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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : September 07, 2009

Judgment delivered on : September 15, 2009

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**W.P. (C) No.5527/2004 and
C.M. No. 4156/2004**

% Dr. Gurdeep Singh ... Petitioner
Through: Petitioner in person

versus

University of Delhi & Ors. ... Respondents
Through: Mr. Amit Bansal and Ms. Manisha
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. On 1st August, 2003, Petitioner, alongwith four other Senior Medical Officers, was granted next higher scale (referred to as Non-Functional Selection Grade) with effect from 5th April, 2002 by the Respondent - University. On that very day, vide impugned order (Annexure P-11), Respondents No. 6 & 7 were granted the next higher scale (Non-Functional Selection Grade) with effect from 6th June, 2001 and this was purportedly done in terms of Office Memorandum of 6th June, 2000 (Annexure P-1).

2. Petitioner claims that Office Memorandum (Annexure P-1) was adopted by Respondent - University vide Resolution of 17th May 2001, (Annexure P-2). According to the Petitioner, the case of Respondents No. 6 and 7 was considered for grant of next higher scale (Non-Functional Selection Grade) on 24th December, 2001 and vide Resolution (Annexure P-6), the Execution Council of Respondent - University had recommended the case of Respondent No. 6 and 7 be reviewed after one year. Petitioner points out that the import of Resolution (Annexure P-6) is that Respondent No. 6 and 7 were not found fit to be placed in the next higher scale (Non-Functional Selection Grade).

3. The grievance of the Petitioner is that he was eligible for the grant of next higher scale (Non-Functional Selection Grade) on 24th December, 2001 and his case should have been considered alongwith Respondent No. 6 and 7 and if they were not found fit, then the Petitioner ought to have been granted the next higher scale. For contending so, the Petitioner relies upon extract of Government Guidelines on Departmental Promotion Committees [as amended upto 8th February, 2002] – (Annexure P-4), which provides for consideration zone of eight officials for two vacancies.

4. Petitioner submits that despite Representations (Annexure P-7, Annexure P-8 and Annexure P-13), the aforesaid grievance of the Petitioner has not been redressed and Respondent - University has

not paid any heed to the aforesaid Representations of the Petitioner.
Hence, this petition.

5. In response to this petition, Respondent - University has filed a short counter affidavit stating as under:-

“Certain guidelines referred to by the Petitioner as to the number of persons to be called by the DPC, relates to calling candidates for regular promotions, which has no application to granting a particular pay scale to limited number of persons. In the present case, only 2 persons became eligible to be considered for grant of Non-Functional Selection Grade pursuant to increase in the number consequent upon the June, 2000 decision of the Government of India adopted by the Executive Council of the University on 17.5.2001. It is further submitted that the Petitioner being lower in the order seniority, was not entitled to be considered for grant of the Non-Functional Selection Grade when the DPC met on 12.12.2001, and rightly considered the two senior most officers.”

6. Despite service upon Respondent No. 5 to 7, they have not responded to this petition. Rejoinder to the counter affidavit of Respondent - University has been filed by the Petitioner.

7. Petitioner has chosen to himself to argue this petition. Petitioner as well as counsel for the Respondent - University have been heard at length and the material on record and the judgment cited has been perused.

8. The claim of the Petitioner for consideration for the grant of next higher scale (Non-Functional Selection Grade) in December, 2001,

alongwith Respondents No. 6 and 7, is based upon Government Guidelines of Departmental Promotion Committees (Annexure P-4), which provides that the zone of consideration for two vacancies would be eight officials. The stand of the Respondent - University is that the Guidelines (Annexure P-4) applies to regular promotions and not for the purpose of granting next higher scale (Non-Functional Selection Grade). This stand of the Respondent - University is duly supported by the Office Memorandum (Annexure P-1) which clearly mentions as under:-

“As NFSG (Non-Functional Selection Grade) is a segment of JAG (Junior Administrative Grade) and is also ‘non-functional’ in character, appointment of NFSG is not promotion but merely placement in the year higher pay scale.”

