that view, the order passed by the High Court does not call for interference by urging contentions which is extraneous to the case put forth by the respondent herein. Insofar as the appointment of the respondent as the Vice-Principal, the Governing Body had taken a decision which was communicated to the University forthwith. Hence any subsequent decision taken by the enlarged Governing Body is only with a malafide intention. In that circumstance, when a recommendation was made it was for the University to approve the same. The learned counsel would point out that the Division Bench of the High Court in para 6 of its order has taken note of all prior appointments made to the post of Vice-Principal where, in most of the cases the approval has been granted post facto. In that view, it is contended that these appeals are liable to be dismissed.

9. In the light of the rival contentions we have perused the appeal papers. At the outset it is necessary to observe that a consideration in these proceedings would be based on the case that has been put forth by the writ petitioner to the extent of the relief claimed therein and in that light the consideration as made by the High Court both by the learned Single Judge and the Division Bench is to be noted to decide the correctness or otherwise of the concurrent view taken by the High Court. To that extent, as pointed out by the learned counsel for the respondent herein, it is seen that the respondent herein as the writ petitioner had assailed the communications by which the University had declined approval to the post of Vice-Principal in the appellant College. Having done so, the consequential relief was

sought to direct the University by issue of Mandamus to accord approval to the appointment of petitioner as Vice-Principal of the College. Though the learned senior advocate for the appellants had contended that the letter dated 2/3 February, 2016 has not challenged in the writ petition, the same would not be of any adverse consequence in the situation where the respondent herein was before the Court limited to his grievance and the relief sought in that regard. Through the said communication though a reference is made to indicate that the proposal to appoint Dr. A.N. Jha as the Vice-Principal is not acceptable, it is only a passing reference made therein while the University for the other reasons had informed the Chairman, Governing Body of the College that a Committee has been constituted to look into the affairs of the College. If at all anybody is to be aggrieved by the said communication, it is the Governing Body itself which is also an appellant herein which should have been aggrieved. Instead, a common contention is being urged by the appellants who have conflicting interest and the common contention to that effect is not acceptable.

10. In that background, when an earlier decision had been taken by the Selection Committee to appoint the respondent Dr. A.N. Jha as the Vice-Principal and a letter had been addressed to the University on 28.12.2015, the action of the University in rejecting such requests through its communication dated 13.01.2016 was the issue which was required to be examined by the High Court. To that effect, both the learned Single Judge as also the Division Bench referred to the procedure required for appointment of the Vice-Principal. In that regard, it is seen that Clause 4(4) of Ordinance XVIII would indicate that the prior approval from the University is required to be taken. However, the tabular form extracted and taken note by the Division Bench in para 6 of the order would indicate that on most of the occasions the approval has been granted post facto. It is in that light, it has been rightly held by the High Court that the rejection in the present case on the ground that there was no prior approval would not be justified when the fact remains that the Governing Body had considered the respondent to be suitable and the respondent was not in any other manner ineligible. It is no doubt true that when a procedure is contemplated the same is required to be followed. However, in the present fact the very manner in which the appellants have proceeded to deny the benefit to the respondent would Page 11 of 16 indicate that the action is not bonafide when the respondent No.1 is not otherwise ineligible. As such in that circumstance when the factual matrix herein indicates that at the first instance the Governing Body had resolved to appoint the respondent as the Vice-Principal and had sent the communication for approval as far back as on 29.12.2015 the subsequent developments should not take away the right that has accrued to the respondent.

11. Further, the subsequent resolution of the expanded Governing Body of the College dated 29.02.2016 referred to by the senior advocate for the appellant would indicate that the entire concern appears as an attempt to stone wall the respondent Dr. A.N. Jha from acting as the Principal and in furtherance of such intention the entire action has been initiated so as to deny him even the benefit of being the Vice-Principal to which he is entitled, inasmuch as the appellants apprehend that the respondent would otherwise become entitle to act as the Principal in terms of the provision contained in Clause 7(3) of

Ordinance XVIII. The need for the Vice-Principal to act as the Principal would arise only if the appellants herein do not take appropriate steps to appoint a Principal and if the post of Principal remains vacant. If the appellants have not taken steps to appoint a regular Principal in accordance with the procedure, they are to blame themselves and cannot victimize the respondent and prevent him from functioning as a Vice-Principal, the post to which he is entitled to by putting forth the issue of prior approval as a ruse to decline approval. In fact, the High Court has appropriately articulated this aspect of the matter to arrive at its conclusion.

12. The very nature of the contentions put forth by the learned senior advocate for the appellants with emphasis on the aspect of acting Principal of the College and to allege that if the respondent is appointed as the Vice-Principal he would hinder the process of appointment of the regular Principal would amount to putting the 'cart before the horse'. As already taken note the grievance raised by the respondent No.1 herein at this point is with regard to the appointment of Vice-Principal of the College to which a right has accrued in favour of the respondent No.1 in view of the decision taken by the Governing Body of the College which was already sent for approval to the University. The correctness or otherwise of the same being examined, the High Court has rightly held that the rejection of approval is not justified. If that be the position, the respondent would be entitled to be appointed as the Vice-Principal.

13. Insofar as the post of Principal, it is for the appellants to take a decision in that regard and appoint a regular Principal. If such duty that is cast on the appellant is not done and, in that circumstance, if the post of Principal continues to remain vacant, it is only in such event Clause 7(3) of Ordinance XVIII would come into play. In such circumstance merely on the apprehension that if the respondent becomes the acting Principal by virtue of being the Vice-Principal, he would not allow the appointment of the regular Principal is a contention which is liable to be rejected. Therefore, in that circumstance if all these aspects are kept in view the conclusion reached by the High Court is justified and the same does not call for interference.

14. At this stage it is appropriate to keep in perspective our interim order dated 08.01.2020 when these appeals were heard and reserved for judgment. By considering the interest of Institution it was observed that Dr. Prakash Vir Khatri will continue as the acting Principal and the first Respondent Dr. A.N. Jha will continue as the acting Vice-Principal. In view of our conclusion as above, the respondent No. 1 is entitled to function as the regular Vice-Principal for which the appellants shall take necessary action. By the very order dated 08.01.2020 we had also indicated that the appellants will initiate the process of appointment of the regular Principal. We had further expressed that it is desirable the appointment be made in two months. Though on being appointed as Vice-Principal, the post of Principal being vacant, the respondent No.1 Dr. A.N. Jha would have the benefit available under Regulation 7(3) noticed supra, we see no reason to curtail the period given for appointment of regular Principal and allow such benefit to respondent No.1 at this stage itself as the interest of the Institution remains the primary concern. It is however made clear that if no steps are taken by the appellants to appoint the regular Principal, in such

event, on expiry of the time indicated the right would accrue to the first respondent to act as regular Vice-Principal in terms of the impugned order and other rights which he may be entitled in terms of the Regulations.

15. The appeals stand dismissed accordingly. There shall be no order as to costs. All pending applications shall stand disposed of.