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

% *Date of Decision: 02nd May, 2023*

+ W.P.(C) 5751/2022 & CM APPL. 17195/2022

NASREEN BANO SIDDIQUI

..... Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur, Ms. Anubha Bhardwaj and Mr. Rajesh Sachdeva, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Chetan Sharma, Additional Solicitor General with Mr. Apoorv Kurup, Central Government Standing Counsel, Mr. Amit Gupta, Mr. Ojaswa Pathak and Mr. Vikramaditya Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioner impugns the inaction of the Respondents in not convening and finalizing the Departmental Promotion Committee ('DPC') for selection on absorption to the post of Assistant Registrar, National Company Law Tribunal ('NCLT'), despite inviting options on 21.12.2020, processing the case, obtaining NOC on 28.06.2021 and the Competent Authority nominating the member of DPC on 05.11.2021.

2. Factual score emerging from the writ petition is that Petitioner was appointed as Assistant Employment Officer in the Directorate of Training and Employment, Government of U.P. w.e.f. 28.12.1999. Applications were invited by NCLT vide Office Memorandum dated 16.11.2017 for filling up different posts including post of Assistant

fulfilled all the requisite conditions stipulated in the Notification and was duly selected for appointment on deputation basis vide order dated 05.03.2018, initially for a period of one year from the date of assumption of charge and joined the post w.e.f. 02.04.2018.

3. Thereafter, options were invited by NCLT vide O.M. dated 21.12.2020 for absorption from those officers who were on deputation in NCLT from other Departments and fulfilled the eligibility criteria stipulated in Rule 10 i.e 'Absorption of Employees on Appointment on Deputation' of the National Company Law Tribunal (Recruitment, Salary and other Terms and Conditions of Service of Officers and other Employees) Rules, 2020 (hereinafter referred to as '2020 Rules'), followed by Corrigendum dated 23.12.2020.

4. Petitioner, who was already working as an Assistant Registrar on deputation basis in NCLT, opted for permanent absorption and at the same time, NCLT processed her case for further extension of deputation for a period of two years i.e. from 02.04.2021 to 01.04.2023 and sought 'no objection' from her parent department vide letter dated 08.01.2021. After receiving no objection, deputation period of the Petitioner was extended for one year i.e. 02.04.2021 to 01.04.2022. In furtherance of the process initiated for absorption, the Competent Authority, vide order dated 05.11.2021, nominated Ms. Mithlesh, Adviser (Cost), Ministry of Corporate Affairs, as Member of the DPC for selection on deputation/absorption to the post of Assistant Registrars, NCLT.

5. Petitioner avers that since the process of absorption on deputation was getting unduly prolonged and her tenure on deputation was coming to an end on 01.04.2022, she requested for further extension of deputation till finalization of the process of permanent absorption, vide representation dated 25.03.2022. However, instead of

convening and finalizing the DPC, NCLT issued an order dated

01.04.2022, relieving the Petitioner on completion of the deputation tenure and also sanctioned one month 'end of tenure' leave, beginning from 04.04.2022 with an assurance that the leave period salary and allowances shall be paid by NCLT. Since there was complete stalemate on the absorption process, Petitioner approached this Court seeking direction to the Respondents to convene a DPC and finalise the absorption process.

6. Contention of the Petitioner is that Rule 10 of 2020 Rules provides absorption on deputation as one of the modes of appointment to the post of Assistant Registrar and stipulates that persons appointed on deputation basis, who fulfil the qualifications and experience laid down in the Rules and are considered suitable by the Department Promotion Committee, shall be eligible for absorption, subject to such person exercising option for absorption and subject to grant of 'no objection' from the parent department. Rule 7 further provides that appointments of Officers and other employees of NCLT shall be made by the Appointing Authority, provided that the appointments to the posts in Level-11 or above in Pay Matrix of 7th CPC, shall be made with the approval of Central Government and since in the present case, the process of absorption was initiated on 21.12.2020, with the approval of Central Government, it cannot be terminated mid-way without the approval of the Central Government i.e. Ministry of Corporate Affairs.

7. It was submitted that the parent department of the Petitioner had conveyed its no-objection on 28.06.2021 to the absorption of the Petitioner as Assistant Registrar in NCLT and member of the DPC was also nominated on 05.11.2021. Therefore, all that was required to be done was to convene the DPC and make appointments as per the DPC's recommendations. Petitioner requested for extension of deputation so that in the meantime, the process of absorption could be

completed, however, without finalising the absorption process, Petitioner was illegally relieved on 01.04.2022, in the teeth of recommendation by the NCLT to extend the deputation tenure up to 01.04.2023.

