

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

+ W.P.(C) No.5460/2010

Judgment reserved on: 26.07.2012

Judgment delivered on: 30.07.2012

OM PRAKASH

..... Petitioner

Through: Mr.J.P.Mishra, Advocate.

versus

NETAJI SUBHASH INSTITUTE OF TECHNOLOGY & ORS.

..... Respondents

Through: Ms. Latika Chaudhary,
Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner is seeking directions to consider the age limit from the date of filing of the W.P.(C) No.6794/2001, when the petitioner was only at the age of 27 years 2 months and 14 days.

2. The petitioner was appointed as *Mali* on daily wages on 13.07.1995. He continued with the respondents till September, 2001, when the respondents did not permit him to join the duties.

3. The petitioner, being aggrieved with the decision of the respondents, filed the W.P.(C) No.6794/2001 and the same was

disposed of vide order dated 19.05.2006 by observing in paras 11 and 12 as under:-

“11. Without going into the merits of the controversy raised in each of the writ petitions, the Respondents in my opinion ought to undertake the review exercise indicated in the guidelines laid down by the Supreme Court. The Respondents shall also complete the process of putting in place the recruitment policies and publish the same. In respect of posts for which sanction is yet to be obtained, the Respondents shall complete the process and take a final decision within four months from today. The Respondents shall undertake the review indicated above by constituting a suitable committee which shall examine all the cases individually, and made specific recommendations, within four months.

12. Learned counsel for the Respondent states that in the event of Respondent having to engage personnel on contract/ad hoc basis the cases of the Petitioners would be considered in accordance with a rational policy having regard to the seniority of all such identically situated persons.”

4. Since the respondents did not comply with the directions issued vide order dated 19.05.2006 as referred above, the petitioner filed the Contempt Case (C) No.108/2008. The same was disposed of vide order dated 11.11.2009.

5. Thereafter, the respondents took the decision in pursuance to the order dated 19.05.2006 in W.P.(C) No.6794/2001, by rejecting the case of the petitioner for the reasons stated therein that:-

“the Review Committee found that the petitioner was engaged as D/wager by the institute on 13th July 1995 to

work as Unskilled worker/Mali. His first spell of engagement expired on 31.8.95. Thereafter he was engaged w.e.f. 2.9.95 to 31.10.95 and last time he was engaged w.e.f. 2.11.95 to 29.1.96. He was 20 years 2 months 7 days old at the time of his engagement as D/wager. He became 31 years old on 19.05.06, the date on which judgment was delivered by the Hon'ble High Court of Delhi. Sh. Om Prakash has neither worked for 240 days i.e. minimum service required in a year in the institute nor he is within age limit of appointment for the post in the Govt. Even after relaxing the period of employment as D/wager i.e. 197 days. He does not fall within the permissible age limit of appointment in Govt. service. Therefore the committee does not recommend Shri Om Prakash for appointment/regularization in the institute being overage for govt. employment."

6. Learned counsel for the petitioner has submitted that the age of the petitioner was considered from the date of directions passed by this Court and wrongly came to the conclusion that he did not work for 240 days i.e. minimum service required in an year in the institute.

7. The respondents filed the response to the instant petition and submitted that after going through the facts, the Committee observed in the matter of the petitioner that the petitioner was initially engaged on daily basis in the Institute on 30.07.1995 to work as an unskilled worker/*Mali*. His first spell of engagement was expired on 31.08.1995. Thereafter, he was engaged w.e.f. 02.09.1995 to 31.10.1995 and further w.e.f. 02.11.1995 to 29.01.1996. As per Annexure R-1, he never worked for 240 days, as the minimum service required in a year, therefore, his case was not considered.

8. The petitioner filed rejoinder to the reply and submitted that the
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contention regarding the period of engagement of the petitioner, as detailed in the counter-affidavit, is not correct. The true fact is that the petitioner had worked from 1995 to 2008 continuously, without any break. The record which was available, after filing the writ petition, reveals that he worked from April, 1999 till August, 2008. His signatures bear on the file moment record of the respondents institution. This is evident from the Annexure P-6 (colly), which starts from page Nos. 114 till 151.

