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

% *Date of Decision: 21st March, 2023*

+ W.P.(C) 3552/2023

RAVINDER KUMAR Petitioner

Through: Mr. S.K. Gupta, Advocate.

versus

GOVERNMENT OF NCT OF DELHI

AND ORS.

..... Respondents

Through: Ms. Latika Choudhry, Advocate
for R-1 to R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 13790/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 3552/2023 & C.M. APPL. 13791/2023 (directions)

3. Present writ petition has been filed by the Petitioner seeking the following relief:-

“(i) issue writ of mandamus or any other writ, order or direction, directing respondent no. 1 to 3 to convene DPC for the purpose of promotion to the post of Laboratory Assistant in respondent no.4 school and also consider the case of the petitioner in accordance with his seniority and service record and if the petitioner is found fit, he may be awarded all consequential benefits”

4. Factual score necessary for the purpose of present writ petition is that Petitioner was appointed to the post of Chowkidar through an open selection process with Respondent No. 4/ I.P. Hindu Girls Senior Secondary School (hereinafter referred to as the ‘School’) on 28.01.1998 and is working on the said post till date. On 15.11.2017, the solitary post of Laboratory Assistant fell vacant on account of the

death of Sh. Ram Kumar Sunpat. It is averred in the writ petition that since the Petitioner was working as a Chowkidar and was eligible for the post of Laboratory Assistant, he gave his willingness to work on the said post. Vide Resolution dated 07.08.2019, the Management Committee of the School forwarded the case to Respondent No. 2/ Directorate of Education ('DoE') for constitution of a Departmental Promotion Committee ('DPC') and considering his case for promotion.

5. It is stated that no DPC was convened till 2021 and it was only through a communication dated 24.06.2021 that DoE informed the School that it had constituted the DPC and the constitution was also conveyed. By a letter dated 05.11.2022, DoE again informed the School of the constitution of the DPC and requested to co-ordinate with all the Members of DPC to fix a suitable date for the meeting. However, despite the exchange of correspondence between the School and DoE, the effort to convene the DPC did not fructify, as a result of which, till date, the post is lying vacant.

6. The grievance of the Petitioner is that despite the post of Laboratory Assistant lying vacant since 15.11.2017 and the Petitioner being eligible, no DPC has been convened till date, to consider his case for promotion. It is submitted that the School has prepared a chart, which has been placed on record, which reflects that Petitioner has 'Good' gradings in the ACRs for the years 2014-15 to 2017-18 and a 'Very Good' grading for the year 2018-19 and despite meeting the benchmark, he is stagnating till date.

7. Learned counsel for the Petitioner urges that Government of India has been issuing Instructions from time to time that DPCs must be convened every year regularly and at least, twice in a year, without any delay. In this context, reliance is placed on DoPT O.Ms dated 10.04.1989, 08.09.1998 and 23.04.2015.

8. Issue notice.

9. Ms. Latika Choudhry, learned counsel accepts notice on behalf of DoE/Respondents No. 1 to 3. Appearing on advance copy of the writ petition, learned counsel submits that as per her instructions, steps were taken to convene the DPC for promotion to the post of Laboratory Assistant in the School but she is unsure why the same did not reach its logical end.

10. Having heard the counsels for the parties, this Court finds merit in the contention of the Petitioner that an obligation is cast on the DoE to hold DPCs at regular intervals pertaining to the vacancies that occur during a particular year. This mandate/obligation finds its genesis in the DoPT O.M. dated 10.04.1989, which provides Consolidated Instructions and Guidelines on DPCs including the frequencies at which the DPCs should meet. DoPT O.M. dated 08.09.1998 reiterates the obligation and relevant part is as follows:-

“PART-II

FREQUENCY OF MEETINGS

Frequency at which DPC should meet

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned Appointing Authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules

normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year."

11. Again, by an O.M. dated 23.04.2015, DoPT emphasized on the timely convening of DPCs and laid down Model Calendars, as follows:-

"Subject:- Timely and advance action in convening of Departmental Promotion Committee meeting in terms of Model Calendar-regarding.

