

\$~2

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

Date of Decision: 10.01.2020

+ **LPA 206/2018 & CM APPL. 29913/2018**

KIRORI MAL COLLEGE

..... Appellant

Through: Mr. Santosh Kumar and Mr. Ganesh
Khanna, Advocates.

versus

DR KUSUM LATA

..... Respondent

Through: Mr. S.K. Rungta, Senior Advocate
with Mr. Prashant Singh and
Mr. Shivankar Shukla, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (Oral)

1. We have heard learned counsel for the Appellant as well as learned Senior Counsel for the Respondents at length. The Appellant has assailed the judgment dated 19.01.2018 rendered by the learned Single Judge in W.P.(C) 2496/2008 preferred by the Respondent. By the impugned judgment, the learned Single Judge has allowed the said writ petition. The operative part of the impugned judgment reads as follows:

“10. Consequentially, a mandamus is issued to Respondent-College to give the slot of visually handicapped in the year 1998 in the '100 Point Roster' (Annexure R-1) to petitioner as her entitlement to 3% reservation has to essentially relate back to the first available vacancy, which was infact existing in the

year 1997. Since petitioner has been erroneously appointed on part-time basis on post of Hindi Lecturer in the year 1997 whereas she should have been appointed against a regular vacancy of Hindi Lecturer, therefore, the relief granted to petitioner is confined to the prayer made in this petition i.e. the seniority of petitioner has to relate back to the year 1998 and not to the year 2001, as has been already granted by Respondent-College. All consequential benefits accruing upon grant of 3% reservation to petitioner w.e.f. the year 1998 shall follow. However, it is clarified that the monetary benefits as a consequence of this decision will relate back to the year 1998 and not to three years prior to filing of this writ petition. Such a clarification is made for the reason that when petitioner's earlier writ petition was disposed of vide order of 22nd November, 2007, liberty was granted to petitioner to claim seniority etc. and all consequential benefits from the year 1998. Since petitioner had filed the earlier writ petition in the year 2001, therefore, all consequential monetary benefits would relate back to period of three years prior to filing of W.P. (C) 1784/2001.”

2. The Respondent – Original Writ Petitioner, is visually impaired. She applied for the post of Hindi Lecturer in pursuance of the advertisement issued by the Appellant in the year 1997. Two posts of Lecturer were advertised by the said advertisement – one permanent, and one part-time. The Selection Committee in its meeting held on 06.07.1997, recommended one Ms. Pragya to be appointed against the permanent post of Hindi Lecturer. The Respondent was recommended for appointment as the part-time Hindi Lecturer while taking note of the fact that she was a visually handicapped candidate. Consequently, the Respondents was offered appointment vide communication dated 16.07.1997 as a part-time Hindi Lecturer on a consolidated salary of Rs. 2,500/- per month for a period of three months, or till regular appointment was made by the regularly

constituted Selection Committee. The Respondent continued to serve in the Appellant College continuously since the time her appointment was made as a part-time Hindi Lecturer. In the year 2000, the Appellant issued another advertisement for several posts, including one permanent post of Hindi Lecturer – which was earmarked as reserved for the Scheduled Caste category candidate, and one temporary post against a leave vacancy. The Respondent applied against the said advertisement and on this occasion, she was appointed to the temporary post against the leave vacancy. This appointment was made on 16.04.2001, as we are informed by the Respondent who is present in Court. She continued to serve against the said post. The Appellant created two more permanent posts of Hindi Lecturer in the year 2005. One post was reserved for the physically handicapped category candidates, and the Respondent was appointed against the said reserved post on 04.03.2006.

3. The Respondent had earlier preferred a writ petition bearing number W.P.(C) 1784/2001 to assail the reservation of the permanent post for the Scheduled Caste category candidates in the advertisement issued in the year 2000. That writ petition was disposed of on 22.11.2007. The Court observed that the Respondent had been appointed on permanent basis on 04.03.2006. It also observed that the Respondent had not challenge the earlier selection process of the year 1997. The Respondent was permitted to prefer a substantive writ petition, and it was also directed that the appointment of Respondent No. 3 in the said writ petition, viz. Mr. Namdev – who was appointed against the vacancy reserved for the Scheduled Caste, would also be subject to further challenge by the Respondent. Thereafter,

