

Court No. - 7

Case :- WRIT - A No. - 6813 of 2023

Petitioner :- Arun Kumar Srivastava

Respondent :- Dr. Ram Manohar Lohia Institute Of Medical Sciences Lko. Thru. Its Director And 5 Others

Counsel for Petitioner :- Rajiv Srivastava, Amita Srivastava

Counsel for Respondent :- Anupras Singh, C.S.C.

Hon'ble Abdul Moin, J.

1. Heard Shri Sanjay Bhasin, learned Senior Advocate assisted by Shri Rajiv Srivastava, learned counsel for the petitioner, Shri Anupras Singh, learned counsel appearing for respondent nos.1 to 4 and the learned Standing counsel appearing for respondent no.5.

2. With the consent of learned counsel appearing for the contesting parties, the writ petition is finally being decided.

3. At the very outset, Shri Sanjay Bhasin states that he may be permitted to delete the respondent no.6 from the array of parties.

4. The aforesaid prayer is allowed.

5. Let the respondent no.6 be deleted by Shri Sanjay Bhasin from the array of respondents during the course of the day.

6. The instant petition has been filed praying for mandamus commanding the respondents to consider the claim of the petitioner for promotion on the post of Accounts Officer in the respondent Institute in terms of the Government Order dated 30.11.2022, a copy of which is contained as annexure no. 1 to the petition, with a further prayer for quashing the advertisement dated 19.06.2023 issued under the authority of

respondent no.2, a copy of which is contained as annexure no.3 to the petition.

7. The case set forth by the petitioner is that while he was working in the Uttar Pradesh State Roadways Transport Corporation as an Accountant, he came on deputation to the Institute i.e. Dr. Ram Manohar Lohia Institute of Medical Sciences, Gomti Nagar, Lucknow (hereinafter referred to as "Institute") and joined on 02.11.2008. Subsequently, he was absorbed and confirmed on 30.04.2010.

8. Later, as his absorption order was sought to be cancelled vide order dated 11.05.2011 as such challenging the said order apart from various other orders, the petitioner filed **Writ Petition No.1021(S/B) of 2011 in Re: Arun Kumar Srivastava Vs. Chairman, Dr. Ram Manohar Lohia Institute of Medical Sciences**. The Division Bench of this Court, vide order dated 30.05.2011 had stayed the order of cancellation of the absorption order of the petitioner along with several other orders that were challenged by him. The copy of the order dated 30.05.2011 has been filed as annexure no.1 to the supplementary affidavit filed vide C.M. Application No.2 of 2023.

9. The Institute, being aggrieved by the order of the Court, filed **Special Leave to Appeal (Civil) No. 21014 of 2011 in Re: Dr. Ram Manohar Lohia Inst. of M.S. & Ors. Vs. Arun Kumar Srivastava & Ors.** and the Apex Court vide order dated 16.08.2011, a copy of which is annexure 2 to the supplementary affidavit filed vide C.M. Application No.2 of 2023 dismissed the special appeal with cost of Rs.1,00,000/-.

10. Thus, for all practical purposes, the interim order dated 30.05.2011 passed by this Court attained finality.

11. It is stated that the aforesaid writ petition is pending for consideration before this Court and the interim order dated 30.05.2011 is still operative as of date.

12. It is further stated by learned Senior Advocate that subsequent thereto, the Institute has accorded seniority to the petitioner vide order dated 28.01.2023, a copy of which is annexure 2 to the petition, wherein his date of substantive appointment has been indicated as 01.11.2008 and his taking over charge has been indicated as 02.11.2008.

13. Further, it has also been indicated that the petitioner has also been granted the benefit of Assured Career Progression Scheme vide order dated 10.01.2019 w.e.f. 02.11.2018, a copy of which is annexure 8 to the petition.

14. Placing reliance on the interim order dated 30.05.2011 passed by this Court, the order dated 16.08.2011 by which the SLP filed by the Institute has been dismissed, the order dated 28.01.2023 by which the seniority has been assigned to the petitioner as well as the order dated 10.01.2019 of grant of A.C.P. to the petitioner, the contention of learned Senior Advocate is that for all practical purposes, the Institute has treated the petitioner to be a regular confirmed employee of the Institute and the petitioner is still continuing in the said capacity as of date.

15. The grievance as indicated in the petition, is that the respondents have issued the advertisement dated 19.06.2023 per which two posts of Accounts Officer are sought to be filled in by deputation.

16. The contention is that when the petitioner has already put in substantial years of service under the respondents and the

criteria for making promotion to the post of Accounts Officer is promotion and the petitioner is fully qualified for being considered for such promotion as such, the respondents have patently erred in issuing the said advertisement for filling in the post of Accounts Officer and in not considering the claim of the petitioner for promotion to the post of Accounts Officer. It is, thus prayed that the aforesaid advertisement be quashed and the Institute be required to consider the case of the petitioner for promotion.

