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

% ***Reserved on: 29.06.2020***
Pronounced on: 06.07.2020

\+ W.P.(C) 3266/2020 & CM APPL. 11447/2020 & 12563/2020

DR. RAJIV CHOPRA ..... Petitioner
Through: Mr. Anand Nandan, Advocate

versus

UNIVERSITY OF DELHI & ORS. ..... Respondents
Through: Mr. Sachin Datta, Sr. Advocate with Mr. M.J.S. Rupal, Standing Counsel with Ms. Akanksha Kaul & Mr. Manek Singh, Advocates for R-1
Mr. Pritish Sabharwal, Advocate for R-2
Mr. Manoj Ranjan Sinha, Advocate for R-3/UGC
Mr. Sanjeev Sabharwal, Advocate for R-4

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Present Petition has been filed under Article 226 of the Constitution of India for quashing the letter dated 24.05.2020 whereby the Petitioner has been repatriated to his parent college, as also, for a direction to Respondent No. 1 to continue the Petitioner on the post of Officer on Special Duty-Principal (hereinafter referred to as 'OSD') in

Respondent No. 2/ College. Quashing of the appointment of Respondent No. 4 on the post of OSD in Respondent No. 2 is also sought.

2. Case of the Petitioner is that on 01.10.2013, Petitioner was selected as OSD in Respondent No. 2/ College and continued on the said post. The appointment was made vide letter dated 30.09.2013 and was for a period of six months in terms of the provisions of Clause 7(3)(c) of Ordinance XVIII of University of Delhi. It is further averred that the appointment was extended vide letters dated 21.04.2014 and 25.09.2014, respectively. No order has been passed after 25.09.2014 and the Petitioner has continued on the said post, till the Impugned Order was passed on 24.05.2020.

3. It is averred by the Petitioner that on 24.05.2020, which was Sunday and a holiday, Respondent No. 1 passed the Impugned Order and the *malafide* is evident from the fact that on 25.05.2020, which was again a holiday, on account of Eid, Respondent No. 4, who has been appointed in place of the Petitioner, without any relieving letter from the Petitioner, joined the post. Letter dated 25.05.2020 was sent to the Petitioner at midnight and no formal handing over of charge took place, before Respondent No. 4 took over. It is averred that there was no urgency or any immediate cause to remove the Petitioner, from the post of OSD except, *malafide* on part of the Respondents. Petitioner feels humiliated by the manner in which he has been repatriated as well as the way he has been prevented from even entering the office, after dedicatedly serving for 6 years.

4. Learned Counsel for Petitioner contends that the Petitioner was selected and appointed as OSD, purely on his merit and there is no reason

or cause to have removed him from the said post. The reason given in the impugned letter for removing the Petitioner, that he has completed more than six years as OSD, itself reveals the *malafide* intent as, the case of the Petitioner is not an isolated one and in several other colleges of the University, OSDs have been allowed to continue for several years, in the absence of regular appointments of principals. To substantiate this argument, learned Counsel has relied on the case of Dr. Vipin Kumar, who was appointed as OSD in Sri Aurobindo College vide order dated 31.12.2013 and continues till date.

5. Learned Counsel further submits that the impugned action is a fall out of a Petition filed by the Petitioner in this Court, being W.P. (C) No. 4521/2019, titled Dr. Rajiv Chopra v. University of Delhi & Ors., with respect to his appointment to the post of Principal in Respondent No. 2/ College. It is submitted that on 23.04.2017, an Advertisement was published for filling up the post of a regular Principal. Petitioner fulfilled all the eligibility conditions and applied for the said post, indicating his Academic Performance Index. Petitioner was recommended for appointment by the Selection Committee, but the recommendations were not accepted by the Governing Body of Respondent No. 2, despite the fact that the Petitioner stood first in the result declared by the Selection Committee.

6. It is submitted that in these circumstances, Petitioner was constrained to file a Writ Petition in this Court for directions to give effect to the recommendations of the Screening Committee. Despite passage of a long time and imposition of cost by the Court, till date, Respondents have chosen not to file a Counter Affidavit, in order to

defeat the rights of the Petitioner in the said litigation. Respondents have passed the Impugned Order to remove the Petitioner from the post of OSD and have made false allegations, to make out a foundation for their illegal actions, so that the Petitioner does not succeed in the said Petition. Impugned action is totally unwarranted and against the principles of natural justice.

7. Learned Counsel further argues that appointment of the Petitioner was required to be continued till a regular Principal is appointed. Appointment of the Petitioner is under Clause 7(3)(c) of Ordinance XVIII, which provides that though the appointment of an OSD shall ordinarily be for a period of six months, but the same can be extended. It further provides that, both, extension and termination can only be with the prior approval of the Vice-Chancellor of the University. The argument is that, the removal of the Petitioner from the post, is without the prior approval of the Vice-Chancellor.

8. Learned Counsel further submits that when the matter was first listed before the Court, Respondents had orally submitted that the Petitioner has been repatriated to his Parent College on account of certain anonymous complaints and allegations against him. Learned Counsel submits that soon thereafter, the Petitioner has filed an Additional Affidavit bringing out that none of the allegations leveled are true or tenable in law and are on account of *malafide*. Petitioner has replied to the allegations made, but there has been no response from the University, as it was realized that the allegations were false.

9. Short Affidavit has been filed on behalf of Respondent No. 1/ University of Delhi. Learned Senior Counsel Mr. Sachin Datta, appearing

on behalf of Respondent No. 1, contends that as per Ordinance XVIII of the University of Delhi, an OSD is appointed ordinarily for six months, as a temporary arrangement. Petitioner was appointed as OSD at Respondent No. 2/ College under the said Ordinance. Although the appointment was intended and actually made for a short and temporary period, but the Petitioner continued as OSD for more than six years. It is argued that by its very nature, this was only a temporary and officiating appointment, which is clear from the perusal of the Appointment Letter, specifying that the appointment was for six months in terms of provisions of Clause 7(3)(c) of the Ordinance. The tenure was further extended and in the letter dated 21.04.2014, it was clearly stated that the extension was given w.e.f. 01.04.2014, for a period of six months or till permanent arrangement is made, whichever is earlier. Last extension was given vide letter dated 25.09.2014 wherein it was stipulated that the extension was w.e.f. 01.10.2014 till further orders or till a regular principal is appointed, whichever is earlier. Petitioner was thus aware that his tenure would come to an end with the happening of any of the two contingencies mentioned in the letter of extension. In the present case, one of the two contingencies has occurred and the impugned order is the 'further order' stipulated in letter dated 25.09.14, which brings to end, the appointment of the Petitioner, as OSD of Respondent No. 2/College.

10. Learned Senior Counsel further argues that the appointment of the Petitioner as OSD was on officiating basis and thus he cannot claim a vested right to continue on an officiating post. The substantive appointment of the Petitioner is on the post of Associate Professor (Department of Commerce), in his Parent College, where he continues to

hold a 'lien'. No employee in law, can claim a vested right on an officiating appointment and there is no illegality in repatriating the Petitioner, back to his parent college. Charge of OSD has been temporarily handed over to the senior-most teacher of the College, who fulfils the minimum eligibility requirement, for the appointment.