the Respondent preferred the writ petition, wherein the impugned judgment has been rendered. The learned Single Judge has held that the Appellant had failed to implement the reservation for the physically handicapped category candidates, despite the resolution of the Executive Council dated 16.07.1994 – which the Respondent University had directed implementation of, vide communication dated 25.10.1994, by all the colleges of the Respondent University, which included the Appellant. The resolution, *inter alia*, states that to begin with, the University should write to all the colleges that, at least, one disabled person must be appointed in each college during the academic year 1994-95. The learned Single Judge also noticed the decision of this Court in ***Pushkar Singh and Ors. v. University of Delhi and Ors.*** (2001) 90 DLT 36 decided on 30.01.2001. The Appellant College was also one of the Respondents in the said writ petition. The learned Single Judge (A.K. Sikri, J. as his Lordship then was) allowed the writ petition and directed as follows:

“19. In view of the aforesaid discussion, this writ petition is allowed in terms of following directions:—

1. The Respondents are directed to comply with Resolution No. 193/3 dated 16th July, 1994 of the Executive Council of Delhi University w.e.f. the date of this Resolution.

2. This exercise should be done to calculate the number of posts which will have to be reserved for visually and orthopaedically handicapped persons in terms of the aforesaid Resolution and the provisions of Disability Act and the number of posts which are to be reserved in the aforesaid manner should be earmarked subject wise keeping in view the criteria laid down in OM dated 25th

November, 1986.

3. *This exercise be done within a period of two months from the date of this judgment.*

4. *After undertaking the aforesaid exercise of ascertaining the number of posts and earmarking those posts subjectwise, steps should be taken to fill up those posts from amongst the handicapped persons by adopting the selection procedure meant for filling up of such posts. This exercise be completed within a period of six months thereafter.*

5. *While implementing the decision aforesaid, if number of posts are not available, the Respondents should have either of the following options:*

i. To create supernumerary post or

ii. terminate the services of those whose appointments were made subject to the decision of this writ petition as per order dated 14th July, 1995 in CM.4271 of 1995. It is simply because the posts which would now be earmarked for handicapped persons were meant for them are occupied by others and thus recruitment not validly made.

6. *Pending this exercise, as per the Resolution dated 16th July, 1994, as one appointment to the teaching post which was to be made during the academic year 1994-1995 and the same has not been done till date, be made and the post be filled from amongst the handicapped persons by each college within a period of two months from today. For such appointments, petitioners should also be considered favourably.*

20. Petitioners shall also be entitled to costs. Counsel fee is fixed at Rs. 10,000/-. It will be paid by both i.e. Delhi University and University Grants Commission in equal proportion i.e. Rs. 5,000/- each.”
(emphasis supplied)

4. The learned Single Judge held that the Respondent had been found fit for appointment against the part-time post of Lecturer in Hindi in 1997. The Appellant had failed to provide reservation in terms of the aforesaid resolution of the Executive Council, as also The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as Disabilities Act). The submission of the Appellant, that the Appellant had provided for reservation of a physically handicapped category candidate, by appointment of one Mr. Someshwar Sati – in the year 1998 as a Lecturer in English, was rejected on the ground that he has been appointed on his own merit, despite being a visually handicapped candidate and, therefore, such an appointment would not tantamount to grant of reservation to a physically handicapped category candidate.

5. In the aforesaid background, the learned Single Judge issued the direction as taken note of hereinabove.

6. The submission of learned counsel for the Appellant is that the Respondent had not challenged, and had accepted the initial selection process through which she was appointed in the year 1997, against a part-time vacancy. She preferred the writ petition only in respect of the advertisement issued in the year 2000. Learned counsel submits that the

challenge to the grant of reservation for the Schedule Caste category candidate in the said advertisement was not upheld by this Court. He further submits that such a challenge could not have been made, since reservation granted to the physically handicapped category candidates is horizontal reservation—relatable to Article 16 (1) of the Constitution of India, whereas, reservation granted to the Scheduled Caste and Schedule Tribe candidates is vertical reservation, relatable to Article 16 (4) of the Constitution of India. Learned counsel for the Petitioner has argued that the petition – wherein the impugned judgment has been rendered, was filed only in the year 2008, and there was no challenge prior to the filing of the said petition to the selection process undertaken in the year 1997, whereunder the Respondent was appointed on part time basis. Thus, the challenge raised by the Petitioner in the writ petition to non-grant of reservation to the physically handicapped category candidates in the selection process of 1997 was highly delayed, and barred by laches.