9. In view of the aforesaid, it becomes crystal clear that the grant of next higher scale (Non-Functional Selection Grade) is not a promotion and therefore, the Guidelines (Annexure P-5) would not apply. Executive Council Resolution (Annexure P-6) of Respondent - University nowhere states that Respondent No. 6 and 7 were unfit for the grant of next higher scale (Non-Functional Selection Grade). What is stated in (Annexure P-6) reads as under:-

“The Committee considered the self assessment proforme of Dr. J.L. Jain and Dr. (Mrs.) R. Lal, Senior Medical Officer Grade-I for their placement in the senior scale of Rs.4500-5700 revised to Rs.14,300-18,300 and after having interviewed them, the Committee recommended the case of:

Dr. J.L. Jain and Dr. (Mrs.) R. Lal be reviewed after one year.”

10. Vide impugned order (Annexure P-11), Respondents No. 6 and 7, have been granted the next higher scale (Non-Functional Selection Grade) with effect from 6th June, 2001, in terms of Office Memorandum (Annexure P-1) which was adopted by the Respondent - University on 6th June, 2001. This was done on the recommendation of the Screening/Evaluation Committee, who had approved the placement of Respondent No. 6 and 7 in the next higher scale (Non-Functional Selection Grade). It is evident from the Office Memorandum (Annexure P-1) that the grant of the next higher scale (Non-Functional Selection Grade) has to be on the basis of 'suitability', which has been considered by the Screening/Evaluation Committee, whose recommendations have been approved by the Executive Council of the Respondent – University.

11. It is not within the domain of this court to sit over the evaluation done by the Screening/Evaluation Committee and to determine as to who is more suitable for placement in the next higher scale (Non-Functional Selection Grade). The main emphasis of the Petitioner is that when Respondents No. 6 and 7 were not found suitable for the grant of next higher scale (Non-Functional Selection Grade) in December, 2001, vide (Annexure P-6), then the grant of next higher scale (Non-Functional Selection Grade) vide impugned order (Annexure P-11) cannot be with retrospective effect, i.e., with effect from 6th June, 2001.

12. To support the aforesaid stand, Petitioner relies upon the observations made in “*Prof. Najma Siddiqui vs. University of Delhi*”, **1998 (46) DRJ 216**, which reads as under:-

“A person who was not selected by a duly constituted Selection Committee could not be given deemed date of promotion which happens to be even prior to the date of first Selection Committee met i.e. June, 1994. The first Selection Committee having rejected his application on 23rd June, 1994 the second Selection Committee vide its order dated 4th March, 1995 could not declare him eligible with retrospective effect nor that matter it could circumvent the decision of the first Selection Committee of 23rd June, 1994. By no stretch of imagination or law the appointment can relate back to January, 1994.”

13. The aforesaid observations were made in a case of promotion and they do not apply to the instant case as the present case is of mere placement in the next higher scale (Non-Functional Selection Grade). Even if it is taken that Respondents No. 6 and 7 were not found suitable for the grant of next higher scale (Non-Functional Selection Grade) in December, 2001, still, it would not mean that their suitability determined in June, 2003 would not relate back to the date of their entitlement, i.e., with effect from June, 2001. It is so said, because their suitability was reviewed after one and half years, whereas, it was required to be reviewed after one year. In the face of Executive Council Resolution (Annexure P-6), had the review of suitability of Respondents No. 6 and 7 had taken before one year,

then perhaps, the grievance of the Petitioner could have been legitimate. It is not so, in the instant case.

14. Admittedly, Respondent No. 6 and 7 were and are senior to the Petitioner. It is true that the law of appointment cannot relate back but the grant of next higher scale (Non-Functional Selection Grade) certainly relates back to the date of entitlement. Therefore, the decision in the case of *Prof. Najma Siddiqui (supra)* is distinguishable on facts and does not advance the case of the Petitioner in any manner whatsoever.

15. In view of the aforesaid, no case for quashing the impugned order (Annexure P-11) is made out as it does not suffer from any illegality. Petitioner fails to establish the entitlement to the grant of next higher scale (Non-Functional Selection Grade) with effect from 6th June, 2000. This petition is devoid of any substance and is hereby dismissed.

16. This petition as well as pending application are accordingly disposed of.

17. No costs.

Sunil Gaur, J.

September 15, 2009
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