11. Mr. Datta, Learned Senior Counsel argues that the Petitioner has not been able to substantiate his legal right to continue as OSD, either in the pleadings or during arguments. In so far as the appointment of OSDs for long periods in various other colleges is concerned, as alleged by the Petitioner, it is submitted that there were only two colleges i.e., DCAC and Sri Aurobindo College, where OSDs were appointed and in both colleges, the OSDs have been repatriated to their respective parent colleges. There is no *malafide* in the decision of Respondent No. 1, to repatriate the Petitioner, to his substantive post in the parent college. With regard to the case of Dr. Vipin Agarwal, relied upon by the Petitioner, it is submitted that, Dr. Agarwal, is an Officiating Principal, in his Parent College and not an OSD.

12. Learned Senior Counsel further submits that the Petitioner is, without any basis, co-relating the litigation with respect to his appointment as regular Principal, with the impugned order, in the present case. It is submitted that the appointment of a regular Principal is a separate issue and would be decided by the Court, as and when the said Petition is heard on merits.

13. Learned Senior Counsel submits that Petitioner was appointed in 2013 for a temporary period and has continued for over six years. Having

known in 2013 that the appointment was for six months, the Petitioner can hardly have a grievance after having continued for over six years.

14. Learned Senior Counsel submits that in law, no employee can have a vested right to continue indefinitely on a Temporary/ Ad-Hoc / Officiating Post. Reliance is placed by the Learned Senior Counsel on judgments of the Supreme Court in ***Parshotam Lal Dhingra v. Union of India [(1958) SCR 828]; State of Bombay v. F.A. Abraham [1962 Supp (2) SCR 92]*** and ***Divisional Personnel Officer Southern Railway v. S. Raghavendrachar [(1966) 3 SCR 106],*** for the proposition that, an officiating Government servant can be reverted to his substantive post, and this would not be a punishment or a reduction in rank and that there cannot be a vested right to continue on an officiating appointment.

15. Mr. Datta further submits that, the Impugned order is an order simpliciter, reverting the Petitioner back to his Parent College, without an iota of allegation for any misconduct. Bare reading of the order would substantiate this and the order cannot be termed as punitive or stigmatic. Reliance is placed on the judgment of the Supreme Court in the case of ***Wainganga Bahuuddeshiya Vikas Sanstha & Ors. v. Ku. Jaya & Ors [2019 SCC OnLine SC 1008],*** to argue that a simpliciter order need not always be stigmatic.

16. Learned Senior Counsel further argues that when the Petitioner was appointed as OSD, it was in terms of Clause 7(3)(c) of Ordinance XVIII, which clearly provides that the appointment will be 'ordinarily for a period of six months'. The word 'ordinarily' has to be given its ordinary meaning as held by the Supreme Court in ***Union of India v. Hemraj***

Singh Chauhan [(2010) 4 SCC 290]. While construing the said word, Courts must not be oblivious of the context in which it is used.

17. University Grants Commission (UGC)/Respondent No. 3 has filed a short affidavit. Stand of the UGC is limited to contending that the UGC, in exercise of its powers under Section 26(1) of the UGC Act, 1956 and in terms of the Notification issued by MHRD, framed the UGC Grants Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 and there is no provision of an OSD officiating as a Principal, in the said Regulations.

18. In so far as the College/ Respondent No. 2 is concerned, it is submitted by Mr. Pritish Sabharwal, learned Counsel that Petitioner was appointed as OSD by Respondent No. 1 on 30.09.2013, for a period of six months, invoking Clause 7(3)(c) of Ordinance XVIII of the University of Delhi. Thereafter, appointment was extended twice, i.e. on 21.04.2014 and 25.09.2014. The letter dated 25.09.2014, clearly mentioned that the appointment was extended until further orders or till the time a regular Principal is appointed, whichever is earlier. The extension was contingent, and did not give a right to the Petitioner to continue on the post, in perpetuity. Appointment of the Petitioner is akin to a deputation on which no employee can claim a right and repatriation to a substantive post, is the prerogative of the employer. Petitioner is an Associate Professor in Sri Aurobindo College and has a lien on his post in the said College. He has no vested right to seek extension on the post of OSD, with the answering Respondent. It is further submitted that in the event,

when a regular Principal of a college superannuates or expires or is incapacitated due to certain circumstances, the college, in the absence of a Vice Principal or a Teacher having necessary qualification to officiate as a Principal, seeks an appointment of an OSD, to officiate as Principal till the time, a regular Principal takes over. This is a temporary and stopgap arrangement only.

19. It is further submitted by Mr. Sabharwal that, the words 'until further orders' mentioned in the Appointment Letter of the Petitioner, clearly connote that it is the prerogative of the Vice-Chancellor, to pass an order terminating the appointment as OSD and reverting the incumbent, to a substantive post. It is contended that, when an employee is sent on deputation, there is a specific duration for which he can remain on the said post. The appointment on deputation/ officiating basis is the sole discretion of the employer. In the absence of any Statutory or vested right to continue in his position as OSD, Petitioner cannot invoke the Writ Jurisdiction of this Court, under Article 226 of the Constitution of India. A petition seeking the relief of mandamus can lie only when there is a vested right, which is abridged. Without prejudice to the said submissions, it is also argued that even otherwise, the tenure of a regular Principal is for a maximum period of five years and the Petitioner has, under extensions, continued for over six years, which is well beyond even the tenure of a regular Principal.

20. Learned Counsel further submits that as per the OM dated 17.02.2016 issued by the Government of India, which has been made applicable to Central Universities, if a borrowing organization wishes to retain an Officer beyond five years, it may seek an extension in writing

with specific duration and such continuation must be absolutely necessary in Public Interest and that too, for a maximum period of another two years. In the present case, Respondent No. 2 does not feel any necessity to continue the Petitioner as OSD, and moreover, the said repatriation of the Petitioner is with the prior approval of the Competent Authority, which is the Vice-Chancellor of the University. Learned Counsel relies on the judgment of the Supreme Court in ***Kunal Nanda v. Union of India [AIR 2000 SC 2076],*** and the judgment of a Division Bench of this Court in ***Shailesh Singh v. Union of India & Ors. [2010 SCC OnLine Del 2688],*** to argue that a deputationist has no right to continue on a deputation post and can be repatriated to the parent department, at the instance of either the lending or the borrowing department.

21. It is pointed out that Respondent No. 4 has been appointed in accordance with Clause 7 of Ordinance XVIII. Respondent No. 4 fulfils the minimum eligibility requirement and is the senior-most teacher. The appointment, in any case, is a temporary arrangement and has due approval of the Vice Chancellor. It is submitted that, while exercising powers under Ordinance XVIII, no reasons need to be assigned, either for appointment or rejection of a candidature and much less for repatriation. Reliance is placed on the judgment of this Court in ***Dr. Ashok K. Mittal v. University of Delhi [1995 SCC OnLine Del 722]***.

22. Mr. Sanjeev Sabharwal, appearing for Respondent No. 4, argues that Respondent No. 4 has been duly appointed after the approval of the Vice-Chancellor and is only holding a temporary charge as Principal and Administrative Head of Respondent No. 2. The main focus of the reply of Respondent No. 4 is with respect to the release of salary of the Petitioner,

for the period after 24.05.2020, when he was repatriated to his parent college. It is submitted that, the salary of the Petitioner was released on 05.06.2020, for the period starting from 01.05.2020 till 24.05.2020, when he ceased to be an OSD of Respondent No.2.

