

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

+ **W.P.(C) No.5590/2014**

% **17th November, 2016**

MAHINDER PAL SINGH Petitioner

Through: Mr. M. Taiyab Khan, Advocate.

versus

THE PRINCIPAL LADY SHREE RAM COLLEGE FOR WOMEN AND
ORS. Respondents

Through: Mr. Ankur Chhibber, Advocate for
respondent No.1.
Mr. Yashraj Singh Deora, Advocate
for respondent No.2.
Mr. Apporv Kurup, Advocate with
Mr. A.C. Boxipatro, Advocate and
Mr. Rohit Rathi, Advocate for
respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of Indian, the petitioner who was a Safai Karamchari with the respondent no.1/Lady Shree Ram College for Women seeks relief of being granted benefits of service taking the petitioner to be regularized in service w.e.f 1.3.1971 and not w.e.f 1.1.1987 as has been done by the respondent

no.1/college. Petitioner also accordingly seeks benefit of grant of pay scales of Fourth Pay Commission w.e.f 1.1.1986 of Rs.950-1400/- and which would be granted to the petitioner in case the petitioner is taken as regularized in service w.e.f. 1.3.1971 and not w.e.f. 1.1.1987. Petitioner also claims appropriate retirement benefits taking the petitioner to be a regular employee from 1.3.1971 including benefits of pay scales as per Fourth Pay Commission w.e.f 1.1.1986.

2. No doubt the petitioner was appointed by the respondent no.1/college in the regular pay scale w.e.f 1.3.1971, and which is seen from the letter dated 10.11.1972 of the respondent no.1/college and as also from an option exercised by the petitioner for grant of CPF-cum-Gratuity benefits in terms of the letter dated 5.3.1973 of the respondent no.1/college, however, respondent no.1/college and the respondent no.2/University of Delhi have stated that the appointment of the petitioner could not have been a regular appointment i.e a permanent employee with commensurate services benefits from 1.3.1971, inasmuch as, the post of Safai Karamchari to which petitioner was regularized came into force w.e.f 1.1.1987 in terms of the letter of the respondent no.3/UGC dated 19.2.1987. This letter of the respondent no.3/UGC dated 19.2.1987 reads as under:-

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Grams: University
University Grants Commission

Bahadurshah Zafar Marg
New Delhi-110002

D.O. No.F.1-4/84/ (NP-II) Vol.II

February 19, 1987

Dear Professor Moonis Raza

Kindly refer to your office D.O. Letter No.DC/632/27 dated 3rd February, 1987 regarding revising the existing staffing pattern in the hostels of colleges affiliated to Delhi University in accordance with the recommendations of the Committee appointed by the University.

The proposal has been considered in the light of the information earlier furnished by the University Vide Letter No.DSW/85/9391 dated 17th October, 1985 which was required to streamline the rules about fees charged and facilities provided in the hostels of the Central Universities. We find that there is a need to Central Universities. We find that there is a need to revise the staffing pattern in the hostel mess staff which was fixed as far back as in 1971.

Though the warden has been desired to be provided for the women's hostels, it is felt that each hostel should have a warden who should be responsible for all hostel administration in the college and he/she should be appointed by the Principal from amongst senior teachers in the college. As an incentive for this extra work an allowance of Rs.300/- p.m. be paid. In order to have the accounts of the hostel up-to-date and in perfect order need for providing a clerk is also felt as a necessity. Since some of the hostels are also having the services of Chowkidar/Mali/Safai Karamchari it has also been decided to provide 4 group-D employees in the category of Chowkidar /Mali/Safai Karamchari to be left to the Principal to adjust the staff in different categories provided the total staff in Group-D for hostel mess staff does not exceed the prescribed limited of additional four.

In view of the above, the commission agrees to provide the following additional staff for the smooth functioning of the hostel activities:-

1. Warden (one) -To be paid Rs.300/-p.m.
2. Clerk (one) -In the scale of pay of Rs.950-1500
3. Group D employees(Four)
in the category of Chowkidar/
Mali/Safai Karamchari -In the scale of pay of Rs.750-940

The provision of the above staff will be effective from 1st January, 1987 and the pattern of funding will be the same as for the payment of maintenance grant to Delhi College i.e. 100% / 95% as the case may be. You are requested to bring this decision to the notice of the concerned colleges having hostel facilities with a request that they should send 2 separate statements of

account in respect of staff working in the hostels and the existing pattern and on the basis of the revised pattern with the accounts of the college for the year 1986-87.

With regards,

Yours sincerely

Sd/-

(S.P. Gupta)

Prof Moonis Raza
Vice Chancellor,
University of Delhi,
Delhi-110007”

3. Respondent nos.1 and 2 accordingly contend that the petitioner is only entitled to have service benefits of a regular and permanent employee of the respondent no.1/college w.e.f 1.1.1987 and not w.e.f 1.3.1971.

4. With respect to whether the petitioner can have the benefits of a regular and permanent employee, that would only be if when the respondent no.1/college appointed the petitioner on a regular scale w.e.f 1.3.1971 there existed a sanctioned post of Safai Karamchari in the hostel of the respondent no.1/college w.e.f 1.3.1971. If there existed no sanctioned post of a Safai Karamchari in the hostel of the respondent no.1/college as on 1.3.1971, then, the respondent no.1/college, even if the employees such as the petitioner are called as regular/permanent employee and given pay-scale accordingly, such employees cannot get the benefits of regular employment

because the respondent no.1/college is functioning under the aegis of the University of Delhi which grants financial aid to the respondent no.1/college and what should be the sanctioned posts for they being filled would be as per directions of the respondent no.3/UGC given to the respondent no.2/University of Delhi and transmitted accordingly by the respondent no.2/University of Delhi to all colleges which function under it including the respondent no.1/college. Obviously, if this Court otherwise give benefits of regular pay scales to the petitioner from 1.3.1971 without entitlement of respondent no.1/college to have/create a sanctioned post, it would mean that this Court would be allowing the respondent no.1/college to violate the directions of the respondent no.2/University of Delhi and respondent no.3/UGC, and without whose permission/consent no post can be created and no specific pay scales can be granted for such posts and which is obviously right because the finances of the respondent no.1/college comes from the respondent no.2/University of Delhi and as per the pay scales which are sanctioned and fixed by the respondent no.3/UGC.

5. Counsel for the petitioner could not point out to me by any pleading in the writ petition or by any document attached thereto as to what were the sanctioned posts of the respondent no.1/college on 1.3.1971, whether there were vacancies in the sanctioned posts to which petitioner

was appointed, and both of which aspects were *sine qua non* for the petitioner to substantiate for the petitioner to be treated as a regular/permanent employee of the respondent no.1/college w.e.f 1.3.1971. Once the petitioner has failed to demonstrate existence of sanctioned posts and vacancies in sanctioned posts, to which the petitioner could have been appointed on 1.3.1971 then there cannot be issued directions effectively making the petitioner a regular/permanent employee against a non-sanctioned post and non-existent vacancy in such sanctioned post, and which sanctioned post and vacancies came into existence only subsequently w.e.f 1.1.1987 in terms of the letter of the respondent no.3/ UGC dated 19.2.1987 which has been already reproduced above.

6. In view of the above, the petitioner having already been granted service benefits taking the petitioner as to be a regular employee w.e.f 1.1.1987 and that the petitioner cannot be granted service benefits taking the petitioner to be a regular employee w.e.f 1.3.1971, hence the writ petition is accordingly dismissed, leaving the parties to bear their own costs.

NOVEMBER 17, 2016
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VALMIKI J. MEHTA, J