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

% **Date of decision: 04.09.2019**

+ **W.P.(C) 937/2018**

RAJESH KUMAR AND ORS.

..... Petitioners

Through Mr.M.K.Bhardwaj,
Mr.Shubham Gairola and
Mr.Akash Dahiya, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ORS.

..... Respondents

Through Mr.Parvinder Chauhan,
Standing Counsel and
Mr.Nitin Jain for DUSIB.

**CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA**

J U D G M E N T

A.K. CHAWLA, J.

1. By the instant petition filed under Article 226 of the Constitution of India, the petitioners, seek the following reliefs:

(a) To declare the actions of respondents in neither holding departmental examination for promotion to the post of LDC as per office order dated

15.09.2014 nor granting promotion to the petitioners to the post of LDC on Adhoc basis as illegal and arbitrary and issue appropriate directions to the respondents to treat the petitioners as eligible for promotion to the post of LDC and consider their claim for promotion to the said post of LDC on regular / Adhoc basis at par with other Group 'D' employees.

(b) To declare the action of respondents in not holding departmental examination as decided to be held on cancellation of departmental examination on 14.06.2014 as illegal and arbitrary and issue appropriate directions for holding departmental examination for promotion to the post of LDC on same terms and conditions as mentioned in circular dated 30.05.2014 and fill up the available vacancies of LDC by considering the claim of petitioners.

(c) To quash and set aside the letter dated 22.06.2017 and direct the respondents to treat the petitioners eligible for promotion to the post of LDC like other Group 'D' employees i.e. Peon, Daftari, Safai karamchari, etc."

2. The petitioners - who joined DUSIB as security guards (Group 'D'), in effect, seek to be declared eligible to the post of LDC, and, thereby, being considered for promotion to the post of LDC on regular / Adhoc basis *inter alia* through departmental examination. They had earlier approached this court by way of WP(C) No.3712/17 **Rajesh Kumar and Others vs. Delhi Urban Shelter Improvement Board & Ors.** It was dismissed as withdrawn with the liberty to approach the respondents by way of a representation. The representation so made has come to be declined vide communication dated 22.06.2017. By the instant petition, the petitioners, now extend challenge to

decision communicated vide said letter dated 22.06.2017. The petitioners assert that all Group 'D' posts have been re-designated as MTS and now fall in Group 'C' category and the petitioners are required to be treated as the feeder cadre for the purposes of promotion to the post of LDC. In support of such assertion, the petitioners advert to the communication dated 26.03.2013 issued by DUSIB requesting the DDOs and Assistant Director to furnish details of all Group 'D' officials, who had passed 12th grade from recognized boards and their qualifications added in their personal files/service books. According to the petitioners, it was thereafter only, the respondents issued the circular for holding departmental examination for promotion to the post of LDC. Thus, according to them, they were treated eligible and even allowed to appear for the examination scheduled for 14.06.2014, though, it came to be cancelled later. Thereafter, the petitioners made a representation on 23.02.2015 followed by a reminder dated 07.07.2015 *inter alia* pointing out that the petitioner No.1 - Rajesh Kumar had even served as LDC for the last two years and therefore, he should get a fair chance for promotion to the post of LDC. The petitioners allege that while their such representation remained pending consideration, vide communication dated 20.07.2016, the respondents called for the work performance reports of the similarly placed persons and in doing so, the respondents had considered all categories of posts like peon, daftari, baildar, process server but for the security guards i.e. the petitioners. Such action, according the petitioners, was discriminatory and violative of their fundamental rights of equality. They allege that there was no promotional hierarchy nor were there any notified recruitment rules for promotion for the security guards and they were stagnating on the post

for years. In support of such plea, reliance is placed on ***State of Bengal vs. Rabindra Nath Sengupta***, 1998 (2) SLR (No.) 535; ***Marine Products Export Development Authority vs. A.Geetha***, 1997 (6) SLR No.331; and, ***Union of India vs. Anil Kumar***, 1999 (4) SLR (No.) 298.

3. The respondents resist the claim made in the petition on the premise that DUSIB has adopted the recruitment regulations of DDA with the approval of the competent authority of the DUSIB and the recruitment regulations so applicable provide that the group 'D' employees - upgraded to Group 'C' as per the 6th Central Pay Commission Report - having defined hierarchy in their own cadre like malies, security guards etc. are not entitled to promotion as LDC. It is also their plea that in the absence of any challenge to the vires of the applicable recruitment regulations, the petitioners cannot be considered for promotion to the post of LDC inasmuch as the security guards in DUSIB have their defined hierarchy and their next promotional post is of Head Security Guard, whereas, the baildars, safai karamchari and process servers have no promotional post in their cadre. For any of the petitioners having been invited to participate in the departmental examination held in May, 2014, according to the respondents, it *ipso facto* does not vest any legal right in their favour for being eligible for appointment to the post sought for. Similarly, according to the respondents, if, the petitioners or any one of them, were asked to perform some duty of the LDC by the branch heads, it does not bind the appointing authority to consider them to the said post. It is thus the plea of the respondents that there was a distinction between an eligibility condition and a right to claim appointment and an ineligible person cannot claim a right to be appointed to

a post lying vacant only on the premise that he or she has the requisite qualifications to be appointed to the post. In support of such contentions, reliance is placed upon ***Shankarsan Dash vs. Union of India*** (1993) 3 SCC 47 and the decision of this court in LPA No.612/2011 ***Vikas Gachli vs. Competition Commission of India***.

