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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 07.05.2019

Pronounced on: 29.05.2019

+ W.P.(C) 4367/2016 & CM APPL. 18272/2016

MANISHA RANI

..... Petitioner

Through

Ms.Mini Pushkarna, Adv. with
Ms.Swagata Bhuyan, Ms.Shiva
Pandey & Ms.Rikita Ganju, Adv.
with petitioner in person.

versus

INTER-UNIVERSITY ACCELERATOR
CENTRE & ORS

..... Respondents

Through

Ms.Malvika Trivedi, Adv. with
Mr.Anurag Misra, Adv. for R-1.
Mr.Ravinder Agarwal, Adv. with
Mr.Girish Pande, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner has prayed as under:
 - a. Direct the respondent no.1 to promote the petitioner to the post of Senior Assistant with the respondent no.1 with effect from 22.01.2014, or in the alternative,
 - b. Direct the respondent no.1 to promote the petitioner to the post of

Personal Assistant in lieu of Respondent No.3, with effect from 22.01.2014 after taking necessary steps.

- c. Set aside and quash the Advertisement no.2/2016 published in the Employment News of 16th to 22nd April 2016 or in so far as the same relate to the direct recruitment of candidates to the post of Senior Assistant in the Respondent No.1 organization.

2. Learned counsel appearing on behalf of the petitioner, on instructions, stated that the petitioner shall only press prayer 'b' which is evident from order dated 10.07.2017 passed in the present petition.

3. The brief facts of the petition are that the petitioner joined the services of the respondent no.1 to the post of Stenographer on 22.01.2009. As per the prevailing rules and regulations, she became entitled to the post of Personal Assistant on 22.01.2014. However, just about one month before the petitioner became entitled to be promoted to the aforesaid post, the respondent no.1 promoted the respondent no.3 to the post of Personal Assistant on 03.12.2013 from the post of Assistant. The respondent no.3 at the time of being promoted, did not have the basic criteria and eligibility conditions to be promoted to the post of Personal Assistant. The said respondent had neither worked as Stenographer for the preceding five years,

nor he had, as a consequence of not being a Stenographer, the minimum typing speed essentially required to be promoted to the post of Personal Assistant. As per the information dated 08.12.2015 provided by the respondent no.1, there is only one post of Personal Assistant to which the petitioner was entitled to be promoted. There are, however, nine posts of Senior Assistants having the same pay band as that of the Personal Assistant, i.e., of ₹4200. Accordingly, the petitioner had been making representations to the respondents in the year 2015-16 for promoting her to the post of Senior Assistant and in the next grade pay. The respondents had been replying the petitioner that her case would be considered as and when the post is vacant in the next hierarchy.

4. Further case of the petitioner is that on 16-22.04.2016, the respondent no.1 could have promoted the petitioner to the post of Senior Assistant, as they had been doing on earlier occasions, with other employees, so that her promotional avenue is not hampered. However, to the utter dismay and shock of the petitioner, the respondent no.1 has come out with an advertisement no.2/2016 wherein they have sought appointment to the prevailing vacant post of Senior Assistant by direct recruitment.

5. Learned counsel appearing on behalf of the petitioner submits that the

petitioner, who is working as Stenographer since 22.01.2009, has been wrongfully denied promotion to the post of Personal Assistant. Instead, error has been committed by respondent no.1 in promoting respondent no.3, who is merely 12th Pass, from the post of Assistant to the post of Personal Assistant. This is despite the fact that feeder cadre for promotion to post of Personal Assistant is Stenographer and not Assistant. As per amended Bye Laws, November, 2012, the hierarchy of promotion from post of Stenographer is Personal Assistant and then Personal Secretary. The eligibility conditions of promotion from stenographer is a Bachelor's degree of a recognised university with a minimum speed of 80 wpm in shorthand and 40 wpm in typing with three years experience as stenographer. As per earlier Bye Laws of August, 1997, the eligibility condition of promotion from Stenographer was same whereas hierarchy of promotion from post of Assistant is Senior Assistant and then Section Officer. Post of Assistant (Clerical Cadres) and Stenographer (Technical Cadre) are two different cadres having different avenues of promotion. While the post of Assistant is filled 50% by promotion and 50% by Direct Recruitment whereas the post of Stenographer is filled by 100% Direct Recruitment.

