

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

+ **W.P.(C) No. 8710/2010**

% **3rd March, 2017**

SHASHI KUMAR SHRIVASTAVA Petitioner
Through: Ms. Shifa Nagar, Advocate.

versus

THE LIEUTENANT GOVERNOR OF DELHI AND ORS.

..... Respondents
Through: Mr. D.K. Singh, Advocate for
R-1 and 2.
Mr. Satyakam, 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. By this writ petition under Article 226 of the Constitution of India, the petitioner, who was appointed as a Lab Attendant (non-teaching staff) with the respondent no. 3/school, seeks the relief of being appointed as a Lab Assistant. Petitioner also seeks the necessary monetary emoluments of a Lab Assistant.

2. Petitioner pleads that petitioner satisfies the eligibility criteria for being appointed as a Lab Assistant and therefore the petitioner should be appointed to the post of Lab Assistant.

3. The respondent no. 3/school has filed a counter affidavit and has stated that vacancy for the post of Lab Assistant has arisen only in the month of June, 2010 on the death of one Sh. Kishan Chand and such vacancy filling-in process will be initiated as per law. It is also pleaded by the respondent no. 3/school that petitioner is not the senior most person for being considered for promotion to the post of Lab Assistant.

4. Petitioner has filed the rejoinder affidavit and pleaded that respondent no. 3/school is deliberately concealing facts because with the respondent no. 3/school there are more than three posts of Lab Assistants and which are lying vacant.

5. It is seen that respondent no. 3/school admittedly is an unaided private recognized school. In an unaided private recognized school what are and should be the number of posts are determined as per the circulars of the respondent no. 2/Director of Education. From the pleading in the writ petition it is not clear as to what were the posts of Lab Assistants which the respondent no. 3/school had to have in terms of applicable circulars and guidelines of respondent no. 2/Director of Education, whether there were vacancies in such posts of Lab Assistants, what was the seniority in the feeder cadre of the different persons entitled to be considered, including the petitioner, and

thus for such persons to be considered for promotion to the post of Lab Assistants, etc etc. The relevant recruitment rules for appointment by promotion failing which by direct recruitment to the post of Lab Assistant reads 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
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.

6. Since petitioner is a Group D/Class IV employee, and if the petitioner fulfills the eligibility criteria for appointment to the post of Lab Assistant, and if there are posts available for Lab Assistants with the respondent no. 3/school which were vacant when the petitioner achieved the eligibility criteria for being appointed as a Lab Assistant, then petitioner in accordance with law would have to be considered for being appointed to the post of Lab Assistant by the respondent no. 3/school.

7. In view of the above discussion, and in the absence of requisite pleadings as regards existence of posts of Lab Assistants with the respondent no. 3/school and vacancies therein and as to whether and when petitioner will satisfy the eligibility criteria for being appointed as Lab Assistant which other persons had the eligibility criteria to be considered for, this writ petition is disposed of with the direction to the

respondent no. 2/Director of Education to decide as to whether the petitioner should to be promoted to the post of Lab Assistant with the respondent no. 3/school. The respondent no. 2/Director of Education will examine all aspects as stated above including as to whether the petitioner fulfills the eligibility criteria for being appointed to the post of Lab Assistant, when the petitioner can be said to have fulfilled the eligibility criteria including of three years working in the feeder cadre post, whether there were posts which were available or had to be available with the respondent no. 3/school of Lab Assistants, whether there were vacancies in such posts of Lab Assistants, whether petitioner had the necessary seniority of satisfying the eligibility criteria for being appointed to the post of Lab Assistant by the respondent no. 3/school, etc etc. Respondent no.2/Director of Education or his nominee will decide the issue after hearing the parties, being the petitioner and the respondent no. 3/school. Respondent no.2/Director of Education or its nominee will pass a speaking order which will be communicated to the parties. Needful be done by the respondent no.2/Director of Education or its nominee within a period of three months from today.

8. The writ petition is accordingly disposed of in terms of the above discussion.

MARCH 03, 2017/

VALMIKI J. MEHTA, J