

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 13 Of 2021
(Arising out of SLP(C)No.8053 of 2019)**

**THE CHAIRPERSON GOVERNING BODY
DAULAT RAM COLLEGE . . . APPELLANT(S)**

VERSUS

DR. ASHA & ORS. . . RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. This appeal has been filed by the appellant questioning the judgment dated 06.03.2019 of the Division Bench of Delhi High Court issuing certain directions in LPA No.316 of 2018 filed by respondent No.1-Dr. Asha, although not interfering with the judgment of the learned Single Judge dated 09.03.2018 disposing of the writ petition filed by Dr. Asha-respondent No.1. The appellant aggrieved by the

directions issued by the Division Bench has filed this appeal.

3. Brief facts giving rise to this appeal are:

Daulat Ram College is affiliated to the University of Delhi since 1960. The Hostel of the Daulat Ram College is an integral part of the College. The Daulat Ram College Society is a registered Society which was established on 03.03.1960 which in turn has established Daulat Ram College (hereinafter referred to as the 'College'). The Daulat Ram College Society has a Memorandum of Association as well Rules. The College has a Governing Body which is approved by the Executive Council of the University (Delhi University). We in the present case are only concerned with the Hostel of the Daulat Ram College and that too appointment of Warden of the Hostel of the College. The Governing Body of the College has been appointing the Warden of the Hostel of the College.

4. On 10.09.2013, respondent No.4-Dr.Kavita Sharma was unanimously appointed as Warden of the College by

the Governing Body with effect from 12.09.2013 for a period of two years. The two years' term of respondent No.4 as Warden was going to end on 11.09.2015, the Governing Body of the College vide its Resolution dated 11.09.2015 re-appointed respondent No.4 as Warden of the College for two years. The Governing Body of the College directed the Principal to seek her willingness/ unwillingness in writing and in case she is willing, to issue her a letter of appointment with effect from 12.09.2015. The Principal issued a letter dated 15.09.2015 informing respondent No.4 that her term of appointment as Warden of the Hostel of the College has been extended upto 12.05.2016. The Chairperson of the Governing Body wrote to respondent No.3, Principal of the College questioning the letter dated 15.09.2015 appointing respondent No.4 for a period of eight months only. The Chairperson of Governing Body informed that re-appointment was for a period of two years and explanation was called from respondent No.3 as to why she has not complied with

the order of the Governing Body. The Chairperson issued a letter dated 02.05.2016 to respondent No.3 sending agenda for the meeting scheduled to be held on 07.05.2016.

5. The Principal on 02.05.2016 issued notice inviting applications from permanent teachers who are interested to work as Warden of College Hostel. Dr. Asha submitted her application. The Principal, respondent No.3 issued a letter dated 06.05.2016 appointing respondent No.1-Dr. Asha as Warden of the College Hostel and she was directed to assume charge on 21.05.2016. In the meeting of the Governing Body it was noted that vide Resolution dated 11.09.2015 respondent No.4 was appointed for a period of two years which term was to expire on 11.09.2017. It was resolved that necessary letters containing the term of appointment be sent accordingly. On 21.05.2016 a show cause notice was issued to respondent No.1 asking her to explain how she illegally and willfully attempted to occupy the post of the Hostel Warden when she was

aware that respondent No.4 was the Hostel Warden appointed by the Governing Body vide its Resolution dated 11.09.2015 for a term of two years. Respondent No.1 wrote a letter on 24.05.2016 to the Chairperson, Governing Body asking that show cause notice issued to her being unwarranted and not based on facts be withdrawn. The Principal wrote on June 9/14, 2016 to the Manager, Indian Overseas Bank informing that respondent No.1 has been appointed as a Hostel Warden with effect from 21.05.2016 for two years and she will operate the College Hostel Accounts with effect from 21.05.2016. On 13.06.2016, the University of Delhi wrote a letter to respondent No.3 that appointment of Warden in a College Hostel is purely an administrative affair of the College and the University has no role to play in this behalf. The Principal was advised to act as per clause 6-A(5)(b)(iii) of Ordinance XVIII of the University.

