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

% *Date of Decision: 15th May, 2023*

+ **W.P.(C) 1945/2022**

DR. MAHAVIR SINGH KALON Petitioner

Through: **Mr. K.S. Rekhi, Advocate.**

versus

**UNIVERSITY OF DELHI THROUGH ITS REGISTRAR &
ORS.** Respondents

Through: **Mr. Mohinder J.S. Rupal and
Mr. Hardik Rupal, Advocates.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“(i) Issue a writ of certiorari thereby quashing and setting aside resolution dated 01-02.07.2019 of Executive Council to the extent that Petitioner is promoted to the post of Professor (Stage – 5) w.e.f. 26.06.2019 instead of his date of eligibility i.e., 21.10.2015; AND

(ii) Issue a writ of certiorari thereby quashing and setting aside order dated 04.07.2019 passed by Respondent No. 1 to the extent that Petitioner is promoted to the post of Professor (Stage – 5) w.e.f. 26.06.2019 instead of his date of eligibility i.e., 21.10.2015; AND

(iii) Issue a writ of mandamus to Respondents thereby directing them to correct and re-fix the seniority of the Petitioner in the grade of Professor (Stage – 5) from the actual date of his eligibility i.e., 21.10.2015 instead of date of interview i.e., 25.06.2019; OR”

2. Factual matrix to the extent relevant for adjudication of the writ petition is that Petitioner joined Respondent No. 1/University of Delhi (hereinafter referred to as the ‘University’) as a Lecturer in the year 2000 and was promoted to the post of Lecturer (Senior Scale) in 2004 and finally as a Reader in 2009. University Grants Commission (‘UGC’) issued a Career Advancement Scheme-2010 (‘CAS-2010’) in order to regulate general conditions of service and promotion policies

of staff of the Universities and Colleges. Pursuant thereto, UGC issued UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in University and Colleges and Measures for the Maintenance of Standard in Higher Education), Regulations 2010 (hereinafter referred to as the 'Regulations 2010'). Regulations 2010 provided that an Associate Professor, on completion of three years of service in Stage-4 and possessing a Ph.D. degree in the relevant discipline, shall be eligible to be appointed and designated as a Professor in the next higher grade i.e. Stage-5. In 2012 Petitioner was promoted to the post of Associate Professor (Stage-4).

3. According to the Petitioner, he completed three years of continuous service as Associate Professor (Stage-4) and attained eligibility to be promoted to the post of Professor (Stage-5) on 21.10.2015. On 24.04.2014, UGC issued a Notification prescribing that promotion under CAS-2010 shall be governed by UGC Regulations in operation on the date candidate attains his eligibility and it was directed that it was obligatory for all Universities to follow the Regulations in toto. Therefore, as per this Notification, promotion of the Petitioner to the post of Professor was governed by Regulations 2010.

4. Petitioner applied for promotion to the post of Professor (Stage-5) on 27.04.2017 and was called for interview by the Selection Committee on 25.06.2019 along with 9 other candidates. Out of total 10 candidates, 7 including the Petitioner were recommended for promotion under CAS-2010. 3 candidates out of 7 were recommended for promotion from the date of their eligibility, while remaining 4 including the Petitioner were recommended from 25.06.2019 i.e. the date of interview by the Selection Committee. Recommendations of

the Selection Committee were approved by Respondent No. 3/ Executive Council on 01-02.07.2019.

5. Pursuant to the approval granted by Respondent No. 3, University communicated its decision of grant of promotion to the Petitioner w.e.f. 25.06.2019 vide its order dated 04.07.2019. This, according to the Petitioner, was illegal since he was entitled to promotion from the date he attained eligibility i.e. on 21.10.2015 as per Clause 6.3.12 of CAS-2010 and University gave no reason for applying a different yardstick to the Petitioner. Petitioner made a representation dated 16.03.2021 seeking benefit of Clause 6.3.12 as well as of the common judgment passed by this Court in ***Dr. Kiran Gupta v. The University of Delhi and Others, W.P. (C) No. 10564/2019*** and two connected petitions decided on 08.03.2021, wherein the Court held that Petitioners therein were entitled for promotion to the post of Professor (Stage-5) from the date of eligibility and not from the date of interview with consequential benefits of seniority. Not getting any favourable response from the University, Petitioner was compelled to file the present writ petition.

6. Learned counsel for the Petitioner submits that the legal nodus arising in the present writ petition whether promotion to the post of Professor (Stage-5) should take effect from the date of eligibility or from the date of interview by the Selection Committee, is no longer *res integra* and is squarely covered by the judgment of this Court in ***Dr. Kiran Gupta (supra)***, where the Court has ruled that promotion and seniority will date back to the date of eligibility in terms of Clause 6.3.12(a) of CAS-2010. It is contended that Clause 6.3.12 provides that if a candidate applies for promotion on completion of minimum eligibility period and is successful, the date of promotion will be from that of minimum period of eligibility and that UGC also supports the

case of the Petitioner that promotion must relate back to the date of eligibility.

