

IN THE HIGH COURT OF DELHI AT NEW DELHI
#17

W. P. (C) 15502/2004

PREETI SHARMA Petitioner
Through: Mr. C. Mohan Rao, Advocate.

Versus

SCHOOL OF CORRESPONDENCE
COURSES & ORS Respondents
Through: Ms. Beenashaw Soni, Advocate
for R-1.
Mr. Ashok Kashyap, Advocate
for R-4 to 6.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

ORDER
12.08.2011

CM Nos. 3227/2005 (for recalling of order dated 6th December 2004), 20880/2010 (for recalling of order dated 8th October 2010) and 20881/2010 (for suspension of order dated 8th October 2010)

1. No grounds are made out to review the orders dated 6th December 2004 and 8th October 2010.

2. The applications are dismissed.

W. P. (C) 15502/2004 & CM APPL Nos. 11276/2004 and 12333/2004 (for stay)

3. The Petitioner is aggrieved by the Award dated 3rd March 2004

passed by the Industrial Tribunal ('Tribunal') in I. D. No. 143 of 2000.

4. The Petitioner was appointed as a Junior Library Attendant ('JLA') in the School of Correspondence Courses and Continuing Education ('the School'), University of Delhi, Respondent No. 1 on 3rd June 1988. She was promoted as Senior Library Attendant ('SLA') on 27th March 1989 and was confirmed on the said post by the Managing Committee ('MC') of Respondent No. 1 at its meeting held on 6th March 1992 with effect from 27th March 1989.

5. Respondent Nos. 2 & 3 were appointed as JLAs in the School on 22nd August 1990. On 30th November 1992, Respondent No. 2 was promoted to the post of Semi Professional Assistant ('SPA') purely on temporary basis with effect from 30th November 1992. On 1st September 1993, Respondent No. 3 was promoted to the post of SPA on a purely temporary basis with effect from 1st September 1993. The Petitioner has placed on record copies of the said orders dated 27th May 1993 and 2nd October 1993 by which Respondent Nos. 2 & 3 were promoted as SPAs on "purely temporary basis". The

Petitioner has also placed on record an Office Order announcing that the MC of the School at its meeting held on 6th March 1992 confirmed 95 employees working in the School “with effect from the date noted against each”. In this list, the Petitioner figured at serial No. 85 as SLA with the date of confirmation as 27th March 1989 whereas Respondent Nos. 2 and 3 were shown at serial Nos. 93 and 89, respectively. They were both junior to the Petitioner as JLA as their date of confirmation was indicated as 22nd August 1990. The date of confirmation of the Petitioner as SLA was already indicated as 27th March 1989.

6. On 4th January 1994, the MC of the School sanctioned the creation of four posts of SPA. In a written endorsement made on the letter addressed to him by the Principal of the School, the Chairman of the MC noted that in view of the approval granted for the creation of posts which included four posts of SPA, “action may be taken to fill up these posts”.

7. What is important is that on 4th January 1994, four posts of SPA were created but they were not filled up on that date. On 6th January

1994, the Departmental Promotion Committee ('DPC') met and decided to promote the Petitioner and Respondent Nos. 2 & 3 to the posts of SPA. Separate orders dated 6th January 1994 were issued each to the Petitioner and to Respondent Nos. 2 & 3 in identical wording. Copies of the letters dated 18th January 1994 addressed to Respondent Nos. 2 & 3 clearly state that their services on the post of SPA "have been placed against the substantive post of Semi Professional Assistant on probation for a period of one year w.e.f. 06.01.1994 in the pay scale of Rs. 1400-40-1800-SB-50-2300". In the office order dated 21st April 1995, the list of confirmed employees shows the Petitioner at serial No. 8 as SPA with the date of confirmation as 6th January 1994 and that of Respondent Nos. 2 & 3 at serial Nos. 9 and 10 as SPAs with the same confirmation date.

8. On 16th May 1997, the Petitioner was addressed a letter by the Acting Principal of the School with the following effect:-

"Ref:- Her representation regarding controversy in seniority in the cadre of Semi-Professional Assistant.