6. In the Minutes of the meeting of the Governing Body dated 24.06.2016 it was recorded that the

Principal has illegally appointed Dr. Asha as Warden of the Hostel of the College. The Governing Body resolved that earlier status quo be maintained and respondent No.4, Dr. Kavita Sharma would continue as the Warden till such time that proper guidelines for appointment of Warden are made by the Governing Body Hostel Committee. Respondent No.3 recorded her dissent in the meeting dated 24.06.2016. The Principal issued a notice dated 30.07.2016 inviting applications from interested permanent teachers of the College for the post of Warden in the College Hostel. Respondent No.1 filed a Writ Petition No.7289 of 2016 praying for issuing a writ, order or direction in the nature of mandamus and/or certiorari directing respondent Nos.2 and 3, i.e., the Principal and Chairperson of the Governing Body to withdraw the notice dated 30.07.2016, declaration was sought that notice dated 30.07.2016 is illegal and unconstitutional. The petitioner's case in the writ petition was that she was appointed as Warden of the Hostel of the College

by Principal vide letter dated 06.05.2016 for a period of two years and took charge on 21.05.2016. The allegations were made against the Chairperson, Governing Body that she has created obstruction in the functioning of the writ petitioner.

7. Learned single Judge vide order dated 19.08.2016 passed an order of the status quo regarding the petitioner's position as Warden of the Daulat Ram College Hostel. Counter-affidavit was filed by the Governing Body. Learned Single Judge after hearing the parties passed a detailed order dated 25.11.2016 vacating the interim order dated 19.08.2016. Against order dated 25.11.2016 Letters Patent Appeal was filed by respondent No.3, Principal, Daulat Ram College where order dated 22.12.2016 was passed by the Division Bench directing the matter to be listed on 10.01.2017 till such time, status quo as of that day be maintained. The Division Bench also passed several orders subsequently and made it clear that pendency of the appeal shall not come in the way of the learned

Single Judge in deciding the writ petition. Learned Single Judge by judgment dated 09.03.2018 disposed of writ petition.

8. Learned Single Judge found that the appointment of the Warden in the College Hostel is the administrative affair of the College. The learned Single Judge held that appointment of the writ petitioner as Warden in the College Hostel by the Principal is irregular. In paragraph 14 following was held:

"14. In the facts and circumstances of this case, this petition and application are disposed of with direction to the Governing Body of respondent-College, for the post of Warden in question and it be placed before the Staff Council of respondent-College, who shall make recommendation for the post of Warden in the College Hostel within a period of four weeks and the said recommendation be considered by the Governing Body of respondent-College within two weeks thereafter, so that the post in question is expeditiously filled up."

9. Aggrieved by the judgment of the learned Single

Judge dated 09.03.2018, LPA No.316/2018 was filed by Dr. Asha-respondent No.1. The Chairperson, Governing Body wrote to the Principal and other members to initiate process for the appointment of the Warden. On Principal not initiating the process of the appointment, the Governing Body convened a meeting on 07.04.2018. The applications were also invited for the post of Hostel Warden. Respondent No.4 applied in pursuance of the application. On 07.04.2018 Governing Body in its meeting resolved to appoint respondent No.4 as Warden of the College Hostel. Thereafter an interim order dated 01.05.2018 was passed by the Division Bench. On 22.05.2018 Letters Patent Appeal was filed by respondent No.1 against the judgment dated 09.03.2018 of the Learned Single Judge.

10. The Division Bench decided the LPA vide judgment dated 06.03.2019. The Division Bench although did not interfere with the direction of the learned Single Judge but in addition issued various directions. The Division Bench vide its direction in paragraph 41

directed for issue of notice by the Principal of the College inviting applications for appointment of Warden of the Hostel, which applications were required to be placed before the Staff Council which was to take a decision thereon and make its recommendations not later than 01.04.2019 and recommendations were to be placed before the Governing Body. Paragraph 41 of the Division Bench judgment is to the following effect:

"41. The Court, while not interfering with the directions issued by the learned Single Judge in the impugned order, issues the following directions:

(i) Within a period ten days from today, and in any event not later than 18th March 2019, a notice will be issued by the Principal of the College inviting applications for appointment as Warden of the Hostel from amongst the teaching Staff, not limited to the Teachers living on campus, but subject to the undertaking given by the applicant (if living outside the campus) that if appointed as Warden she will stay on campus in the two-room set in the Hostel building.