7. Learned counsel argues that Petitioner is identically placed as the Petitioners in the case of **Dr. Kiran Gupta (supra)**, which is a judgment *in rem* and there is no reason why similar benefits should not be granted to the Petitioner. There is no reason whatsoever forthcoming in the Minutes of the Selection Committee as to why promotion has been denied to the Petitioner from the date of eligibility while granting the said benefit to 3 others recommended for promotion along with the Petitioner. This, according to the counsel, amounts to clear discrimination and violates Article 14 of the Constitution of India.

8. Counsel further submits that on account of erroneous fixation of the date of promotion, seniority of the Petitioner has been adversely impacted inasmuch as instead of reckoning his seniority in the post of Professor (Stage-5) from 21.10.2015, he has been given seniority from 26.06.2019, resulting in four years' loss in seniority, which will impact his future promotions and career, to his detriment.

9. Mr. Rupal, on the other hand, strenuously contends that there is a fundamental dispute as to whether Petitioner will be governed by Regulations 2010 or Regulations 2018. He further submits that acceptance of the stand of the Petitioner would amount to giving retrospective effect to Regulations 2018 and date of promotion, which in law, has to take effect from the date a candidate is recommended for promotion and not from any earlier date.

10. In so far as the judgment in the case of **Dr. Kiran Gupta (supra)** is concerned, it is submitted that no reliance can be placed on the same as the University has already filed a review petition bearing No. 88/2021 in which order is yet to be delivered. Some crucial legal

issues have been raised by the University in the review petition including the applicability of 2010 or 2018 Regulations as well as the requirement of a Selection Committee giving reasons for its conclusion, in view of the observations of the Court that there must be some expression of fact/reason in case a Teacher is not found fit in a particular year but found fit in a later year. In a nut shell it is urged that this Court must await the decision in the review petition.

11. I have heard learned counsels for the parties and examined their respective contentions.

12. The controversy before the Court is in a narrow compass as to whether Petitioner is entitled to promotion and consequential seniority from the date of eligibility or from the date of interview by the Selection Committee and this Court agrees with the counsel for the Petitioner that the issue is no longer *res integra*. Identical issue arose before a Co-ordinate Bench of this Court in **Dr. Kiran Gupta (supra)**, which is evident from Paragraph 16 of the judgment, which captures not only the question the Court was considering but also reflects that the case of the Petitioners therein was predicated on Clause 6.3.12 of CAS-2010 and the same is extracted hereunder, for ready reference:-

“16. I have heard learned counsel for the parties. A short issue, which arises for consideration is, whether the petitioners are entitled to promotion from the date of eligibility or from the date of interview. There is no dispute that the case of the petitioners have to be considered under CAS 2010. The relevant clause of CAS 2010, which relates to the selection procedure is sub clause 6.3.12 and, the same is reproduced as under:-

“6.3.12.(a) If a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion will be from that of minimum period of eligibility.

(b) If, however, the candidates find that he/ she fulfills the eligibility conditions at a later date and applies on that date and is successful, his/ her promotion will be effected from that date of application fulfilling the criteria.

(c) If the candidate does not succeed in the first assessment, but succeeds in the eventual assessment, his/ her promotion will be deemed to be from the later date of successful assessment.”

13. Examining the provisions of CAS-2010 and Regulations 2010, the Court held as follows:-

“17. From the perusal of clause 6.3.12 sub clause (a), it is clear that if a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion will be from the date of minimum period of eligibility. There is no dispute that the petitioners have been assessed fit for promotion. If that be so, then the promotion must relate back to the date of minimum period of eligibility, which in the case of the writ petitioners, shall be the following:-

***May 08, 2009** - in case of writ petitioner in W.P.(C) 10564/2019*

***September 15, 2014** - in case of writ petitioner in W.P.(C) 10744/2019*

***April 27, 2012** - in case of writ petitioner in W.P.(C) 10789/2019*

18. No doubt, sub clause (c) contemplates that if a candidate does not succeed in the first assessment, but succeeds in the later assessment, his/ her promotion will be deemed to be from the later date of successful assessment. This sub clause contemplates that an assessment can be from a later date than the date of eligibility but surely from the minutes of the Selection Committee, which I reproduce as under, it is clear that there is no conclusion of the Selection Committee that the petitioners have not been found fit from the date of their eligibility.

“1. Dr. Kiran Gupta for promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from 25.06.2019.

2. Dr. V.K.Ahuja for promotion from Associate Professor (Stage-4) to Professor (Stage- 5) with effect from the date of his eligibility

3. Dr. Raman Mittal for promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from the date of his eligibility.

4. Dr. Manju Arora Relan for promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from 25.06.2019.

5. Dr. Sarabjit Kaur for promotion from Associate Professor (Stage-4) to Professor (Stage 5) with effect from the date of her eligibility.

