

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

+ **W.P.(C.) No. 7642/2008 & C.M. No. 8339/2009**

Judgment Reserved on: 03.02.2010

% **Judgment Delivered on: 11.02.2010**

SMT. ANJU SHARMA Petitioner

! Through: Mr. M.K. Bhardwaj, Advocate.

Versus

\$ DELHI UNIVERSITY AND OTHERS Respondents

^ Through: Mr. Aditya Singh, Advocate for
Respondent No. 1.
Mr. A.P.S. Ahluwalia, Advocate for
Respondents No. 2 & 3.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J

The petitioner working as Senior Assistant in Dayal Singh College under Delhi University has filed this writ petition seeking quashing of impugned advertisement dated 04.07.2008 issued by the College inviting applications from SC candidates for filling up one vacant post of Section Officer (Accounts) in the College. The petitioner has also prayed for directions to the respondents to promote her to the post of Section Officer (Accounts) from the due date she became eligible for such promotion in terms of recruitment rules applicable for the said post.

2 The post of Section Officer (Accounts) advertised by Dayal Singh

College vide impugned advertisement was vacated by a general category candidate Mr. S.D. Verma on 30.06.2008. As per the petitioner, the post of Section Officer in the College, in terms of recruitment rules applicable for the post, could be filled only by way of 100% promotion and not by way of direct recruitment. The petitioner has stated that since the post of Section Officer (Accounts) was vacated by a general candidate Mr. S.D. Verma, the same has to go to the general category and not to the SC category. After the issuance of the impugned advertisement dated 04.07.2008, the petitioner had made a representation to the College on 03.09.2008 and again on 08.09.2008 reiterating her stand that as per reservation roster and DOP & T OM dated 02.07.1987, 'L' shape roster is to be operated as the cadre strength is less than 13. She also explained in her representations that she being the senior most Senior Assistant in the College having five years regular service in the College fulfills all the eligibility conditions for her promotion to the post of Section Officer (Accounts) and therefore requested the College to promote her to the said post without any delay. Since the petitioner did not hear any response to her representations from the College, she has filed the present writ petition for quashing of the impugned advertisement dated 04.07.2008 and for directions to the respondents to promote her to the post of Section Officer (Accounts) as she fulfills all the eligibility conditions required for her promotion to the said post.

3 Reply to the petition has been filed on behalf of Dayal Singh College (respondents No. 2 & 3). Dr. I.S. Bakshi, Principal Dayal Singh College has sworn his affidavit in support of reply filed on behalf of the College. The respondents in their reply have denied that they have ignored the statutory recruitment rules notified in terms of Article 309 of

the Constitution of India and the reservation roster in initiating the process for appointment against the post of Section Officer through open selection. The respondents have stated that as per the rules, the appointment to the post of Section Officer can be made both through direct recruitment as well as by promotion. The rules permit 75% promotional appointment and 25% direct recruitment by limited departmental examination. The respondents have further stated that there are two posts of Section Officers in Dayal Singh College, one for accounts for looking after accounts/finance of the College and other post is for administration. As per 13-point post based roster of the university, the existing vacant post of Section Officer in the College is reserved for SC category while the petitioner belongs to a general category. According to the respondents, the petitioner was not eligible for her promotion to the post of Section Officer (Accounts) as the said post in terms of reservation roster is required to be filled from a candidate of SC category. Since there is no SC candidate presently available in the College who can be promoted to the post of Section Officer, the University has granted permission to the College to advertise the post and make appointment of SC candidate from open market as per rules. It is stated by the respondents that they have followed the guidelines and the instructions of the Delhi University in initiating the process for appointment to the post of Section Officer (Accounts) advertised vide impugned advertisement dated 04.07.2008. The respondents have prayed for dismissal of the present writ petition.

