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

Date of decision: 01.08.2019

+ W.P.(C) 7697/2016

M RAJAMANNAR

..... Petitioner

Through

Mr. A. K. Behera with Ms. Prabha
Sharma and Mr. A. P. Singh, Advs.

versus

VICE CHANCELLOR IGNOU AND ANR

..... Respondents

Through

Mr. Saurabh Chauhan with Mr. Varun
Jain, Advs. for R-1
Mr. Arun Bhardwaj, CGSC with Mr.
Piyush Gaur, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks mandamus directing the respondent no.1 to give retrospective placement/promotion to petitioner w.e.f. 06.03.2005 and, thereby quashing the letter dated 04.07.2007 issued by the respondent no.1.

2. Consequently, direct the respondents to pay all benefits and consequential benefits including back salary w.e.f. 06.03.2005 to the petitioner.

3. Further seeks direction thereby directing the respondents, thereby quashing letter dated 17.09.2012.

4. The case of the petitioner is that he got placement in selection grade under Career Advancement Scheme (CAS) of Indira Gandhi National Open University (hereinafter referred to as 'IGNOU') vide impugned office order dated 04.07.2007 w.e.f. 02.07.2007 instead of 06.03.2005. The petitioner has gone through the interview/selection committee for his placement in same selection grade three times i.e. on 05.10.2005, 26.09.2006(reconstituted) & 27.06.2007(reconstituted). The five member committee constituted under 110th BOM dated 07.10.2010 has held in its report dated 27.02.2012 that govt. policy and scheme of Career Advancement Scheme (CAS) were not followed by respondent no.1 in first two interviews/selection of petitioner. The report was also adopted by respondent no.1 in its 114th BOM held on 28.07.2012 and thereby approved the retrospective promotion of petitioner w.e.f. 06.03.2005. However, on the basis of one letter dated 17.09.2012 of

respondent no. 2 petitioner's promotion w.e.f. 06.03.2005 was rejected by respondent no.1 in its 115th BOM dated: 19.09.2012.

5. Further case of the petitioner is that before National Commission for Schedule Caste on 21.12.2010 and 18.08.2015 petitioner's promotion w.e.f. 06.03.2005 was agreed to be considered by respondent no.1. Also, the respondent no.2 in reply to National Commission for Schedule Caste vide letter 07.01.2015 has stated that its letter dated 17.09.2012 was only a view/comment on petitioner promotion w.e.f. 06.03.2005 and stated that it has no role in day to day functions of University and it is respondent no.1 who takes suitable action/decision in appointments in university under the IGNOU Act, 1985. However, vide letter dated 27.05.2016 the respondent no. 2 has informed the petitioner on his representations that his case has been rejected in 124th meeting held on 23.01.2016.

6. Mr. A. K. Behera, learned counsel appearing on behalf of petitioner submits that the petitioner has been victimized at the hands of respondent no.1, by denying him retrospective promotion w.e.f. 06.03.2005, on the basis of arbitrary and illegal decisions taken by the respondent no.1 in its BOM i.e. 115th dated 19.09.2012 and 124th BOM dated 23.01.2016 because the petitioner is prejudiced due to the mala-fide of respondent no.1, in not

withdrawing its wrong decision taken in 115th BOM when the respondent no. 2 vide its letter dated 07.01.2015 has stated that letter dated 17.09.2012 is merely a comment/view and not an objection for in sanctioning of petitioner's retrospective promotion.

7. Learned counsel for the petitioner further submits that the respondent no. 1 knew very well that according to IGNOU Act, 1985 respondent no. 2 has no-vital role in day to day functioning of University including recruitments. However, respondent no.1 rejected the case of petitioner on the view of respondent no.2.

8. It is further submitted that Sh. Ravi Shankar who is an M.A degree holder and as per CAS rules for placement in selection grade he required 11 years of service as lecturer in Senior scale, therefore, the petitioner being an M.Phil who required 10 years of service was senior to Sh. Ravi Shankar and as per his qualifications was more fit and eligible. Under CAS, there is no restriction regarding the number of persons to be selected from among the candidates who appear for the interview. Because the five member committee report dated 27.02.2012 has observed five lapses on the part of respondent no.1, with regard to the first selection committee and second

selection committee's report dated 27.02.2012 whereby in the report at points 1 and 3 stated as under:-

"A. Point 1 says "As against the policy of the Government, the SC representative was not present in the Selection Committee held on 05.10.2005. However, the then officials of the university cited the UGC's suppression of the 1998 guidelines by 2000 guidelines. The letter received from MHRD in this case suggested that notification of 2000 for the composition of Selection Committee does not annul the provisions of the Government Policy for reservation".

B. Point 3 says " the University did not hold the interview afresh despite being suggested to do so by the Ministry on the ground that in promotional cases one can approach the institution after one year. In this case relief was being sought by Sh. M. Rajamannar on the ground of discrimination and misrepresentation of the fact to the Selection Committee regarding the external members of selection committee including SC/ST representative. Therefore, the interview should have been conducted, as sought by the petitioner and desired by the Ministry and NCSC."

9. Learned counsel for the petitioner further submits which is not in dispute that the respondent no. 1 has given assurances to the petitioner in meetings before National Commission for Scheduled Castes on 20.12.2010 and 18.08.2015 to protect two year seniority of petitioner and to review the selection of petitioner.

10. He further submitted that the new amended clause V (8) of Ordinance on Career Advancement of Teachers approved in 93rd BOM held on 07.01.2008 does not apply to the case of petitioner for review of his selection w.e.f. 06.03.2005 in view of five committee report dated 28.02.2012 and assurances made to National Commission for Scheduled Castes.

