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

+ **LPA 777/2023 & CM APPL. 61873-61875/2023**

VIKAS SHARMA

..... Appellant

Through: Mr. Jai Sahai Endlaw, Mr. Nishant
Prateek, Mr. Shashank Khurana,
Advocates

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondents

Through: Mr. Hardik Rupal, Advocate for R-1.

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Date of Decision: 01st December, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. Present appeal has been filed challenging the order dated 23rd August, 2023 passed by a learned Single Judge in *W.P.(C) 8938/2018*. By way of the impugned judgment, petition filed on behalf of the appellant was dismissed, thereby holding that there was no irregularity or illegality in the communication dated 23rd July, 2018 issued by respondent no. 1, wherein it had been stated that the validity of the advertisements for direct recruitment of both Teaching and Non-Teaching staff in the University was eighteen (18) months.

2. The facts of the present case in brief are as follows:

2.1 The appellant participated in the recruitment/examination process for the post of Senior Technical Assistant (Computers) (hereinafter referred as "STA, Computers") at the respondent no. 2, Motilal Nehru College pursuant



to advertisement dated 9th December, 2014 and 13th December, 2014 issued in the Newspapers.

2.2 Examination for recruitment to the said post was held in two parts on 1st November, 2015 and 13th December, 2015 and the results thereto were declared on 18th March, 2016. The appellant secured first position in the merit list declared on 18th March, 2016 for the post of STA, Computers, a Group “B” post.

2.3 Since the recruitment to the said post had to be finalized by a Selection Committee, the respondent no. 2/college constituted a Selection Committee. The said Selection Committee also included one external expert from the field to be nominated by the Director, South Delhi Campus. In view thereof, a letter dated 18th March, 2016 was written by the respondent no. 2/College to respondent no. 1/University for sending the name of one external expert so that meeting of the Selection Committee could be held. However, in view of the communication from the University Grants Commission (“UGC”)/Ministry of Human Resource Development (“MHRD”) with regard to discontinuation of interview for direct recruitments up to the post of Group “B” category, there was delay in the decision with regard to nomination of external expert by the respondent no. 1/University. Thus, letter dated 16th/19th May, 2016 was written by respondent no. 2/College to the respondent no. 1/University requesting for a special approval of the University so that the validity of the advertisement for appointments may continue even after the expiry of the required period of eighteen (18) months. However, by its letter dated 23rd June, 2016, the respondent no. 1/University categorically stated that the recruitment process cannot go beyond eighteen months.



2.4 Since the selection process could not be completed within eighteen (18) months of the lapse of the advertisement dated 9th December, 2014 and 13th December, 2014, respondent no. 2 issued notification dated 30th December, 2016 for re-advertising the Non-Teaching posts in question. Aggrieved by the said notification, the appellant approached this Court by filing the writ petition bearing *W.P.(C) 3607/2017*, seeking appointment to the post of STA, Computers and setting aside of the said notification dated 30th December, 2016, on the ground that the respondents had not finalized the selection process for filling up the Group “B” post of STA, Computers on permanent basis.

2.5 The said writ petition was disposed of vide order dated 3rd April, 2018 with liberty to the appellant to file a concise representation before the respondent no. 1/University and with directions to the Competent Authority to pass a speaking order. Pursuant thereto, appellant made a representation dated 10th April, 2018 to the respondent no. 1/University, followed by reminder letter dated 9th May, 2018, wherein he submitted that the decision of making the advertisement valid only for eighteen (18) months did not apply to Non-Teaching posts.

2.6 The representation of the appellant was rejected by respondent no. 1/University by communication dated 23rd July, 2018. Aggrieved by the said communication, the appellant filed the writ petition being *W.P.(C) 8938/2018* challenging the same and seeking appointment to the post of STA, Computers. The writ petition filed on behalf of the appellant was dismissed by the learned Single Judge vide order dated 23rd August, 2023. Hence, the present appeal has been filed.