Ms. Preeti Sharma, Semi Professional Assistant in

Library is hereby informed that her representation under reference was considered and it has been found that under the University rules the seniority of the three employees of the Library in the cadre of SPAs will remain unchanged since the same was finally approved by the Managing Committee at the time of their confirmation in the cadre of S.P.A. viz :-

<u>S. N.</u>	<u>NAME OF THE INCUMBENTS</u>	<u>DATE OF CONFIRMATION</u>
1.	Ms. Preeti Sharma, SPA	06-01-94
2.	Ms. Anjana, SPA	06-01-94
3.	Ms. Nirmala Devi, SPA	06-01-94

(DR. R. K. ANAND)
ACTING PRINCIPAL”

9. However, it appears that on 21st October 1997, a representation was made by Respondent Nos. 2 & 3 protesting against the above order of seniority. Thereafter, at the meeting of the MC held on 8th October 1998, the MC noted that “the seniority confirmed earlier by the Managing Committee needs to be revised. After a detailed discussion, the Managing Committee decided to re-fix the seniority, taking into consideration the temporary services rendered by the two officials i.e. Ms. Anjana and Ms. Nirmala Devi.” Respondent Nos. 2

& 3 were now shown senior to the Petitioner. The Petitioner protested against the above decision but this was negated by the School by a letter dated 6th April 1999.

10. The resultant dispute was referred to the Labour Court in ID No. 143/2000. The dispute referred to it read as follows:-

“Whether the demand of Smt. Preeti Sharma, Semi-Professional Assistant, for treating her senior to Smt. Nirmala Devi and Smt. Anjana is justified and if so, what directions are necessary in this respect?”

11. On the primary issue whether the reference was maintainable in the absence of any proper espousal of the dispute, the issue was held against the Petitioner. The Tribunal concluded that since Respondent Nos. 2 & 3 had been promoted earlier as SPA, they were senior to the Petitioner and, therefore, the fixation of the seniority by the MC at its meeting on 8th October 1998 was correct.

12. Before this Court it has been contended by Mr. C. Mohan Rao, learned counsel for the Petitioner that there is no basis for altering

the seniority of the Petitioner vis-à-vis Respondent Nos. 2 & 3 as was done by the MC on 8th October 1998. There were no rules whereby the *ad hoc* service rendered by a person in a post would count for the purpose of seniority after being regularly absorbed in the said post. Consequently, it is submitted that all the three, i.e., the Petitioner and Respondent Nos. 2 & 3 were promoted as SPAs on the same date, i.e., 6th January 1994 whereas a representation by the School was made in the written statement in the Tribunal that the Chairman had directed these promotions to be effective from 4th January 1994. It is submitted that there is no such order passed by the Chairman of the School. Thirdly, it is submitted that the *feeder cadre* for the post of SPA was SLA and neither the Respondent No. 2 nor Respondent No. 3 was appointed either on *ad hoc* basis or regularly as SLA. Therefore, they were not eligible to be promoted as SPA earlier than the Petitioner who was confirmed as SLA and that too much before Respondent Nos. 2 & 3 who were appointed as JLAs. Lastly, it is submitted that the Petitioner qualified a graduate degree on 6th January 1994 which was the date of the marksheet issued in respect of the BA exam taken by her in October/November 1993. Since the promotion to the post of SPA was effective only

from that date, the Petitioner was qualified for the post.

13. Ms. Beenashaw Soni, learned counsel appearing on behalf of the School submitted that the Petitioner intimated that she had obtained a BA degree only on 18th January 1994. On the date of promotion to the post of SPA, i.e., 6th January 1994, she was not qualified to be so promoted. Consequently, it is submitted that since Respondent Nos. 2 & 3 have been already working on *ad hoc* basis in the post of SPA earlier to the Petitioner they were, therefore, entitled to count for the purposes of seniority, the *ad hoc* service period as well. Thirdly, it is submitted that the Petitioner delayed the actual orders of grant of promotion and used that time to somehow obtain the BA degree in order to justify her promotion as SPA. Lastly, it is submitted that the actual date of promotion should be considered as 4th January 1994 on which date admittedly the Petitioner did not possess the BA degree.

14. Appearing on behalf of certain other employees of the School as Respondent Nos. 4 to 6, Mr. Ashok Kashyap submitted that the delay occurred by the Petitioner through a correspondence course was not

recognized and that the *inter se* seniority of the Petitioner and Respondent Nos. 2 & 3 ought not be distributed.

15. As regards the last submission, it is seen from the record that there was no challenge at any point of time raised either by the School or Respondent Nos. 2 & 3 to the promotion granted to the Petitioner as SPA. The only dispute was as regards the *inter se* seniority. Consequently, it is not necessary for this Court to adjudicate whether the degree produced by the Petitioner was good enough for the purposes of her eligibility for promotion as SPA.

16. The issue that arises for consideration is whether the MC of the School was justified in altering *inter se* seniority of the Petitioner and Respondent Nos. 2 & 3 at its meeting on 8th October 1998.

