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

+ **LPA 922/2015**

HARSH KUMAR Appellant
Through Mr.Piyush Sharma, Advocate

versus

DAYAL SINGH COLLEGE & ANR. Respondents
Through Mr. A.P.S.Ahluwalia, Sr.Advocate
with Mr. Mohit Bhandari & Mr. S.S.Ahluwalia,
Advocates for Respondent No.1
Mr. Mohinder J.S.Rupal & Mr. Prang Newmai &
Ms. Slomita Rai, Advocates for
Respondent/University of Delhi

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
14.11.2018

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1. This is an appeal against the judgment dated 28th October, 2015 passed by the learned Single Judge dismissing the Appellant's WP(C) No. 7561/2012.
2. The Appellant, who was employed as a Lab Attendant in Dayal Singh College was aggrieved by a note appended by the Liaison Officer of the Delhi University (Respondent No.2) on 28th March, 2011 on the post based reservation roster, in respect of the next promotion post of Lab Assistant to the effect that the "next post should be filled by SC category to clear the shortfall".

3. The learned Single Judge agreed with the stand taken by the Respondents that the previous promotion of one Mr. Yad Ram made on 30th April, 2004 to the post of Lab Assistant was not in the SC vacancy but on his own merit and therefore it could not be said that any error was committed in appending the above note.

4. In the present appeal, the issues that arose for consideration were crystallised in an order dated 6th September, 2018 which read as under:

“Challenge in this appeal is to the order dated 28.10.2015 passed by the learned Single Judge. The grievance of the appellant is that when the post of Lab Assistant was filled up through promotion by appointing Mr.Yad Ram, a scheduled caste candidate, the next post was to be filled up by a general candidate. Appellant is aggrieved by the remark made by the University that the post of Mr.Yad Ram is based on his own merit and should be filled as a general candidate and accordingly, the next post should be filled up by a S.C. candidate. Mr.A.P.S.Ahluwalia, learned senior counsel appearing for respondent no.1 has relied upon an O.M. dated 11.07.2002 (filed at page no.233 of the paper book). Mr.Piyush Sharma, counsel for the appellant submits that O.M. dated 11.07.2002 should be read along with O.M. dated 31.01.2005 (filed at page no.239 of the paper book). Reading of both the O.M.s would show that O.M. dated 31.01.2005 has clarified the effect in case of promotions made by non-selection method.

Counsels for the parties wish to look into the law on the subject matter.

At joint request, list the matter on 25.09.2018.”

5. This Court has again perused carefully the two OM's which have been referred to in the above order i.e. the OM dated 11th July, 2002 which stated that any SC candidate promoted on his own merit should be considered

against the unreserved vacancy and not against the reserved vacancy. The Court has also perused the OM dated 21st January, 2005 which sought to reverse the aforementioned OM. It stated that where the promotion was on a non-selection basis, an SC candidate so promoted would be considered only against the reserved vacancy.

6. Today Mr. Rupal, learned counsel appearing for the University has produced yet another OM dated 10th August, 2010 which was not available at the time when the matter was considered by the learned Single Judge. This OM states that the matter has again been examined in light of certain decisions of the Central Administrative Tribunal which were affirmed by the Madras High Court. Para 3 of the said OM reads as under:

“The matter has been examined in the light of the above referred judgments and it has been decided to withdraw O. M. No. 36028/17/2001-Estt (Res.) dated 31.1.2005 referred to above. It is clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. These orders will take effect from 2.7.1997, the date on which post based reservation was introduced.”

7. Since the OM dated 10th August, 2010 clarifies that the order would take effect from 2nd July, 1997, the date on which post based reservation was introduced, it is clear that it would apply even to the case at hand. It has now been clarified that a SC candidate appointed by promotion on his own merit and seniority “and not owing to reservation or relaxation of qualifications” would be adjusted against the unreserved points of the reservation roster

“irrespective of the fact whether the promotion is made by selection method or non-selection method”. In other words, the position that was prevailing prior to 11th July, 2002 has been restored. The Court is not informed of any further OM beyond the OM dated 10th August, 2010.

8. It may also be noticed that the aforementioned OM dated 10th August, 2010 has been referred to and followed by the Punjab and Haryana High Court in a decision dated 15th July, 2011 in CWP No. 13218/2009 (*Lachmi Narain Gupta v. Jarnail Singh*).

9. In view of the above OM dated 10th August, 2010, there are no grounds to interfere with the impugned order of the learned Single Judge.

10. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 14, 2018

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