

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

+ **Writ Petition (Civil) No.2067/2008**

% Date of Decision : March 14, 2008

Vinod Kumar Kanvaria Petitioner

Through : Mr. Tarun, Advocate

Versus

Delhi University Respondent

Through : Mr. Anurag Mathur,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J : (Oral)

1. The petitioner seeks a writ of mandamus directing the Delhi University to “immediately put into effect the appointment in terms of the selection of the petitioner as Lecturer in the Department of Education in the Scheduled Caste category”.

2. In response to an advertisement dated 27.6.2006, published in the National Dailies on 4.7.2006, for the post of Lecturer in Education with the respondent University the petitioner applied for the faculty position in the Scheduled Caste category on 18.7.2006. Apart from requisite qualifications, the

advertisement inter alia, indicated for seven vacancies for the post of Lecturers out of which three were reserved for Scheduled Caste candidates. At the time of applying for the said post, the petitioner was working as a T.G.T. Mathematics Teacher with the Government Sarvodaya Kanya Vidyalaya, Naraina, New Delhi.

3. The petitioner was interviewed on 7.6.2007 by the Selection Committee of the respondent University. The recommendation made by the Selection Committee for the posts in Scheduled Caste and Scheduled Tribe categories was approved by the Executive Council of the respondent University on 8.6.2007. The petitioner was also amongst those recommended. However, the petitioner has not been appointed till date.

4. Before me, counsel for the petitioner has taken the stand that his client has in fact been appointed by the respondent/ Delhi University in that post. To substantiate his stand, counsel has drawn my attention to the recommendation of the Selection Committee that recommended the petitioner and others for appointment to the post of Lecturer in the Department of Education. In this recommendation, four persons were recommended for appointment in the order of merit as indicated therein. The petitioner's name is the third from the top. This recommendation was considered by the Executive Council of the respondent in its meeting held on 8th June, 2007. On that date, the Executive Council resolved to accept the aforesaid recommendation of the Selection Committee. The Selection

Committee is appointed by the Executive Council and functions on its behalf. The recommendations of the Selection Committee, are forwarded to the Executive Council for consideration. The Executive Council may accept or reject such recommendations. However, the acceptance of the recommendations by the Executive Council does not by itself automatically, amount to an appointment. At best, this decision can be said to have placed him on a select list. Nothing more. The petitioner's counsel urges to the contrary. He states that this acceptance by the Selection Committee constitutes a valid appointment to the post, and that nothing further is required to be done in this behalf. However, despite my repeated queries, he is unable to show any precedent where any such selection is deemed to be an appointment. I have also drawn attention of counsel for the petitioner to the decision of Supreme Court in the case of ***State of U.P. Vs. Rajkumar Sharma reported as (2006) 3 SCC 330*** wherein it has been held that mere inclusion in a select list does not confer any right to appointment upon the individual placed in that select list, even if the post in question remains unfilled.

5. It would appear that counsel for the petitioner is unable to appreciate the distinction between due selection for appointment to a post and the actual appointment to that post. No appointment letter or any other factor that would go to demonstrate the actual appointment of the petitioner to the post in question has been brought to my attention and I am

unable to persuade myself that the minutes of the meeting of the Executive Council dated 8th June, 2007, which contain a resolution by the Executive Council accepting the recommendation of the Selection Committee for appointment of the petitioner, is sufficient to constitute valid appointment of the petitioner to the post in question. Counsel appearing for the respondent in response to advance notice has also stated that in fact there is another Writ Petition bearing WP(C) No.16258/2006 pending before a Division Bench of this Court where the issue of appointment of handicapped persons against the quota reserved for such persons is being examined. He states that there are some interim orders passed by the Division bench in that case, because of which no other appointments are being made in reserved categories except for those that fall under reservations for handicapped persons. He states that it is possible that further action was not taken with regard to the petitioner's candidature for this reason. He states that the aforesaid interim orders in that case were issued on 4th April, 2007 and it is possible that the decision of the Executive Council accepting the recommendation of the Selection Committee for appointment of the petitioner, which came about on 8th June, 2007, has not been acted upon for that reason.

6. Be that as it may, whilst the Executive Council is vested with the powers to appoint lecturers on the recommendations of the Selection Committee constituted for the purpose, mere acceptance of the recommendations per se would not amount to

an appointment. It is merely an acceptance of the recommendation of the Selection Committee to the effect that those recommended are fit for appointment. No decision or resolution of the Executive Council to appoint the petitioner or directing the issuance of an appointment letter to him has been brought to my notice. The petitioner has cited no precedent or even any rules or regulations that would persuade me to hold that the aforesaid resolution of the Executive Council on 8.6.2007 itself constitutes an appointment or that he has acquired any right to be appointed. Under the circumstances, in my view, the acceptance of the aforesaid recommendations by the Executive Council at best amounts to due selection because of which the petitioner can be said to be placed in a Select List. In that view of the matter, the petitioner cannot, as a matter of law, be granted the reliefs prayed for. In this regard, in ***Union of India Vs. Kali Das Batish (2006) 1 SCC 779***, the Supreme Court observed that, “mere inclusion of a candidate's name in the select list gave him no right and if there is no right, there could be no occasion to maintain a writ petition for the enforcement of a non-existing right.” In that case, the Supreme Court relied on its earlier decisions in ***Punjab SEB Vs. Malkait Singh (2005) 9 SCC 22*** and ***Sankarsan Dash Vs. Union of India (1991) 3 SCC 47*** for the above proposition. Similarly, in the case of ***State of UP Vs. Om Prakash (2006) 6 SCC 474***, the Court held that inclusion of a candidate's name in the merit list does not confer any indefeasible right to be appointed.

Since I feel that the aforesaid resolution of the Executive Council does not constitute any appointment of the petitioner to any post, the question of issuing a mandamus directing the respondent to give effect to any such appointment does not arise.

However, it is clarified that this decision would not come in the way of any further steps/action that the Executive Council may be inclined to take in the matter of the petitioner's appointment consequent upon its aforesaid resolution of 8.6.2007.

7. The writ petition is dismissed.

Sudershan Kumar Misra, J.

March 14, 2008
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