

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

+ W.P.(C) 8311/2002

Date of Decision : **13th May, 2008.**

PADMA RANI

..... Petitioner

Through Mr. P.R. Agarwal, Mrs.Anju Bhushan and
Mr.Arun Srivastava, Advocates.

versus

UNIVERSITY OF DELHI & ORS. Respondents

Through Mr. A. Mariarputtam, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The petitioner-Ms.Padma Rani, has prayed for two reliefs. Firstly, the Recruitment Rules notified in 2000 for appointment to the post of Librarian should not be applied in the present case as the said post had fallen vacant in 1996. In this regard, it is submitted that appointment to the post of Librarian should be made as per the Recruitment Rules prevalent in 1996. It is stated that the first advertisement for appointment to the post of Librarian was issued

in 1997. The second contention is that the petitioner is entitled to salary as a Librarian for the period 1st January, 1987 till 31st January, 1990 and from 1996 onwards. It is prayed that the respondent-Ram Lal Anand College (Eve.) should be directed to pay the difference in salary that was paid to her and the salary payable to her as a Librarian, along with interest.

2. I may note here that the present Writ Petition was filed on 17th December, 2002 after the respondent-College had advertised the post of Librarian vide Advertisement dated 9th November, 2002. The Advertisement prescribed eligibility conditions specified in the Recruitment Rules-2000, which requires that a candidate should possess Ph.D. degree or should have passed the National Eligibility Test in Library Science being conducted by U.G.C. It is an admitted case of the parties that the petitioner does not meet the above eligibility criteria fixed under the Recruitment Rules, 2000.

3. Learned counsel for the petitioner in support of his first contention has relied upon the judgment of the Supreme Court in ***Y.V. Rangaiah and others versus J. Sreenivasa Rao and others*** reported in (1983) 3 SCC 284. However, in the said case, the earlier Recruitment Rules required a panel to be prepared by 1st of September, every year. There was delay in preparation of the panel and as a result eight vacancies that had arisen between December, 1975 and April, 1977 were not drawn up and filled. In the meanwhile, the Recruitment Rules were amended in March, 1977. In view of

the earlier Recruitment Rules which required preparation of a panel as on 1st of September, every year, the Supreme Court in para 9 of the said judgment has held as under:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than Respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

4. The ratio of the decision of the Supreme Court in the case of **Y.V. Rangaiah** (supra) becomes clear, if we refer to another decision of the Supreme Court in the case of **P. Murugesan and others versus State of Tamil Nadu and others** reported in (1993) 2 SCC 340. In the said case, the earlier Recruitment Rules, provided for employment within three months failing which power was given to the Council to appoint a person to hold the office temporarily and pay salary. The Supreme Court referred to the decision

in ***Y.V. Rangaiah*** (supra) case and it was observed that vacancies which had arisen three months before the commencement of the amended Recruitment Rules shall be filled up as per the old Rules but vacancies arising thereafter shall be filled by the new Recruitment Rules. In para 27 of the judgment, it was observed as under:-

“**27.** In our opinion Section 87 does indicate and manifest the concern of the legislature that the vacancies occurring in the Corporation Service should not be kept unfilled for a period of more than three months. Sub-section (3) which provides for the consequence of default on the part of the council to abide by sub-section (1) emphasises the concern of the Legislature. So also does sub-section (2). Sub-section (4) says that if there is going to be any delay or if a suitable or qualified person is not available, the council may appoint a person on temporary basis. The said provision is, therefore, analogous to, and indeed more specific than Rule 4 of the Andhra Pradesh Registration and Subordinate Service Rules considered in *Rangaiah v. Sreenivasa Rao*. Accordingly it must be held that the learned counsel for respondents 3 to 8 is right in his submission that the vacancies occurring prior to three months before the date of commencement of the impugned amendment ought to have been filled in accordance with the rules then obtaining. At the same time we cannot fail to recognise the force in the argument of the learned counsel for the appellants that the respondents not having raised the said contention in the High Court i.e., before the learned Single Judge or the Division Bench should not be allowed to raise the same in this Court for the first time. On a balancing of the contending equities, we are of the opinion that the following direction would be the appropriate one in the particular facts and circumstances of this case. The direction is this:

The Corporation shall ascertain the vacancies in the category of assistant executive engineers, that have arisen three months prior to the coming

into force of the impugned amendment (introducing the quota of 3:1 as between degree holders and diploma holders) and shall work out the vacancies which would have gone to the diploma holders if unamended rules had been followed. The Corporation shall also ascertain which of the diploma holders would have been promoted in those vacancies. Such diploma holders will be promoted in the vacancies that may be existing as on today and those that may arise in future. Until these diploma holders are so promoted to the category of assistant executive engineers, no degree holders shall be promoted. After these diploma holders are so promoted and thereafter, it is obvious the amended rules shall be applied and followed. It is further directed that as and when a diploma holder is promoted in pursuance of this direction, his promotion shall be given effect to from the date he ought to have been promoted. Such diploma holder promotees shall be entitled to the benefit of seniority and pay fixation flowing from such retrospective promotions, but they shall not be entitled to the arrears of difference in salary for the period they have not actually worked as assistant executive engineers.”