17. Responding to that, the argument of Shri Anupras Singh, learned counsel appearing for the Institute, on the basis of the instructions sent by Chief Medical Superintendent dated 13.09.2023, is that as the petitioner had initially come on deputation in the Institute and had been absorbed but subsequent thereto, his absorption had been cancelled and he has been repatriated back to his parent department i.e. U.P.S.R.T.C., consequently it cannot be said that the petitioner is a regular employee of the Institute. He further submits that the aforesaid controversy pertaining to the cancellation of the absorption order of the petitioner and his repatriation is already sub judice before this Court in Writ Petition No.1021(S/B) of 2011 and as such, the petitioner had not acquired any right for being considered for promotion to the next higher post. The further contention is that by means of an advertisement dated 19.06.2023, out of the three posts which are available in the Institute of Accounts Officer, only two posts are to be filled in through deputation, leaving one post vacant/reserved for the petitioner. Shri Singh also states that the claim of the petitioner had already been considered by the DPC in February, 2023 but the DPC was also of the view that as the matter pertaining to the absorption of the petitioner is sub judice before this Court consequently as and when a decision would be taken by the writ

court, the institute would be acting accordingly.

18. Heard the learned counsel for the parties and perused the record.

19. From perusal of the records, it emerges that the petitioner had initially come to the Institute on deputation on the post of Assistant Accounts Officer in November, 2008. Subsequent thereto, the Institute considered the case of the petitioner for absorption and also absorbed the petitioner vide order dated 10.05.2010. Subsequently, the petitioner was sought to be repatriated vide order dated 11.05.2011 and various other orders were also passed. The petitioner, being aggrieved, filed Writ Petition No.1021(S/B) of 2011 before this Court and this Court vide order dated 30.05.2011 passed a detailed interim order whereby the repatriation order apart from various other orders that were passed by the Institute were all stayed. The said interim order attained finality with the dismissal of the Special Leave to Appeal filed by the Institute vide order dated 16.08.2011.

20. The matter might have attained a quietus there but for the fact that the Institute on its own accord has assigned seniority to the petitioner vide order dated 28.01.2023 treating the petitioner's date of substantive appointment as 01.11.2008. Subsequent thereto, the petitioner has also been granted the benefit of A.C.P. vide order dated 10.01.2019 w.e.f. 02.11.2018. Thus, the aforesaid conduct of the Institute itself indicates that for all practical purposes, the petitioner is now being treated to be a substantively appointed and absorbed employee of the Institute.

21. The controversy which has resulted in the petitioner filing the instant petition arose when the Institute has issued an

advertisement dated 19.06.2023 for filling in two posts of Accounts Officer on deputation. As the petitioner's date of substantive appointment, as per the Institute itself is, November, 2008, consequently the petitioner being left behind in not being considered for promotion to the post of Accounts Officer despite being eligible and being aggrieved, has filed the instant writ petition claiming that once the petitioner is eligible for being considered for promotion to the post of Accounts Officer, consequently there cannot be any occasion for the respondent Institute to fill in the post of Accounts Officer by deputation.

22. The reasons, on the basis of instructions, as have been given by Shri Anupras Singh, learned counsel for the Institute are that keeping in view of the pendency of the aforesaid Writ Petition No.1021(S/B) of 2011 before this Court wherein the very right of the petitioner i.e. as whether he is a confirmed employee of the Institute or not is still to be decided as such though his claim for promotion to the post of Accounts Officer had been considered by the DPC in February, 2023 yet his consideration has been kept in abeyance. The aforesaid argument on behalf of the Institute cannot be accepted for the simple reason that on account of the assignment of the seniority to the petitioner by the Institute itself vide order dated 28.01.2023 and with the grant of A.C.P. benefit to the petitioner retrospectively w.e.f. 02.11.2018, the petitioner has in fact has been treated to be a substantively appointed employee by the Institute itself. Thus the Act of the Institute in not considering the claim of the petitioner for promotion as Accounts Officer against their earlier action wherein they have acquiesced to the order of the Writ Court.

23. Keeping in view of the aforesaid discussion, there does not, thus, appear to be any reason for the Institute to not consider the

claim of the petitioner for his promotion to the post of Accounts Officer. It is needless to mention that once three posts are available in the Institute of which, as per the arguments of Shri Anupras Singh, one post has already been left vacant/reserved for the petitioner, it is only for two posts on which the post are to be filled in through deputation. Consequently this Court does not deem it fit to interfere with the advertisement dated 19.06.2023.

24. In view of the aforesaid, the writ petition is **disposed of** with a direction to the Institute to consider the petitioner for promotion to the post of Accounts Officer. Let such consideration be done within a period of four weeks from the date of receipt of certified copy of this order.

25. At this stage, Shri Sanjay Bhasin, learned Senior Advocate has expressed his apprehension that in case the applicants/candidates are appointed on deputation prior to the promotion of the petitioner, then they would get seniority over the petitioner.

26. Considering the aforesaid, it is provided that the claim of the petitioner for promotion to the post of Accounts Officer would be considered prior to finalizing the appointments on the post of Accounts Officer through deputation.

Order Date :- 13.10.2023
S. Shivhare