8. The next plank of argument on behalf of the Petitioner was that once the process of absorption was initiated and was under active consideration, Petitioner had a legal and vested right for consideration for permanent absorption and there is no plausible reason forthcoming for depriving her of this valuable right. Even though, Petitioner has joined her parent department on being relieved by Respondent, this cannot be an impediment in her consideration and directions be issued to the Respondents to convene the DPC and consider her case, as Rule 10 does not debar consideration if an employee ceases to be on deputation.

9. Mr. Shanker Raju placed reliance on the judgment of the Supreme Court in *Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Limited and Others, (1999) 8 SCC 381*, wherein it was held that an employee, who is on deputation, may not have a right to be absorbed in service where he is working on deputation, however, every case will be governed by the Statutory Rules applicable and if the Rules provide for absorption on deputation, then such an employee has a right to be considered for absorption in accordance with the said Rules.

10. Responding to the arguments on behalf of the Petitioner, Mr. Chetan Sharma, learned Additional Solicitor General, at the outset, takes a position that the writ petition is infructuous since Rule 10 of 2020 Rules mandates that option of absorption in the services of NCLT can be exercised only by a person who is on deputation with NCLT and in this case, admittedly, Petitioner has

been relieved from the post of Assistant Registrar, NCLT w.e.f.

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01.04.2022 and has also availed one month of 'end of term leave' which was sanctioned pursuant to para 7.6(c)(iii) of DoPT O.M. dated 17.06.2010. Further, even the said leave has ended on 03.05.2022 and Petitioner's application for extension of leave has been forwarded to her parent employer i.e. Directorate of Training and Employment, U.P. Clearly, after a person demits the post held on deputation, he/she is not eligible for absorption under Rule 10 of 2020 Rules. On this count itself, the judgment in *Rameshwar Prasad (supra)* is distinguishable, as in the said case, Petitioner was not repatriated but continued on deputation at the time of seeking relief.

11. It was urged that NCLT issued a Notification dated 24.02.2022 for filling up the post of Registrar, NCLT (New Delhi) on deputation basis; a Notification dated 30.03.2022; O.M. dated 08.04.2022 for filling up 4 posts of Assistant Registrars on deputation in different NCLT Benches; and O.Ms. dated 08.04.2022 for filling up 8 posts of Deputy Registrars and 26 posts of Private Secretaries, respectively, on deputation in different NCLT Benches. The senior posts in NCLT are being filled on deputation basis in order to attract new and fresh candidates, as part of the initiative of the President, NCLT, to improve the working of all Benches by putting in place a highly efficient administration. Every effort is being made to appoint people on deputation who bring with them vast experience in different fields which helps in increasing administrative efficiency on a holistic level.

12. In view of this decision to make appointments on deputation on all senior posts, it was decided to terminate the process of permanent absorption to the post of Assistant Registrar and since the process itself stood terminated, the question of considering the case of the Petitioner did not arise. Moreover, it is settled law that even successful candidates do not acquire an indefeasible right to be appointed and the

appointments can be legitimately denied even where a process has

been initiated. This is because a notification or an advertisement for recruitment/absorption merely amounts to an invitation to qualified and eligible candidates to apply for recruitment but gives no right until finally selected. There is no reciprocal obligation on the Government or any employer to fill all or any vacancies and selection process can always be cancelled without reaching its logical conclusion.

13. Reliance was placed by the learned ASG on the judgment in *Employees State Insurance Corporation and Another v. Dr. Vinay Kumar and Others, 2022 SCC OnLine SC 699*, wherein the Supreme Court held that a candidate who has applied does not have a legal right to insist that the recruitment process set in motion must be carried to its logical end. Reliance was also placed on the judgment of the Supreme Court in *Shankarsan Dash v. Union of India, (1991) 3 SCC 47*, wherein it was held that there is no indefeasible right for appointment merely because a candidate is found fit in a selection. Unless the relevant Recruitment Rules so indicate, the State is under no legal duty to fill up all or any vacancies.

Analysis:

14. Petitioner is indisputably an employee of Directorate of Training and Employment, Government of U.P, where she is employed as Assistant Employment Officer w.e.f. 28.12.1999. Petitioner applied for appointment on deputation basis with NCLT and on qualifying the selection process, she was appointed on deputation basis vide order dated 05.03.2018. While Petitioner was working on deputation, options were invited vide O.M. dated 21.12.2020 for appointment on permanent absorption basis in NCLT to the post of Assistant Registrar. Petitioner gave her option and her parent department also sent the NOC. Process of permanent absorption reached the stage of appointing a member of the DPC but rested at that

stage and it is an admitted position that Petitioner has been repatriated

to her parent department and stands relieved from NCLT w.e.f. 01.04.2022.