23. Learned Counsel for the Petitioner, arguing in rejoinder, submits that the order appointing the Petitioner as OSD was issued after the approval of the Vice-Chancellor, on recommendation of the Governing Body. It is clear from the extension letters that Petitioner could be replaced only after the appointment of a regular Principal. The words 'until further orders' only connote that he could be replaced by a regular Principal and not by another Acting or Officiating Principal. Whether the Petitioner was an Acting or an Officiating Principal, the fact is that he discharged the functions of a regular Principal. It is argued that, it is wrong for the Respondents to term the appointment of the Petitioner as deputation with no vested right to continue on the post. Unlike the deputation under the Central Government, in an appointment as OSD-Principal, leave, salary, pension contribution is not transferred from one college to the other, as per Statute 28A of the University of Delhi.

24. Learned counsel further argues that it is a settled law that an ad-hoc or a temporary employee cannot be replaced by another ad-hoc or temporary employee and can only be replaced by a regularly selected employee. Reliance in this behalf is placed on the Supreme Court judgment of ***State of Haryana v. Piara Singh [(1992) 4 SSC 118],*** and a judgment of a Co-ordinate Bench of this Court in ***Raj Kumar vs. University of Delhi & Anr. [2019 SCC OnLine Del 6493]***. It is argued that only when a regular Principal is appointed by Respondent No. 1,

Petitioner can be removed from his post of OSD. It is reiterated that the Respondents have removed the Petitioner only because he has laid a challenge to the *malafide* action of Respondent Nos. 1 & 2 in not appointing the Petitioner as a regular Principal. Had the Respondents not illegally rejected the recommendations of the Selection Committee in 2018, Petitioner would have been a regular Principal of Respondent No. 2, at present.

25. Learned Counsel vehemently argues that although serious arguments were made during the first hearing before this Court that there were allegations against the Petitioners, the Counter-Affidavits are conspicuously silent about the allegations, only because the Respondents are aware that the same cannot be substantiated against the Petitioner.

26. It is also argued that the Petitioner has a legal and fundamental right to continue on the post and the decision to remove him could only be taken by the Governing Body, subject to final approval by the Vice-Chancellor. It is contended that there has been no such decision by the Governing Body after 2014, when the last extension was given to the Petitioner.

27. Learned Counsel for the Petitioner relies on the judgment in the case of ***The Manager Government Branch Press & Anr. vs. D.B. Belliappa [1979 (1) SCC 477],*** for the proposition that if the services of the temporary Government servant are terminated arbitrarily and not on ground of unsuitability, unsatisfactory conduct or the likes, a question of unfair discrimination may arise, notwithstanding the fact that, in terminating his service, the Appointing Authority was purporting to act in terms of the employment. In such a situation, it is the duty of the

Authority to disclose to the Court, the reason or motive, which impelled it to take the impugned action. Relevant paras read as under:

> *"23. In the view we take, we are further fortified by a decision of the Constitution Bench in Champak Lal case. That was a case of a temporary government servant. Rule 5 governing a temporary government servant, which came up for consideration in that case, gave power to the Government to terminate the service of a temporary government servant by giving him one month's notice or on payment of one month's pay in lieu of notice. This rule was attacked on the ground that it was hit by Article 16. In the alternative, it was urged that even if Rule 5 is good, the order by which the appellant's services were dispensed with was bad because it was discriminatory. Reference was made to a number of persons whose services were not dispensed with, even though they were junior to the appellant and did not have as good qualifications as he had. Wanchoo, J. (as he then was), speaking for the Court, repelled the alternative argument in these terms:*
>
> > *"We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case, a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In those circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was as a result of discrimination. The present however is a case where the appellant's services were terminated because his work was found to be unsatisfactory ... (In such a case) there can, in our opinion, be no question of any discrimination. It would be absurd to say that if*

> *the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is. Therefore even though some of those mentioned in the plaint by the appellant were junior to him and did not have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory, for that action was taken on the basis of his unsatisfactory conduct. A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of aparticular temporary employee on account of his conduct being unsatisfactory."*
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> *(Parenthesis and emphasis supplied)*

The principle that can be deduced from the above analysis is that if the services of a temporary government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off in a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16.

24. Conversely, if the services of a temporary government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in

> *accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Article 311(2), proviso (c), the authority cannot withhold such information from the Court on the lame excuse that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the Rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in Breen v. Amalgamated Engineering Union [(1971) 1 All ER 114] , "is one of the fundamentals of good administration", and, to recall the words of this Court in Khudiram Das v. State of W.B. [(1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832, 845] in a Government of laws "there is nothing like unfettered discretion immune from judicial review ability". The executive, no less than the judiciary, is under a general duty* ***to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1)****."*

28. Learned Counsel next relies on the judgment of the Supreme Court in ***Kerala State Beverages (M&M) Corporation Ltd. v. P.P. Suresh*** **[*(2019) 9 SCC 710],*** on the principle of legitimate expectation and argues that Supreme Court has held that, for a legitimate expectation to arise, the decision of the Administrative Authority must affect the person, by depriving him of some benefit or advantage, which had accrued to him in the past and that the employee had received assurance from the employer that the advantage will not be withdrawn, without an opportunity of advancing reason for withdrawing the advantage. The principle of

procedural legitimate expectation would apply to cases where promise is made and is withdrawn without affording an opportunity to the person affected. Reliance is further placed on the judgment in ***Union of India & Ors. v. Godfrey Philips India Ltd. [1985 (4) SCC 369],*** to argue that the Court has in the said judgment clearly held that Doctrine of Promissory Estoppel is well established in Administrative Law of India. It is a principle in equity, evolved to avoid injustice. Doctrine is applicable against the Government, in exercise of its Governmental, Public or Executive Functions. Learned Counsel also relies on the judgments of the Supreme Court in ***Kasnika Trading & Anr. v. Union of India & Anr. [1995 (1) SCC 274]*** and ***Delhi Cloth & General Mills. v. Union of India [1988 (1) SCC 86],*** with respect to the Doctrine of Promissory Estoppel.

29. Learned Counsel for the Petitioner strenuously argued that an order of reversion from an officiating to a substantive post amounts to reduction in rank. It is submitted that the substantive post of the Petitioner is that of an Associate Professor, while he was officiating as OSD-Principal, which is a higher post. The Impugned order, by reverting the Petitioner to a lower post, has actually reduced him in rank and the same could not have been done without holding an enquiry, as envisaged under the provisions of Article 311 of the Constitution of India. Learned Counsel relies on the judgment of the Supreme Court in ***K. H. Phadnis v. State of Maharashtra [(1971) 1 SCC 790].*** In the said case the Appellant was chosen for deputation on two occasions to another Department. On the second occasion, the Appellant was sent to a post, on deputation, which was a temporary post. The Appellant, however, continued on the said post for several years, indicating that, the post was a temporary post

of quasi-permanent character. Appellant was, however, reverted from the post. The Supreme Court relied on an earlier judgment in ***Appar Apar Singh v. State of Punjab [(1970) 3 SCC 338]***, in which, the question was whether an order reverting the Appellant from a post in Class-I Service, in which he was officiating, to a substantive post in Class-II, amounted to reduction in rank. In the said case, the Court held that the order amounted to a reduction in rank and as no enquiry was held, the order was in violation of provisions of Article 311. In the case of ***K. H. Phadnis (supra)***, the Supreme Court observed that the order of reversion simpliciter is not reduction in rank or a punishment, however, if there is evidence that the order of reversion is not 'a pure accident of service' but an order in the nature of punishment, Article 311 will be attracted. This part of the judgment has been strongly relied upon by learned Counsel for the Petitioner.