(ii) The applications received will be placed before the Staff Council which will take a decision thereon and make its recommendations not later than 1st April 2019.

(iii) The recommendations of the Staff Council shall then be placed before the GB by the Principal forthwith, and in any event not later than 3rd April 2019.

(iv) The GB will meet and take a decision on such recommendation of the Staff Council not later than 10th April 2019.

(v) If for some reason the GB does not accept the recommendations of the Staff Council, it will give its reasons, which will form part of the minutes of its meeting and send the minutes to the Staff Council not later than 15th April 2019. In such event, the Staff Council will again convene and make a fresh recommendation from among the remaining applicants and this will be placed before the GB not later than 17th April 2019. The GB will be bound such recommendation and will take a decision on the appointment of the Warden not later than 20th April 2019. Dr. Kavita Sharma, if not appointed as Warden in the above process, shall immediately hand over charge to the newly appointed Warden. Likewise, the Matron would abide by the directions issued in para 39 above.

(vi) The minutes of the meetings of the Staff Council and the GB in compliance with the above directions will be placed before the Court on the next date."

11. Aggrieved by the judgment of the Division Bench dated 06.03.2019, the Chairperson, Governing Body, Daulat Ram College has filed this appeal. While

issuing notice in this appeal on 05.04.2019 following order was passed by this Court:

"Issue notice.

Till the next date the warden, who is as on date looking to the affairs of the hostel, shall continue."

12. We have heard learned counsel for the appellant and learned counsel appearing for the respondents.

13. Learned counsel for the appellant submits that appointing authority of Warden of the College Hostel is the Governing Body of the College. The appointment of respondent No.1 was directly made by the Principal-respondent No.3 on 06.05.2016 without approval of the Governing Body which was an illegal appointment. Learned counsel submits that both learned Single Judge and Division Bench having found the appointment of respondent No.1 illegal, the appointment made by the Governing Body in pursuance of judgment of the learned Single Judge ought to have been maintained. There was no occasion for directing fresh appointment as has

been directed by the learned Division Bench of the High Court. It is submitted that Delhi University vide its letter dated 23.10.2013 and letter dated 02.08.2016 had clarified that the appointment of Warden and Matron in College Hostel is purely an administrative affair of the College and the University of Delhi has no role to play in this regard. It is submitted that Ordinance XVIII, 6A(5) (b)(iii) does not confer any authority to Staff Council to appoint a Warden of the Hostel of the College. It is further submitted that the letter of the University Grants Commission dated 19.02.1987 does not confer any authority on the Principal to make appointment of Warden of the Hostel of the College. It is submitted that the learned Division Bench has issued various directions which encroach on the right of the Governing Body to exercise its jurisdiction of the appointing authority of the Warden of the Hostel of the College.

14. Learned counsel appearing for respondent No.3

submits that Daulat Ram College is affiliated to the University of Delhi and 95% grants is funded from University Grants Commission and only 5% of the funds is to be paid by the Society-Trust. The letter dated 19.02.1987 was written by the University Grants Commission in response to the letter of the Vice-Chancellor, University of Delhi and said letter was ratified by the Executive Council of the University in its meeting dated 25.04.1987 that it is the Principal, who is the appointing authority of the Warden of the Hostel of the College. The Principal, being the administrative head of the College, is entitled to make appointment. It is also submitted that Staff Council also has no role in the appointment of Warden which is in the domain of the Principal of the College.

15. Learned counsel appearing for respondent No.1 has adopted the submissions made by the learned counsel for respondent No.3. It is submitted that after judgment of the Division Bench, Staff Council in its

meeting dated 01.04.2019 has recommended respondent No.1 for appointment as the Warden of the Hostel of the College, there is no power in the Chairperson of the Governing Body to appoint any one of her choice as Warden of the Hostel of the College.

16. On behalf of respondent No.2, it has been submitted that the appointment of an existing teaching staff in an honorary capacity as Warden of a College Hostel is not specifically provided for under any of the provisions of University of Delhi Act, 1922, Statutes, and Ordinance. It is submitted that all Colleges which are affiliated to or constituent of University of Delhi follow the practice of inviting applications from interested teachers of their respective Colleges by putting up a notice by the Principal of the College and thereafter Principal recommends/shortlist the name for appointment whereafter the Governing Body grants approval and the procedure for appointment takes thereafter.