3. On behalf of the appellant, it is contended that the respondent no. 1



has failed to explain as to how the validity of advertisement for only eighteen (18) months applies to Non-Teaching posts, as the same applies to only Teaching posts. The Executive Council (“EC”) Resolution No. 236 dated 02nd March, 1994 applies to only Teaching posts and not Non-Teaching posts, as the said Resolution relates to the post of Research Associate, which is a Teaching post. Thus, it is prayed that the appellant be appointed to the post Senior Technical Assistant (Computers) on permanent basis.

4. Leaned counsel for the appellant has relied upon the following judgments:

- I. *Gagandeep Singh Versus State of Punjab and Others*, (2019) 11 SCC 771
- II. *East Coast Railway and Another Versus Mahadev Appa Rao and Others*, (2010) 7 SCC 678
- III. *Dinesh Kumar Kashyap and Others Versus South East Central Railway and Others*, (2019) 12 SCC 798

5. Per contra, learned counsel appearing for the respondent no.1/University justified the judgment passed by the learned Single Judge.

6. Having heard learned counsel for the parties and having perused the record, this Court notes that the claim of the appellant to seek appointment to the post of STA, Computers, relates to advertisement dated 9th December, 2014 and 13th December, 2014. The Resolution of the EC of the University of Delhi numbered as 236 dated 2nd March, 1994 clearly stipulates that the validity of an advertisement for appointments in the University shall be for eighteen (18) months. The said Resolution of the EC reads as under:



“University of Delhi

E.C. Reso.No.236
Dated :- 02-03-1994

236. The Council resolved, as per suggestion in the monograph (Chapter IV, Para 14 & 17):-

- (i) The constitution of the Selection Committee for recommending appointment to the post of Research Associate be as under:-
 - a. The dean of the Faculty Concerned (Chairperson)
 - b. The Head of the Department Concerned
 - c. A nominee of the Executive Council
 - d. Two experts to be nominated by the Vice-Chancellor
- (ii) The period of Validity of advertisement for appointments be extended from 15 months to 18 months (Chapter IV, Para 10)”

7. The position that the aforesaid EC Resolution No. 236 dated 2nd March, 1994 relates to Teaching as well as Non-Teaching cadre has clearly been laid down by the University in its order dated 23rd July, 2018, which reads as under:

“XXX XXX XXX

IV. The matter has been reconsidered and it has been noted that:

- a) The Executive Council Resolution No. 236 dated 02.03.1994 clearly states the period of validity of advertisement for appointment is 18 months, hence question to re-consider the decision pass by E.C. which is mutatis mutandis applicable to all the Teaching and Non-Teaching cadre does not arise having policy implications.
- b) The EC Resolution No. 628 dated 17.03.1983, No. 656 dated 15.02.1985, No. 5(1) dated 20.05.1989 and No. 140 dated 10.02.2004 speaks about the weeding rules regarding retention/preservation/old records.

V. In view of the above, it is to state that the validity of an advertisement is 18 month which is made applicable for Direct Recruitment of both Teaching and Non-Teaching staff in the University.

XXX XXX XXX”



8. Perusal of the aforesaid communication demonstrates that it is the clear stand of the respondent no.1/University that the decision of the EC of the University regarding validity of the advertisements is *mutatis mutandis* applicable to the entire Teaching as well as Non-Teaching cadre.

9. Further, this Court notes that in its counter affidavit before the learned Single Judge, University of Delhi has stated in clear terms that validity of advertisements for all posts, Teaching or Non-Teaching, is eighteen (18) months. Thus, it has been stated by the respondent no. 1/University as follows:

“XXX XXX XXX

*4. That, without prejudice, it is submitted that para (ii) of EC Resolution No. 236 dated 02.03.1994 categorically states that the period of validity of advertisement for appointments be extended from 15 months to 18 months. It is applicable to both teaching and non-teaching posts because the word 'advertisement' will be applicable to both. No distinction was made therein between teaching and non-teaching posts. This Resolution is being misconstrued by the Petitioner by confusing and conflating paras (i) and (ii) which are, in fact, distinct and deal with different and different subjects. Para (i) is related only to the selection committee for a research associate and it has no connection whatsoever with regard to validity or otherwise of an advertisement for a teaching or non-teaching post. Further, para (ii) is applicable to the validity of advertisements for all posts - teaching or non-teaching posts. It is evident that the said para (ii) refers to appointments in general and has no correlation with para (i) whatsoever. Words cannot be imported into a resolution so as to completely alter the interpretation or intention of the Executive Council before passing the said resolution. True Typed Copy of Resolution No. 236 dated 2.3.1994 passed by the Executive Council of the Delhi University annexed herewith as **Annexure R1/1**.*

XXX XXX XXX”

10. The facts on record show that since the recruitment process pursuant to the advertisement issued in December, 2014 was not complete, the respondent no.2/college vide its letter dated 16th May, 2016 specifically



sought approval for extension of the same. However, by its letter dated 23rd June, 2016, the respondent no. 1/ University categorically conveyed that the recruitment process cannot go beyond eighteen (18) months. The letter dated 23rd June, 2016 issued by the University of Delhi reads as under:

***“University of Delhi
College Branch-III
Room No.215, II Floor
New Administrative Block, Delhi-110007
Ph: 27667725/1162***

*No. CS-III/149 /MLN(E)-SDC/2016/Min./1012
Delhi-07. The 23rd June, 2016*

*The Offg. Principal,
Motilal Nehru College (Evening),
(University Of Delhi)
Benito Juarez Road,
New Delhi- 110021.*

Sub: Regarding interview for the posts of Non-Teaching staff.

Sir,

Please refer to your letter No. MLN/EVE/2016-17/151 dated 16/19.5.2016 on the subject mentioned above.

In this connection, I am directed to inform you that the recruitment process cannot go beyond 18 months

*Yours faithfully,
Assistant Registrar (college)”*

(Emphasis Supplied)

11. Therefore, there is no doubt that the validity of the advertisement for recruitment to the post of STA, Computers, which is a Non-Teaching post, to which the appellant had applied, was clearly only for a period of eighteen (18) months and not beyond that. Therefore, the process of selection for the said post which was advertised in December, 2014, evidently lapsed in July, 2016. Therefore, re-advertising the said Non-Teaching post by way of notification dated 30th December, 2016, cannot be faulted with. Since the



selection process for the post of STA, Computers pursuant to the advertisement in December, 2014 never got completed and no final list of selected candidates was ever released, there is no vested right that got accrued in favour of the appellant.

12. This Court upholds the finding of the learned Single Judge wherein it has been held as follows:

“XXX XXX XXX

35. The petitioner has also sought appointment by way of the instant petition, however, the position to this effect stands settled and is no more res integra that appointment/recruitment is not a matter of right. There is no absolute right that exists in favour of the petitioner for his appointment if he has not been able to show that there is any procedural irregularity which is apparent on the face of the record or is in gross violation of the settled principles of law. Therefore, there is nothing in this regard that can be granted in the favour of the petitioner.

XXX XXX XXX”

13. It is also to be noted that after the re-advertisement of the same post i.e. STA, Computers, the appellant had participated in the recruitment process. Therefore, the appellant cannot be allowed to challenge the said recruitment process after re-advertisement, when he himself participated in the same.

14. The judgments relied on behalf of the appellant do not apply to the facts and circumstances of the present case, as there was no appointment in favour of the appellant, since the recruitment process in question never got completed. This Court has already noted the justifiability of the cancellation of the earlier recruitment process and initiation of a fresh recruitment process.

15. At this stage, this Court observes that in case of Non-Teaching posts, the validity of advertisement could also be less than eighteen (18) months, as



the process of recruitment for Non-Teaching posts would involve less complexity. However, such a decision is within the domain of the competent Authority of the University. According to us, the time period for completion of recruitment process is salutary in nature and the same ought to be completed within a time bound manner. Otherwise, the recruitment process may take years to complete, which will be prejudicial to public interest.

16. Accordingly, the present appeal is found without any merits. The same is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 1, 2023
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