30. I have heard learned Counsel for the Petitioner, learned Senior Counsel for Respondent No. 1 and learned Counsels for Respondent Nos. 2 to 4.

31. The undisputed fact is that the Petitioner was appointed as OSD-Principal in Respondent No. 2/ College on 01.10.2013 and has continued in the said post until the passing of the Impugned order. At the time of his appointment as OSD, the substantive appointment of the Petitioner was of an Associate Professor in Sri Aurobindo College, which is his Parent college. There is no dispute that even today the substantive appointment of the Petitioner continues to be that of an Associate Professor and his appointment to the post of OSD, was only in an officiating capacity.

32. The appointment of the Petitioner as OSD was made under the provisions of Clause 7(3)(c) of Ordinance XVIII of the University of Delhi. The provision for appointment as well as its extension or termination is contained in the said Clause and the same is extracted herein under for ready reference:

> "**Clause 7 (3) (c) of Ordinance XVIII**
>
> *3 (c) Where circumstances so warrant that it may be necessary to appoint an OSD to officiate as Principal, the Governing Body may recommend a panel of at least three names to the Vice-Chancellor for approval of a candidate for appointment as an OSD. However, in case there is no appointing authority to recommend such a panel, the Vice-Chancellor shall appoint the OSD. The appointment of OSD shall ordinarily be for a period of six months, which may be extended or terminated with the prior approval of the Vice-Chancellor."*

33. Reading of the said Clause makes it clear that where the circumstances so warrant and exigency requires appointment of an OSD, the Governing Body may recommend a panel of three names to the Vice-Chancellor for approval. In case there is no Appointing Authority to recommend, the Vice-Chancellor shall appoint the OSD. The Tenure of the OSD so appointed, as provided in the Clause, is ordinarily for a period of six months. The said period can be extended or terminated with the prior approval of the Vice Chancellor. It is clear, that the extension of the tenure of an OSD, beyond the initial period of six months is the prerogative of the University and the College, and cannot be claimed as a matter of right, by the employee so appointed as OSD.

34. It would be useful at this stage to refer to the Appointment Letter of the Petitioner as the same would indicate, both the nature of the appointment as well as the Tenure. The appointment letter dated 30.09.2013 is as under:

"University of Delhi South Campus
Benito Juarez Road, New Delhi-110 021

Phone: 24112231-E/224
Fax:91-11-24117772

CS-SDC/114/DCAC/2013/488

The Chairman *30th September 2013*
Governing Body
Delhi College of Arts and Commerce
New Delhi-110024

Dear Sir,

I am directed to refer to your letter dated 26th September 2013 regarding officiating arrangement on the post of Principal, Delhi College of Arts and Commerce and to say that the Vice Chancellor has been pleased to appoint Dr. Rajeev Chopra, Associate Professor, Department of Commerce, Sri Aurobindo College (Morning), University of Delhi as Officer-on-Special Duty to ***officiate*** *as Principal of the College w.e.f. 1st October 2013 for a period of* ***six months,*** *in terms of provisions contained in Clause 7(3)(c) of Ordinance XVIII of the University.*

Yours faithfully,
Sd/-
DEPUTY REGISTRAR"

35. The appointment of the Petitioner was clearly in the nature of an officiating appointment and for a period of six months, in terms of provisions of Clause 7 (3) (c) of Ordinance XVIII. The period of 'six months' and the word 'officiate' are clearly mentioned in the said letter.

36. Vide letter dated 21.04.2014, University approved the extension of appointment of the Petitioner, on recommendation of the Governing Body w.e.f. 01.04.2014, for a period of six months or till a permanent arrangement is made, whichever is earlier. The said letter dated 21.04.2014 reads as under:-

"University of Delhi South Campus
Benito Juarez Road, New Delhi-110 021

Phone: 24112231-E/224
Fax:91-11-24117772

CS-SDC/114/DCAC/2014/856

The Chairman *21st April 2014*
Governing Body
Delhi College of Arts and Commerce
Netaji Nagar
New Delhi- 110023,

Sub: Extension of appointment of OSD – DCAC

Dear Sir,

With reference to your letter No. DCAC/A-9/2014 dated 28th March 2014 on the subject cited above, I am directed to convey the University approval, in view of the recommendations of the Governing Body and in terms of provisions contained in Clause 7(3)(c) of Ordinance XVIII of the University, the extension of appointment of Dr.

Rajeev Chopra, Officer-on-Special Duty w.e.f. 1st April 2014 for a period of six months or till a permanent arrangement is made, whichever is earlier.

Yours faithfully,

Sd/-
DEPUTY REGISTRAR"

37. Subsequent thereto, another letter was issued by the University on 25.09.2014 conveying the approval of the University for further extension w.e.f. 01.10.2014. This letter is significant as under this letter, the extension was 'till further orders or till a regular principal is appointed, whichever is earlier'. This letter was never challenged by the Petitioner and in fact, his extension till the passing of the Impugned order is under the provisions of this letter. From a bare perusal of the letter, it is clear that the extension of the Term/ Tenure of the Petitioner as OSD was subject to either of the two contingencies i.e., 'further orders' or 'appointment of a regular Principal', whichever was earlier. Petitioner was thus aware that his appointment as OSD was on officiating basis, made under Clause 7(3)(c) of Ordinance XVIII, for an initial term of six months and the extension was subject to the two contingencies, envisaged under the letter dated 25.09.2014. The said letter is as under:

"University of Delhi South Campus
Benito Juarez Road, New Delhi-110 021

Phone: 24112231-E/7224
Fax:91-11-24117772

CS-SDC/114/DCAC/2014/1112

The Chairman *25th September, 2014*
Governing Body
Delhi College of Arts and Commerce
Netaji Nagar
New Delhi- 110023,

Sub: Extension of term of Dr. Rajiv Chopra as Officer-on-Special Duty-DCAC-REG

Dear Sir,

With reference to your letter No. DCAC/BE/2014/531 dated 3rd September, 2014 on the subject cited above, I am directed to convey the approval of the University in the extension of appointment of Dr. Rajiv Chopra, Officer-on-Special Duty w.e.f. 1st October 2014 ***till further order or till a regular Principal is appointed, whichever is earlier*** *as per provisions of Ordinance XVIII of the University.*

Yours faithfully,
Sd/-
DEPUTY REGISTRAR"

38. In so far as one of the contingency i.e., the appointment of the regular Principal for Respondent No. 2/ College is concerned, the parties are *ad-idem* that the Petitioner has filed a petition in this Court, being W.P. (C) No. 4521/2019, titled Dr. Rajiv Chopra v. University of Delhi & Ors., wherein he has challenged his non-selection to the substantive post of a Principal. Mr. Datta, learned Senior Counsel, during the course of the arguments had submitted that since the matter is *sub-judice* before this Court, University has decided not to appoint a regular Principal, till

the petition is pending. Hence, the contingency of appointment of a regular Principal has not arisen thus far.

