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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6846/2021, CM No. 21642/2021
PROF. RAJIV SAXENA

..... Petitioner

Through: Ms. Nidhi Nagpal, Adv.

versus

JAWAHARLAL NEHRU UNIVERSITY & ANR.

..... Respondent

Through: Ms. Monika Arora, SC with
Mr. Shri Ram Tiwary, Adv. for JNU

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

17.09.2021

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1. The present petition has been filed by the petitioner with the following prayers:

“In the facts and circumstances of the instant case and the grounds mentioned hereinabove, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(i) Issue an appropriate writ setting aside the Impugned Decision communicated to Petitioner vide email dated 02.07.2021 as being illegal, arbitrary, unreasonable and violative of the provisions of Jawaharlal Nehru University Act, 1966 and the Statutes framed thereunder;

(ii) Issue an appropriate writ setting aside the Impugned Office Order No. 19/2021 dated 01.02.2021 as being illegal, arbitrary, unreasonable and violative of the provisions of

Jawaharlal Nehru University Act, 1966 and the Statutes framed thereunder;

(iii) Issue an appropriate writ directing the Respondent No.1 University to appoint the Chairperson of Centre of Spanish, Portuguese, Italian and Latin American Studies in strict adherence to the Statute 18(2)(c)(I) of the JNU Act;

(iv) Award the Petitioner costs relating to the filing of the present writ petition;

(v) Pass such other further order(s) that this Hon'ble Court may deem fit in the interest of justice in the facts and circumstances of this case."

2. The grievance of the petitioner in this petition is to the letter dated June 30, 2021 sent to the petitioner vide email dated July 02, 2021 whereby the respondent No.1, i.e., University has concluded that there is no Professor at the Centre of Spanish, Portuguese, Italian and Latin American Studies ('CSPILAS', for short) who is eligible to be the Chairperson of the Centre. The impugned letter reveals that two Professors, i.e., the petitioner and Prof. Indrani Mukherjee cannot be appointed to the post of Chairperson of the Centre i.e. CSPILAS for reasons: (i) that the petitioner has already completed two consecutive terms as the Chairperson of CSPILAS; and (ii) Prof. Indrani Mukerjee was replaced as the Chairperson during her term due to a certain misconduct.

3. It is the case of the petitioner and so contended by his counsel that the appointment to the post of Chairperson of CSPILAS in the University is regulated by the Jawaharlal Nehru University Act, 1966 ('Act of 1996', hereinafter) and Statutes framed thereunder. She submits that Statute 18(1)

provides that the University has various Schools of study. As per Statute 18(2), each school of study shall consist of Department/Centres. Ordinance 6 provides that University shall establish various schools, one of them being the School of Language, Literature & Cultural Studies ('SLL&CS', for short). Clause 5(2)(a) of Ordinance 6 states that CSPILAS shall be created and assigned to School of Languages. The CSPILAS in one of the Centres under SLL&CS.

4. Statute 18(2)(c)(I) stipulates that each Centre/Department is required to have a Chairperson and the Chairperson is required to be appointed by the Executive Council from amongst the Professors / Senior Fellows within the Centre itself. She states that the said Statute does not confer any discretion on the University to act otherwise. The only discretion lies with the University is that if there is only one Professor in the Centre, then an Associate Professor may also be appointed.

5. According to her, the University is required to act in accordance with the provisions of the Act of 1966, the Statutes and the Ordinances. She also states that the Statute 18 does not provide any grounds of disqualification for appointment to the post of Chairperson. The grounds which may disqualify a person from being chosen as a member of any of the authorities of the University are provided under Statute 23 of the Act of 1966 and these are: (i) if a person is of unsound mind or is deaf-mute or suffers from contagious leprosy; (ii) if he is an undischarged insolvent; (iii) if he has been convicted by a Court of law of offence involving moral turpitude and sentenced thereof to imprisonment for not less than six months.

6. That apart, there is no bar on a Professor being appointed as Chairperson for more than two terms. In fact, according to her, in one Centre

for the Study of Social Exclusion and Inclusive Policy, the same faculty has been occupying the position of the Chairperson since November 01, 2014 because there is no other Professor / Associate Professor in that Centre. Even with regard to Prof. Indrani Mukherjee, there is no document on record to show that there has been a complete bar on her appointment as Chairperson.

