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

DECIDED ON : 3rd May, 2012

+ **LPA 595/2004**
(CM A.7268-7270/2004, CM A.15799/2004, CM A.2896/2012)

U.V.UTTAMCHANDANI Appellant
Through : Mr.P.P.Khurana, Sr.Advocate with
Mr.Sudhansu Palo, Advocate.

versus

UNIVERSITY OF DELHI & ANR. Respondents
Through : Mr.Anurag Mathur, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P.GARG

S. RAVINDRA BHAT, J. (Open Court)

1. This appeal is directed against the judgment and order of learned Single Judge dated 11.02.2004 in C.W.P. No. 3542/1990. The present Appellant had filed a writ proceeding seeking various reliefs in the form of directions. By the impugned judgment that writ petition, seeking the reliefs against the Delhi University, was dismissed.

2. The writ petitioner, an engineering graduate claims to have had 16 years working experience when he applied to the post of University Engineer on 16.11.1977, in the pay scale of ₹ 1100-50-1600. He was offered appointment as temporary work-charged Executive

Engineer, through a letter dated 29.05.1978 which he accepted. In 1990, the Appellant filed the writ petition seeking several reliefs including a declaration that his appointment should be treated as on to a regular post of University Engineer. During the course of hearing in the appeal, learned Senior Counsel, appearing on behalf of the Appellant argued that in view of the subsequent events especially having regard to the fact that the Appellant and the other contender to the same position, (who was arrayed as second Respondent in the writ petition i.e. Mr. S.P. Goel have now both superannuated) dispute pressed would only be in respect of whether the Appellant was legally or justifiably overlooked for the post of Superintending Engineering 1986. It is a matter of record that Mr. S.P. Goel, the second Respondent who was also working as Executive Engineer, was in fact considered and promoted to the post of Superintending Engineer on 15.12.1986.

3. It was also contended on behalf of the Appellant that he was a graduate engineer and that merely because he accepted the position of Executive Engineer in a work-charged establishment, the University could not decline him regular appointment, having regard to his qualification and work experience. Learned counsel relied upon the advertisement which he said nowhere disclosed that the post sought to be filled was a work-charged post, but was likely to continue. It was also stated during the course of proceedings that in its affidavit, Delhi University had not denied that the Appellant was applying for a temporary position.

4. To continue the narrative, Mr. S.P. Goel, who had been appointed prior to the Appellant was promoted to the post of Executive Engineer, on a work-charged basis on 24.10.1977; he was recommended

and subsequently, absorbed as a regular employee in that post, pursuant to the Executive Council's resolution No.393 dated 22.09.1982. Mr. S.P. Goel was appointed w.e.f. 22.11.1983. Subsequently, on 11.12.1986, Mr. S.P. Goel was selected or recommended to the post of Superintending Engineer; he was, in fact, promoted to that post on 15.12.1986. The present Appellant U.V.Uttamchandani was subsequently promoted to the post of Superintending Engineer on work-charged basis w.e.f. 08.02.1989. It is also a matter of record that the existing post of Executive Engineer was upgraded on 19.03.1988 through Resolution No.184 of the Delhi University. The resolution stated that the up-gradation was to be to the work-charged post.

5. It was submitted on behalf of the Appellant that other things being equal his candidature could never have been ignored when the first up-gradation of the Executive Engineer took place in 1986 to which Mr. S.P. Goel was appointed on 15.12.1986. Elaborating on this, learned counsel submitted that even though the Appellant was appointed by the University subsequently, the fact remained that Mr. S.P. Goel was a diploma holder and, the resolution absorbing his service to the permanent or regular post expressly had relaxed the essential condition even at the lower cadre level i.e. Executive Engineer. In these circumstances, when the occasion to fill up the up-graded post of Superintending Engineer arose in 1986, the Appellant's case stood in a better footing considering his previous work experience and undeniable educational qualification of graduate engineer, which could never be considered by any stretch of imagination to be lower than that of a mere diploma holder.