17. We have considered the submissions of the learned counsel for the parties and have perused the records.

18. Only two questions arise for consideration in this appeal:

(1) Whether it is the Principal of the College who is empowered to appoint Warden of the Hostel of the College or it is the Governing Body in whom the power to appoint Warden is vested ?, and

(2) what is the procedure to be adopted before making appointment of Warden of the College Hostel ?

19. Both the questions being inter-related are being taken together.

20. The claim of the Principal as well as respondent No.1 that it is the Principal who is the appointing authority of Warden of the College Hostel is based on letter of the University Grants Commission dated 19.02.1987. The letter dated 19.02.1987 was written by

the Secretary of University Grants Commission to the Vice-Chancellor of the Delhi University regarding revising the existing staffing pattern in the Hostels of the Colleges affiliated to Delhi University. The above letter has been brought on record as Annexure-P2. It is useful to extract the entire letter which is to the following effect:

**"UNIVERSITY GRANTS COMMISSION
BAHADURSHAH ZAFAR MARG NEW DELHI**

D.O.NO.F.1-4/B84/884(NP-II) Vol.II

February 19, 1987

Dear Professor Moonis Raza

Kindly refer to your office DO letter No. DC/632/87 dated 3rd February, 1987 regarding revising the existing staffing pattern in the hostels of colleges affiliated to Delhi University in accordance with the recommendation of the Committee appointed by the University.

The proposal has been considered in the light of the information earlier furnished by the University vide letter No.DSW/85/9391 dated 17th October, 1985 which was required to streamline the rules about fees charged and facilities provided in the hostels of the central universities. We find that there is a need to revise the staffing pattern in the hostel mess staff which was fixed as far back as in 1971.

Though the Warden has been desired to be provided for the women's hostels, it is felt that each hostel should have a warden who should be responsible for all hostel administration in the college and he/she should be appointed by the Principal from amongst senior teachers in the college. As an incentive for this extra work an allowance of Rs.300/- pm be paid. In order to have the accounts of the hostel up to date and in perfect order a need for providing a clerk is also felt as a necessity. Since some of the hostels are also having the services of Chowkidar/Mali Safai Karamchari to be left categories provided the total staff in Group D for hostel mess staff does not exceed the prescribed limit of additional four.

In view of the above the commission agrees to provide the following additional staff for the smooth functioning of the hostel activities:

- | | |
|----------------------|---|
| 1.Warden (One) | To be paid Rs.30/- per month |
| 2. | |
| 3.Clerk (One) | In the scale of pay of Rs.950-1500. |
| 3.Ground D employees | In the scale of pay of Rs.(four)in the category 750-940. of Chowkidar/Mali/Safai Karamchari |

The provision of the above staff will be effective from 1st January, 1987 and the pattern of funding will be the same as for the payment of maintenance grant to Delhi Colleges i.e. 100% 95% as the case may be. You are requested to bring this decision to the notice of the concerned colleges having hostel facilities with a request that they should send

2 separate statements of accounts in respect of staff working in the hostels on the existing pattern and on the basis of the revised pattern with the accounts of the college for the year 1986-87.

With regards,

Yours sincerely,

(S.P. Gupta)

Prof. Moonis Raza,
Vice-Chancellor,
University of Delhi."

21. The emphasis has been laid by the counsel for respondent No.2-University of Delhi on the following sentence occurring in the letter:

"...it is felt that each hostel should have a warden who should be responsible for all hostel administration in the college and he/she should be appointed by the Principal from amongst senior teachers in the college."

22. The letter of the Secretary dated 19.02.1987 communicates the decision of the Commission. The last portion of the letter incorporates decision of the Commission beginning with the word:

"In view of the above the commission agrees

to provide the following additional staff for the smooth functioning of the hostel activities:

1.Warden (One) To be paid Rs.30/- per month..”

23. A careful reading of the aforesaid letter indicates that the decision of the Commission which was communicated by the Secretary was the decision of the University Grants Commission to provide additional staff for smooth functioning of the Hostel of the College. The Commission neither took decision regarding appointment of the Warden nor such decision was communicated by the said letter.