9. Further submitted that the respondents considered the petitioner as over age for the appointment as he was 31 years old on the date of the directions issued by this Court on 19.05.2006, is mis-conceived of law.

10. It is submitted that generally the Service Law Jurisprudence propagates that the date of initiation of the case is taken into consideration for appointment in service. If the respondents took ten years to decide the appointment in the case, the petitioner will not lose his right for his appointment on account of over age.

11. The petitioner at the time of his first appointment was only 20 years 2 months and 7 days. At the time of initiation of the writ petition i.e. 11.10.2001, his age was 26 years 5 months and 5 days. The respondents deliberately not given the appointment to the petitioner, whereas appointment was given to other over age candidates on the same principle.

12. To strengthen this argument, the petitioner has relied upon W.P.(C) No. 5460/2010

Annexure P-B, which starts from page Nos. 24 upto 29, wherein Kishan Lal, Gurmeet Singh, Lalan Kumar, Mrs. Reena, Ravinder Kumar and Mukesh Kumar, LDCs were taken on roll. In addition to that, Ravinder Rana, Ranjeet Pd. Gupta, S.G. Tiwari and Prasanna Joshi, Accounts Clerks were also appointed. Therefore, the respondents have discriminated and selected the persons of their own choice, for the reasons best known to them.

13. The Deputy Director of the respondents office in its letter dated 09.10.1996 addressed to the Director, informed the need of creation of posts which were yet not filled up. Therefore, some vacancies are available in the department.

14. The experience certificate dated 24.08.1999 issued by the respondents office, which is placed as Annexure P-4 shows that he worked continuously from 19.08.1998 to 24.08.1999. This also does not prove that he worked 240 days in a particular year.

15. After hearing learned counsel for the parties, it is emerged that the case established by the petitioner in the body of the petition is different from what he has stated in the rejoinder filed on 13.07.2012. The settled law is that if pleadings are not made in the body of the petition and pleaded in the rejoinder, that cannot be relied upon. Because, the respondents have no opportunity to reply the same. Moreover, the challenge in the instant petition is the decision taken by the respondent prior to that.

16. The case of the petitioner has been rejected on two counts; (i) he
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has not completed 240 days and (ii) he was overage at the time of passing the directions by this Court.

17. Vide order dated 19.05.2006, this Court directed the respondents to consider the case of the petitioner in W.P.(C) 6794/2001 filed by him. This Court was conscious to the fact of overage, despite directed the respondents to consider the case of petitioner. It was not a mere formality. The petitioner had agitated his right way back in 2001, but the system took around nine years. The petitioner cannot be punished for no fault of his. Moreover, the respondents had appointed even overage candidates, as mentioned above.

18. Be that as it may, vide order dated 26.09.2011, this Court directed the respondents to consider the case of the similarly placed petitioner in W.P.(C) No.4788/2010 filed by Dinesh Kumar as under:-

“Although the respondent had already decided the cases of those temporary/ad-hoc employees pursuant to the recommendations of the Committee constituted by the respondent and as per the respondent, the temporary / ad-hoc employees are being recruited any more. This Court however, is not inclined to give any direction to the respondent to give any regular appointment to the petitioner at this stage. However, if in future the respondent engages to appoint any clerk on contract or ad-hoc basis in any of its projects or otherwise, then certainly the respondent shall consider the case of the petitioner who admittedly had put in some good years of service in the respondent organization. Any such offer whenever made by the respondent to the petitioner shall be in accordance with the relevant rules and regulations of the respondent.

19. In view of the above and on parity, the petitioner shall also be considered in the eventuality the case of Dinesh Kumar is given effect.

20. With the above directions, instant petition is disposed of.

SURESH KAIT, J

JULY 30, 2012

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