

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

+ **W.P.(C) No. 5709/2010**

% **21st February, 2017**

CHANDAN SINGH Petitioner

Through: Mr. S. Sunil, Advocate.

versus

THE MANAGER, L.N. GIRDHARI KU SENIOR SECONDARY
SCHOOL & ANR. Respondents

Through: Mr. Anuj Aggarwal, Advocate for R-
2 with Ms. Pushpinder Kaur, DEO
Zone -8 in person.

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 India, the petitioner seeks the relief of being promoted to the post of Lab Assistant with the respondent no.1/school. Petitioner seeks promotion from the post of Peon to the post of Lab Assistant.

2. In the present case the concerned post of Lab Assistant to which petitioner claims promotion was created on 13.7.2004. Therefore, it is argued, and rightly so on behalf of the petitioner, that only the persons who are eligible as on 13.7.2004 should be considered for the post.

Petitioner argues that due to subsequent acquiring of qualifications two other persons, namely, Sh. Jagdish Singh Prasad and Sh. Bahadur Singh became eligible for the post of Lab Assistant on 26.2.2005 and 22.7.2005 respectively, and that such persons cannot be considered for the appointment to the post of Lab Assistant as on 13.7.2004, and on which date only the petitioner had the necessary qualifications for being appointed.

3. The respondent no. 1/school is an aided school i.e 95% of the finances of the respondent no. 1/school are provided by the respondent no.2/Government of National Capital Territory of Delhi (GNCTD) through the Director of Education. Respondent no. 2 in its counter affidavit has admitted the factum with respect to the employees namely Sh. Jagdish Singh Prasad and Sh. Bahadur Singh having acquired qualifications for the post of Lab Assistants on 26.2.2005 and 22.7.2005 i.e only after 13.7.2004. Respondent no. 2, however, states in its counter affidavit that the senior most person will be considered for promotion whenever the Departmental Promotion Committee (DPC) is held.

4. Petitioner has filed the Recruitment Rules with respect to promotion to the post of Lab Assistant, and which read as under:-

“Recruitment Rules for the Post of Lab. Assistant
Vide Notification No.F.2(15)/68-S.II, Dated: 23-12-1971 and amended
Vide No.F.2(110)/74-S.II, Dated:07-05-1975 & F2(102)/80-S.II, Dated: 03-03-1981
and F.2(102)/80/S.II, Dated : 14-03-1986 & F.27/1/90-Edn./795-800, Dated : 21-03-1990

1.	Name of the post	: Lab. Assistant
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2.	No. of posts	: 1762 (Subject to variation dependent on work load).
3.	Classification	: Group 'C', Non-Gazetted, Non-Ministerial
4.	Scale of pay	: Rs. 1200-2040 (Pre-revised) Rs. 4000-6000 (Revised as per V C.P.C.)
5.	Whether selection post or non-selection posts	: Non-selection
6.	Age limit for direct recruits	: 18-25 years (Relaxable for Govt. servants)
7.	Education and other qualifications required for direct recruits	: Essential : Senior Secondary/Intermediate with Science from a recognised University. Desirable : At least 6 months experience as Lab. Assistant
8.	Whether age and Educational qualifications prescribed for direct recruits will apply in the case of promotions	: **Qualifications : To the extent mentioned in Column 11. Age : No limit. * Amended vide Delhi Admn., Delhi Notification No. F.2(102)/80-S.II dated 3.3.1981 * Amended vide Delhi Admn., Delhi Notification No. F.2(102)/80-S.II dated 14.3.1986. * Amended vide Delhi Admn., Delhi Notification No. F.27/1/90-Edn./795-800 dated 21.3.1990.
9.	Period of probation	: 2 years
10.	Method of recruitment whether by direct rectt. or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods.	: By promotion failing which by Direct Recruitment
11.	In case of rectt. by promotion/deputation/transfer, grades from which promotion/deputation transfer to be made	: Promotion : Group 'D' employees of Delhi Admn. having 3 years service in the grade rendered after appointment thereto on a regular basis who are matriculate or equivalent/Higher Secondary with Science (Physics & Chemistry & Biology with Practical), and employees who are matriculate or equivalent/Higher Secondary without Science provided they have successfully undergone a three months Orientation Course in Science conducted by the Directorate of Education. Note : The ratio proportion between the two categories will be determined on 1 st May every year depending upon the actual number of eligible employees under the respective category on that day.
12.	If a DPC exists, what is its composition	Group 'C' D.P.C.

13.	Circumstances in which U.P.S.C. is to be constituted in making recruitment	Not Applicable.
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5. In the writ petition, petitioner has not given details as to how the petitioner satisfies the eligibility criteria given in para 11 of the Recruitment Rules, and counsel for the petitioner at this stage thus only prays that petitioner be considered for promotion to the post of Lab Assistant in accordance with the rules and only if the petitioner satisfies the eligibility criteria as per Recruitment Rules for the post of Lab Assistant then the DPC should consider the petitioner for promotion to the post of Lab Assistant.

6. In view of the fact that petitioner was the senior most person as on 13.7.2004 and has accordingly to be considered first for promotion to the post of Lab Assistant before consideration of Sh. Jagdish Singh Prasad and Sh. Bahadur Singh, accordingly, this writ petition is disposed of with the direction that the respondent no.1/school must now constitute a DPC/Selection Committee in accordance with the applicable rules and guidelines and in case the petitioner before this DPC succeeds in showing that he was a senior most person as on 13.7.2004 for being appointed to the post of Lab Assistant and the petitioner otherwise has the necessary eligibility criteria as required for the post of Lab Assistant, then the DPC in

accordance with the rules and guidelines of the respondent no. 1/school will consider the case of the petitioner for promotion to the post of Lab Assistant.

7. The writ petition is, accordingly, allowed and disposed of, subject, however, to the aforesaid observations and also for constituting of a DPC to examine the case of the petitioner for promotion to the post of Lab Assistant in accordance with law. Parties are left to bear their own costs.

FEBRUARY 21, 2017

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VALMIKI J. MEHTA, J