4 In rejoinder to the reply of the respondents, the petitioner has reiterated her stand that the post of Section Officer (Accounts) to be filled in the College has to be filled by way of 100% promotion and is not

available for direct recruitment. She has further reiterated her stand that she being the only eligible candidate for promotion to the said post is entitled for her promotion with effect from the due date on which she became eligible for the said promotion. The petitioner in her rejoinder has denied that the post of Section Officer (Accounts) to be filled in the College is reserved for SC candidate as alleged by the respondents in their reply. According to her, since the post was vacated by a general candidate, it can be filled only by a general candidate and not by a SC candidate.

5 I have heard the arguments of the learned counsel for both the parties and have also perused the written arguments filed by both of them. I have also gone through all the documents placed by the counsel for the parties before me for my consideration.

6 There are two crucial issues that arise for consideration in the present case. The first is whether in terms of post based reservation roster applicable to small cadre strength up to 13 posts, the post vacated by a general candidate Mr. S.D. Verma on 30.06.2008 is meant to be filled by a SC candidate. The second question that arises for consideration is whether the post of Section Officer (Accounts) to be filled in the College can be filled by way of direct recruitment for non-availability of a suitable SC candidate in the line of promotion in the feeder cadre.

7 The vacancy to the post of Section Officer (Accounts) arose in the College on retirement of Mr. S.D. Verma on 30.06.2008. The College is governed by the rules and regulations framed by the University and has to strictly adhere to the guidelines and the directions in the matter of appointment, promotions and other terms and conditions relating to

service of employees working in the College. So far as, non-teaching employees are concerned, their services are governed by Ordinance XXII-D of Delhi University calender wherein it is specifically provided that the terms and conditions of service of non-teaching employees of the University and its colleges except that of Librarian and Registrar shall be governed by the rules as framed in Appendix VIII attached to the University calender. The rules that are contained in Appendix VIII attached to the University calender are described as University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1971. Rule 5 (2) in Chapter II of the said Rules provides for the qualifications for appointment which is to be determined by the Executive Council from time to time to the post in various cadres. Rule 5 (4) provides the mode and method of recruitment to the various posts which can be made (i) by direct recruitment; (ii) by promotion and (iii) by appointment of employees borrowed from other institutions such as on deputation. Rule 6 deals with the mode of appointment to be made and sub rule (1) of Rule 6 provides that the appointment to a post in the College shall be made by the Executive Council on the recommendations of the Selection Committee and sub rule (2) of Rule 6 provides for age, educational and other qualifications for appointment to the post and method of recruitment as prescribed by the Executive Council from time to time.

8 In the exercise of its powers conferred by Rule 6 of the said Rules, the Executive Council has been, from time to time revising, modifying and laying further guidelines for the appointment of the employees to the various posts. These rules are statutory rules framed and form part of the University calender and they applied to all non-teaching employees of the University and its colleges. The Executive Council vide its Resolution No.

114 dated 28.09.2001 had made amendment in the qualification for the direct recruitment to the post of Section Office (Accounts)/Section Officer (Admn.) for various colleges of the University. The essential qualification for S.O. (Accounts) as laid down by the Executive Council in its Resolution No. 114 dated 28.09.2001 was that at least five years working experience in the feeder cadre of Senior Assistant is must and it will be desirable if the incumbent has skills in computer application also. The decision of the Executive Council taken vide Resolution No. 114 dated 28.09.2001 was notified to the College through Notification No. CB/II/MIN/2001 (37331) and at the bottom of the said Notification, it was provided as under:-

“ Further I am to inform you that the above decision of the Executive Council will be applicable in case no Senior Assistant is available/eligible to be considered to the post of Section Officer”.