24. It is further submitted that the above decision of the University Grants Commission dated 19.02.1987 has been ratified by the Executive Council of the Delhi University vide its minutes dated 25.04.1987. In the counter-affidavit filed by respondent No.3 the minutes of the Executive Council dated 25.04.1987 are filed in which proceeding, Item No.15, the letter of the University Grants Commission dated 19.02.1987 has

been referred to and the decision taken by the Executive Commission was recorded. The relevant minutes of the proceeding of Item No.15 is as follows:

"15. Resolved that receipt of the following letters from the University Grants Commission and the Government of India and the action taken thereon wherever necessary be recorded:-

Letters from the U.G.C.

<i>Letter No.& Date</i>	<i>Subject</i>
1.
2.
3.
4. F.I-4/84(NP-II)	Conveying the Commissions
Vol.II, dated 19.2.1987	approval to(i) raising the funding pattern of Salaries of Hostel, employees from 75% to 95% (100% in case of University maintained institutions) subject to the condition that the remaining 5% of the expenditure may be made by the Management as in the case of College administration with no financial burden, whatsoever, on the students residing in the Hostels. (ii) Sanction for a few additional posts for smooth functioning of Hostel activities."

25. A perusal of the above minutes of the Executive

Council of the Delhi University indicates that what Executive Council noticed in the minutes is that the Commission has approved the raising of the funding pattern of salaries of the employees of the Hostel from 75% to 95% and the remaining 5% of the expenditure was to be made by the Management as in the case of College administration with no financial burden on the students residing in the Hostels. Only to the extent of the above part of the decision of the Commission the Executive Council reiterated and there was no decision by the University that appointment of Warden of the Hostel is to be made by the Principal of the College.

26. The University has filed counter-affidavit in the writ petition before the High Court where it has categorically taken the stand that the University Act, Statutes and Ordinance do not provide for appointment of the Warden of the Hostel College and it is a private matter concerning the respective college. In the LPA affidavit was called for and the affidavit

dated 11.01.2019 by Prof. T.K. Das, Registrar, University of Delhi was filed. In paragraph 5 of the said affidavit following has been stated:

"5. The appointment of an existing teaching staff in an honorary capacity as Warden of a college is not specifically provided for under any of the provisions of University of Delhi Act, 1922 statutes, and Ordinance; being a private matter concerning the respective college and University of Delhi has no role to play. However, all the collages, which have their own hostel and, are affiliated or constituted of University of Delhi follow the practice of inviting applications from interested teachers of their respective college by putting up notice by the Principal of said College, willing to take on this honorary charge. Then the Principal of the respective college considers such application received and recommends/shortlist the name for such appointment. Thereafter, the name of shortlisted teacher and appointed to the honorary post of warden is placed before the Governing Body for approval."

27. Two earlier letters dated 21.10.2013 and 13.06.2016 which have been brought on record as Annexure-P7 and Annexure-P23 have also communicated that appointment of Warden in the College Hostel is purely an administrative affair of the College and the University has no role to play in this behalf.

28. In view of the aforesaid, letter dated 19.02.1987

issued by the University Grants Commission cannot be read to mean that it is Principal who is the appointing authority of the Warden of the Hostel of the College.

29. Learned single Judge in its judgment dated 19.08.2016 has rightly held that University Grants Commission's letter dated 19.02.1987 is of no avail.

26. Much emphasis has been laid by the learned counsel for the respondent on Ordinance XVIII which deals with "Of Colleges and Halls". Ordinance XVIII, 6-A deals with Staff Council. 6-A relevant for the present case is quoted hereunder:

"6-A. (1) There shall be a Staff Council in every College.

(2) All the members of the teaching staff, the Librarian and the Director of Physical Education shall constitute the Staff Council.

(3) Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Principal shall act as Principal-in-Council in respect of matters on which Staff Council is required to take decisions.

ORDINANCE XVIII

(4) (a) The Principal shall be ex-officio Chairman of the Staff Council.

(b) The Council shall elect its Secretary, who shall hold office for a term of one year. The Secretary may be re-elected for a second term but no person shall hold office of Secretary for more than two consecutive terms.

(5) (a) Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council shall take decisions in respect of the following matters:

(i) Preparation of College time-table.

