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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 25.08.2022***

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W.P.(C) 11518/2019

AMIT KATARIA & ORS

..... Petitioners

Through: Mr.Tanmay Mehta, Mr.Vasu Vats &
Ms.Riya Rathi, Advs.

versus

OFFICE OF THE DISTRICT AND SESSIONS JUDGE (HQ) &
ANR RespondentsThrough: Ms.Avnish Ahlawat, SC, GNCTD
with Mr.N.K.Singh & Ms.Palak Rohmetra, Advs.
Mr.Rajat Aneja & Ms.Aditi Shastri, Advs. for R-2**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The petitioners, who are working in this Court as Judicial Assistant, have approached this Court seeking the following reliefs:

“a. Quash and set aside the orders part of Annexure P-1 (Colly) passed by the .Office of the District & Sessions Judge (HQs): Delhi by which inter alia, the Petitioners representations (Part of Annexure P-4 (Colly)), seeking upgradation to the post of Upper Division Clerk/ Judicial Assistant w.e.f. completion of 5 years service from date of joining, was rejected;

b. Quashing and set aside the minutes of meetings dated 06.06.2019 and 19.08.2017 of the Selection Committee on the basis of which the Petitioners representations were rejected;

c. Direct the Office of the District & Sessions Judge (HQs): Delhi and the Selection committee to grant the Petitioners their due upgradation as UDCs and further direct the Respondents to grant all consequential benefits



including all monetary benefits to the Petitioners, w.e.f. completion of 5 years from date of joining as LDC with the district courts, including such further monetary benefits for which a decision may have been taken after their respective dates of completion of 5 years service but where such decision was made applicable for the period between date of completion of 5 years service up to the date of relieving from service of district courts;

d. Direct ,the Respondents to ensure that the monetary benefits due and payable to the Petitioners are in no manner lesser than the monetary benefits which were granted to persons who were junior to the Petitioners as per seniority;”

2. The petitioners, who had initially joined the Delhi District Courts as Lower Division Clerk (LDC) on different dates in 2003, as noted hereinbelow in detail, had while working on the said post joined this Court as Junior Judicial Assistant (JJA) pursuant to an independent selection process.

S. No.	Petitioner's name with father's name	Date of joining in Tis Hazari District Courts	Date of joining in Hon'ble High Court of Delhi	Date on which 5 years of service as LDC completed
1.	Amit Kataria S/o Sh.Ajit Singh Kataria	05.06.2003	11.09.2009	04.06.2008
2	Rahul Bhatarah S/o Sh. M.K. Bhatarah	23.04.2003 (ad-hoc) 27.08.2003	05.09.2009	22.04.2008
3.	Javed Akhtar S/o	10.12.2003	05.09.2009	09.12.2008



	Saleem Ahmed			
4.	Ajay Verma s/o Sh.R.P.Ver ma	30.06.2003	05.11.2008	29.06.2008
5.	Ashwani Maithani S/o Late Sh.C.P.Mait hani	01.11.2003	07.11.2008	31.10.2008
6.	Giriraj Singh S/o Sh.Prahlad Singh	18.07.2003	25.07.2008	17.07.2008
7.	Ruchika Bisht D/o Sh.G.S.Bisht	18.12.2003	04.09.2009	17.12.2008
8.	Ghanshyam Prashad S/o Sh.Gauri Shankar	10.07.2003	01.11.2008	09.07.2008
9.	Gulshan Nagpal S/o Late Sh. P.D.Nagpal	19.06.2003	03.09.2009	18.06.2008

3. The grievance of the petitioners is that after they had joined this Court as JJA, the respondent no.1 pursuant to a decision dated 22.03.2010 of this Court in W.P.(C) 5686/1998 took a decision for upgradation of the post of LDC to the post of Upper Division Clerk (UDC) in terms of the OM dated 01.10.1979 and 20.03.1994. As per the decision taken on 17.04.2017, after 1996, the upgradation was to be done five years of service as LDC. Learned



counsel for the petitioner submits that this decision was duly implemented for all serving employees of the respondent no.1 who were also granted all consequential benefits irrespective of the post they were working on at the time of the decision of upgradation. However, vide the impugned communication dated 01.08.2019, the benefit of this upgradation has been arbitrarily denied to the petitioners on the premise that they were no longer employees of respondent no.1 and their lien which was only for a period of two years stood terminated in 2010-2011 itself. He submits that once it is an admitted position that upgradation has been made effective on the date when the petitioners were in service of respondent no.1 as LDC , they cannot be deprived of this benefit for the period during which they remained in service of respondent no.1. He, therefore, prays that the respondent be directed to grant the benefits of the pay scale of UDC to all the petitioners w.e.f. the date on which they completed five years service as LDC.

4. The petition is sought to be opposed by Ms.Ahlawat, learned counsel for the respondent no.1, who contends that once the lien of the petitioners stood terminated, they cannot seek benefits of any upgradation of post or pay scale. She submits that when it is not denied that the decision to implement the upgradation has been taken only recently and in any event much after the petitioners had left the service of respondent no.1, they cannot now be granted any benefits as they are no longer employees of respondent no.1.

5. On the other hand, Mr.Aneja, learned counsel for the respondent no.2, submits that this claim of the petitioners pertains to a period when they were not in the service of the respondent no.2 but were in the service of respondent no.1 and therefore, the respondent no.2 has no role to play qua



this relief. He, however, submits that even if the petitioners are held entitled to receive the benefits of the upgraded post of UDC from the respondent no.1 for the period during which they were in service with said respondent, the same would not entitle them to claim a higher scale from the respondent no.2, where they had joined as JJA.

6. Having considered the submissions of the learned counsel for the parties and perused the record, I am of the view that the plea of respondent no.1 that since the petitioners were no longer in service of the said respondent when the decision for upgradation was taken, needs to be noted only to be rejected. It is settled law that an employee, merely because he is no longer in service, cannot be deprived of the benefits like upgradation of pay scale which are made effective from the date he/she was in service. Once it is an admitted position that the decision to upgrade the post of LDC to UDC after 5 years, as decided on 17.04.2017 has been made effective w.e.f. 01.10.1979, the respondent no.2 could not have denied benefits of the said upgradation to the petitioners for the period during which they were in service. The respondent no.1, having extended the said benefit to all similarly placed employee who are in service, cannot be permitted to discriminate against the petitioners, who had all completed five years of service as LDC before they left the service of respondent no.1 to join respondent no.2.

7. Insofar as the submission of Mr.Aneja that this upgradation of the petitioners' pay scale from a retrospective date will not automatically entitle them to claim any higher scale from the respondent no.2, is concerned, since the petitioners have not made any specific prayer in this regard, I do not deem it necessary to deal with this aspect. It is, therefore, made clear that



this Court has not expressed any opinion on the said aspect and in case, the petitioners raise any claim in this regard, it will be open for them to seek legal recourse as permissible in law.

8. The writ petition is, accordingly, allowed by directing that since the petitioners completed five years of service as LDC in respondent no.1, they would be entitled to receive all consequential benefits of the upgradation from the date of completion of five years of service as LDC in respondent no.1. The arrears in favour of the petitioner will be paid within a period of eight weeks.

(REKHA PALLI)
JUDGE

AUGUST 25, 2022/kk