9 Mr. M.K. Bhardwaj learned counsel appearing on behalf of the petitioner had argued that Resolution No. 114 dated 28.09.2001 was passed by the Executive Council for amendment in the qualifications for the post of Section Officer and not for making any provision for appointment to the post of Section Officer by direct recruitment. It was submitted by him that need arose for amendment in the qualifications because a new College namely the College of Applied Sciences was opened and the Principal of the said College wanted to fill up the posts of Section Officer (Accounts) and Section Officer (Admn.) in the said new college by direct recruitment and for that reason, provision for educational qualifications for the post of Section Officer required to be filled through Direct Recruitment was made in the rules of 2001 by the Executive Council. The contention of Mr. Bhardwaj was that the amendment of qualification by the Executive Council by no means can be

treated as amendment of the rules so as to provide for filling up the vacant post of Section Officer through direct recruitment. According to the learned counsel, the post of Section Officer in the College till the time it was vacated by Mr. S.D. Verma on 30.06.2008 had always been filled only by way of promotion and never ever by direct recruitment. He has placed reliance on a roster for 116 sanctioned posts of Section Officers maintained by the University of Delhi w.e.f. 02.07.1997 for its various departments. The mode of recruitment of Section Officers shown in this roster is '100% promotion'.

10 Mr. Ahluwalia learned counsel appearing on behalf of respondents No. 2 & 3 had argued that the recruitment rules applicable to the post of Section Officer in the University and the colleges do not prohibit filling up of vacancies through direct recruitment. It was submitted by him that prior to the amendment of the rules in December 2008, the posts of Section Officer were required to be filled only by way of promotion but in case a suitable candidate in the line of promotion in the feeder cadre of Senior Assistants was not available, then according to the rules, the post could be filled even through direct recruitment.

11 Per Contra, Mr. Bhardwaj learned counsel appearing on behalf of the petitioner had argued that the post of Section Officer in the University and the colleges had always been filled by 100% promotion and according to him, even a single appointment through direct recruitment was not made till date. In order to ascertain the true position, this Court sought a query from the counsel appearing on behalf of the College as to whether there has been any precedent of any direct recruitment for the posts of Section Officer (Accounts) & Section Officer (Admn.) and in response to the said query, the respondents have placed on record three

such precedents of three different colleges in which direct recruitments were made to the post of Section Officer since the departmental candidates in the concerned Colleges were not eligible for promotion. First such precedent is of Deen Dayal Upadhyay College who had advertised the post on 20.06.2000 for Section Officer (Admn.) and the appointment was made directly. Second is of Sri Arobindo College, Malviya Nagar, New Delhi who also through an advertisement dated 21.02.2007 invited applications for Section Officer (Accounts) and the appointment was made by the College by appointing Mr. Sandeep Dewan as a direct recruit Section Officer. The third precedent is of Shyama Prashad Mukharji College (Women), who invited applications through advertisement dated 05.06.2007 for the post of Section Officer (Admn.) and appointed Mr. Ritesh Kapahi as a direct recruit Section Officer in the College. These three precedents clearly demonstrate that the appointments to the post of Section Officers have been made in the colleges of the University through direct recruitment even in the past prior to the amendment of the rules in 2008. However, it appears that the recourse to the direct recruitment was taken as a last resort when the university/college was not able to find a suitable candidate to man the post of Section Officer in the line of promotion in the feeder cadre of Senior Assistant. It is amply borne out from the record that the recruitment rules applicable for the post of Section Officer (Accounts) or (Administration) prior to 2008 had no embargo on the college/university for making appointments through direct recruitment.

12 The Executive Council of the University vide its resolution No. 102 passed in its meeting held on 29.10.2008 has made further amendments in the rules and these rules are now called 'Recruitment Rules (Non-

Teaching Employees), 2008'. This amendment has been effected in terms of Ordinance XXII-D of Chapter II of the Appendix VIII of the University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1971. According to these amended rules notified in December, 2008, 75% post of Section Officer are meant to be filled by promotion and 25 % by direct recruitment. However, these amended rules have no application to the case of the petitioner because the vacancy caused upon retirement of Mr.S.D. Verma on 30.06.2008 has to be filled as per the un-amended rules. According to the un-amended rules, the posts of Section Officer were required to be filled by 100% promotion with a caveat that in case a suitable candidate in the line of promotion in the feeder cadre of Senior Assistant was not available then the vacant post could be filled even through direct recruitment also.