15. The grievance ventilated by the Petitioner before this Court is that while she was working on deputation with NCLT, she had opted for permanent absorption and was duly qualified and eligible. She was willing for absorption and her department also had no objection. Thus, there is no plausible reason or justification why the process be not taken to its logical end. It is not open to the Respondents to terminate and abandon the process mid-way as Petitioner has a right of consideration for absorption *albeit* there may not be a right to assert that she must be absorbed.

16. Parties are *ad idem* that Rule 10 of 2020 Rules read with Schedule I provides absorption on deputation as a mode of appointment to the post of Assistant Registrar, NCLT, with the approval of Central Government mandated under Rule 7 of the said Rules. Process of permanent absorption was initiated by NCLT and thus, the moot question that arises for consideration is whether the Petitioner can insist that the process must be taken to its logical end by convening a DPC and considering those who had applied/opted for permanent absorption.

17. It is a settled law that filling up of posts, mode of recruitment, category from which the recruitment is to be made, etc. are all matters exclusively within the domain of the Executive. In ***State of Andhra Pradesh and Another v. V. Sadanandam and Others, 1989 Supp (1) SCC 574***, the Supreme Court held that it is not for judicial bodies to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment, as these are matters of policy decision falling exclusively within the purview of the Executive. Constitution Bench of the Supreme Court in ***Shankarsan Dash (supra)***, held as

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“7. Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.....”

18. In ***U.P. Bhumi Sudhar Nigam Ltd. v. Shiv Narain Gupta, 1994 Supp (2) SCC 541***, the Supreme Court observed that High Court fell into patent error in issuing the *mandamus* since it is the authoritative pronouncement of the Supreme Court that even if a vacancy is available and the employer bonafidely declines to make an appointment, even the candidate placed on a select list has no right to insist that he must be appointed. In ***State of Haryana v. Subash Chander Marwaha and Others, (1974) 3 SCC 220***, the Supreme Court held that the existence of vacancies does not give legal right to a candidate for appointment. It is open to the Government to decide whether to make appointments and if so against how many vacancies. It was observed that in order that a *mandamus* may issue to compel an authority to do something, it must be shown that the Statute imposes a legal duty on that authority and the aggrieved party has a legal right under a Statute to enforce its performance.

19. From a conspectus of the aforesaid judgments, it is clear that the Supreme Court has affirmed and re-affirmed that no person can have an indefeasible right to assert that he or she must be appointed, even where a person is placed on a select list and much less where the process has not even reached the stage of holding an examination or convening a DPC, as the case may be, for appointment or selection.

No candidate has a right to insist that all or any vacancies, which are lying unfilled, must be filled and the employer must necessarily initiate the process of appointment or adopt a particular mode of appointment from among the modes provided in the respective recruitment rules. In fact, in the case of *Babita Prasad and Others v. State of Bihar and Others*, 1993 Supp (3) SCC 268, the Supreme Court held that even where a candidate is brought on a panel and sent for training at the Government expense, it would not imply that any right has been created for appointment. It is purely the domain of the Executive as a matter of policy decision to decide which and how many vacancies to fill as also the mode of recruitment *albeit* the mode must form part of the Recruitment Rules/Regulations in question for appointment to a particular post. In view of the wealth of judicial precedents, it can hardly be argued by the Petitioner that there is a legal right to insist that the DPC must be convened and the post of Assistant Registrar must be filled by the mode of permanent absorption as against the mode of deputation sought to be adopted by NCLT.

20. Mr. Raju strenuously urged that once the process of permanent absorption was initiated, Respondents were under an obligation to ensure that the process is taken to its logical end and it is illegal to terminate or abandon the process midway. This Court cannot accept this argument, which is clearly in the teeth of the judgments of the Supreme Court, holding to the contrary. I may profitably refer to the judgment in *Employees State Insurance Corporation (supra)* on this aspect. In the said case, advertisements were issued calling for applications to fill up various posts including the post of Associate Professor for Colleges run by ESIC and the case concerned the Dental College. Later, the recruitment process was kept in abeyance for

administrative reasons and this action was challenged by Respondent

No.1 before the Central Administrative Tribunal, which passed an order directing the Corporation to fill up the post. The Corporation unsuccessfully challenged the order in the High Court and the matter travelled to the Supreme Court. Allowing the appeal, the Supreme Court held that “*the cardinal principle that must be borne in mind is that a candidate who applies does not have a legal right to insist that the recruitment process set in motion be carried to its logical end*”. It was observed that even inclusion of a candidate in the select list may not clothe the candidate with such a right. Adding a caveat that this did not imply that the employer is free to act arbitrarily, the Supreme Court ruled that the direction by the High Court to conclude the recruitment process, was clearly untenable.