17. The School has failed to explain how Respondent Nos. 2 & 3 could have been promoted as SPA even on an *ad hoc* basis when they were at no point of time appointed as SLAs which was the feeder cadre for the promotional post of SPA. It was submitted that there had been a merger of the post of JLA and SLA and therefore,

both the Petitioner and Respondent Nos. 2 & 3 were eligible for being promoted as SPAs. However, there is no such statement made in the pleadings. On the contrary, the combined list of employees of the School at page 48 of the paper book which is of 13th April 1992 shows the Petitioner at serial No. 85 as SLA having been confirmed on 27th March 1989 and Respondent Nos. 2 & 3 at serial Nos. 93 and 89 respectively shown as JLA with the date of confirmation as 22nd August 1990. Clearly, therefore, the Petitioner who was confirmed as SLA from an earlier date was eligible to be promoted to the newly created post of SPA earlier than Respondent Nos. 2 & 3. Moreover, the *ad hoc* promotions granted to Respondent Nos. 2 & 3 as SPA was on a purely temporary basis.

18. The MC of the School at its meeting on 3rd January 1994 approved the creation of the four posts of SPA and this was conveyed by the Principal of the School to the Chairman of the MC on 4th January 1994. He then made an endorsement that “necessary action may be taken to fill up these posts”. Therefore, as on 4th January 1994 the four posts of SPA were only created. The promotion of the Petitioner and Respondent Nos. 2 & 3 of the said

posts only took place on 6th January 1994 when the DPC met.

19. On that date, i.e., 6th January 1994, the Petitioner admittedly was a graduate. In her letter dated 18th January 1994 addressed to the School, she enclosed the marksheet issued to her from the Osmania University of the BA final examination held on October/November 1993. Even if the marksheet was issued only on 6th January 1994, clearly the marks list has been prepared earlier. The answer sheets were given even earlier. The date of graduation usually relates the date of passing the exam which invariably would be earlier to the date of issuance of the marksheet. It is possible that the actual date of issuance of the marksheet may vary. A person who has passed the exam should be taken to have passed the exam some time earlier to the date of issuance of the marksheet indicating the marks. In the present case, therefore, the Petitioner certainly was a graduate as on 6th January 1994. The submission on behalf of the School that she would be taken to be a graduate only on the date of the intimation to the School overlooks the factual position that as far as the Petitioner is concerned, she in fact graduated on 6th January 1994, or even earlier and was merely intimating the School of that fact on 18th

January 1994. Therefore, on the date of promotion to the post of SPA, the Petitioner was duly qualified.

20. The seniority initially fixed of the Petitioner and Respondent Nos. 2 & 3 as found in the office order dated 21st April 1995 and was further confirmed by the letter dated 16th May 1997 of the Acting Principal. The memorandum dated 18th January 1994 issued to Respondent Nos. 2 & 3 also clearly stated that their appointments as SPAs was on probation with effect from 6th January 1994 and should not be counted from any earlier date. The *ad hoc* appointment of Respondent Nos. 2 & 3 was as SPA would not count for the simple reason that at that time there was no substantive post of SPA available. Such post was created only on 4th January 1994 and their *ad hoc* service could not have been regularized on a non-existent post.

21. For all the aforementioned reasons, this Court finds that the position taken by the MC at its meeting on 8th October 1998 showing Respondent Nos. 2 & 3 to be senior to the Petitioner in the post of SPA to be unsustainable in law.

22. The Tribunal came to a contrary conclusion. It failed to notice that Respondent Nos. 2 & 3 were appointed as SPAs only on *ad hoc* basis prior to 6th January 1994 and, therefore, could not be considered senior to the Petitioner in the substantive post of SPA. These substantive posts were created only on 3rd January 1994 and the appointments to the substantive post were effective from 6th January 1994.

23. Consequently, the impugned Award dated 3rd March 2004 of the Tribunal in ID No. 143 of 2000 as well as the decision dated 8th October 1998 of the MC of the School are hereby set aside. The Respondent No. 1 School will now issue appropriate orders correctly restoring the seniority of the Petitioner vis-à-vis Respondent Nos. 2 & 3 as indicated in the office order dated 21st April 1995 and further confirmed in the letter dated 16th May 1997 issued by the Acting Principal. All other consequential orders and benefits will also be given to the Petitioner. All these directions will be complied with by Respondent No. 1 School within a period of four weeks from today.

24. In the interim order dated 8th October 2010, it had been directed that the *ad hoc* promotions for filling up four vacant posts of Professional Assistant would be subject to final outcome of the present writ petition. Consequently, orders in that regard will also now be passed on the basis of the present judgment. The Respondent No. 1 School will now consider the case of the Petitioner for promotion to the post of Professional Assistant in accordance with law. This will also be done within a period of four weeks from today.

25. The writ petition is allowed in the above terms with costs of Rs. 5,000/- which will be paid by Respondent No. 1 to the Petitioner within a period of four weeks.

S. MURALIDHAR, J.

AUGUST 12, 2011

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