7. On the other hand, Mr. S.K. Rungta, learned Senior Counsel for the Respondent submits that the Respondent were bound to implement their own resolution of the Executive Council taken note of hereinabove. He submits that there was no need for the Respondent to preferred a separate petition to assail the non-grant of reservation to the physically handicapped category candidates in the selection process undertaken in 1997 and thereafter, on account of the fact that the writ petition preferred by Pushkar Singh and Others in the year 1995 was pending, and that decision was rendered on 30.01.2001. He points out that an interim order had been passed in the case of Pushkar Singh in the year 1995 itself, that all

appointments made by the Respondents – which included the Appellant College as well, would be subject to orders in the writ petition. He further submits that the Appellants were bound to implement the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and to grant reservation to the physically handicapped category candidates.

8. He relies on the directions issued in ***Pushkar Singh*** (supra) as taken note of hereinabove. He has also drawn our attention to the office memorandum dated 29.12.2005 issued by the Government of India, Ministry of Personnel Public Grievances and Pension, DOPT on the subject of reservation for persons with disabilities, wherein in point No. 7, it was stated that “***Persons with disabilities selected on their own merit without relaxed standards alongwith other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standards. It will apply in case of direct recruitment as well as promotion, wherever reservation for persons with disabilities is admissible.***” He has also drawn our attention to the decision of this Court in ***Ravi Prakash Gupta v. UPSC and Ors.*** in W.P.(C)5429/2008 decided on 25.02.2009 and the decision of the Supreme Court in the Special Leave Petition (C. No. 14889/2009) dated 07.07.2010 whereby the Supreme Court dismissed the appeal preferred by the Government against the decision of this Court in ***Ravi Prakash Gupta***

(supra). By placing reliance on the said decision, he submits that inaction on the part of the bureaucracy in implementing the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 cannot be cited as an excuse for denying the rights of persons for whose benefits the said Act is enacted.

9. The communication dated 25.10.1994, issued by the University of Delhi to the Heads of Department/ Principals of Colleges, on the aspect of grant of reservation of the physically handicapped category candidates, reads as follows:

“Sir/ Madam,

I am to inform you that the Executive Council vide Res. No. 193(3) of 16.7.94 has approved the following recommendations of the committee appointed by the University to work out the modalities of representation of disabled persons in the teaching positions in the University and Colleges:-

“In terms of the GOI Resolution the three types of handicapped – visually handicapped, auditorilly handicapped and orthopaedically handicapped be given representation in jobs. However, those circulars are applied to Group C & D categories. The committee recommends very strongly that it should be extended to teaching position as well. This is particularly so for the blind and orthopaedically handicapped for teaching posts in the Colleges and University Departments.”

We feel that auditorilly handicapped people cannot be accommodated for teaching purposes because they cannot perform those duties. Hence these reservations are confined to blind and orthopaedically handicapped persons. The idea behind the extension of this reservation is that the teachers do

not have to perform the kind of functions that Class A & B have to perform in GOI set up and hence the Committee sees no problem in extending this reservation to lecturers. Further, the committee recommends that the qualifications in no way be relaxed for these categories. We strongly feel that this be implemented with immediate effect. The Committee also reiterates the suggestion made earlier & already approved by the AC/ CC:-

- i. The 3% reservation as recommended by the Committee for blind & orthopaedically handicapped categories be made known in every advertisement of the university colleges, so that the disabled person can apply to university/ colleges,*
- ii. To begin with the University should write to all the colleges that at least one disabled person must be appointed in each college during the academic year 1994-95. The disabled persons are mostly available in Humanities & Social Sciences.*

I shall be grateful if you kindly take necessary action in this regard while filling up the posts of lecturers.

Yours faithfully,

*Sd/-
(S.K. WASAN)
REGISTRAR”*

10. The Appellant does not dispute the position that it was bound to comply with the decision of the Executive Council contained in Resolution No. 193(3) of 16.07.1994, whereby the Executive Council approved the recommendations of the Committee appointed by the university to work out the modalities for the representation of disabled persons in teaching positions in the university and colleges. The said Committee had strongly recommended that reservation for the

handicapped category candidates, which included the visually handicapped, auditorilly handicapped and orthopedically handicapped candidates, should be granted reservation in teaching positions. This was applied to posts in Group 'C' and 'D' categories only. However, the communication dated 25.10.1994 contained the resolution of the Executive Council that reservations in teaching posts be extended to blind and orthopedically handicapped persons.