6. Dr. P.B. Pankaja tor promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from 25.06.2019.

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19. Rather, it is seen that the petitioners have been found fit on their first assessment itself for promotion to the post of Professor. If that be so, the petitioners could not have been denied the promotion

from the date of eligibility when the promotion with prospective effect is based on the same material. In fact, I find that by giving the recommendations prospectively, the Selection Committee has deferred the promotion of the petitioners from May 08, 2009 to June 25, 2019 in W.P.(C) No. 10564/2019; from September 15, 2014 to June 25, 2019 in W.P.(C) No. 10744/2019 and from April 27, 2012 to June 25, 2019 in W.P.(C) No. 10789/2019. The same clearly demonstrates the prejudice that has been caused to the petitioners due to the recommendation of the Selection Committee, promoting the petitioners prospectively from the date of interview.

20. *Insofar as the reliance placed by Mr. Rupal on the judgment of the Supreme Court in the case of **National Institute of Mental Health and Neuro Sciences (supra)** that it is not necessary for the Selection Committee to give reasons for its conclusion, suffice to state, the Supreme Court had given a finding to that effect in cases where the rules do not contemplate so. There is no dispute on the said proposition of law. But in view of reading of the relevant Regulations, which I have already referred to above, surely there must be some expression of the fact / reason in case a teacher is not found fit in a particular year but found fit in a later year. In the absence of such conclusion, it must be said that this teacher is found fit from the date of eligibility.*

21. *In view of the above, the petitions need to be allowed. The proceedings of the Selection Committee / Executive Council / communication dated July 04, 2019 are set aside to the extent that promotion has been given to the petitioners to the post of Professor is made prospectively i.e. from June 25, 2019. The said promotion shall relate back to their date of eligibility. No costs."*

14. There is substance and merit in the contention of the Petitioner that his case is covered by the aforesaid judgment and promotion to the post of Professor (Stage-5) would relate back to the date of eligibility and consequently the seniority would also reckon from the said date and not from the date of interview by the Selection Committee. In fact, this position becomes palpably clear from a bare reading of Clause 6.3.12 of CAS-2010, which in no uncertain terms provides that if the candidate is successful, the date of promotion will be from that of minimum period of eligibility. It is only in an event that a candidate does not succeed in the first assessment but succeeds in the eventual assessment his promotion will be deemed from the later date of successful assessment under Clause 6.3.12(c). It is

nobody's case that Petitioner was not successful in the first assessment and therefore the case of the Petitioner is covered by the said Clause 6.3.12(a).

15. University has not been able to make out a case of any distinction or distinguishing factor between the Petitioners in ***Dr. Kiran Gupta (supra)*** and the Petitioner herein and the stand of the Petitioner that he is identically placed is fortified from a reading of the judgment. Additionally, it may be noted that the Petitioner has also brought out that he was considered for promotion to the post of Professor (Stage-5) along with 9 other candidates out of which 7 including the Petitioner were recommended and 3 out of the 7 were in fact recommended for promotion from the date of their eligibility and rightly so. Therefore, the impugned action of the University in denying promotion to the Petitioner from the date of eligibility is discriminatory not only qua the Petitioners in the case of ***Dr. Kiran Gupta (supra)*** but also qua those who were considered along with him for promotion in the same batch. Clearly, this is a classic case of creating a class within a class and as rightly urged by the Petitioner, action of the University amounts to violation of Article 14 of the Constitution of India.

16. Much emphasis was laid by Mr. Rupal on the fact that a review petition has been filed, however, on a pointed query the Court was apprised that the decision is still awaited. Therefore, this Court finds no impediment in granting the benefit of the judgment to the Petitioner. It needs a mention that during the hearing it was canvassed on behalf of the University that the prime issue raised in the review petition is which of the two Regulations viz: 2010 or 2018 would apply, but to my mind this issue is irrelevant in the present case in view of the stand of the University in the short affidavit wherein it is

categorically stated in para 22 that the Selection Committee held on 25.06.2019 considered the case of promotion of the Petitioner under CAS-2010 and recommended him. It is thus not understood on what basis applicability of CAS-2010 can now be questioned and moreover nothing is brought forth in the affidavit or during the arguments on what is the alleged material difference in the two Regulations, which would take the case of the Petitioner out of the purview of the judgment in *Dr. Kiran Gupta (supra)*. In any event, the case of the Petitioner is clearly covered by Clause 6.3.12 of CAS-2010, which unambiguously contemplates grant of promotion from the date of eligibility and its plain reading admits of no other interpretation. Petitioner is also right that on account of erroneous consideration of his promotion from the date of interview, he has suffered a loss of four years in his seniority, which indisputably will have an adverse impact on his future career.

17. For all the aforesaid reasons, the writ petition is allowed quashing and setting aside Resolution dated 01-02.07.2019 of the Executive Council to the extent it has recommended promotion of the Petitioner to the post of Professor (Stage-5) w.e.f. 26.06.2019 instead of his date of eligibility i.e. 21.10.2015. Order dated 04.07.2019 passed by the University also stands quashed to the extent it reckons the promotion of the Petitioner from 26.06.2019. Writ of mandamus is issued to the Respondents to issue a fresh order reckoning the promotion of the Petitioner from the date of eligibility with all consequential benefits including reckoning seniority from the date of eligibility.

18. Writ petition stands disposed of accordingly.

JYOTI SINGH, J

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