21. In light of the aforesaid judgments, all that is need to be tested is if the impugned action is arbitrary. It is stated in the short affidavit filed on behalf of Respondent No.2/NCLT that a decision was taken to fill up the Senior Level positions in the office of NCLT, New Delhi and its Regional Benches on deputation in order to attract new and fresh candidates, as a part of the initiative of the President, NCLT to improve the working of all Benches more efficiently in terms of administration. Thus, a conscious decision was taken to adopt the mode of deputation instead of absorption. Rules 2020 governing appointment to the post of Assistant Registrar, provide for deputation as a mode of appointment and the decision is within the framework of the Rules. Following the binding dictum of the Supreme Court, it is not for this Court to dictate the mode and manner of appointment and/or issue a *mandamus* to the Respondents to necessarily fill up the post of Assistant Registrar on permanent absorption basis. This is a policy decision taken by the Competent Authority in NCLT in overall interest of the Tribunal and warrants no interference. Petitioner has

been unable to establish that she has a vested right under the Rules to

insist that the DPC must be convened and NCLT is bound to follow the mode of absorption for appointment.

22. The matter can be examined from another angle. The law on deputation and absorption is fairly well settled. A deputationist has no right to either continue on deputation or to claim permanent absorption in the borrowing department. It was held by the Supreme Court in *Kunal Nanda v. Union of India and Another*, (2000) 5 SCC 362, that the basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position and there is no right to claim continuance on deputation or seek absorption. In *Pawan Kumar & Ors. v. Union of India & Ors.*, 2018 SCC OnLine Del 12615, a Division Bench of this Court rejected the relief of absorption and even negated the plea of legitimate expectation in a case where the Petitioners had continued on deputation for 7 years or more.

23. In the present case, Petitioner was appointed on deputation as Assistant Registrar, NCLT by an order dated 05.03.2018 for a period of one year, which was extended up to 01.04.2022 after which she has been relieved and has joined her parent department. Merely because the process of permanent absorption was initiated would not give a vested right to the Petitioner to seek a *mandamus* to the Respondents to convene a DPC in the wake of a conscious decision taken by the Respondents to terminate the process of permanent absorption and resort to deputation as a mode of appointment to the post of Assistant Registrar, which is clearly a mode of appointment under Rule 10 of 2020 Rules. Judgment in the case of *Rameshwar Prasad (supra)* is clearly distinguishable and does not aid the Petitioner. There can be no quarrel with the law propounded by the Supreme Court that where the

Rules provide for absorption of employees on deputation, then the

employee has a right to be considered. However, the point that the Petitioner overlooks is that in the said case, the Supreme Court noticed in para 15 of the judgment that there was total inaction on the part of Respondent No.1 in not passing the order either for repatriation or for absorption qua the Appellant and this was unjustified and arbitrary and in this context, the Supreme Court held that the delay or inadvertent inaction on the part of the Officers of the Respondents in not passing appropriate order would not affect Appellant's right to be considered for absorption under the Recruitment Rules. The Supreme Court observed that if the Appellant was not to be absorbed, he ought to have been repatriated when he had completed 5 years on deputation.

24. It is relevant to note that in an additional affidavit filed on behalf of NCLT, it is stated that after the Petitioner was repatriated to her parent department, she has assumed charge of her duties on 12.07.2022 and NCLT has already forwarded her service book to the Directorate of Training and Employment, Government of U.P. pursuant to their request vide letter dated 03.08.2022. It is also stated in the affidavit that process for filling up the posts of Assistant Registrar at NCLT, New Delhi, Jaipur and Guwahati Benches was initiated vide Notification dated 08.04.2022. The process is complete and after approval of the Ministry of Corporate Affairs, appointment letters have been issued and the post of Assistant Registrar at New Delhi, for which the Petitioner is aspiring, has already been filled up by Shri Rajesh Sharma, who has joined on deputation on 03.10.2022 for a period of 3 years.

25. In view of the aforesaid judgments and in the facts of this case, Court is of the view that Petitioner cannot seek a writ of *mandamus* to the Respondents to convene a DPC for consideration of her case on

permanent absorption in NCLT and the writ petition deserves to be dismissed.

26. Accordingly, the writ petition is dismissed along with the pending application, being devoid of merit.

MAY 02, 2023/kks

JYOTI SINGH, J