6. Further submitted that the feeder cadre for promotion to the post of

Assistant is LDC having 8 years continuous regular service. Respondent no.3 worked on the post of LDC for 9 years and subsequently to the post of Assistant for 5 years, as Senior Assistant on adhoc basis for 2 years 1 month from 18.10.2011 to 02.12.2013, before he was promoted as Personal Assistant, illegally. The aforesaid experience of respondent no.3 was relevant only for promotion to the post of Senior Assistant, as per the prevailing Bye Laws/RRs, and not relevant for promotion to the post of Personal Assistant, which was a separate and independent cadre. Moreover, eligibility criteria for promotion to the post of Senior Assistant is 5 years continuous regular service as Assistant. On the other hand, eligibility criteria for promotion to the post of Personal Assistant is five years continuous regular service as Stenographer, which qualification the petitioner had and respondent no.3 does not have.

7. Learned counsel for the petitioner further submitted that the petitioner was appointed to the post of Stenographer with respondent no.1 on 22.01.2009. She thus, became entitled for promotion i.e. fulfilling the eligibility condition for promotion from Stenographer to Personal Assistant on 22.01.2014 whereas post of Personal Assistant had become vacant on 01.08.2013. Just about one month before the petitioner became entitled to

be promoted to the post of Personal Assistant, respondent no.1 promoted the respondent no.3 on 03.12.2013 from the post of Assistant to Personal Assistant when post of Assistant is not even a feeder cadre to the post of Personal Assistant.

8. On the other hand, learned counsel appearing on behalf of respondent no.1 submits that the petitioner did not challenge the merger of posts of Senior Assistant and Personal Assistant in the present writ petition. To the contrary, the petitioner relied upon the merger, which is evident from the contention of the petitioner in the writ petition itself. The petitioner joined the services of the respondent no.1 on 22.01.2009 as Stenographer. She was not eligible for promotion to the position of Personal Assistant on the date of convening of DPC in December, 2013. The Office Memorandum dated 08.09.1998 captioned *'Procedure to be observed by the Departmental Promotion Committees (DPCs) – Model Calendar for DPCs and related matter'* issued by the Government of India states, "...The DPCs should access the suitability of the officers for promotion on the basis of their service records and with particular reference to the ACRs for five preceding years". In the petitioner's case the ACR's of 5 preceding years, became available only after 31.03.2014 and could only be considered for the

vacancy arising the following year. Further, the Government of India directives do not allow posts to be kept vacant for more than a year. Also, as per the extant instructions, the Departmental Promotion Committees enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of the candidates who are to be considered by them. On the basis of ACR's placed before the DPC, the DPC recommended the candidature of respondent no.3, who was the senior most eligible candidate in the feeder cadre, for substantive appointment as Personal Assistant in the Grade Pay of ₹4,200/-. Moreover, the respondent no.3 has 25 years of service and has been stagnating without a promotion since 2005 and was on the verge of retirement.

9. Learned counsel for respondent no.1 further submitted that as per the Recruitment Rules of respondent no.1, the ratio of filling up of the position of Senior Assistant is 50:50 by promotion and by direct recruitment. The claim of the petitioner is that the respondent no.1 has committed an illegality by granting promotion to the higher posts by clubbing two cadres which are different and independent of each other is *ex facie* incorrect and unfounded. The position of Personal Assistant and Senior Assistant are grouped together in the pay band of ₹4,200/- in order to give promotional avenues to

administrative staff as the position of Personal Assistant is a single vacancy. The petitioner herself acquiesced to the grouping of posts in her letter dated 24.07.2015. Posts which are substantially comparable as regards duties and responsibilities with a uniform scale of pay can be grouped or merged. The merger does not require any change in the recruitment rules as no new posts are created but only grouped together for promotion and to avoid stagnation in either cadre.

10. It is further submitted that the Handbook for Personal Officers brought out by the Government of India, Department of Personnel & Training states, *“E. GROUPING OF POSTS – in cases where there are posts of similar duties and responsibilities but under different designations the number of such posts may be taken as a whole, wherever necessary or possible. This is particularly helpful in cases where there are single posts with different designations but similar duties.”*

11. Learned counsel for respondent no.1 further submitted that in the present case, the pay scale of Personal Assistant and Senior Assistant is the same and further the respondent no.1 and the DPC are well within their powers to group the posts for promotion. The petitioner has nowhere in the writ petition questioned the merger of the posts and/or there is no prayer

whatsoever challenging the said merger.

12. To strengthen her arguments, learned counsel for the respondent no.1 has relied upon the case of ***State of Sikkim & Ors. vs. Adup Tshering Bhutia & Ors.: (2014) 12 SCC 507*** whereby it has been held that there is no vested right to promotion or seniority and Articles 14 & 16 of the Constitution do not stand in the way of the State integrating different cadres into one cadre.

13. Further relied upon the cases of the ***Sports Authority of India & Ors. vs. Vijay Kumar decided on 18.01.2010*** by this court in W.P.(C) 3487/2008 whereby held that in cases where people are holding isolated posts with no chances of promotion, they should be merged with the general cadre to achieve greater effectiveness.

