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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 24.02.2022

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LPA 137/2022**KUMUD GUPTA & ORS.**

..... Appellants

Through: Mr Harsh Panwar with Mr S M
Srivastav, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Sanjeev Sabharwal, Sr. Govt.
Counsel for respondent no.1/UOI.
Mr Ripudaman Bhardwaj, CGSC with
Mr Kushagra Kumar, Advocate for
respondent nos.2 & 3.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE TALWANT SINGH****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)****CM APPL. 9806-07/2022**

1. Allowed, subject to just exceptions.

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2. This appeal has been preferred against the judgment of the learned single judge dated 23.12.2021, passed in W.P.(C.) 15010/2021.

3. The reliefs sought for by the appellants in the writ petition have been culled out in the impugned order.

3.1. The first relief that the appellants sought in the writ petition, in effect,



concerns revision of the seniority list dated 22.11.2018. Interlinked with this relief was the merger of the two grades i.e., Junior Library and Information Assistant [in short 'JLIA'] with Senior Library and Information Assistant [in short 'SLIA']. The record shows that the merger took place on 03.01.2019 *albeit* w.e.f. 01.01.1996.

3.2. The second relief which the appellants sought was to promote them from the post of SLIA to the next post i.e., Assistant Librarian and Information Officer [in short, 'ALIO'] w.e.f. the date when the Departmental Promotion Committee [DPC] convened and recommended respondent no.3 i.e., one Ms Geeta Yadav for promotion.

3.3. The third and final relief which the appellants sought in the writ petition was that a direction be issued to respondent no.2 i.e., Nehru Memorial Museum & Library for payment of arrears of salary arising following the refixation of pay after the merger of JLIA with SLIA.

4 The learned single judge having considered the matter, has allowed the writ petition with regard to the third relief sought by the appellants i.e., grant of arrears of salary.

4.1. The appellants had indicated to the learned single judge that they had been paid a lump-sum amount of Rs. 7 lakhs each. The learned single judge, taking this assertion into account, has directed respondent nos.1 and 2 to consider the request of the appellants for payment of balance amount having regard to the order of merger dated 03.01.2019.

4.2. The said respondents i.e., respondent nos.1 and 2 have been directed to render their decision with regard to arrears, if payable, within six weeks from the date of the impugned judgment.

5. However, insofar as the first two reliefs are concerned, the learned



single judge has repelled the contention of the appellants.

5.1 Importantly, the learned single judge has returned a finding that respondent no.3 i.e., Ms Geeta Yadav was shown at the top of the seniority list dated 22.11.2018.

6. It is not in dispute that the seniority list issued on 22.11.2018 was a “draft” seniority list; however, what is not in dispute is that the draft seniority list was published with a caveat, which was that objections, if any, to the seniority list had to be filed within three days, failing which the said seniority list would be treated as a final seniority list.

6.1. Although Mr Harsh Panwar and Mr S.M. Srivastav, who appear on behalf of the appellants, attempted to convey that objections were filed qua the said seniority list, on being queried, they could not draw our attention to any such document on record.

6.2. On a closer questioning, both Mr Panwar and Mr Srivastav conceded that objections though filed, were not placed before the learned single judge. We suspect that objections were not filed vis-a-vis the said seniority list and if they were filed, they were not filed within the three days window provided by respondent nos.1 and 2.

6.3. Therefore, in our opinion, the learned single judge was right that since the merger took place only on 03.01.2019, respondent no.3 i.e., Ms Geeta Yadav was senior to the appellants as she was appointed to the SLIA grade w.e.f. 12.11.2012.

6.4. Consequently, the learned single judge, once again, correctly, in our view, has held that she was entitled to promotion to the next higher post i.e., that of ALIO. This promotion was granted to respondent no.3 i.e., Ms Geeta Yadav *via* order dated 01.10.2019 and consequently pay was fixed *via* order



dated 30.10.2019.

6.5. The observations in this behalf are contained in paragraphs 5 and 6 of the impugned judgment. For the sake of convenience, the same are set forth hereafter:

“5. I am not in agreement with the submission made by Mr. Srivastava for the simple reason that the seniority list is dated November 22, 2018 when there was no decision of January 3, 2019 for merger. On the said date, Ms. Geeta Yadav was admittedly senior to the petitioners having been appointed in the grade of SLIA w.e.f. November 12, 2012 . That apart, based on the seniority list of November 22, 2018, wherein Ms. Geeta Yadav was shown senior to the petitioners herein, she has been given promotion to the next higher post of Assistant Librarian and Information Officer vide order dated October 30, 2019. In other words, the impugned seniority has been acted upon by the respondent Nos. 1 and 2 granting promotion to Ms. Geeta Yadav to the post of Assistant Librarian and Information Officer. In fact on the date when the seniority list was issued, the merger order dated January 3, 2019 was not even in place, surely, subsequent order passed by the respondents cannot affect the rights of a person whose seniority has been determined before January 3, 2019. In fact, I find that on a representation made by the petitioners herein, respondents vide its letter dated August 23, 2019 have stated as under:

"Subject: Fixation of seniority of JLIAs in the grade of SLIAs consequent upon merger of JLIA with the SLIA.

With reference to your representation dated 17/07/2019, I am directed to inform you that this office is in the process of working out the modalities of the case with respect to the Court order regarding merger of the post of Junior Library Information Assistant (JLIA) with the post of Senior Library Information Assistant (SLIA). Therefore, your case for fixation of seniority will be



decided in due course.

This issues with the approval of Director.”

6. From the aforesaid it is clear that that pursuant to merger of JLIA with SLIA, the inter-se seniority issue of the petitioners would be decided in due course. Hence, any decision in that regard cannot have a bearing on the seniority list of Ms. Geeta Yadav.”

7. Therefore, having regard to the record placed before us and considered the submissions advanced by Mr Panwar and Mr Srivastav, we find that there are no good reasons to interfere with the judgment of the learned single judge.

8. Accordingly, the appeal is dismissed.

(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

FEBRUARY 24, 2022/tr

Click here to check corrigendum, if any