13 In the present case, the vacancy to the post of Section Officer (Accounts) arose in the College on 30.06.2008 when a candidate belonging to the general category had retired. According to the respondents, the post that was vacated by Mr. S.D. Verma was meant to be filled by a SC candidate, in terms of 13 points post based reservation roster approved by the University. The respondents along with their reply have annexed a list of incumbents promoted to the post of Section Officer in the College w.e.f. 02.07.1997 till date and the said list is Annexure R-2 to the reply at running page 73 of the paper book. The said list (Annexure R-2 at running page 73 of the paper book) is extracted below:-

“Dayal Singh College, Lodi Road, New Delhi

Section Officer

w.e.f 2.7.1997

**Mode of Recruitment: Promotion
Pay Scale Rs.6500-10500**

	Reserved	Name of employee	Date of Birth	Date of appointment	Whether SC/ST/ UR	Date of retirement or Promotion
1	UR	Sh. Yash Pal	14.8.1938	01.7.1992	UR	31.8.1998 (R)
2	UR	Sh. T.L. Sharma	09.6.1941	01.8.94	UR	30.6.2001 (R)
3	UR	Sh. P.C. Thakur	11.4.1944	09.3.1999	UR	30.4.2004 (R)
4	UR	Sh. S.D. Verma	15.6.1948	29.11.2001	UR	30.6.2008 (R)
5	UR	Sh. S.C. Shani	16.1.1947	29.11.2001	UR	31.1.2007 (R)
6	UR	Sh. Surender Singh	04.2.1954	20.5.2007	UR	
7	SC					
8	UR					
9	UR					
10	UR					
11	UR					
12	UR					
13	UR					
14	ST					

14 The Constitution Bench of the Hon'ble Supreme Court in the case of ***R.K. Sabharwal Vs. State of Punjab*** has held that the reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories in a cadre, reaches the prescribed percentages of reservation. Thereafter, the rosters cannot operate the vacancies released by the retirement, resignation, promotion etc of the persons belonging to the general and the reserved categories and they are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained. With a view to bring the policy of reservation in line with the law laid down by the Supreme

Court, a model roster for promotion applicable for cadre strength up to 13 posts was provided for, which is extracted herein below:-

POST-BASED ROSTERS

APPENDIX TO ANNEXURE – III

Model Roster for promotion for cadre strength up to 13 posts

REPLACEMENT NO.													
<i>Cadres Strengt h</i>	<i>1st</i>	<i>2nd</i>	<i>3rd</i>	<i>4th</i>	<i>5th</i>	<i>6th</i>	<i>7th</i>	<i>8th</i>	<i>9th</i>	<i>10th</i>	<i>11th</i>	<i>12th</i>	<i>13th</i>
1	UR	UR	UR	UR	UR	SC	UR	UR	UR	UR	UR	UR	ST
2	UR	UR	UR	UR	SC	UR	UR	UR	UR	UR	UR	ST	
3	UR	UR	UR	SC	UR	UR	UR	UR	UR	UR	ST		
4	UR	UR	SC	UR	UR	UR	UR	UR	UR	ST			
5	UR	SC	UR	UR	UR	UR	UR	UR	ST				
6	SC	UR	UR	UR	UR	UR	UR	ST					
7	UR	UR	UR	UR	UR	UR	ST						
8	UR	UR	UR	UR	UR	ST							
9	UR	UR	UR	UR	ST								
10	UR	UR	UR	ST									
11	UR	UR	ST										
12	UR	ST											
13	ST												

- NOTE:**
- 1. For cadres of 2 to 13 posts, the roster is to be read from entry 1 under column Cadre Strength till the last post and then horizontally till the last entry in the horizontal row, i.e., Like “L”.
 - 2. All the posts of a cadre are to be earmarked for the categories shown under column Initial Appointment. While initial filling up will be by the earmarked category the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre.
 - 3. The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category.