14. She also relied upon the case of ***High Court of Delhi and Anr. vs. A.K. Mahajan and Ors: (2009) 12 SCC 62*** whereby the Hon'ble Supreme Court has held that a mere chance of promotion being affected by amendment is inconsequential. Since promotion is not a right of an employee, a mere chance of promotion if affected cannot and does not invalidate the action on part of the employer.

15. In case of ***Chuba Jamir and Ors. vs. The State of Nagaland and***

Ors.: (2009) 15 SCC 169, whereby the Hon'ble Supreme Court has held that in the interest of administration, the State Government is open to bring about merger as a matter of policy and the same does not warrant any interference from the Court.

16. In addition to above, learned counsel for respondent no.1 has relied upon **S.P. Shivprasad Pipal vs. Union of India: (1998) 4 SCC 598** whereby it has been held that A decision to merge such cadres is essentially a matter of policy. However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. She also placed reliance upon the case of **Ashok Kumar Uppal & Ors. vs. State of J&K & Ors.: AIR 1998 SC 2812**.

17. I have heard learned counsel for the parties and perused the material on record.

18. It is not in dispute that the feeder cadre for promotion to the post of Personal Assistant is Stenographer and not Assistant. As per amended Bye Laws, November, 2012, the hierarchy of promotion from post of Stenographer is Personal Assistant and then Personal Secretary. The eligibility conditions of promotion from stenographer is a Bachelor's degree

of a recognised university with a minimum speed of 80 wpm in shorthand and 40 wpm in typing with three years experience as stenographer. As per earlier Bye Laws of August, 1997, the eligibility condition of promotion from Stenographer was same whereas hierarchy of promotion from post of Assistant is Senior Assistant and then Section Officer. Post of Assistant (Clerical Cadres) and Stenographer (Technical Cadre) are two different cadres having different avenues of promotion. While the post of Assistant is filled 50% by promotion and 50% by Direct Recruitment whereas the post of Stenographer is filled by 100% Direct Recruitment.

19. The petitioner was appointed to the post of Stenographer with respondent no.1 on 22.01.2009. She thus, became entitled for promotion i.e. fulfilling the eligibility condition for promotion from Stenographer to Personal Assistant on 22.01.2014 whereas post of Personal Assistant had become vacant on 01.08.2013.

20. The respondent no.3 was initially appointed as Helper-Auxiliary Staff-LDC-Assistant-Senior Assistant-Personal Assistant. Respondent no.3 is only 12th pass. Thus, the two posts of Personal Assistant and Senior Assistant are not comparable. While post of Personal Assistant is a technical post with feeder cadre being Stenographer whereas the post of Senior

Assistant is in the nature of a clerical post with feeder cadre being Assistant. Respondent no.1 has sought to justify its action by stating that the post of Personal Assistant was grouped with the post of Senior Assistant. This contention is totally wrong because respondent has not placed any amended Recruitment Rules/Bye Laws which provides for such grouping/merger of these two posts for purposes of promotion. In fact, even after bye-laws were modified, the requirement of educational and other qualifications have remained the same for promotion to the post of Personal Assistant and even Senior Assistant. There is no unified cadre with respect to two posts of Assistant and Stenographer or Senior Assistant and Personal Assistant. There is no unified or combined seniority list maintained by respondent for the two cadres. Even the two posts of Personal Assistant and Senior Assistant are advertised separately by the respondent no.1. This itself shows that the contention of respondent no.1 regarding merger/grouping of posts of Personal Assistant and Senior Assistant is wrong. In addition to above, the Bye Laws and Rules existing as on date show the two cadres of Assistant and Stenographer on the one hand and Senior Assistant and Personal Assistant on the other hand, as separate and independent cadres.

21. In cases where merger of two posts have been done by Government,

in such cases, formal orders are issued by the Government for merger of posts in question and then both the merged posts are indentified as one post only. However, in the present case, the posts of Stenographer and Assistant on the one hand and post of Personal Assistant and Senior Assistant have always remained separate and independent.

22. The period of probation is computed towards length of service and considered for the purposes of promotion. Therefore contention of respondent no.1 is that the petitioner did not have qualifying service for promotion at the relevant time, is totally wrong. Further, contention regarding respondent no.3 being senior most having put in 25 years of service, is totally erroneous as any experience in some other cadre will not entitle respondent no.3 to be promoted as Personal Assistant, when he does not even belong to the feeder cadre. Respondent has referred to a Handbook to justify its action whereas said Handbook deals with grouping of posts of similar duties and responsibilities, but under different designations. However, present case is not a case of two posts of similar duties and responsibilities with different designations. In the present case, there are two separate and independent cadres exist with separate Recruitment Rules and separate eligibility criteria for qualifying service for promotion. The

Recruitment Rules for both Assistant and Stenographer are different. Duties and functions of Assistant and Stenographer are not of similar nature and are totally different. Thus, there is no unified cadre for the two posts of Assistant and Stenographer or Senior Assistant and Personal Assistant. There is no document to show that any amendment in Rules has been carried out for purposes of clubbing these cadres for promotion. These posts have existed as separate and independent cadres and there is no merger of posts.