11. The aforesaid decision, which bound the Appellant, obliged the Appellant to appoint at least one disabled person during the Academic Year 1994-95. Despite the aforesaid binding direction issued by the University of Delhi to the Appellant College, the Appellant did not provide reservation for physically handicapped category candidates while filling up permanent post of Lecturer in Hindi which was advertised in 1997. Pertinently, when the said advertisement was issued, not only the aforesaid binding decision of the University was in existence, but also the writ petition preferred by Pushkar Singh and Others – wherein the Appellant College was also impleaded as a party Respondent, was also pending since 1995 and the Court had clearly stated that appointments made by the colleges of the university would be subject to the outcome of the said writ petition. The direction issued by the learned Single Judge in *Pushkar Singh* (supra) in its decision dated 30.01.2001 required the Respondent, which included the Appellant herein, to comply with the Resolution No. 193/3 dated 16.07.1994 of the Execution Council of Delhi University w.e.f. from the date of the said resolution i.e. w.e.f. 16.07.1994. The Court also

described the manner of implementation in its second direction quoted hereinabove, which required the Respondents (including the Appellant herein) to calculate the number of posts which would have to be reserved for visually and orthopaedically handicapped persons in terms of the resolution dated 16.07.1994 and the provisions of the Disabilities Act, and the number of posts which are to be reserved in the prescribed manner were not required to be earmarked subject wise keeping in view the criterion laid down in O.M. dated 25.11.1986. The direction issued in paragraph 19(5) is most relevant. The same required creation of supernumerary post, if number of posts were not available – to implement the decision by the Respondent. Alternatively, the Respondent was required to terminate the services of those, who were appointed subject to decision of the said writ petition, in terms of the order dated 14.07.1995. Though the Respondent had not filed the said writ petition and was not a party to it, the Appellant and all other colleges of Delhi University, including the Delhi University were party to the said writ petition preferred by Pushkar Singh and Others. It is clear from the decision in ***Pushkar Singh*** (supra) that the same did not relate only to the rights of the petitioner therein, but to the entire body of physically handicapped category candidates. The Respondent may not have challenged appointment of Ms. Pragya, who was appointed to the permanent post of Hindi Lecturer in the selection process in which she also participated, and was appointed against the part-time vacancy. The learned Single Judge proceeded to grant seniority and other reliefs to the Respondent by directing that the Respondent be given a slot as a

visually handicapped category candidate in the year 1998, and the Respondent has accepted the said direction.

12. We are, therefore, not inclined to interfere with the said direction, even though, strictly in terms of the decision rendered in *Pushkar Singh* (supra), she may have been entitled to permanent appointment on a permanent full time post from the date when Ms. Pragya was appointed to the permanent post of Hindi Lecturer. At the same time, there is no denying the fact that the Respondent actually served only in part-time capacity between 16.07.1997 – when she was appointed as part-time Hindi Lecturer, and 16.04.2001 – when she was appointed to the temporary post of Hindi Lecturer against leave vacancy.

13. We, therefore, modify the directions issued by the learned Single Judge to the extent that though her permanent appointment would notionally relate back to the year 1998, and her pay would accordingly be fixed on a notional basis from 1998, she would be entitled to actual payment of arrears from 16.04.2001. We also find that the learned Single Judge has not fixed a specific date in the year 1998 from which the Respondent would count her seniority as a permanent Hindi Lecturer. Considering the fact that the Respondent was appointed as a part-time Hindi Lecturer in 1997, we direct that she would be deemed to be appointed on a permanent post of Hindi Lecturer in the Appellant College from 01.01.1998 onwards. On this basis, her seniority would be reckoned and her notional pay would be fixed for the purpose of computation of arrears of pay that she would

be entitled to from 16.04.2001 onwards.

14. The Appellant college shall ensure that the Respondent is paid the arrears of pay is fixed within the next eight weeks.

15. The appeal is disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

JANUARY 10, 2020

Nk/kd