11. He also submitted that due to the act of respondent no.1 which is followed by respondent no.2 the petitioner is losing his two years seniority and respondent no.1 cannot deprive the petitioner of his legitimate selection due to its own faults by not including SC/ST representative in first selection and by misrepresenting the fact at the time of second selection that selection is post based and not under CAS as observed in report dated: 27.02.2012.

12. To strengthen his arguments, Mr. A. K. Behera, learned counsel for the petitioner has relied upon the case decided by this Court in ***Govt. of NCT of Delhi And Ors. vs Sh. Rakesh Beniwal And Ors.*** on 4 August, 2014, has held in para no. 22 as under:-

"22 . This Court observed a catena of judgments, relating to a similar situation as the present matter, where the Courts have held that if promotion is denied to an employee because of the mistake of the administration

and due to no fault of the applicant/employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides, an employer denies the benefit of promotion to the employee at the time when it becomes due and grants it afterwards though retrospectively.”

13. Learned counsel for the petitioner submits that executive council of the university /Board of Management, who has approved the case of the petitioner, is the final authority to decide the seniority of the petitioner which has approved the selection of the petitioner w.e.f. 06.03.2005, therefore, the respondent no.2, Ministry of HRD especially Joint Secretary of the said Ministry, has no power to tinker with the decision taken by the Board of Management.

14. Respondent no.1 has filed the counter affidavit, whereby, taken the preliminary objection stating therein, that the petitioner has challenged the impugned office order after a gap of almost nine years. Therefore, the present petition is deservers to be dismissed on the ground of delay and latches. However, the admitted facts are as under:-

- (i) That the Petitioner joined the Respondent University as Producer on 06.03.1995.

- (ii) The Petitioner was placed in Senior Scale of Rs. 10,000-15,200 w.e.f. 06.03.2001 and became eligible for placement in Selection Grade from 06.03.2005 under the CAS scheme of the Respondent University.
- (iii) The Petitioner was interviewed for placement in the selection grade on 05.10.2005 and 26.09.2006, however, he was not recommended on both occasions.
- (iv) Thereafter, the Petitioner was interviewed again on 27.06.2007 for placement in the selection grade and after recommendations of the Selection Committee were approved by the Board of Management on 02.07.2007. Accordingly, the petitioner was placed in the selection grade w.e.f. 02.07.2007.
- (v) The 114th BoM after considering the report of the five member Committee approved the placement of the Petitioner in selection grade w.e.f. 06.03.2005 under the CAS scheme of IGNOU. However, on account of comments received from the MoHRD vide letter dated 17.09.2012 qua the 114th BoM, the decision of the 114th BoM approving the placement of the Petitioner in selection grade w.e.f. 06.03.2005 under the CAS scheme was reversed.
- (vi) A meeting was held between the SC Commission and the Vice Chancellor of the respondent university and it was decided that the case base of the petitioner be placed before the BoM for consideration.
- (vii) That the matter concerning the promotion of the Petitioner w.e.f. 6.03.2005 was placed before the 122nd BoM held on 25.04.2015. After detailed discussion, the 122nd BoM reiterated the decisions taken in the 91st BoM dated 02.07.2007 and reaffirmed in 110th BoM dated 02.07.2007.
- (viii) The case of the petitioner was again taken by 124th BoM dated 23.01.2016 which after detailed deliberations reiterated its earlier decisions.

15. In counter affidavit filed on behalf of respondent no.2 i.e. Ministry of HRD, it is submitted that the IGNOU being a Central University enjoys the full functional autonomy as envisaged under IGNOU, Act, 1985. The University takes all its decision including appointments/promotion etc. of its faculty and non-faculty members with the approval of its BoM, which is the highest decision taking body within the University. Respondent no. 2 has no role in its day to day functioning including administrative matter etc.

16. The fact remains that the decision was taken by board of Management in its 114th meeting held on 28.07.2012 to consider the case of the petitioner and the decision taken by the Board approved the placement of petitioner in Selection Grade w.e.f. 6.3.2005 under the Career Advancement Scheme of IGNOU.

17. The respondents failed to establish that there is provision in the Act that once decision is taken by the Board of Management that can be reviewed by a selection committee. Thus, the decision taken in the meeting held on 28.07.2012 was reviewed and the fresh decision was taken in subsequent meeting dated 01.01.2017, whereby the selection grade of the petitioner was approved with effect from 02.07.2007 which is illegal, unconstitutional and without application of mind.

18. It is pertinent to mention here that the decision took on 28.07.2012 was tinkered with by Board of Management solely on the communication dated 17.09.2012 made by Joint Secretary of respondent no.2.

19. Whereas in counter affidavit filed by respondent no.2 it is specifically stated that the respondent no.2 has nothing to do with the selection staff of the university. Therefore, there was no occasion for the Board of Management to review its decision dated 28.07.2012

20. Moreover, respondent nos.1&2 have not disputed the fact and the decision taken by the BOM. It is also admitted by respondent no.2, that said respondent has no power, to interfere with the decision taken by respondent no.1 i.e. Board of Management which is the highest decision making body of the university.

21. In view of above discussion and the settled proposition of law, I hereby quash letter dated 04.07.2007 issued by respondent no.1, directing the respondents to pay all consequential benefits, including back salary with effect from 06.03.2005

22. Consequently, I hereby quash letter dated 17.09.2012 qua item no.8. It is made clear that the respondents shall place the petitioner in the seniority

by approving his placement w.e.f. 06.03.2005 and the petitioner shall be entitled for all benefits including salary and back wages.

23. Accordingly, the respondents are directed to pay the arrears in favour of the petitioner with interest @ 7.5% per annum with effect from 06.03.2005 till realization within four weeks from the receipt of this order, failing which the petitioner will be entitled for the interest @ 12% per annum on the delayed payment.

24. In view of above, the petition is allowed and disposed of.

25. Pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 01, 2019
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