23. The plea raised by respondent no.1 in promoting respondent no.3 in December, 2013 is that the Government of India directives do not allow posts to be kept vacant for more than a year, also does not help the case of respondent no.1. Firstly, the post of Personal Assistant became vacant on 01.08.2013. Secondly, the petitioner became entitled for promotion to the post of Personal Assistant on 22.01.2014. Even as per the case put forward by respondent, the ACR of the petitioner was to become available after 31.03.2014. Even as per the Bye Laws of the respondent, Clause 4.3.1, the assessment work towards ACR's would be completed within outer limit of May 15th. Thus, the ACR of the petitioner would have become available before May 15th in the year 2014. Thus, the petitioner possessed all requisites for promotion to the next higher post i.e. Personal Assistant as per

her cadre and was eligible for promotion. Thus, promotion of petitioner to the post of Personal Assistant would have been within the time period of 1 year from the date of arising of vacancy i.e. 01.08.2013.

24. Respondent No.3 is neither from the feeder cadre for promotion to the post of Personal Assistant nor does he had the requisite qualifying service of five years continuous regular service as Stenographer, as stipulated in the Recruitment Rules of respondent no.1. Even the Bye Laws of respondent no.1 clearly stipulates in Clause 4.3.2 that the eligibility for promotion would be determined by the Recruitment Rules as approved by the Governing Board. Modified Recruitment Rules as well as the earlier Recruitment Rules clearly stipulates five years continuous regular service as Stenographer as eligibility criteria for promotion to the post of Personal Assistant.

25. Respondent No.3 was wrongly granted promotion in December, 2013, when he does not even constitute feeder cadre to the post of Personal Assistant. Contention of respondent no.1 regarding discretion of DPC, is erroneous. A post cannot be filled by DPC for the sake of filling vacancy in the absence of availability of eligible candidate for such promotion. Respondent No.3 was neither eligible at the time when he was granted

promotion to the post of Personal Assistant nor is he eligible now for holding the said post.

26. In case of *State of Gujarat & Ors. vs. Arvind Kumar T. Tiwari & Ors.: AIR 2012 SC 3281* whereby the Hon'ble Supreme Court held that a person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such person would amount to serious illegibility and not mere irregularity.

27. The aforesaid judgment was relied upon in case of *Rakesh Kumar Sharma vs. Government of NCT of Delhi & Ors.: (2013) 11 SC 58*.

28. In case of *State of Orissa & Anr. vs. Mamta Mohanty: (2011) 3 SCC 436*, the Hon'ble Supreme Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility cannot be preserved, or protected, merely because a person has been employed for a long time.

29. In case of *B. Mutyalamma & Ors. vs. The High Court of A.P., represented by its Registrar Administration, High Court, Hyderabad & Ors.* in W.P.(C) No. 28028/2011 decided on 27.01.2012 and held that

statutory rules cannot be amended or superseded by way of administrative instructions/executive orders.

30. The case of ***S.P.Shiv Prasad Pipal (supra)*** relied upon by respondent no.1 is not applicable for the reason that in the above cited case, there was formal order of merger whereas in the present petition, no such order is there.

31. The case of ***Ashok Kumar Uppal (supra)*** is also not relevant because in the said case, rules were amended but in the case in hand, no rules were amended while granting permission to respondent no.3.

32. So is ***Vinay Kumar Verma (supra)*** is also not applicable because in para 5, it reveals that there were formal order whereas in the present case, no such order has been passed. There is no dispute regarding the settled law relied upon by the respondents but those cases are not relevant to the facts and circumstances of the case in hand.

33. Vide prayer (b) of the writ petition, the petitioner seeks direction thereby directing respondent no.1 to promote the petitioner to the post of Personal Assistant in lieu of respondent no.3 w.e.f 22.01.2014 whereas respondent no.3 has already retired on superannuation.

34. Therefore, in view of above facts and circumstances and the settled

position of law discussed above, I hereby direct respondents to promote the petitioner as Personal Assistant with effect from 22.01.2014, the date she became eligible with all consequential benefits, if she is otherwise eligible. The process thereto, shall be completed within four weeks from the receipt of this order.

35. In view of above directions, the petition is allowed.

CM APPL. No.18272/2016

36. In view of the order passed in the present writ petition, the application has been rendered infructuous and is, accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

**MAY 29, 2019
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