39. The other contingency i.e 'till further orders', however, occurred when Respondent No. 1 passed the impugned order on 24.05.2020. Vide the said order, University invoked Clause 7(3)(c) of Ordinance XVIII and repatriated the Petitioner to his Parent College on the ground that he has completed more than six years as OSD. The words 'whichever is earlier' in the letter dated 25.09.2014 assume significance at this stage. It was well-known to the Petitioner that whenever anyone of the two events mentioned in the letter occurs, the term of his appointment would come to an end. Learned Counsel for the Petitioner has sought to argue that in terms of the Ordinance and the appointment and extension letters, Petitioner is entitled to continue as an OSD till the regular Principal is appointed. In fact, this is the main plank of argument of the Counsel for the Petitioner. In my view, there is complete fallacy in the said argument. Neither the provisions of Clause 7 (3) (c) of Ordinance XVIII, nor any of the letters referred to above, even remotely convey that the Petitioner had a vested right to continue, till a regular Principal is appointed. Had that been so, the letter dated 25.09.2014, which is the last letter of extension, would not have contained the words 'till further orders' and 'whichever is earlier'.

40. The genesis of the appointment of the Petitioner is Clause 7 (3) (c) of Ordinance XVIII. The provision itself indicates that, the appointment is intended to be 'ordinarily' for a period of six months and the right of extension or termination is with the University and the Petitioner cannot claim a vested right to seek extension. The word 'ordinarily' has to be

given its ordinary meaning as held by the Supreme Court in the case of ***Hemraj Singh Chauhan (supra),*** while interpreting Rule 4 (2) of the Indian Administrative Service (Cadre) Rules, 1954, which provided that the Central Government shall ordinarily hold a Cadre Review at an interval of every five years. Court held as under:-

> *"39. The learned counsel for the appellants has also urged that the statutory mandate of a cadre review exercise every five years is qualified by the expression "ordinarily". So if it has not been done within five years that does not amount to a failure of exercise of a statutory duty on the part of the authority contemplated under the Rule.*
>
> *40. This Court is not very much impressed with the aforesaid contention. The word "ordinarily" must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word "ordinarily" has been used in the context of promotional opportunities of the officers concerned. In such a situation the word "ordinarily" has to be construed in order to fulfil the statutory intent for which it has been used.*
>
> *41. The word "ordinarily", of course, means that it does not promote a cast-iron rule, it is flexible (see Jasbhai Motibhai Desai v. Roshan Kumar [(1976) 1 SCC 671] at SCC p. 682, para 35). It excludes something which is extraordinary or special (Eicher Tractors Ltd. v. Commr. of Customs [(2001) 1 SCC 315] at SCC p. 319, para 6). The word "ordinarily" would convey the idea of something which is done "normally" (Krishan Gopal v. Prakashchandra [(1974) 1 SCC 128] at SCC p. 134, para 12) and "generally" subject to special provision (Mohan Baitha v. State of Bihar [(2001) 4 SCC 350 : 2001 SCC (Cri) 710] at SCC p. 354)."*

41. Thus, giving the ordinary meaning to the word 'ordinarily' in Clause 7(3)(c) of Ordinance XVIII, the only interpretation that can be given is that the appointment of the Petitioner was initially for a period of six months and as a corollary, temporary in nature. No doubt that over the years, extension was given, but extensions were the prerogative of the University and were based on the Administrative requirements and exigencies of service. But, this by itself, gives no right to the Petitioner to insist that he would continue till the regular incumbent joins. Once the impugned order has been issued by the University, invoking its right under the Ordinance, the Petitioner cannot claim, as a matter of right that the extensions must continue.

42. There is another facet of the matter. In service jurisprudence, rights of an employee stem out of and are dependent on the nature of their employment and its Terms and Tenure. Appointment to a permanent post can be substantive or on probation or on officiating basis. A substantive appointment carries with it, a right to hold the post and the employee is also entitled to a 'lien' on the post in terms of Rule 9(13) of Fundamental Rules. With substantive appointment, comes the right of an employee to continue on the post, till attainment of the age of superannuation, subject of course, to other contingencies, such as abolition of a post or any penalty of dismissal or compulsory retirement etc., on account of any misconduct. Even in that event, Government servant would have the protection of an enquiry, to prove his innocence, before any penalty is imposed. However, appointment to a permanent post on 'officiating basis' is by its very nature temporary and transitory in character. The terms and conditions of such an employment are usually such that it is

terminable at the discretion of the employer and the right of an employee to continue in such a post, is of a much lower threshold than a right to continue on his substantive post. The law on the right of an employee to continue on a post on which he is appointed on an officiating basis, is no longer *res integra*. Supreme Court in the case of ***Parshotam Lal Dhingra (supra)*** drawing a distinction between a substantive and an officiating appointment, observed as under:-

> *"11. The appointment of a government servant to a permanent post may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a "lien" on the post. This "lien" is defined in Fundamental Rule Section 3, Chapter II Rule 9(13) as the title of a government servant to hold substantively a permanent post, including a tenure post, to which he has been appointed substantively. The Government cannot terminate his service unless it is entitled to do so (1) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by the contract, or (2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or on the fulfilment of the conditions for compulsory retirement or, subject to certain safeguards, on the abolition of the post or on being found guilty, after a proper enquiry on notice to him, of misconduct, negligence, inefficiency or any other disqualification. An appointment to a permanent post in government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period, e.g., for six months or for one year or it may be expressed simply as "on probation" without any specification of any period. Such an employment on probation, under the ordinary law of*

master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. It is, therefore, quite clear that appointment to a permanent post in a government service, either on probation or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. Likewise an appointment to a temporary post in a government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period. In such a case the servant so appointed acquires a right to his tenure for that period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving

the requisite notice or the person so appointed is, on enquiry held on due notice to the servant and after giving him a reasonable opportunity to defend himself, found guilty of misconduct, negligence, inefficiency or any other disqualification and is by way of punishment dismissed or removed from service or reduced in rank. The substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on the same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules promulgated in 1949 to which reference will hereafter be made, his service had ripened into what is called a quasi-permanent service.

12. The position may, therefore, be summarised as follows: In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service. The question for our consideration is

whether the protections of Article 311 are available to each of these several categories of government servants."

43. Similarly, in the case of ***State of Bombay vs. F.A. Abraham (supra)***, following the case of ***Parshotam Lal Dhingra (supra)***, Court held that a person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available, for various reasons, but it is an implied term of an officiating appointment, that he could be reverted back to his original rank, in accordance with the terms on which he was given the officiating post.

44. In the case of ***Sreedam Chandra Ghosh vs. State of Assam & Ors. [(1996) 10 SCC 567]***, Supreme Court was dealing with the case of a Petitioner who, while working as Assistant Graduate Teacher, being the senior most, was appointed to officiate in the post of a Head Master on the retirement of the regular incumbent. Once the new Head Master was appointed and posted, Petitioner was moved out, and he challenged the same. Supreme Court observed that the appointment of the Petitioner as Head Master was only a stopgap arrangement made for the Petitioner to officiate as Head Master, till the regular incumbent assumed office and therefore, Petitioner did not have any right to continue in the said post, once the regular incumbent was transferred, to join the post. Petitioner was only officiating and therefore, his handing over the charge to the regular incumbent was neither a demotion nor a punishment.

