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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 24.05.2021

+ W.P.(C) 2868/2021

NEELIMA AZHAMCHALIL

MOONNAMBETH

.....Petitioner

Through Mr.Romil Pathak, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Mr.Avnish Singh, Ms.Pushplata
Singh, Ms.Sumanlata Gautam,
Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

CM 8645/2021(Exemption)

Allowed, subject to all just exceptions.

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1. This petition has been filed challenging the order dated 19.12.2019 passed by the learned Central Administrative Tribunal ('CAT'), Principal Bench in O.A. No. 3682 of 2019, titled *Neelima*

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Azhamchalil Moonnambeth & Ors. v. Union of India & Anr.,
dismissing the said O.A. of the petitioner herein.

2. The petitioner had filed the above O.A. primarily challenging the Seniority List dated 04.07.2018 for the post of Botanical Assistant and had sought retrospective seniority from the date when the petitioner became eligible to be promoted as Botanical Assistant Grade-II in accordance with the then existing Recruitment Rules. The petitioner also challenged the subsequent promotion granted to others to the post of Botanist by the Departmental Promotion Committee ('DPC') conducted on 29.09.2018.

3. The petitioner contends that she was appointed to the post of Preservation Assistant Grade-I and in accordance with the then existing Recruitment Rules, the promotional avenue for the petitioner was Botanical Assistant Grade-II, for which she was eligible to be considered after three years of regular service. The second promotional avenue from the post of Botanical Assistant Grade-II was to the post of Botanical Assistant Grade-I, for which she would have become eligible after three years of further service.

4. The petitioner further submits that the last DPC meeting for making promotions to the post of Botanical Assistant Grade-II, were held on 2nd – 3rd March, 2009, and three persons, who were admittedly senior to the petitioner, were promoted to the said post.

5. The petitioner further submits that vide an Office order dated 19.07.2010, pursuant to the recommendations of the VIth Central Pay

Commission, the post of Botanical Assistant Grade-II was merged with the post of Botanical Assistant Grade-I and was designated as Botanical Assistant, with retrospective effect from 01.01.2006, however, the Recruitment Rules for the merged posts were notified only on 04.12.2015. Due to the delay in the notification of the Recruitment Rules, though appointment through Direct Recruitment continued, no DPC for promotion was held.

6. The petitioner was promoted to the said merged post of Botanical Assistant vide the Promotion order dated 29.02.2016.

7. The petitioner claims that her seniority should be counted from the date when she became eligible for the post of Botanical Assistant Grade-II.

8. The learned CAT has rejected this claim of the petitioner, observing as under:

“8. In the representation made by the applicants, the grievance was mostly about the delay in consideration of their cases for promotion. They stated that had a DPC been convened in the year 2010-11, they would have been promoted. All that is, in the realm of speculation. No administration can be compelled to hold a DPC at a particular time. Much would depend on existence of vacancies, administrative exigency or convenience. An employee has to take a chance, as and when it is convened. At any rate, there cannot be a deemed promotion, just because the convening of DPC was delayed.”

9. The learned counsel for the petitioner, placing reliance on the judgment of the Supreme Court in *Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao & Ors.*, (1983) 3 SCC 284, submits that the delay in holding a DPC cannot prejudice the petitioner and the case of the petitioner for promotion was to be considered in accordance with the then existing Recruitment Rules and should not have been postponed for want of the Recruitment Rules for the merged post of Botanical Assistant. He submits that therefore, her seniority is to be counted from the date that the post of Botanical Assistant Grade-II became available for departmental candidate through promotion.

10. We do not find any merit in the submission made by the learned counsel for the petitioner.

11. The post of Botanical Assistant Grade-II stood merged with the post of Botanical Assistant Grade-I pursuant to the Office Order dated 19.07.2010. Thereafter, there could have been no promotion made to the post of Botanical Assistant Grade-II, which post ceased to exist. Though, we appreciate that the Recruitment Rules should have been immediately formalised and implemented for the new post of Botanical Assistant, the delay in notifying such Recruitment Rules for the merged post or in finally making the promotion there-against cannot justify the claim of the petitioner to seek seniority with retrospective effect from any date prior to the actual appointment.

12. In *K. Meghachandra Singh & Ors. v. Ningam Siro & Ors.*, (2020) 5 SCC 689, the Supreme Court has held that a person is disentitled to claim seniority from a date he was not borne in service.

It has held that a seniority is to be given only from the date of appointment and not from the date of initiation of recruitment process. In the present case, in fact, the recruitment process had not even started or initiated.

13. Reliance of the learned counsel for the petitioner on the judgment in *Y.V. Rangiah* (supra) is also ill-founded inasmuch as the same concerned the retrospective application of the Recruitment Rules to the vacancies that occurred prior thereto and not to the issue of inter-se seniority.

14. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

MAY 24, 2021
RN/P