The undersigned is directed to state that with a view to having the approved select panels for promotion ready in advance in a time-bound manner, this Department has issued a Model Calendar for DPCs vide OM No. 22011/9/98-Estt. (D) dated 8th September, 1998 as modified vide OM No. 22011/4/2013-Estt.(D) dated 28.01.2015. An indicative pattern has been provided in the Model Calendar for various events involved in the pre/ post DPC related actions. All the Ministries/Departments have been impressed upon from time to time by this Department to adhere to the prescribed time-line so as to ensure that the panel is ready in time and is utilised as and when the vacancies arise during the course of the vacancy year.

2. *Appointment Committee of Cabinet has viewed it seriously that the DPCs are not being convened in time. Delay in promotion affects the manpower planning and impedes the career progression of the employees. The delays in conduct of DPC negate the very purpose of the Model Calendar for DPCs issued vide Office Memorandum No.22011/9/98-Estt.(D) dated 8th September, 1998 as modified vide OM No. 22011/4/2013-Estt.(D) dated 28.01.2015.*

4. *The objective of timely promotions of employees in various Ministries/Departments can be achieved only by granting the promotion in time.*

5. *All the Ministries/Departments are, therefore, once again advised to ensure strict compliance of instructions in order to achieve the desired objectives of timely convening of DPCs/ preparation of approved select panels within the prescribed time frame."*

12. It would be profitable to refer to a recent DoPT O.M. dated 27.10.2016 in this regard, wherein it is highlighted that all Ministries/

Departments must adhere to prescribed timelines to ensure that the select panels are ready in time and utilized as and when vacancies arise during the course of the vacancy year. Noting the fact that many promotional posts are lying vacant due to abnormal delay in convening DPCs, Ministries/Departments have been advised to ensure strict compliance of Instructions, in order to achieve desired objectives of timely convening of DPCs.

13. The Supreme Court in ***Union of India v. N.R. Banerjee, 2016 SCC OnLine Del 4828***, has echoed the importance of holding of DPCs at regular annual intervals preferably, if necessary, on a fixed date in a year and I may quote the relevant para hereunder:-

“6. DPCs should be convened every year, if necessary, on a fixed date, i.e. 1st of April or May. In the middle of the para, by way of amendment brought on 13-5-1995, it postulates that very often action for holding DPC meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of DPC should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. It would, thus, be seen that DPCs are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the DPCs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.”

14. From the aforementioned judgment of the Supreme Court, which has been subsequently followed in several other judgments, as well as from a reading of the DoPT O.Ms., some of which have been alluded to above, there is no gainsaying that it is imperative that DPCs are convened at regular intervals so that the employees, who are in the

zone of consideration and eligible, do not stagnate for want of consideration for promotion and at the same time, the functioning of the Government is not adversely impacted.

15. In the present case, it is an admitted position that post of Laboratory Assistant is lying vacant since 15.11.2017 and despite the School having written to the DoE and efforts having been made by the DoE to constitute DPC, no concrete conclusion has seen the light of the day. The delay in convening the DPC is not only adversely affecting the interest of the Petitioner and/or any other eligible candidate in the School but is also impacting the students of classes X, XI and XII in the Science stream, as a Laboratory Assistant is an important functionary in a Laboratory in a School.

16. For all the aforesaid reasons, the writ petition is allowed directing DoE to convene a DPC for promotion to the post of Laboratory Assistant in the School, within a period of eight weeks from today and consider the Petitioner and/or any other candidate who may be eligible and in the zone of consideration, consider all eligible candidates including the Petitioner, if eligible, in accordance with Recruitment Rules, applicable to the post.

17. Needless to state that if the Petitioner has any surviving grievance, he is at liberty to take recourse to the remedies available in law.

18. Writ petition stands disposed of along with pending application.

JYOTI SINGH, J

MARCH 21, 2023/shivam