15 A reference to the above model roster read along with the list of incumbents (Annexure R-2 at running page 73 of the paper book) would show that the vacancy caused upon the retirement of Mr. S.D. Verma on 30.06.2008 comes to the share of SC category candidate being at the seventh point (i.e., 1st initial point for unreserved and the sixth

replacement point)

16 Mr. M.K. Bhardwaj learned counsel appearing on behalf of the petitioner had argued that even if the vacancy caused upon the retirement of Mr. S.D. Verma had fallen to the share of SC candidate, still the said vacancy was liable to be filled up by promotion from a general category candidate after dereservation. In this regard, he has referred to the following rule on reservation contained in OM dated 06.11.2003:-

“In cases of promotion including promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A', if sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies may be dereserved as per prescribed procedure and filled by candidates of other communities.”

17 The contention of Mr. Bhardwaj was that in the first place the post vacated by Mr. S.D. Verma was not meant for SC candidate and even if it was meant for SC candidate, it should have been filled from general candidate after dereservation. Upon giving my anxious consideration to this submission made on behalf of the petitioner, I have not been able to persuade myself to agree with the same. The rule on reservation extracted above, on which reliance is placed by the petitioner's counsel, only provides that if the appointing authority so desire it can fill up the reserved post from general candidate after dereservation. The words used are 'may' in the above rule and not 'shall'. It is within the discretion of the employer to appoint a general candidate against a reserved post but in case the employer decides not to fill up the reserved post from a general candidate for cogent reasons, then such a decision of the employer cannot be called in question in judicial review.

18 In the present case, it is not disputed that there are only two posts

of Section Officers in the College, one meant for Accounts and the other for Administration. The appointment to these two posts in the College is not an annual or a regular feature. The occasion for replacement arises only on the retirement of an earlier incumbent manning the post. A perusal of list of incumbents (Annexure R-2 at running page 73 of the paper book) placed by the respondents on record would show that since 02.07.1997 till the retirement of Mr. S.D. Verma on 30.06.2008, the respondents had appointed six people to the post of Section Officer in the College and they all are from the general category. Till date not even a single SC category candidate has been appointed or promoted to the said post, presumably as there was none. In case the argument of the petitioner's counsel that the post vacated by a general candidate has to be filled only from general category is accepted, then it will completely negate the scheme of reservation inasmuch as no reserve category candidate can ever be appointed because there was no appointment from the reserved category earlier. Upon retirement of Mr. S.D. Verma on 30.06.2008, the point for his replacement, as already discussed above, has come to the share of SC category candidate and therefore, the decision of the respondents not to divert the SC post to general category by no means can be called in question or said to be arbitrary or un-reasonable.

19 Dayal Singh College is a constituent College of University of Delhi and is governed by the rules and regulations framed by the university. The College had apprised the university about the vacancy caused upon the retirement of Mr. S.D. Verma and had taken its approval for filling up the said post from SC category candidate through direct recruitment. The approval as sought for has been granted by the University. It is not

disputed by the petitioner that as on date, there is no eligible SC candidate in the line of promotion of feeder cadre of Senior Assistant who may be promoted to the post of Section Officer (Accounts) and for that reason, the respondents are well within their right to fill up the said post from SC category candidate through direct recruitment. The material placed on record shows that the College has acted wholly in accordance with the rules and guidelines and the directions of the EC of Delhi University to fill up the post of Section Officer (Accounts) by the SC candidate.

20 In view of the foregoing, I have no hesitation in concluding that the petitioner has failed to establish as to how and in what manner the College has acted against the provisions of law or of the university calender in advertising the post vide impugned advertisement dated 04.07.2008 for filling up the same from SC category through direct recruitment.

21 In the facts and circumstances of the case delineated above, I do not find any merit in this writ petition which fails and is hereby dismissed but with no order as to costs. Interim order granted on 21.08.2009 is vacated.

FEBRUARY 11, 2010
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S.N.AGGARWAL
[JUDGE]