

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

+ **LPA No.398 of 2002**

% *Judgment Delivered On: 5th July, 2012.*

VINOD KUMAR . . . Appellant

through : Nemo.

VERSUS

N.D.M.C. & ANR. . . .Respondents

through: Nemo.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

1. Nobody appears on behalf of the parties. The matter is listed in the category of 'Old Regular Matters' at Item No.6. We have waited for counsel for the parties for some time. Being an old matter and shown in the list, when nobody has appeared, we deem it proper to decide the matter on records.
2. The appellant herein filed writ petition challenging his reversion from the post of Assistant Director (H) to Section Officer (H). He also sought an order prohibiting the respondent No.1, i.e., New Delhi Municipal Corporation to promote the respondent No.2 from the post of Section Officer (H) to Assistant Director (H).

3. The appellant and the respondent No.2 were working as Section Officer on substantive basis. Respondent No.2 was senior to the appellant. They were considered for promotion to the post of Assistant Director (H). However, at that time, an F.I.R. was registered against the respondent No.2 and therefore, the result of the respondent No.2 was kept in sealed cover. The appellant was promoted to the post of Assistant Director (H) along with one Shri Babu Khan. After sometime, in the said F.I.R., it was reported that no case was made out and thus, the proceedings were dropped. The respondent No.2 was given promotion to the post of Assistant Director (H) and at the same time, the appellant was reverted to the post of Section Officer. According to the respondent, the appellant was promoted to the post of Assistant Director (H) only on temporary basis and therefore, had no right to occupy the said post and his reversion was valid, moreso the respondent No.2 senior to him got promotion.
4. Challenging the aforesaid reversion, the appellant filed writ petition.
5. The case set up by the appellant, however, was that the respondent No.2 should not be promoted to the said post. It so happened that the respondent No.2 was appointed as Section Officer on 19.10.1976 as a Scheduled Caste (SC) candidate. Thereafter, he was promoted as Assistant Director (H) on 31.3.1983 against the post reserved for SC. Later on, it transpired that he had produced fake and forged certificate

representing himself as SC. On this basis, the departmental inquiry was held and vide order dated 02.12.2007, penalty of reduction in rank from the post of Assistant Director to Section Officer.

6. When the DPC was held in the year 1988, respondent No.2 was again considered for promotion, but his result was kept in a sealed cover, as mentioned above and it is the appellant, who was promoted. The plea of the appellant was that if the respondent No.2 is not given promotion, then, the appellant would have continued to the post of Assistant Director (H) and would not have been reverted. He, thus, argued that when it was found that the respondent No.2 got the service on the basis of a forged certificate, his services should have been terminated or in the alternative, he could have been given a fresh post against the General Category. Instead, the respondent No.2 was given the penalty of reversion to the lower post of Section Officer, which was unwanted.
7. The learned Single Judge has rejected this contention on the ground that the imposition of penalty upon the respondent No.2 was the function of the Disciplinary Authority and the appellant could not have any say in that matter and could not contend why the lesser punishment is given. Although the learned Single Judge has commented upon the liberal approach adopted by the respondent No.1 stating that it was not desirable to continue such a person in service. However, that aspect is not carried further because of lapse of substantial

time as the Disciplinary Authority has passed the order way back on 02.12.1987. This approach of the learned Single Judge is quite justified in the facts of present case and this aspect does not call for any interference.

8. We, however, find from the records that in this appeal, the contention of the learned counsel for the appellant was that the appellant was not appointed on temporary basis and could not have been reverted from Assistant Director to Section Officer. Taking note of this contention, notice in this appeal was issued confining to the question of reversion of the appellant from Assistant Director to Section Officer. It was also directed that in the meantime, reversion be not effected in case he had not been reverted from Assistant Director to Section.
9. The NDMC has filed additional affidavit in which position is explained as under:

"5. That as per Recruitment Rules for the post of Assistant Director (Hort.) a Section Office possessing Graduation qualification with 5 year regular service and non-graduates with 10 years service are eligible for consideration for promotion to the post of Assistant Director (Hort.).

6. That five years regular service of respondent No.2 completed in the year 1992.

7. That a DPC was held on 03.04.1998 for 10 vacant posts of Assistant Director (Hort.).

8. That respondent No.2 having fulfilled the criteria as laid down in the RRs for the post of Assistant Director (Hort.) and being within the zone of consideration was considered by the DPC for promotion to the said post.

Since, a FIR bearing No.55/93 was pending against the respondent No.2, vigilance clearance was sought for in respect of Respondent No.2 and his promotion to the post of Assistant Director (Hort.) was kept in a sealed-cover.

9. That on 11.04.2000 another DPC was held for filling up of two vacant posts of Assistant Director (Hort.). The appellant was considered along with one Shri Babu Khan. The appellant and Shri Babu Khan fulfilled the criteria as per the RRs and thus, were promoted to the post of Assistant Director (Hort.) vide order dated 20.04.2000 on probation for a period of two years. Copy of order dated 20.04.2000 is annexed herein as Annexure-R3.

10. That in the meantime the Anti-Corruption Branch, Govt. of NCT of Delhi vide letter dated 23.05.2001 intimated that there was nothing against respondent No.2 in case FIR NO.55/93 and there is no case pending against respondent No.2. in the Anti-Corruption Branch.

11. That on the basis for the said letter, the case of respondent No.2 was reexamined for promotion to the post of Assistant Director (Hort.) w.e.f. 28.12.1998. Copy of order dated 06.02.2002 is annexed herein as Annexure-R4."

10. From the aforesaid, particularly from the averments made in Para 9, it is clear that the appellant was considered by regular DPC and was promoted to the post of Assistant Director on probation for a period of two years. The Office Order specifically mentions that the appellant and Sh. Babu Khan were promoted against "vacant posts" and also mentions that they will be on probation for a period of two years from the date of promotion.

11. The promotion of the appellant was, therefore, not on temporary basis. It was a regular promotion and it was put on

probation. He was not reverted on the ground that his work and conduct was not satisfactory. His reversion is on the ground that he was promoted on temporary basis which reason is factually incorrect. Moreover, he was promoted in the year 2000 and has continued on the post ever since, i.e. for last more than 12 years.

12. This appeal is, thus, partly allowed holding that the reversion order of the appellant is not valid. It is directed that the appellant shall continue to work as Assistant Director (H). No order as to costs.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

JULY 05, 2012

pmc