7. She further lay stress on the fact that the purpose of appointing a Chairperson from Professors within the Centre itself is based on the understanding of the role and duties of the Chairperson. The post of Chairperson of the Centre entails a host of administrative and academic duties which include maintenance of academic standards and conducting teaching, research and examination in the Centre. The Chairperson is also required to organize research and is the sole representative of the Centre in the Committee for Advance Studies and Research. The Chairperson brings forth the requirements of the Centre regarding appointment of Supervisors and Examiners and makes suitable recommendations regarding the research work at the Centre and therefore, it is required that the Chairperson is familiar with the subject-matter as well as functioning of the Centre. In support of her submissions, she has drawn my attention to Ordinance 4 of the Ordinances. She states that in view of the position under the Act of 1966, the Statutes and the Ordinances, the petitioner is required to be continued as the Head of the Centre.

8. On the other hand, Ms. Monika Arora, learned Standing Counsel appearing for the University would contend that the petitioner has rendered himself ineligible for being appointed as Chairperson of CSPILAS for the following reasons:

(1) *It is on record that the faculty of the Centre CSPILAS had lodged a written complaint with the Dean, SLLCS and copied to the Vice-Chancellor, JNU and Others, against misconduct, autocratic behaviour and abuse/misuse of power of the Chairperson Prof. Rajiv Saxena in complete disregard of laid down rules and procedures that had resulted in a complete chaos leading the Centre on the verge of a total collapse. The faculty and students have made several requests for meetings which were not heeded to by the Chairperson (Prof. Rajiv Saxena) who by his careless actions had jeopardized the administrative functioning of the Centre as well as the academic activities of the students and faculty members.*

*In spite of multiple requests made to Prof. Rajiv Saxena as Chairperson of CSPILAS, he didn't pay any heed and even defied the order issued by the Dean, for participating in the academic activities of the School. In the light of the above mentioned circumstances the Dean had to call a meeting to diffuse the situation created by Prof. Rajiv Saxena's unruly behavior and use of unparliamentarily language against his own faculty members belonging to SC category and his misconduct was proved when he filed a case in Delhi High Court against awarding of the PhD degree to one of his own researcher belonging to the SC community. As a result, the High Court in its judgment mentioned that (Chairperson Prof. Rajiv Saxena) "**Petitioner failed to take timely and***

necessary action to conduct the viva-voce and can only blame himself for the action of the University in appointing two other Supervisors”.

(2) It is further respectfully submitted that as per the the Hon’ble High Court of Delhi”s Orders, dated 5 August, 2010, in the WP (C) 547/2010 in the matter of Prof. Rajiv Saxena (Petitioner) Vs. JNU & Ors., Prof. Rajiv Saxena has expressed his regret and tendered apology to Prof. Shyama Prasad Ganguly in Court.

(3) The University has also received a complaint addressed to the Chief Vigilance Officer of the University through the Ministry of Education against Prof. Rajiv Saxena regarding corruption and financial and administrative irregularities as Chairperson.

(4) Prof. Rajiv Saxena was advised by the then Rector vide letter dated 19.8.2009 to refrain from making false allegations and not to use derogatory language failing which he would be liable for disciplinary action, in a matter pertaining to the then Chairperson of the CSPILAS, SLLCS.

(5) In respect of other Professor, Prof. Indrani Mukherjee, it is kindly submitted that the Executive Council of the University in its meeting held on 10 May, 2013 had taken a serious view of the manner in which the Chairperson, Centre of Spanish, Portuguese, Italian and Latin American Studies, School of Language, Literature and Culture Studies conducted herself on the issue and

resolved to replace the Chairperson of the Centre of Spanish, Portuguese, Italian and Latin American Studies, School of Language, Literature and Culture Studies.

(6) It is also kindly submitted that on several previous occasions, the Deans of the School or Professors of other Centres (including the petitioner) have been made Chairpersons of different Centres. Some examples are given below:

(a) Prof. Rekha Vaidyarajan, Centre for German Studies, SLLCS was the Dean of the School of Language, Literature and Culture Studies and also the Chairperson of Centre of Indian Languages, SLLCS.