45. It is thus settled that an employee appointed on an officiating basis to a permanent post cannot claim a vested right to continue and can be reverted to his substantive appointment. As noticed above, this law was

enunciated by the Supreme Court as early as 1958, and there has been no shift in the said law, till date. In view of the above, Petitioner cannot claim, in the present Petition, that he must be continued as OSD and not be reverted to his substantive appointment as an Associate Professor. The right of the Petitioner to continue as OSD is clearly hedged by the provisions of Clause 7(3)(c), as well as his letter of appointment and the subsequent extension letters. Totality of these facts and the law on Officiating Appointments does not leave any window with this Court to issue a direction to the Respondents, to continue the Petitioner on the post of OSD.

46. Learned Counsel for the Petitioner has vehemently contended that the impugned action is on account of certain allegations which were sought to be made against the Petitioner and therefore, he is entitled to the protection of Article 311(2) of the Constitution of India. The argument is that before reverting the Petitioner, an enquiry should have been held and a fair chance should have been given to the Petitioner to prove his innocence. Article 311(2) of the Constitution of India reads as under:-

> *"**311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**.—*
> *(1) xxx xxx xxx*
> *(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."*

47. There is no doubt that Article 311(2) is a fetter on the right of the Government to inflict the punishments of Dismissal, Removal or

Reduction in rank. None of the three punishments mentioned therein can be imposed on a Government servant, without giving him/her a reasonable opportunity, by way of an enquiry or show cause, to prove his innocence. Question, however, is whether the Petitioner can invoke Article 311(2) in the present case.

48. Petitioner is not a Government Servant or holder of a Civil Post and on this basis alone not entitled to the protection of Article 311(2). This is sufficient to reject the contention of the Petitioner seeking protection under the said provision.

49. Even otherwise the contention has no merit. Petition has neither been Dismissed nor Removed from service. Argument of Counsel for the Petitioner is that the reversion of the Petitioner to his Parent College, is reduction in rank and therefore, he is entitled to protection under Article 311(2). Learned Counsel has also relied on the judgment of the Supreme Court in ***K. H. Phadnis*** **(supra)** more particularly paras 13 and 17, which are extracted herein under:-

> *"13. In the recent unreported decision in Appar Apar Singh v. State of Punjab [(1970) 3 SCC 338] the question for consideration was whether an order reverting the appellant in that case from a post in Class I service in which he was officiating to his substantive post in Class II amounted to reduction in rank. The appellant was employed in the Punjab Education Service Class II. He was promoted to Class I on an officiating post as Principal of the Government College, Muktsar. He had trouble with the members of the staff. The appellant as Principal of the College in reading the annual report made certain aspersions against some members of the teaching staff. Thereafter, an enquiry was made pursuant to the demand of some of the parents of the students. Two Deputy*

Directors made an enquiry. At that enquiry the appellant was neither given copies of statements recorded nor was he allowed to cross-examine the witnesses. The State contended that it was a preliminary confidential enquiry into the affairs of the College and that the appellant had no right to continue in Class I appointment where he was only officiating. The High Court held that the order of reversion was not by way of punishment but only because the person reverted was not found suitable to hold the post and an enquiry was only to find out the state of affairs of the normal functioning of the College. This Court held that the enquiry by the Deputy Directors was to investigate allegations against the Principal and the Deputy Directors recommended exemplary punishment. Therefore the order amounted to reduction in rank and as no enquiry regarding disciplinary proceedings was held, the order was in violation of the provisions of Article 311.

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17. The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On

> *the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted."*

50. Only to deal with the argument as it was vehemently pressed, even on merit the issue is no longer res integra. In the case of ***Parshotam Lal Dhingra (supra)***, Supreme Court dealt with the precise question which is being raised by the Petitioner herein. The Court held that, if a Government servant is appointed to officiate in a permanent post or to hold a temporary post, whether substantively or on probation or on an officiating basis, the implied term of his employment is that his service may be terminated on reasonable notice and this would, per se, not amount to dismissal or removal. It was further observed that when a Government servant has a right to a post or to a rank, under the terms of his employment, express or implied, then, his reduction to a lower post is prima facie a punishment as it operates as a forfeiture of his right to hold that post and to get its emoluments and other benefits. But if he has no right to the post, such as, where he is appointed on an officiating basis, the termination of his employment, does not deprive him of any right and cannot be a punishment. Supreme Court laid down a test for determining whether the action of the Government, of terminating the services of an employee on a particular post, amounted to a punishment or not, and held that, the single test was to determine if the employee had the right to hold the post. In case, the Government has, by contract, express or implied or under the Rules, the right to put an end to the employment, then it is not a punishment and does not attract Article 311. Therefore even in the extreme case of Termination the protection is not available, in case there

is no right to hold the post. Supreme Court also deliberated on what constitutes reduction in rank, in law and held as under:-

> *"28. ..... A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of*

his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

51. Finally, on the facts of the said case, Supreme Court concluded as under:-

"29. Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which, according to Indian Railway Code, Rule, 2003(19) corresponding to F.R. 9(19) means, that he was appointed only to perform the duties of that post. He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. Nor did this reduction under Note 1 to Rule 1702 amount to his dismissal or removal. Further it is quite clear from the orders passed by the General Manager that it did not entail the forfeiture of his chances of future promotion or affect his seniority in his substantive post. In these circumstances there is no escape from the conclusion that the petitioner was not reduced in rank by way of punishment and, therefore, the provisions of Article 311(2) do not come into play at all. In this view of the matter the petitioner cannot complain that the requirements of Article 311(2) were not complied with, for those requirements never applied to him. The result, therefore, is that we uphold the decision of the Division

Bench, although on somewhat different grounds. This appeal must, therefore, be dismissed with costs."

52. The issue of reduction in rank was also considered by the Supreme Court in the case of ***Divisional Personnel Officer Southern Railway (supra)***. The question formulated by the Supreme Court for consideration in the said case was, as under:-

"1. This appeal, by special leave, raises a somewhat important question of law which is whether the reversion of a Government servant from an officiating post to his substantive post, while his junior is officiating in the higher post, does not, by itself, constitute a reduction in rank within the meaning of Article 311(2) of the Constitution."

53. Supreme Court, relying on the judgment in the case of ***Parshotam Lal Dhingra (supra),*** and the test laid therein, as to whether the Appellant had the right to continue on the post or not, finally held as under:-

"22. *The respondent's rank in the substantive post i.e. in the lower grade, was in no way affected by this. In the substantive grade, the respondent retained his rank. It may also be added that he was visited with no penal consequences. It is no doubt true that it is not the form but the substance that matters, but once it is accepted that the respondent has no right to the post to which he was provisionally promoted, there can be no doubt that his reversion does not amount to a reduction in rank."*

54. In this context, it would be useful to refer to the observations of the Supreme Court in the case ***State of Bombay (supra).*** Relevant paras read as under:-

"6. We are unable to agree with the observation in M.A. Waheed case [(1954) NLJ 305] that when a person officiating in a post, is reverted for unsatisfactory work, that reversion amounts to a reduction in rank. A person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available, having gone on leave or being away for some other reasons. When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he had been given the officiating post. Again, sometimes a person is given an officiating post to test his suitability to be made permanent in it later. Here again, it is an implied term of the officiating appointment that if he is found unsuitable, he would have to go back. If, therefore, the appropriate authorities find him unsuitable for the higher rank and then revert him back to his original lower rank, the action taken is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is not, therefore, a reduction in rank. It has been held by this Court in Parshotam Lal Dhingra v. Union of India [(1958) SCR 828, at p. 842] that.

