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

+ **LPA 126/2017**

MAHINDER PAL SINGH

..... Appellant

Through: Mohammad Taiyab Khan, Advocate.
versus

THE PRINCIPAL LADY SHREE RAM COLLEGE FOR WOMEN & ORS

..... Respondents

Through: Mr. Ankur Chhibber, Advocate for
Respondent No.1.

Mr. Mohinder J.S. Rupal, Advocate
with Ms.Slomita Rai, Advocate for
Respondent No.2/ University of
Delhi.

Mr. Apoorv Kurup, Advocate with
Mr. Avanish Rathi, Advocate for
Respondent No. 3.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

29.11.2018

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1. This is an appeal against an order dated 17th November, 2016 passed by the learned Single Judge dismissing the Appellant's Writ Petition (Civil) No. 5590/2014 whereby he was seeking a direction to the Respondents i.e. Lady Shree Ram College for Women (Respondent No. 1), the University of Delhi (Respondent No.2) and the University Grants Commission (Respondent No.3) for treating the Appellant as having been regularised in service with Respondent No.1 with effect from 1st March, 1971 and not with effect from 1st January, 1987 and to give him the consequential reliefs.

2. The Appellant was appointed by the Respondent No. 1 College as Safai

Karamchari in the regular pay scale with effect from 1st March, 1971. On this there is no dispute. His appointment came to be regularised with effect from 1st January, 1987 in terms of a letter dated 19th February, 1987 by the UGC. It was on the above basis that the Respondents held that the Appellant would have the service benefits of a regular and permanent employee of the College only with effect from 1st January, 1987.

3. The Appellant retired from service on 31st October, 2013 on attaining the age of 60 years. On 27th November 2013, Respondent No. 2 approved the grant to him of the Second Modified Assured Career Progression (MACP) benefit in Pay Band -1 with effect from 1st September, 2008 and the Third MACP with Pay Band-1 with effect from from 1st September, 2008.

4. It is at that stage that the Appellant realised that his service benefits were being computed by treating him as being the regular employee with effect from 1st January 1987 and not with effect from the date of his initial appointment i.e. 1st March, 1971.

5. The learned Single Judge has in the impugned judgment concluded that with there being no sanctioned post against which the Appellant could have been appointed on a regular basis from 1st March, 1971 and with a vacancy in that sanctioned post coming to existence only with 1st January, 1987, there was no illegality in treating the Appellant to be regular employee only with effect from 1st January, 1987.

6. During the pendency of the present appeal, the Respondents were asked to seek instructions so that the Appellant's request could be considered

favourably. Mr. Ankur Chhibber, learned counsel appearing for Respondent No. 1 College, on instructions, states that with the college being affiliated to Respondent No.2 University and being bound by the norms of the UGC, it cannot possibly treat the Appellant as a regular employee on a post which was not sanctioned earlier than 1st January, 1987.

7. The learned counsel for the Appellant has placed reliance on Rule 13 of the CCS Pension Rules, which reads as under:

“13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.”

8. According to him, since the Appellant was appointed with effect from 1st March, 1971 on a 'regular pay scale', his appointment should be treated as falling within the parameters of the above Rule 13 and he should be

considered to have been regularly appointed from that date.

9. There is a distinction to be drawn between the grant of a 'regular pay scale' and being appointed on the regular basis to a sanctioned post. In fact, the word 'post' used in Rule 13 above refers to such a sanctioned post. On such a sanctioned post, the appointment could be either substantive or in an officiating or temporary capacity. The 'post' that Rule 13 talks of is only a regularly sanctioned post.

10. Admittedly, at the time when the Appellant was appointed with effect from 1st March, 1971, there was no sanctioned post available against which he could have been appointed. Such a post was sanctioned only with effect from 1st January, 1987 and therefore his appointment could be regularised in that post only from that date. The fact that the Appellant may have drawn a 'regular pay scale' would not convert his appointment into a regular appointment till such time a sanctioned post was available in the Respondent No.1 College.

11. Consequently, the Court is unable to find any ground for interference with the impugned judgment of the learned Single Judge. The appeal is dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 29, 2018/ss