

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

Date of Decision: January 19, 2018

+ **W.P.(C) 2496/2008 & CM 5138/2008**

DR. KUSUM LATA Petitioner
Through: Mr. S. K. Rungta, Senior Advocate
with Mr. Prashant Singh and Mr. Shivankar
Shukla, Advocates

Versus

UNIVERSITY OF DELHI & ORS Respondents
Through: Mr. Anurag Mathur, Advocate for
respondent No.1
Mr. Pranav Kumar Jha, Advocate for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner is visually impaired, who had applied for the post of Hindi Lecturer in pursuance of an Advertisement in the year 1997 and as per the counter-affidavit filed by respondent-College, she was found to be meeting the minimum eligibility qualification and she was duly considered under 3% Reservation for visually impaired persons, but was found to be unfit by the Selection Committee for appointment on the permanent post of Hindi Lecturer. However, it is the case of respondent-College that petitioner was found to be fit for being appointed on the post

of Hindi Lecturer on part-time basis. Accordingly, petitioner was appointed as Hindi Lecturer on part-time basis in July, 1997. In the counter-affidavit, it is pointedly asserted by respondent-College that though petitioner was not found to be fit for appointment on the permanent post of Hindi Lecturer by the Selection Committee, she was found to be fit to be appointed as a part-time Hindi Lecturer. It is matter of record that petitioner had worked as a part-time Hindi Lecturer till 15th April, 2001 and thereafter, she was appointed against a Leave Vacancy of Hindi Lecturer on 16th April, 2001, after due selection.

2. In the first round of litigation, petitioner had assailed the Advertisement (*Annexure P-X*) whereby one permanent post of Hindi Lecturer reserved for Schedule Caste category and one Leave Vacancy of Hindi Lecturer were advertised. It is the case of petitioner that she had applied against a permanent post of Hindi lecturer in the year 2000, but was selected against Leave Vacancy.

3. While entertaining petitioner's earlier writ petition, appointment of third respondent as well as of petitioner was made subject matter of decision of writ petition. However, petitioner's earlier writ petition i.e. W.P. (C) 1784/2001 was disposed of vide order of 22nd November, 2007 (*Annexure P-I*) while noting that petitioner has been given a regular appointment of Hindi Lecturer in the year 2006 and so, liberty was granted to petitioner to seek her remedies claiming seniority and other consequential benefits from the year 1998. In the second round of litigation i.e. by way of instant petition, petitioner has sought quashing of appointment of third respondent on the post of Hindi Lecturer w.e.f. 1998

and also a mandamus to confirm her retrospectively from the year 1998 as permanent Lecturer in Hindi with all consequential benefits.

4. Alongwith counter-affidavit filed by respondent-College, “*100 Point Reservation Roster under the Persons with Disability Act, 1995 for the Disabled Category in the Cadre of Lecturer*” (Annexure R-1) (hereinafter referred to as “*100 Point Roster*”) is appended. A bare perusal of the ‘*100 Point Roster*’ (Annexure R-1) reveals that one post of Lecturer was filled up in the year 1998 under the category of visually handicapped and reservation to visually handicapped was again given in the year 2006 to petitioner as she was visually impaired.

5. Learned senior counsel for petitioner submits that ‘*100 Point Roster*’ (Annexure R-1) is incorrectly prepared as it is evident from the recommendation of 28th August, 1998 of the Selection Committee (Annexure R-6) that appointment on the post of Lecturer in English was against an unreserved vacancy and so, differently abled *Someshwar Sati* cannot be considered to have been appointed against a vacancy reserved for a handicapped person and as a necessary corollary thereof, petitioner’s appointment has to relate back to the first available vacancy as per the ‘*100 Point Roster*’ (Annexure R-1). In support of his submissions, learned senior counsel for petitioner relies upon a decision of this Court in *Pushkar Singh & Ors. v. University of Delhi & Ors.*, 2001 (57) DRJ 734.