> *"It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a very transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and*

consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time."

The respondent had of course no right to the post of Deputy Superintendent of Police to which he had been given an officiating appointment and he does not contend to the contrary. He cannot therefore, without more, complain if he is sent back to his original post. This is what happened in this case even if it be taken that the respondent had been reverted to his original rank because he was found unsuitable for the higher rank to which he had been given an officiating appointment.

xxx xxx xxx

8. *It is quite clear that the circumstances mentioned in this observation have not occurred in the present case. The reversion has not in any way affected the respondent so far as his condition and prospect of service are concerned. He, of course, lost the benefit of the appointment to the higher rank but that by itself cannot indicate that the reversion was by way of punishment because he had no right to continue in the higher post or to the benefits arising from it. He had been reverted in exercise of a right which the Government had under the terms of the officiating employment. The High Court seems to us to have been in error in thinking that the Government's refusal to supply the respondent with the reasons why action was taken against him proved that the reversion was a reduction in rank by way of punishment; the refusal cannot prove that. It may give rise to a suspicion about the motive which led the Government to take the action, but it is now firmly established that if the action is justifiable under the terms of the employment, then the motive inducing the action is irrelevant in deciding the question whether the action had been taken by way of punishment: see Parshotam Lal Dhingra case [(1958) SCR 828, at p.*

> *842] at p. 862. It does not require to be repeated now that unless the reversion is by way of punishment, Section 240(3) is not attracted."*

55. Examined on the touchstone of these judgments, the question that arises is whether by repatriating the Petitioner to his substantive post in his Parent College, he has been reduced in rank, so as to be entitled to seek the protection of Article 311(2) of the Constitution of India. The answer to this question, in the opinion of the Court, is in the negative. Applying the test laid down by Supreme Court, it can certainly not be contended by the Petitioner that he has a right to the post of OSD-Principal. As noticed above, the appointment was merely on 'officiating' basis and transitory in character. Reversion to the post of Associate Professor will not entail forfeiture of his pay or allowances or loss of seniority in his substantive post or stoppage or postponement of his future chances of promotion, and therefore, cannot be termed as reduction in rank, so as to invoke the provisions of Article 311 (2), even assuming that the same was applicable in the case of the Petitioner.

56. In so far as the argument that the Respondents had sought to level certain allegations which formed the basis of the Impugned Order is concerned, suffice would it be to state that, there are no such allegations in the Pleadings filed by the Respondents before this Court and, therefore, no cognizance can be taken of the said argument.

57. Another argument, though subtly, raised by Counsel for the Petitioner was that, the Impugned order is punitive in nature and has cast a stigma on the Petitioner, which would adversely affect his career. This Court has perused the impugned order and the only reason as clearly

discernible from the said order is, that the Petitioner has continued for over six years and is, therefore, reverted to his substantive post. A plain reading of the order does not indicate that it is punitive or casts any stigma on the Petitioner. It is a simpliciter order, reverting from an officiating appointment to a substantive post. The order does not contain any adverse comment or allegation against the Petitioner, nor any observation with respect to his performance. Thus, this contention of the Petitioner has no merit.

58. Learned Counsel for the Petitioner, in support of his contentions, has relied on certain judgments. In the case of ***The Manager Government Branch Press (supra)***, the Court was dealing with an issue of discrimination under Article 16 of the Constitution of India, where a temporary Government servant is terminated on account of unsatisfactory conduct or work or unsuitability for the job. The Court held that if the services of a temporary Government servant are terminated on account of his unsatisfactory conduct of work, then, there is no discrimination qua those employees whose work is satisfactory. The issue in the said judgment, in my view does not concern the controversy involved in the present case.

59. Learned Counsel has relied on the judgment of the Supreme Court in ***Kerala State Beverages (supra),*** to argue that, having worked on the post for six years, the Petitioner had a legitimate expectation that he would continue and would not be reverted as an Associate Professor. Para 16 of the said judgment reads as under:-

> *"16. M. Jagannadha Rao, J. elaborately elucidated on legitimate expectation in Punjab Communications*

Ltd. v. Union of India [Punjab Communications Ltd. v. Union of India, (1999) 4 SCC 727]. He referred (at SCC pp. 741-42, para 27) to the judgment in Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in which Lord Diplock had observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which,

> *"27. ... (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or*
> *(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn." (AC p. 408)"*

60. It is clear that in order to invoke the Doctrine of Legitimate Expectation, the two factors enumerated above must come into play. In the present case, the Appointment Letter as well as the Extension Letters, coupled with Clause 7(3)(c) of Ordinance XVIII, gave no assurance or even an indication, to the Petitioner, that he would be permitted to continue, unless some rational ground is given to him, to withdraw the appointment; nor was any opportunity of hearing, assured, before terminating the appointment. On the contrary, at the cost of repetition, the letters unequivocally stipulated that the appointment was on officiating

basis and until further orders or appointment of a regular Principal, whichever was earlier. This judgment thus, does not inure to the Petitioner's advantage.

61. Petitioner has further relied on the judgments in the cases of ***Godfrey Philips India Ltd. (supra), Kasnika Trading & Anr. (supra)*** and ***Delhi Cloth & General Mills.(supra),*** to invoke the Doctrine of Promissory Estoppel. There is no doubt on the proposition argued by learned Counsel for the Petitioner that Doctrine of Promissory Estoppel is applicable against the Government, in exercise of its functions, both Public and Executive. However, in order to invoke the Doctrine, Petitioner must substantiate that there was a promise made by the University to continue him till the time a regular incumbent took over or in perpetuity and the promise has not been fulfilled. Petitioner has been unable to substantiate that there was any such assurance or promise or representation, by the University. The last Extension Letter dispels any such impression, assuming that the Petitioner had any, earlier.

62. Judgement in the case of ***Anirudhsinhji Karansinhji Jadeja & Anr. vs. State of Gujarat [1995 (5) SCC 302],*** was relied upon for the proposition that the exercise of power by the Government should not be arbitrary or on external dictation. In my view, the University in the present case has exercised the powers vested in it under Clause 7(3)(c) of Ordinance XVIII. Petitioner has continued for six years, which is beyond even the normal tenure of a regular Principal and in these circumstances, it can hardly be argued by the Petitioner that the impugned action is arbitrary or on any external dictates.