6. Learned counsel of the University, on the other hand, urged that the impugned judgment ought not to be interfered with since the learned Single Judge had the benefit of scrutinizing the records and the pleadings. It was submitted that the Appellant approached the Court after a considerable lapse of time. Although the original appointment was made in 1978, he never made out any grievance or sought to approach the Court for relief within a reasonable time. Similarly, when Mr. S.P. Goel was promoted to the post of Superintending Engineer in 1986, the Appellant did not approach the Court, at least not within a reasonable time. In these circumstances, even if the Appellant's contentions were assumed to be correct, on the merits, the Court should not at this stage, after the superannuation of them both, interfere and grant the kind of relief which is sought for.

7. We have considered the submissions as well as the pleadings and the documents which are a part of the record. It is an admitted fact that the Appellant is a degree holder, a graduate engineer and had 16 years experience before he joined the Delhi University. There can be no quarrel with the proposition of learned Single Judge that for declaration and directions that the Appellant sought originally, he did indeed approach after a considerable delay. Furthermore, the Appellant had accepted the post of Executive Engineer in a work-charged establishment in 1978 and continued to be so till his promotion in 1989. At the same time, this Court cannot be oblivious of the circumstance that when the up-gradation of existing post of Executive Engineer took place, at least at that stage suitability of candidates had to be considered. No material was brought to the notice of the Court that resolution dated 11.12.1986 considered any

one apart from Mr. S.P. Goel for the up-graded post of Superintending Engineer. Mr. S.P. Goel had, as stated earlier, been considered for promotion to the post of Executive Engineer after granting a relaxation in the essential qualification, which meant that even for the lower post of Executive Engineer the basic qualification was graduation in engineering. In these circumstances, at least when the question of considering suitable candidates for the post of Superintending Engineer arose, the Appellant had a case for been considered on account of his superior academic qualification. The University has no explanation to offer except to say that he was in a work-charged establishment. We are of the opinion that whether or not the Appellant was in a work-charged establishment, he nevertheless was discharging functions on behalf of the University, and nothing prevented his name from being considered to the post of Superintending Engineer as far back as 1986 along with Mr. S.P. Goel.

8. In the normal circumstance, having regard to the nature of relief sought, this Court would have straight away directed the University to grant the Appellant relief that is sought as far as the appointment to the post of Superintending Engineer w.e.f. 1986 is concerned. However, having regard to the length of time (more than 25 years) that has passed, it would be iniquitous to disturb the fact situation which has existed till now. It would not only be unwise but also highly inequitable to interfere with the appointment of Mr. S.P. Goel, even though he is a party to the present proceeding. Furthermore, the Petitioner's case was considered and he was promoted to the post of Superintending Engineer on 08.02.1989. Having regard to these peculiar circumstances, we are of the opinion that ends of justice would be best sub-served if the next below rule is applied and the

Petitioner's appointment is also related back to be made effective from the same date as Mr. S.P. Goel's appointment to the post of Superintending Engineer i.e. w.e.f. 15.12.1986. This Court accordingly, directs the University to issue an appropriate office order or circular to such effect. The Court also directs the Respondent-University to take suitable steps towards the Appellant's appropriate fixation of pay in the pay scale having regard to the stage and scale of pay enjoyed by him in the post of Executive Engineer, at the relevant time i.e. on 15.12.1986 and apply to Fundamental Rule 22(C) (of the Fundamental and Supplementary Rules) or any other similar or analogous rule applicable to the Delhi University's officers. The University is further directed to release all the terminal benefits and pensionary benefits, on final basis, including final pension fixation, and release arrears and consequential benefits which the Appellant would be entitled to now that the appeal is decided on merits. The exercise shall be completed in 3 months, and all payments released in that period. Appeal is disposed of in these terms. All the pending applications also stand disposed of, accordingly. No costs.

S. RAVINDRA BHAT, J

S.P.GARG, J

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