(ii) Allocation of extra-curricular work of teachers not involving, payment of remuneration.

(iii) Organising extra-curricular activities, including cultural activities of students, sports, games, National Service Scheme and other social services schemes and academic societies.

(iv) Laying down guide-lines for purchase of library books and laboratory equipment in consultation with the appropriate departments.

(v) Organising admission of students.

(b) Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council shall make recommendations in respect of the following matters :

(i) Formulation of recommendations on introduction of new teaching posts in the departments and expansion of the existing departments;

(ii) Formulation of admission policy within the framework of the policy laid down by the University;

(iii) Formulation of guidelines regarding arrangements for the residence and welfare

of students in consultation with appropriate students organisations;

- (iv) Formulation of guide-lines regarding discipline of the students;
- (v) Formulation of policies for recommending names of teachers for participation in seminars and conferences and financial assistance to teachers.

Note : The administrative staff of the College will not be within the purview of the Staff Council."

30. The reliance has been placed on 6-A(5)(b)(iii), formulation of guidelines regarding arrangements for the residence and welfare of students in consultation with appropriate students organisations. When we read the Ordinance 6-A which deals with the Staff Council of every College, clause (5)(a) provides that subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council has to take decisions in respect of the matters enumerated therein. There is reliance only on clause (5)(b)(iii) which is extracted above. Clause (5)(b) provides that subject to the provisions of the Act, the Statutes and

the Ordinances of the University, the Staff Council shall make recommendations in respect of the matters mentioned therein. Formulation of guidelines regarding arrangements for the residence and welfare of students in consultation with appropriate students organisations, in no manner can embrace in it the power to make appointment of Warden. It has been clearly stated by the University in its letters and affidavit that it is a matter of administration of the College and is not dealt in the Act, Statutes and Ordinances. Had the Ordinance 6-A(5)(b)(iii) contemplated recommendation of Staff Council for appointment of Warden, the University could have very well taken that stand which stand has not been taken in the present proceedings.

31. The Delhi University has also filed a counter-affidavit in the proceedings before this Court. In the counter-affidavit filed by the University of Delhi in these proceedings, the stand of University of Delhi has again been taken in paragraph 4 which is to the

following effect:

"4. The appointment of Warden of the hostel maintained by the College constituent/affiliated to the University of Delhi is purely an administrative affair of the College and the University has no role to play in this behalf. It is respectfully submitted that the appointment of an existing teaching staff in an honorary capacity as Warden of a college is not specifically provided for under any of the provisions of the University of Delhi Act, 1922 Statutes, and Ordinances. However all the Colleges, which have their own Hostel and, are affiliated or constituent of University of Delhi, follow the practice of inviting application from interested teachers of their respective College by putting up notice by the Principal of said College, willing to take up the honorary charge. Then the Principal of the respective College considers such application received and recommends/shortlist the name for such appointment. Thereafter, the name of the shortlisted teacher to be appointed to the honorary post of Warden is placed before the Governing Body of the said college for approval. This practice has been in vogue, more or the less in the light of the letter of UGC dated 19.02.1987 (Annexure P-2 herein). The Hindu college for instance also follows the same practice."

32. In the counter-affidavit of the University referring to practice, the University clearly states that appointment of Warden is purely an administrative

affair of the College and the University has no role to play and further the same is not provided for under any of the provisions of the University of Delhi Act, Statutes and Ordinances. We, thus, come to the conclusion that Ordinance XVIII 6-A(5)(b)(iii) does not empower the Staff Council to make any recommendation with regard to the appointment of Warden of the College Hostel.

33. The Governing Body of the College is to administer the affair of the College. Ordinance XVIII Chapter VII-2 at page 47 of the paper book is to the following effect:

"2. The Governing Body will meet at least once in a term, and, subject as hereinafter provided, shall have general supervision and control of the affairs of the College and maintain its own records of its proceedings which shall be open to inspection by the inspection authority."

34. The Governing Body, thus, has general supervision of the College. Even in the Colleges and Institutions which are maintained by the University, it is provided in Ordinance XX that the Governing Body which is

constituted by the Executive Council is empowered to appoint the administrative staff of the College. Similarly, the Governing Body of the affiliated Colleges is empowered to appoint administrative staff of the College. The Ordinance does not empower the Principal to make any appointment of the Warden of the Hostel nor any other statutory provision has been referred which empowers the Principal to appoint Warden of the College.