(b) Prof. Heeraman Tiwari, Centre for Historical Studies, School of Social Sciences was the Dean of Atal Bihari Vajpayee School of Management and Entrepreneurship and also Chairperson of Centre for Media Studies, SSS.

(c) Prof. Anupama Roy, Centre for Political Studies, School of Social Sciences was the Chairperson of Media Studies, School of Social Sciences.

(d) Prof. Rajiv Saxena, Centre for Spanish, Portuguese, Italian and Latin American Studies as Chairperson, Centre for French and Francophone Studies, SLLCS.

(7) It is to kindly submit that the University is open to consider appointment of Assistant Professors as Chairpersons of Centres, which is subject to amendment in the relevant Clause of Statute of the University with prior

approval of the Visitor (President of India). In fact, the National Education Policy (NEP) 2020 has recommended appointment of Assistant Professors as Heads of the Departments/Chairpersons of the Centres. National Institute of Technology, Tirupati has in fact appointed an Assistant Professor as Head of the Department (Humanities and Social Sciences).

(8) In the short span, starting from 1st February 2021 till date, under Prof. Mazhar Asif's tenure as Centre Chairperson, commendable progress has been made. The following are enumerated for reference:

- Prof. Mazhar Asif held 4 faculty meetings in which constructive discussions resulted in regaining the smooth functioning of the Centre. During the tenure of Prof. Rajiv Saxena as Chairperson for one complete year there was no faculty meeting held.*
- One JRF to SRF meeting and 2 PhD viva voce were conducted, presided by Prof. Mazhar Asif, in which he gave valuable academic suggestions which were appreciated both by students, the supervisors and the external members. Prof. Rajiv Saxena himself was the Supervisor for all the above research scholars and he himself appreciated the observations and suggestions made by Prof. Mazhar Asif.*
- Administrative hurdles regarding the Brazilian Visiting Faculty and Spanish Visiting Faculty were taken up*

and amicably resolved in proper manner as per rules of the MoU between JNU, UGC and the respective Embassies.

- *Online meeting with Cultural Attache of Brazil and another interaction with Cultural Attache of Spain were held by Prof. Mazhar Asif to promote academic collaboration between JNU and the respective countries. These successful meetings were done without any semantic barriers of language.*
- *One lecture was organized for research students, one international book launch event was done and one International Conference has been approved and preparations for the same are underway. The Centre issues have been resolved with dexterity with an amicable approach.*
- *Prof. Mazhar Asif is available in the office everyday from 9:30 am to 7:30 pm and meeting faculty members and students for solving their grievances if any.*
- *Two newly appointed Assistant Professors' grievances and their administrative and academic problems which were kept pending without sighting any reason by the ex-Chairperson Prof. Rajiv Saxena were taken up and solved out amicably.*
- *Two faculty members, who had earlier applied for promotion under Career Advancement Scheme but were left in abeyance by the ex-Chairperson Prof.*

Rajiv Saxena, were also cleared and forwarded as per rules for necessary action.

9. She has also drawn my attention to the Statute 18 to contend that each Centre / Department shall have a Chairperson who shall be appointed by the Executive Council from amongst the Professors / Senior Fellows for a period of two years.

10. Ms. Arora concedes to the fact that there is no bar to appoint a Professor as the Chairperson of the Centre even for a second term though there is no stipulation in that regard in the Statute.

11. Insofar as the submission of the learned counsel for the petitioner by relying upon Ordinance 4 of the Ordinances that one of the powers and duties of the Head of the Department is to organise the teaching and research work in the Department or Centre, Ms. Arora would submit that in terms of Ordinance 8, the Committee for Advanced Studies and Research consisting of the following members:

(a) Dean of the School (Convenor and Chairman)

(b) Heads of Centres and Departments in the School

(c) One Professor/Senior Fellow, one Associate Professor / Fellow and one Assistant Professor / Associate Fellow from amongst the members of the Board of the School by rotation in order of seniority and as such there are other teachers in the committee who are well acquainted with the language, can assist the working of the Centre.