5. In the present case the earlier or the unamended Recruitment Rules did not provide for and specifically stipulated that appointment to the post of Librarian should be made within a specified period. It may be noted here that appointment to the post of Librarian is by direct recruitment and is not a promotion post. The petitioner has not specifically challenged and questioned the earlier recruitment process initiated by issue of Advertisement dated 15th July, 1997 and which did not result in any appointment. Thus, the said selection process was cancelled. It is not the contention of the petitioner that she should have been appointed pursuant to Advertisement dated 15th July, 1997

and the selection procedure then dropped was illegal and contrary to law. The petitioner by way of the present Writ Petition now claims right to be considered for appointment in 2002/03 on the basis of pre-2000 Recruitment Rules. This question is being examined while deciding the first contention.

6. Learned counsel for the petitioner in support has also referred to **A.A. Calton versus Director of Education and another** reported in 1983 SCC (L&S) 356. The said judgment is distinguishable. In the said case after the selection process had been started, Section 16-F of the U.P. Intermediate Education Act, 1921 was amended. The amendment did away with the power of the Director to make appointment in cases of minority institutions but was not retrospective. In the said case, the advertisement in question had been issued prior to the amendment of Section 16-F and the said process had continued even after the amendment. In these circumstances, it was held that the unamended Section 16-F of the said Act would continue to apply as the process of appointment was one single process which had started before amendment of Section 16-F. The Supreme Court noticed that the amendment had not been given retrospective effect. In the present case, the Advertisement was issued on 9th November, 2002 and by that time the amended Recruitment Rules of 2000 had come into operation. The recruitment process was therefore governed by the Recruitment Rules of 2000. It cannot be said that the recruitment process had continued from 1996-

97 onwards when the first advertisement for appointment to the post of Librarian was issued on 15th July, 1997. The Advertisement issued on 15th July, 1997 ended with no selection and the said selection process came to an end. The recruitment process was again initiated in the year 2002. The said recruitment process was separate and distinct from the earlier recruitment process initiated vide Advertisement dated 15th July, 1997.

7. Another judgment relied upon by the learned counsel for the petitioner is in the case of ***P. Ganeshwar Rao and others versus State of Andhra Pradesh and others*** reported in 1989 SCC (L&S) 123. In the said case, the amended/new Recruitment Rules were interpreted and it was held that the said Rules were prospective in operation and would be applicable to vacancies that had arisen after the amended Rules were notified. Accordingly, it was observed that the earlier or unamended Recruitment Rules would continue to apply for vacancies which had arisen before the new amended rules were notified. The said decision proceeds on the language of the amended/new recruitment rules, which were prospective in nature and applicable to vacancies which had arisen after the said rules were notified. In the present case, the Recruitment Rules as modified and notified in 2000 are applicable to all vacancies. There is nothing in the Recruitment Rules of 2000 which stipulates that the same will be applicable only to vacancies that have arisen after 2000. Thus, the Recruitment Rules on the date of the

advertisement are applicable. The petitioner is not Ph.D. and has not passed National Eligibility Test. She is not eligible.

8. With regard to the claim for arrears of salary, it may be noted that the Writ Petition was filed on 17th December, 2002 and the claim made is for the period 1st January, 1987 till 13th January, 1990 and from 1996 onwards till 2003. Substantial portion of the claim is beyond three years. This portion of the claim is obviously bad for delay and laches.

9. Even on merits, I do not think that the petitioner is entitled to any relief. The petitioner was given current duty charge and asked to perform functions of a Librarian. As per Rule 24 of the Law and Procedure relating to Governance of Colleges, an employee placed in charge of current duties of a higher post is entitled to receive basic pay + 10% of the minimum of the scale of pay applicable to the higher post. The said provision reads as under:-

“24. Pay and allowances for holding additional charge of posts.

2. An employee placed in charge of the current duties of a higher post will receive pay in the basic pay *plus* 1/10th of the minimum of the scale of pay applicable to the higher post.”

10. It is an admitted case of the parties that the petitioner has been paid 10% additional salary as per the minimum of the scale of pay applicable to the post of a Librarian. The substantive post of the petitioner is Semi Professional Assistant. The petitioner was given current duty charge.

11. During the course of arguments, learned counsel for the petitioner referred to Rule 24(v) of the Law and Procedure relating to Governance of Colleges. The said provision has not been referred and relied upon in the Writ Petition. The said provision reads as under:-

“(v) An official holding one post, if entrusted with the full duties of another post concurrently, he will receive the higher of the pay *plus* one-fifth of the minimum of the time scale of pay of the other post. The appointment to the additional posts should be made formally. The status of the posts does not effect the quantum of the employments; but, normally an official holding a post should not formally be appointed to hold full charge of a lower post.”

12. Rule 24(v) is not applicable to the case of the petitioner and it applies only if an official holding one post is entrusted with full duties of another post concurrently. In such cases, he is entitled to receive higher of the two pays + 1/5th of the minimum time scale of the pay of the other post. The petitioner has not made any allegation that she was entrusted with concurrent duties of two posts. The said provision will accordingly not apply.

13. However, at the same time I must express my disappointment and concern on the conduct of the respondents. The petitioner was permitted and allowed to work on the post of Librarian from 1st January, 1987 till 13th January, 1990 and then from January, 1996 onwards till 2003, when the post of Librarian was filled up pursuant to the Advertisement dated 9th November,

2002. It is not proper to keep a post vacant for a long time and make another junior employee work on the said post without making regular appointment after following the proper selection procedure. It creates complications and also results in unnecessary litigation. The person working at the said post aspires to be appointed.

14. In view of the above reasoning, the petitioner is not entitled to any relief and accordingly, the Writ Petition is dismissed. No costs.

MAY 13, 2008.
P/VKR

SANJIV KHANNA, J.