6. On the contrary, learned counsel for respondent-College maintains that there is no challenge to appointment of handicapped candidate-*Someshwar Sati*, who was given appointment in the year 1998 and in any

case, no challenge can be made to appointment of third respondent as the said vacancy was advertised for a Schedule Caste (SC) category candidate and third respondent was duly selected in the SC category. Learned counsel for respondent-College submits that in a Public Interest Litigation, a Division Bench of this Court in W.P. (C) 3919/2014 titled *Sambhavana v. Union of India & Ors.* rendered on 4th March, 2015, it has already come on record that respondent-College has complied with the provisions of *the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*.

7. Learned counsel for respondent No.3 supports the stand taken by learned counsel for respondent-College.

8. Upon hearing and on perusal of material on record and the decisions cited, I find it to be wholly illogical that a person is fit for part-time appointment, but is not fit for regular appointment against a post. In the counter-affidavit, it has not been explained as to how it can be so said. Even during the course of hearing, no plausible explanation on this aspect was forthcoming from learned counsel for respondent-College. It is pertinent to note that petitioner was given appointment on the post of Hindi Lecturer on part-time basis way back in the year 1997. Although in this petition quashing of appointment of third respondent made in the year 1998 has been sought, but I find no justification to quash the appointment of third respondent for the reason that his appointment was against a post under the Scheduled Caste category and petitioner belongs to an altogether different category of handicapped persons i.e. differently abled category.

9. The crucial question which requires to be considered in this petition is whether 3% reservation for the physically impaired persons was given by respondent-College or not. In the case of *Pushkar Singh (supra)*, the aspect of 3% reservation for the physically impaired was considered and the said writ petition was disposed of with a mandamus to give 3% reservation to visually and orthopedically handicapped persons and if need be, supernumerary post be created to ensure that due representation is given to the visually and orthopedically handicapped persons. The decision in *Pushkar Singh (supra)* has attained finality. It is quite evident from recommendation of 28th August, 1998 of the Selection Committee (*Annexure R-6*) that physically impaired person was appointed on the post of Lecturer in English against an unreserved post. In view thereof, '*100 Point Roster*' (*Annexure R-1*) indicating that reservation was given to visually impaired in the year 1998 is factually incorrect. Since *Someshwar Sati* was appointed against an unreserved post, therefore, reservation to visually handicapped persons has to essentially relate back to the year 1998 as per the '*100 Point Roster*' (*Annexure R-1*). Merely because in a Public Interest Litigation, it has not come to light that reservation has not been given to physically handicapped, cannot be a ground to turn blind eye to the anomaly in the '*100 Point Roster*' (*Annexure R-1*) as noticed above.

10. Consequentially, a mandamus is issued to respondent-College to give the slot of visually handicapped in the year 1998 in the '*100 Point Roster*' (*Annexure R-1*) to petitioner as her entitlement to 3% reservation has to essentially relate back to the first available vacancy, which was

infact existing in the year 1997. Since petitioner has been erroneously appointed on part-time basis on post of Hindi Lecturer in the year 1997 whereas she should have been appointed against a regular vacancy of Hindi Lecturer, therefore, the relief granted to petitioner is confined to the prayer made in this petition i.e. the seniority of petitioner has to relate back to the year 1998 and not to the year 2001, as has been already granted by respondent-College. All consequential benefits accruing upon grant of 3% reservation to petitioner w.e.f. the year 1998 shall follow. However, it is clarified that the monetary benefits as a consequence of this decision will relate back to the year 1998 and not to three years prior to filing of this writ petition. Such a clarification is made for the reason that when petitioner's earlier writ petition was disposed of vide order of 22nd November, 2007, liberty was granted to petitioner to claim seniority etc. and all consequential benefits from the year 1998. Since petitioner had filed the earlier writ petition in the year 2001, therefore, all consequential monetary benefits would relate back to period of three years prior to filing of W.P. (C) 1784/2001.

11. With aforesaid directions, this petition and the application are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 19, 2018

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