35. The Principal, however, who is entrusted the over all internal administration of the College is a person who knows all the staff of the College and his/her recommendation with regard to appointment of Warden of the College Hostel is to carry weight. The Governing Body while making appointment of Warden of the College Hostel has to give due weight to the recommendation of Principal. The appointment of Warden of the Hostel is made from amongst the permanent staff of the College, the practice which is followed in the College and with which there is no dispute between the parties is that

the applications are invited through notice by Principal for appointment of Warden and after recommendation is made by the Principal, a decision is taken by the Governing Body is to appoint Warden.

36. With regard to the role of Staff Council in the appointment of Warden of the Hostel, we have already observed that Ordinances do not empower the Staff Council to make any recommendation with regard to the appointment of Warden. We have found that the Principal has no authority to appoint Dr. Asha-respondent No.1 as Warden in the Hostel of the College and appointment made by the Principal was irregular. The Division Bench also did not interfere with the judgment of the learned Single Judge. The Division Bench in the directions in paragraph 41 has directed that the applications received in response to notice for appointment of Warden to be placed before the Staff Council which was to take a decision and make recommendations on the said applications. We having found that Staff Council is not statutorily empowered

to make any recommendation regarding appointment of Warden of the College Hostel, the direction of the Division Bench requiring placement of all applications before the Staff Council was uncalled for. The appointment of Warden of the Hostel being in the domain of the Governing Body, the High Court should have left it to the Governing Body to take appropriate steps along with the Principal of the College for making appointment of the Warden of the Hostel of the College. We, thus, are of the view that directions in paragraph 41 of the Division Bench judgment cannot be sustained and are hereby set aside.

37. The High Court has also appointed two Advocates as Commissioners to visit the Hostel premises. The Commissioners visited the Hostel and submitted report to the High Court. No further directions are needed in the above reference.

38. Respondent No.4 in its counter-affidavit has stated that in pursuance of direction of the learned Single Judge, respondent No.4 was appointed by the

Governing Body as Warden of the Hostel of the College whereas respondent No.1 claims that respondent No.1 has been appointed as Warden in pursuance of notice issued by the Principal on 08.03.2019. The appointment of respondent No.4 as Warden which was made subsequent to the judgment of the learned Single Judge by the Governing Body on 07.04.2018, the tenure of which has come to end. The initial appointment of respondent No.1 on 06.05.2016 as well as subsequent appointment as claimed by respondent No.1 cannot be held to be valid.

39. The dispute which ensued regarding the appointment of Warden of the College Hostel arose due to the fact that position regarding procedure and right to make appointment on the post of Warden was not clear and the claim was raised by the Principal on the strength of letter of the University Grants Commission dated 19.02.1987 which we have dealt as above. From the discussion as above, it is clear that it is the Governing Body of the College which has the

authority to appoint Warden of the College Hostel. However, the Principal being Executive head of the entire College and being in position to know the members of the staff as per prevailing practice the applications are to be invited through the Principal of the College and after receipt of the applications the applications along with recommendation of the Principal may be placed before the Governing Body which is to take decision regarding appointment of the Warden of the Hostel of the College.

40. The affidavit has also been filed on behalf of the respondent No.3 that Hostel of the College is closed since June 2019 which has not yet been opened. An affidavit has also been filed by the appellant stating that Schools and Colleges were closed under the orders issued by the Government of India, Ministry of Home Affairs and it has to be opened in the fair manner. The appellant submits that Schools, Colleges and Hostels cannot be opened as of now. The issue regarding opening of the Hostels is not being subject

matter of this appeal, we need not consider the said issue in this appeal. It is for the University and College administration to take a call regarding opening of the Hostels. We, however, observe that the Governing Body should initiate process for fresh appointment of Warden of the Hostel of the College by inviting applications through Principal of the College before the Hostel is open for housing the students.

41. In the result, the directions contained in paragraph 41 of the Division Bench judgment are set aside. The appeal is allowed subject to observations as above.

.....J.
(ASHOK BHUSHAN)

.....J.
(M.R. SHAH)

**NEW DELHI,
JANUARY 05, 2020.**