

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

+ W.P.(C) 955/2015 & C.M.No.1684/2015

% **17th March, 2015**

RACHNA KUMARI PRASAD Petitioner

Through: Ms.Sriparna Chatterjee with
Ms.Soumitra Chatterjee, Advocates.

versus

SHYAMA PRASAD MUKHERJI COLLEGE (FOR WOMEN) & ANR.

..... Respondents

Through: Mr.Saurabh Banerjee with Mr.Sumit
Nagpal, Advocates for R-1.
Mr.Mohinder J.S.Rupal, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. In this writ petition filed under Article 226 of the Constituion of India, an *ex parte ad* interim order was passed on 02.2.2015. Today it transpires that the petitioner, in fact, has misled this Court in seeking the said interim order, inasmuch as, though in the writ petition, the petitioner has stated that she was a general category candidate however the appointment now which is being made to the post is not to a general category post because the general category post has been converted to a reserved category post, and this aspect specifically was not during the hearing brought to the notice of the Court on

02.2.2015. Hence, the petitioner's services which actually had come to an end way back on 22.11.2014 were wrongly directed to be continued by the interim order.

2. Petitioner is also guilty of misleading this Court even if it is now argued before this Court that the petitioner has not taken up a case as per the pleadings that the post is converted from a general category post to a reserved category post, inasmuch as the advertisement which is impugned by the petitioner itself mentions that the appointments were to be made to only OBC and SC category posts, whereas admittedly the petitioner's appointment is to a general category post. Therefore, petitioner did not bring to the notice of the Court that the petitioner was appointed as a general category candidate, however by the advertisement *ad hoc* appointments are sought to be made to the reserved category of OBC and SC and not to a general category post.

3. Another important aspect to be noted is that the petitioner was admittedly appointed initially only for a term of four months on *ad hoc* basis, and which was continued for another period of four months i.e petitioner's appointment was not a permanent appointment and the fresh appointments being made were not identical to the appointment of the petitioner because they were being made in a separate category, viz the

reserved category, and therefore, the judgment in the case of ***Abhinav Chaudhary & Ors. Vs. Delhi Technological University & Anr.*** in W.P.(C) No.3512/2014 decided on 20.1.2015, which is the basis for passing of the interim order dated 02.2.2015 will not apply to the facts of this case. The judgment in the case of ***Abhinav Chaudhary (supra)*** would have applied if the new appointment was identical to the appointment of the petitioner inasmuch as one contractual employee cannot be replaced by another similar contractual employee on similar terms, but once the subject post to which the petitioner was appointed was in a general category and the appointments which are now being made pursuant to the advertisement dated 20.1.2015 are not for the general category but for the reserved category, there is no equivalence with respect to the terms of the appointment of the petitioner and the terms of the appointments of the fresh posts. Petitioner therefore can derive no benefit of the ratio of the judgment in the case of ***Abhinav Chaudhary (supra)***.

4. At this stage, it would be necessary to reproduce the prayer clauses (a) and (b) in the writ petition because it is found that the prayer clauses have been artistically drafted so as to create an ambiguous impression, and which ambiguous impression really is effectively for seeking to continue the *ad hoc* services of the petitioner without any artificial breaks. These prayer clauses (a) and (b) read as under:-

“a) pass an order/writ/direction in the nature of mandamus directing the Respondents to treat the period of artificial break created in the service of the Petitioner from 01.11.2014 till the date she is allowed to rejoin/resume her duty as continuous service and the period mentioned in the leave application as covered under maternity leave as available under the Rules; and

b) pass an order/writ/direction in the nature of mandamus directing the Respondents to issue intermittent orders of renewal of ad-hoc service w.e.f. 23.11.2014 till the date the Petitioner is allowed to resume her duty;”

5. However, learned counsel for the petitioner argues that the petitioner is only seeking the relief that she should not be given an artificial break and which artificial break was because the petitioner took maternity leave, but really the prayer clauses when read holistically leaves this Court in no manner of doubt that *dehors* the language employed in the drafting of the prayer clauses, effectively and in substance, petitioner really claims continuation of her *ad hoc* appointment and which *ad hoc* appointment admittedly came to an end on expiry of the term on 22.11.2014. Prayer clause (b) in this regard specifically talks of renewal of the *ad hoc* services from 23.11.2014 i.e the next day after the completion of term of four months’ service of the petitioner on 22.11.2014.

6. Accordingly, in the opinion of this Court, since the appointments which are to be made pursuant to the impugned advertisement dated 20.1.2015 are not for general category candidates to which the petitioner was

appointed but to the reserved category, and the petitioner in spite of knowing that the appointments are to the reserved category, and since the petitioner has not challenged in this writ petition the roster decided by the competent authority of the University that appointment to be made to the post of Assistant Professor (Political Science) could not be from the general category but could only be for the reserved category resulting in the general category post being converted to a reserved category post, the petitioner therefore is clearly not entitled to any relief whatsoever from this Court taking additional note that the petitioner did not bring to the notice of this Court on 02.2.2015 (and even thereafter till date) that the petitioner's appointment is not on the same terms and conditions as the fresh appointments which were being made by the advertisement dated 20.1.2015, and which were only for the reserved category unlike the general category to which the petitioner originally had got appointment and for which appointment petitioner was seeking continuation.

7. Dismissed.

VALMIKI J. MEHTA, J

MARCH 17, 2015
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