4. In the submissions of Mr.Bhardwaj, learned counsel for the petitioners, the petitioners met the criteria of qualifications for being promoted to the post of LDC and therefore, the petitioners - who were all group 'D' employees - could not be discriminated against in the departmental examination for promotion to the post of LDC. In his submissions, few of the petitioners having applied for such examination, were even issued admit card and appeared for the examination as well and therefore, it is to be taken that the respondents had accepted that the petitioners were eligible for being appointed to the post of LDC. Mr.Bhardwaj also strenuously contended that the respondents did not have their own recruitment rules and therefore, any adoption or application of the recruitment rules of another institution i.e. DDA was bad in law. In his submissions, in the absence of any recruitment rules of DUSIB of its own, the petitioners, who fulfill all the qualifications, were eligible and liable to be considered for promotion to the post of LDC.

5. Mr.Chauhan, learned counsel for the respondents, on his part however points out that the respondents were following the recruitment rules for different posts as applicable to DDA employees with the approval of the competent authority and therefore, any contention raised to the contrary was unmerited. He also points out that as per such recruitment rules, a copy

whereof is annexed to the counter affidavit, the petitioners had a defined hierarchy in their own cadre and therefore, they were not entitled to promotion as LDC.

6. Vide letter dated 22.06.2017, the respondents declined the request made by the petitioners for promotion to the post of LDC stating as follows:

"This has reference to your letter dated 06.05.2017 addressed to Chief Executive Officer, Delhi Urban Shelter Improvement Board, Govt. of NCT of Delhi on the subject cited above.

In this regard, I am directed to inform that as per prevailing RRs for promotion to the post of LDC, group 'D' employees having defined hierarchy in their own cadre like malies, security guards etc. shall not be entitled for promotion to the post of LDC.

Further, Security Guard has its own hierarchy i.e. Head Security Guard and recently the Department has promoted some security guards to the post of Head Security Guard."

7. The forgoing impugned communication dated 22.06.2017 does not leave any doubt that the petitioners, who are the security guards, have a defined hierarchy of promotion to the post of Head Security Guard. Few of the security guards were even promoted to such promotional post, the petitioners do not dispute. In fact, the petitioners who are the security guards, have a defined hierarchy of promotion in DUSIB, is well acknowledged by them in the RTI application they made, a copy whereof forms part of the paperbook. In the face of such undisputed fact, it does not

lie in their mouth to contend otherwise that they did not have any defined hierarchy for promotion and they must be considered for the post of LDC.

8. DUSIB is applying the recruitment regulations as have been notified for the DDA is a matter of fact. The respondents state that it is applying such regulations with the approval of the competent authority. Whether the competent authority has given the approval rightly or not is not the subject matter of the instant petition. Fact of the matter is that such recruitment regulations are being applied with the approval of the competent authority and, the petitioners, on the basis of such recruitment regulations, are also being given the defined hierarchical promotion to the post of Head Security Guard. They therefore, cannot be allowed to contend otherwise. Here, it is also worthwhile to observe that even if there would have been some stagnancy in promotion, it is not the case of the petitioners that they were not being given the financial upgradations as per the applicable scheme(s) inasmuch as no prayer to that effect is made.

9. As regards the plea of the petitioners that they are being discriminated from amongst the same class of MTS or Group 'C' employees for being considered for promotion to the post of LDC though they are also eligible to be considered, the plea raised has fallacy, at least, on two counts. Firstly, possessing academic qualifications required for a post by itself cannot be a criteria for being considered for any employment. Besides the basic qualifications, the other factors of consideration, which befit the job profile, are always relevant to be kept in mind and cannot be ignored. Prerogative to stipulate or impose conditions for appointment to a particular post is

therefore, always that of the employer. It appears that in that direction only, the recruitment regulations in vogue, exclude malies and security guards etc. only, from being considered for promotion to the post of LDC. It does not require elaboration that the job profile of malies, security guards, etc. is specialized for the duties assigned to them and therefore, they form a separate cadre within the same category of MTS or Group 'C' employees.

10. Any information called by the respondents as regards the qualifications added in the personal files of the petitioners or any of the petitioners having been issued admit card and, possibly, having even appeared for the departmental examination for promotion, which examination, came to be cancelled or abandoned, cannot be construed to invest any right in the petitioners to be considered for promotion. Any contention raised to the contrary is wholly misconceived and is rejected.

11. In the given factual conspectus, reliance placed on ***State of Bengal (supra)*** and ***Marine Products Export Development Authority (supra)*** by the learned counsel for the petitioners is wholly misplaced. In ***State of Bengal (supra)***, the court was concerned with the invocation of the right of equality enshrined under Article 14 of the Constitution of India vis-a-vis the government accommodation qua government employees and licence in respect of government accommodation being co-terminus with service. Principle of equality elaborated in the ***State of Bengal (supra)*** has no bearing to the facts and circumstances of the case in hand. In ***Marine Products Export Development Authority (supra)***, the court was concerned with aspect of interpretation of the applicable standing instructions or the

clauses to different sets of employees of the organization rather than on the principle of any equality as enshrined under Article 14. ***Union of India*** (*supra*), it would be seen, in effect, does not lend support to the case of the petitioners inasmuch as it reiterates that in service matters, merit or experience could be a proper basis for classification to promote efficiency in the administration.

12. In view of the foregoing, the court does not find any merit in the petition and the same is hereby dismissed.

A.K. CHAWLA, J.

SEPTEMBER 04, 2019/dm



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