63. Judgement in the case of ***Ashvin Chadha vs. University of Delhi [2013 (133) DRJ 264],*** relied upon by the Petitioner is also of no avail to him. In the said case, the Petitioner therein had filed the Petition in capacity of Member and Chairman of the Governing Body of the college. The Petitioner had challenged continuation of the OSD as Principal of the college and his non-repatriation by the Vice Chancellor, beyond six months, contrary to Clause 7(3) of Ordinance XVIII. The said non-repatriation was also challenged on the ground that it was in violation of the Resolution of Governing Body to the effect that the services of the said OSD were no longer required by the college. However, the circumstances in that case were entirely different, as the Court therein had noticed the existence of certain inter-se disputes within the Governing Body, including the Petitioner's disputes with most other members, which justified the extension of tenure of the said OSD, by the Vice Chancellor, in his discretion, beyond six months. The said judgment does not apply to the facts of the present case as, in that case, the extension of the tenure of the OSD-Principal was done as per the discretion of the Vice Chancellor, in compliance with the Ordinance, on account of considerable conflict within the Governing Body. Petitioner places reliance on Paragraph 73 of the judgment to contend that as per the Ordinance, the tenure of OSD can be beyond six months, if the circumstances so warrant, as observed by the Court in the said Paragraph. However, the fact situation in the said case was different from the one in the present case. In that case, regular Principal could not be appointed on account of antagonism within the Governing Body, that resulted in numerous hurdles in its functioning, including, Resolutions not being

duly implemented. No such circumstance exists in the present case. In fact, an important observation of the Court is relevant for the present case. In Paragraph 78 of the judgement, Court has observed as under:-

> *"78. ..... Therefore, I am of the considered view that the term of OSD cannot be for an indefinite period."*

64. Learned Counsel for the Petitioner contended that it is settled law that an ad-hoc or a contract employee cannot be replaced by another ad-hoc or contractual or temporary employee and can only be replaced by a Regular employee. Reliance was placed on the judgment in ***Raj Kumar (supra)*** and ***Piara Singh (supra)***. In my view, the law laid down in the two judgments is on a different service jurisprudence, where contractual/ ad-hoc employees are replaced by ad-hoc/ contractual employees. This concept cannot apply where an employee working on a substantive post, is appointed to officiate on another post and is subsequently sent back to his substantive post.

65. Learned Counsel for Respondent No.2, in response to the judgment in the case of ***K.H. Phadnis (supra)*** cited by the Petitioner, has relied on a judgment of a Division Bench of this Court in ***LPA 159/2018 titled Rakesh Kumar Verma s. Jawaharlal Nehru University & Anr., decided on 03.05.2019*** and, in my view, the ratio of the said judgement clearly applies to the present case. In the said case, the Petitioner, working in the office of the CAG, was appointed on deputation as a Finance Officer with JNU. The initial appointment was for a period of five years. Repatriation back to the parent department was challenged by the Petitioner. Parties had extensively relied on various judgments on deputation including several OMs of the Department of Personnel & Training (DoPT) on the

subject. The Division Bench took note of the judgment of the Supreme Court in ***K.H. Phadnis (supra)***, relied by the Petitioner herein and held as under:-

> *"44. In this context it must be observed that although the JNU may have sought to adduce reasons in the counter affidavit for why it decided to repatriate the Appellant, the impugned orders by themselves do not spell out any of those reasons. There is no occasion for the Court therefore to treat those orders as stigmatic. What the repatriation order does is simply to acknowledge that the period of deputation has come to an end and nothing more. It is not possible to read anything further into those orders. A repatriation at the end of the deputation period cannot and should not be treated as a punishment. The law in this regard has been explained by the Supreme Court in K.H. Phadnis v. State of Maharashtra (supra) as under:*
>
> > *"The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post\in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character*

> *or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted."*

45. In the present case the position that emerges on an examination of the documents on record is that:

(a) The appointment of the Appellant as Finance Officer of JNU was by way of deputation and continued as such. In other words, merely because the appointment as such was by the Selection Committee, did not convert it into a substantive appointment.

(b) The repatriation of the Appellant was virtually at the end of his term of deputation and cannot be termed as 'premature'. There was, therefore, no infraction of para 9 of the OM dated 17th June 2010 on account of the failure to give him and the CAG three months' advance notice.

(c) Since the Appellant's appointment remained as one on deputation, and with his emoluments being consistent with what was payable to him in his post with the CAG, it did not transform into a substantive appointment with JNU on a regular basis. Therefore, the question of applicability of Statute 31 did not arise.

46. Further, there is no vested right to continue in deputation or claim a right to absorption at the end of a period of deputation. The law in this regard is well settled as explained in Kunal Nanda v. Union of India (supra) as under:

> *"It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist*

> *cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.""*

66. Petitioner has also contested that the impugned order has been passed without the prior approval of the Vice-Chancellor and is therefore, in violation of Clause 7(3)(c) of Ordinance XVIII. In order to ascertain the factual position, Court had called for the records to see if there was approval by Vice-Chancellor, prior to the impugned action. Learned Counsel for Respondent No. 1 had brought to the notice of the Court, the E-mail by which the Vice-Chancellor had granted Approval, for repatriation. At that stage, learned Counsel for the Petitioner had raised an objection that E-mail would not suffice and there must be a file noting, containing the Approval. Responding to this, it was contended by Counsel for Respondent No. 1 that on account of the Pandemic COVID-19, office of the Vice-Chancellor has been transacting routine work only through E-mails and there are no physical files with notings, which is the system followed during normal times. Learned Counsel for the Petitioner had sought a direction that the University be directed to file an Affidavit to that effect. An Affidavit has been filed by the University and it is stated that the Vice-Chancellor has been executing all official work, during the Pandemic, through electronic mode and the decision to

repatriate the Petitioner was also approved by an E-mail dated 24.05.2020. The Court is satisfied, after perusing the Affidavit and the E-mail that the action of the Vice-Chancellor in conveying approval through electronic mode has been in the usual course of official work, on account of the prevailing unprecedented circumstances.

67. Having examined the facts of the case and the judgments on the issue, this Court is of the opinion that the impugned action of Respondent Nos. 1 & 2 in reverting the Petitioner back to his substantive appointment is neither illegal nor arbitrary and is within the four corners of the law on the subject and therefore, calls for no interference. This Court cannot direct the Respondents to extend the officiating appointment of the Petitioner in light of the well settled law on the subject.

68. This Court is conscious of the fact that a substantive Petition filed by the Petitioner for appointment as regular Principal in Respondent No. 2/College is pending in this Court. It is made clear that the present Petition is on a separate cause of action and has no connection with the subject matter of the petition, being W.P. (C) No. 4521/2019, titled Dr. Rajiv Chopra v. University of Delhi & Ors. It is also made clear that any expression on the merits of this case will have no impact on the adjudication of the said Petition on its merits.

69. At this stage, it needs a mention that when the petition was first listed, Court has directed the parties to maintain status quo and not to insist on the Petitioner joining his Parent College, till the petition is decided, to avoid any further complication. Since some dispute was raised by Respondent No.4 about the Petitioner functioning in the office as OSD, parties had agreed that Petitioner would keep away from the Office

premises. Dispute of salary not being paid was also raised by the Petitioner from time to time. In the circumstances, Respondent No.1 is directed to pay to the Petitioner his full salary and emoluments for the period between the impugned order and the date of the judgement, without any deductions.

70. Present Petition has no merit and is accordingly dismissed.

71. At this stage, I would pen down my displeasure on the manner in which the Petitioner was sought to be repatriated. The letter informing him of the repatriation was served upon him at midnight, on a holiday and without permitting him to hand over the Charge, he was asked to join his Parent College. Petitioner's Counsel had narrated the saga of how the Petitioner was forcefully prevented from entering the office and the lock was broken. An employee may or may not have a right to continue on a post, but certainly cannot be sent out so unceremoniously. Teachers/Professors are the pillars of our society. They play myriad roles in lives of many in shaping knowledge, values and careers, leading to the path of success, as a guiding light. This kind of treatment is least expected in a College, a Temple of learning and education.

CM APPL. 11447/2020 (for necessary directions)

72. In view of the order passed above, this Application is dismissed.

CM APPL. 12563/2020 (for necessary directions)

73. No further orders are required to be passed in this application in view of the order passed in the main petition.

JYOTI SINGH, J

JULY 6th, 2020
yo/rd