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

+ **W.P.(C) 952/2018 and CM APPL. 12812/2018**

PIYUSH GUPTA Petitioner

Through: Petitioner in person.

versus

**DELHI LEGAL SERVICES AUTHORITY,
DELHI**

..... Respondent

Through: Mr Sumer Sethi, Advocate with
Ms Geetanjali Goel, Special
Secretary, DSLSA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.02.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning a notification dated 22.12.2017 (hereafter 'the impugned notification') issued by the respondent (Delhi State Legal Services Authority – DLSA) for empanelment as Senior Legal Services Advocates for providing legal services.

2. The petitioner is an advocate practicing in Delhi. DLSA issued a notification dated 06.04.2017 inviting applications from advocates for empanelment as Legal Services Advocates for providing Legal Services in the District Courts. Pursuant to the said notification, the petitioner applied for being empanelled on Magisterial Panel in South East DLSA. Subsequently, he was included in the list of shortlisted candidates for the said Panel.

3. On 07.09.2017, the list of empanelled advocates was published on the website of South East DLSA. The petitioner was not selected in the said Panel but he was included in the waiting list of seven candidates, which was annexed with the aforesaid list.

4. On 22.12.2017, the respondent issued the impugned notification for empanelment of advocates in the South East DLSA. The said notification indicated that there was a requirement of fourteen advocates for empanelment on the MM Panel.

5. The petitioner contends that DLSA has decided not to operate the waiting list, as it invited fresh applications in terms of the notification dated 22.12.2017. The petitioner contends that the impugned notification is arbitrary inasmuch as the wait list candidates have not been considered for empanelment before issuing the impugned notification. He submits that the same is violative of the petitioner's right under Article 14 and 16 of the Constitution of India.

6. On 06.01.2018, the petitioner sent a letter to South East DLSA expressing his grievance and further seeking an explanation regarding the said empanelment process. Since, the same did not elicit any response, the petitioner filed the present petition.

7. Notice was issued in the present matter, and DLSA filed a report in pursuance to the aforesaid notice. In the said report, it is stated that the South East DLSA had empanelled advocates in the years 2014 and 2015. The tenure of the advocates empanelled in the year 2014 was to expire in 2017. The respondent states that

accordingly, the notification dated 06.04.2017 was issued to fill up the vacancies in the panel constituted in the year 2014, and the said panel came into effect from 06.09.2017. Similarly, the tenure of advocates empanelled in the year 2015 was to expire in 2018 and accordingly, the notification dated 22.12.2017 (the impugned notification) was issued to fill up the vacancies that would accrue in the said panel.

8. In view of the aforesaid, DLSA submits that the vacancies notified as per the impugned notification are not residue vacancies and, thus, no candidate on the wait list declared in terms of the notification dated 07.09.2017 can raise any grievance in that regard. It is contended that the candidates in the waiting list can be empanelled only in vacancies that arise in the panel reconstituted in the year 2017; that is, the 2014 panel as reconstituted.

9. It is also relevant to note that the Notification dated 06.04.2017 indicated the number of advocates required to be empanelled. However, it did not indicate that any waiting list would be maintained. It is, thus, clear that there was no obligation on the part of DLSA to maintain a waiting list. It, clearly, follows that no rights accrue in favour of the petitioner on account of being placed on the said waiting list.

10. The petitioner had relied upon the decision of the Supreme Court in *Malik Mazhar Sultan & Anr. v. U.P. Service Public Commission & Ors.: (2008) 17 SCC 703* in support of his contention that anticipated vacancies should be a part of the total vacancies for

which recruitment process is undertaken. He submitted that not operating the waiting list fall foul of the said decision. He had also relied upon the decision of the Supreme Court in ***Prem Singh & Ors.v. Haryana State Electricity Board & Ors.: (1996) 4 SCC 319;*** and ***Virender S. Hooda and Ors. v. State of Haryana and Anr.: (1999) 3 SCC 696.***

11. The reliance placed on the aforesaid decisions is misplaced. In ***Malik Mazhar Sultan's*** case (*supra*), the Supreme Court had issued certain direction for filling up the vacancies in the Subordinate Courts and the District Courts. The Supreme Court had highlighted the necessity for taking timely steps for determination of the vacancies and for undertaking the process of appointment. The said decision is not an authority for the proposition that it is mandatory for maintaining a waiting list in all cases.

12. In ***Prem Singh's*** case (*supra*), the Haryana State Electricity Board had issued advertisements for 62 posts but had proceeded to make appointments on 138 posts. The same was the subject matter of challenge. Extra vacancies had arisen as the Board had not taken into account the vacancies which would arise during the course of the recruitment process. In this context, the Court observed that the Board could have taken into account not only the actual vacancies but also vacancies that were likely to arise because of retirement etc. Therefore, the Supreme Court was of the view that it would not be just and equitable to invalidate the appointments made and, therefore, in the special facts and circumstances, the Court declined to invalidate

certain appointments to 25 additional posts. The said case has no relevance to the facts of the present case.

13. In *Virender S. Hooda (supra)*, the Haryana Public Service Commission had advertised for 12 posts. The appellants therein were not in the merit list against 12 posts. They, however, claimed that they ought to have been considered against the vacancies arising on account of the selected candidates not joining the services. The appellants therein placed reliance on certain policy circulars. The Supreme Court held that the appellants could have been considered on the vacancies arising out of the non-appointment of the selected candidates. The Court also held that in terms of the Circulars which declared the policy of the Government, the vacancies arising within six months of the selection could also be filled up by candidates recommended by the Commission. The said decision was rendered on the basis of the policy as stated in the circulars relied upon by the appellants. In the present case, there is no circular or policy that requires DLSA to operate a waiting list.

14. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 25, 2019
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