

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

Date of Order: March 14, 2018

+ **W.P.(C) 2367/2018 & CM No.9924/2018**

SHASHI KUMAR SHRIVASTAVA Petitioner

Through: Mr.Rajat Aneja, Ms.Chandrika Gupta,
Ms.Nisha Sharma and Ms.Vandana
Aneja, Advocates

versus

DIRECTORATE OF EDUCATION
AND ANR.

..... Respondents

Through: Mr.Satyakam, ASC (GNCTD) for R-1
with Mr.Laxmi Narayan, Legal Assistant
(Directorate of Education)

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In the first round of litigation, petitioner had sought appointment as a Lab Assistant in the year 2010 while claiming that the vacancy for the post of Lab Assistant had arisen in June, 2010. Vide order of 3rd March, 2017 in W.P.(C) No.8710/2010 *Shashi Kumar Shrivastava Vs. The Lieutenant Governor of Delhi & Ors.*, a Coordinate Bench of this Court had issued the following directions:-

Respondent-Director of Education shall consider as to whether the petitioner should 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.

2. Vide order of 27th July, 2017 (Annexure P-11), respondent-Directorate of Education has directed the Management of respondent-school to constitute a Departmental Promotion Committee for filling up the post of Lab Assistant by way of promotion from all eligible Group 'D' employees of the school. In pursuance to the aforesaid order, respondent-school vide office order of 26th September, 2017 (Annexure P-12) has upon recommendations of the Departmental Promotion Committee promoted petitioner to the post of Lab Assistant with effect from 1st August, 2017 in the pay scale of ₹5200 – 20200 + ₹2400/-GP.

3. The grievance of petitioner in this petition is that promotion of petitioner ought to relate back to the year 2010 and the grade pay has to be ₹2,800/- instead of ₹2,400/-. To submit so, petitioner's counsel relies upon orders of 10th October, 2017 (*Annexure P-14*) and 18th July, 2009 (*Annexure P-15*). Learned Standing Counsel for respondent-Directorate of Education fairly states that there is no proper compliance of the order of 3rd March, 2017 in the order (*Annexure P-11*) passed by the respondent-Directorate of Education.

4. Upon hearing and on perusal of impugned order (*Annexure P-12*) and the material on record, I find that this Court vide order of 3rd March, 2017 (*Annexure P-11*) had directed respondent-Directorate of Education to clarify as to whether the post of Lab Assistant was available in the respondent-school when petitioner became eligible for being appointed on the post of Lab Assistant. It is also required to be clarified by respondent-Directorate of Education as to whether petitioner was eligible or not, when the vacancy for the promotional post in question came into existence. This factual aspect was required to be spelt out in the impugned order (*Annexure P-12*). Petitioner's claim of seniority from the date when the post of Lab Assistant fell vacant, needs to be considered. Petitioner's claim for grade pay of ₹2,800/- also needs to be considered by the respondent-Directorate of Education.

5. In the facts and circumstances of this case, respondent-Directorate of Education is called upon to look into the aforesaid aspects and intimate petitioner. Let needful be done within a period of twelve weeks and petitioner be intimated about it, so that petitioner may avail of the remedy

as available in law, if need be.

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

Copy of this order be given *dasti* to learned counsel for the parties.

(SUNIL GAUR)
JUDGE

MARCH 14, 2018
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