12. According to Ms. Arora, the role of Chairperson has to be assessed in terms of the academic and research work and in this regard performance of Prof. Mazhar Asif speaks for itself. In fact, the petitioner has miserably failed to foster any spirit of academic excellence and the Centre was

handicapped by his actions. In support of her submission, Ms. Arora has drawn my attention to the various documents filed by her along with the written submissions. She seeks the dismissal of the petition.

13. Having heard the learned counsel for the parties, the only issue that arises for consideration is whether the appointment of respondent No.2 as the Chairperson of CSPILAS is justified. There cannot be any dispute that the Jawaharlal Nehru University has been established under the Act of 1966 and is governed by the Statutes and Ordinances which are statutory in nature. It is the Statute 18 of the Statutes which governs the appointment of the Chairperson of all the Centres under the School including CSPILAS. Statute 18(2)(c) (I) of which a reference has been made by the learned counsel for the parties reads as under:

(c) (I) "Each Centre/Department shall have a Chairperson who shall be appointed by the Executive Council from amongst the Professors/Senior Fellows for a period of two years.

Provided that where in any Centre/Department, there is only one Professor/Senior Fellow, the Executive Council may also appoint one of the Associate Professors/Fellows as the Chairman of the Centre/Department."

14. It is clear from the above, that the Chairperson of the Centre / Department has to be appointed from amongst the Professors / Senior Fellows for a period of two years. There is no stipulation that the appointment cannot be renewed beyond two years. Though there is no specific stipulation that the Professors / Senior Fellows have to be from the same Centre / Department, but the proviso clause more specifically the

words “where in any Centre / Department, there is only one Professor / Senior Fellow, the Executive Council may also appoint one of the Associate Professors / Fellows as the Chairman of the Centre / Department.” makes it clear that the Professor(s) has to be from the same Centre.

15. The respondent No.2 though the Dean of the School, is the Chairperson of Centre for Persian Studies. The said Centre is a separate Centre. Surely the appointment of the respondent No.2 as the Chairperson of CSPILAS is not in conformity with the Statute. The action of the University appointing respondent No.2 as Chairperson of CSPILAS shall mean, that a Professor in any Centre can be appointed as Chairperson of any other Centre. The same is impermissible.

16. The submission of Ms. Arora is that the petitioner having completed two tenures and given the nature of his conduct which has jeopardised the Centre's functioning, it was decided that the petitioner's tenure as a Chairperson of the Centre CSPILAS be not continued after two terms.

17. However, Ms. Arora during her submission did concede to the fact that there is no stipulation in the Statute 18, (which has been reproduced above) which limits the appointment of Chairperson of a Centre only for two terms. In fact, the Ld. Counsel for the petitioner has stated that the faculty in the Centre for the Study of Social Exclusion and Inclusive Policy is occupying the position of Chairperson since 2014. In other words, there is no bar for being appointed beyond two terms. If that be so, the petitioner could have been appointed for a further term. The plea of Ms. Arora is primarily that the conduct of the petitioner as Chairperson of CSPILAS was such that, the petitioner cannot be appointed for a further term.

18. Ms. Arora has placed reliance on the documents filed along with the

written submissions. The learned counsel for the petitioner has contested the stand of the University with regard to the complaints made against the petitioner. The plea of the counsel for the petitioner that the only ground on which the position of Chairperson can be denied are those highlighted in Para 5 above and the said grounds being non-existent in the case in hand, the petitioner needs to be granted extension is appealing on a first blush, as the said grounds are those which disqualify a Professor the consideration itself for appointment as Chairperson. But in this case, the working of the petitioner as reflected in various documents is such that, his appointment shall not be in public interest / Centre. In any case, I find it is not the prayer of the petitioner that he be appointed for a further term.

19. The submission of the learned Counsel for the petitioner that, the decision of the University not to appoint Prof. Indrani Mukherjee as the Chairperson of the Centre is untenable, is appealing. I find the University has relied upon certain happenings of the year 2013 (almost nine years back), when Prof. Indrani Mukherjee was the Chairperson of the Centre, as the ground to deny the position to Prof. Indrani Mukherjee. Surely, such conduct of Prof. Indrani Mukherjee cannot be taken against her at least in 2021. But I find that Prof. Indrani Mukherjee is not a party in the writ petition. Hence no claim on behalf of Prof. Indrani Mukherjee can be entertained in this petition.

20. That apart, I note that it is not disputed by the learned counsel for the petitioner that the petitioner, though a Professor in CSPILAS was also given the position of Chairperson of the Centre for French Studies. If that be so, the very ground on which the petitioner is contesting the appointment of the respondent No.2 as Chairperson of CSPILAS is not justified and he has no

locus to challenge the appointment being a beneficiary of similar action of the University. The question is whether the appointment of the respondent No.2 as Chairperson of the Centre can be upheld by this Court. The answer to this has to be 'No'. Any conclusion in that regard would be contrary to the provisions of the Statute 18 and even the Ordinance 4 of the Ordinances, which I reproduce as under: -

“4. *Powers and Duties of the Head of the Department or Centre:

The Head of the Department or Centre shall convene and preside over meetings of the Department or Centre, as the case may be, and shall, under the general supervision of the Dean and with the concurrence of the Centre –

(a) organize the teaching and research work in the Department or Centre;

(b) maintain discipline in the class rooms and laboratories through teachers;

(c) assign to the teachers in the Department or Centre such duties as may be necessary for the proper functioning of the Department or Centre;

(d) perform such other duties as may be assigned to him by the Dean, the Board of the School concerned, the Academic Council, the Executive Council and the Vice-Chancellor.”

It is clear that one of the powers and duties of the Head of Department is to organise the teaching and research work in the Department / Centre, which is possible only if one is well-versed with the discipline / language(s)

concerning the Department / Centre. The learned Counsel for the petitioner is right in contending that the Chairperson of the Centre is required to maintain academic standards and conduct teaching, research and examinations in the Centre. Moreover, the Chairperson is the representative of the Centre in the Committee for Advance Studies and Research.

21. The submission of Ms. Arora in this regard by relying upon the Ordinance 8 which relates to the Committee for Advance Studies and Research which is a larger body than Centre is unmerited. The School consists of different Centres, so Ordinance 8 would not answer the plea of the learned Counsel for the petitioner by relying upon Ordinance 4, which entails duties on the Chairperson to organise research work / maintain standards of teaching and research.

22. Ms. Arora would also submit that the research work in every Department including CSPILAS is carried out in English and as such there would be no difficulty for the respondent No.2 to understand the nature of research being conducted by a particular researcher / student in a Centre.

23. I am not in agreement with such a submission of Ms. Arora for the simple reason, the Centre being Centre of Spanish, Portuguese, Italian and Latin American Studies must have some working knowledge of these languages which admittedly the respondent No.2 does not have. At least nothing has been placed before me in that regard. In any case that cannot be a ground to appoint respondent No. 2 as Chairperson, in violation of Statute 18 (2) (c) (I).

24. A stand has been taken by Ms. Arora in her written submissions that the University is open to consider the appointment of Assistant Professors as Chairperson of Centres subject to amendment of relevant clauses of Statute

of the University with prior approval of the Visitor (The President of India). I say nothing on that, it is for the University to act in accordance with the provisions of the Act of 1966, Statutes, Ordinances and Regulations of the UGC, if any.

25. This Court is conscious of the fact that a Centre cannot be without a Chairperson who supervises its activities, but the appointment of respondent No. 2 cannot be justified. I have seen the prayers made by the petitioner in the writ petition. He has primarily challenged the appointment of the respondent No.2 being violative of the Act of 1966 and Statutes framed thereunder. He has not sought any prayer in the writ petition for his appointment / continuance as Chairman of the Centre. In fact, his prayer is that a Chairperson of CSPILAS be made strictly in accordance with the Statutes 18(2)(c) (I) of the Act of 1966.

26. If that be so, the petition is disposed of by setting aside the appointment of respondent No. 2 as Chairperson of CSPILAS. Liberty is with the University to proceed in accordance with law. No costs.

CM No. 21642/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 17, 2021/aky/jg