



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

% **Date of order : 23rd August, 2023**

+ **W.P.(C) 9072/2018 and CM APPL. No. 34936/2018**

SH. JAMIL MALIK Petitioner

Through: **Mr.Nishant Prateek, Advocate**

versus

**MOTI LAL NEHRU COLLEGE (EVENING) UNIVERSITY OF
DELHI AND ANR** Respondents

Through: **Mr.Hardik Rupal, Advocate for
University of Delhi.**

**Mr.Santosh Kumar and Mr.Kushagra
Aman, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition seeks the following reliefs:

“(i) issue a writ of Mandamus or any other appropriate writ/order/directions/command for setting aside the Impugned order dated 23.07.2018 and direct the respondents to give appointment to the petitioner.;

(ii) Direct the respondents to reserve a vacant seat of the Senior Assistant (OH) for the petitioner in the department till the final disposal of the present Writ;

(iii) Pass such other and further order/directions/commands as this Hon'ble Court in the



facts and circumstances of the case may deem fit and proper.”

2. The course of events that have led to the filing of the instant petition are discussed hereafter:

a. The petitioner participated in the recruitment/examination process initiated for the post of Senior Assistant (hereinafter “SA” or “the subject post”) at the respondent no.1, Motilal Nehru College in pursuance of the advertisement dated 9th December 2014, and 13th December 2014, issued in the newspaper ‘Hindustan Times’ and ‘Employment News’ respectively. The said examination was held on 20th March 2016, and the results thereto were declared thereafter.

b. The petitioner then preferred an application under the Right to Information Act, 2005 (hereinafter “RTI”), making his queries regarding the results and his selection thereto. In response to the RTI application, he was informed that the respondent no. 1 had notified vide Notification dated 30th December 2016, that as per the University rules for recruitment process, the advertisement and recruitment process thereto cannot go beyond a period of 18 months.

c. On 16th May 2016, the respondent no. 1 made communication bearing REF. No. MLN/EVE/2016-17/151, to respondent no. 2, informing them that the validity of the advertisement inviting applications dated 9th December 2014, would remain for 18 months only, and would lapse in July 2016. The respondent no. 1 also



requested to convey a special approval of the respondent no. 1 since, the validity of the appointment may continue after the expiry of period of 18 months.

d. The respondent no. 2 replied to the said letter on 23rd June 2016, and rejected the request made by the respondent no. 1 for extension of time to complete the selection procedure, and replied to its above mentioned letter stating that the recruitment proceedings cannot be exceeded beyond 18 months. The selection process for recruitment with the respondent no. 2 was, thus, required to be completed by July 2016.

e. Thereafter, on 30th December 2016, the respondent no. 1 issued Notification bearing No. REF.NO.MLN/EVE/2016-17, dated 30th December 2016, re-advertising the non-teaching posts on the ground that 18 months had lapsed since the first advertisement dated 9th December 2014 and 13th December 2014, issued in Hindustan Times and Employment News respectively.

f. On 23rd May 2017, in response to the petitioner's RTI, he was informed that the college had notified notification dated 30th December 2016, on its website.

g. Aggrieved by the said Notification, the petitioner approached this Court by way of filing Writ Petition bearing W.P. (C) No. 8239/2017, seeking setting aside of the said Notification. The said



writ petition stood disposed of *vide* order dated 3rd April 2018, with liberty to the petitioner to file a concise representation before the respondent no. 2 herein, and with directions to the competent authority to pass a speaking order.

h. The petitioner, in pursuance to the directions passed by the Coordinate Bench of this Court *vide* order dated 3rd April 2018, made a representation to the respondent no. 2 on 12th April 2018, seeking reconsideration of the order dated 23rd June 2016, on the ground that the decision of making the advertisement valid only for 18 months does not apply to non-teaching posts and has in ,fact, been made applicable to non teaching posts by the respondents.

i. On the said representation, the respondent no. 1 passed the order bearing No. CS-SDC/112/2018/16/MNC(Eve.)/36, dated 23rd July 2018, thereby rejecting the representation of the petitioner. The petitioner being aggrieved by the said order is now before this Court challenging the order dated 23rd July 2018, as well as seeking appointment at the subject post.

3. The learned counsel appearing on behalf of the petitioner submitted that the order passed by the respondents on the representation of the petitioner is erroneous and is not in accordance with the directions passed by this Court.

4. It is submitted that upon disposal of W.P. (C) No. 8239/2017, specific



directions were given to the respondents and their competent authority to pass a detailed and speaking order, however, the impugned order does not lay out any reasons or details with regard to the representation of the petitioner and remains to be cryptic.

5. It is submitted that the petitioner had qualified for the post of SA by passing the written examination which was conducted on 20th March 2016. Thereafter, the respondent no. 2 decided that the advertisement in question and the process of appointment initiated therefrom would not remain in operation beyond 18 months from the date of its issuance. The respondent, however, failed to explain as to how the rule regarding the period of 18 months came into existence and how it was applicable to the case of the petitioner.

6. It is further submitted that the respondent no. 2 has not been able to show from where they have derived the rule of 18 months' validity of an advertisement applicable to non-teaching posts. The document which the respondent no. 2 has referred to, i.e., E.C. Resolution No. 236, dated 2nd March 1994, pertains to appointment of research associate, i.e., a teaching post and hence, para (ii) of the said Resolution is not applicable to the petitioner herein who seeks to be appointed at a non-teaching post.

7. It is also submitted that the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, issued an Office Memorandum dated 29th December 2015, bearing No. 39020/01/2013-Esst(B)-Part, which states that from 1st January 2016,



there will be no recruitment with interview at the junior level posts in Government of India, Ministries/ Departments/ attached Office/ Subordinate Office/ Autonomous Bodies/Public Sector Undertakings. All the advertisement for future vacancies will be without interview as part of the recruitment process. The respondent no. 1 did not give this information in time and is solely responsible for the delayed information, which was received by the respondent no. 2 on 2nd December 2015. However, it is the petitioner who is suffering due to the delay caused on the part of the respondents.

8. It is further submitted that respondent no. 2 has failed to give any explanation as to how the University Non-Teaching Employees (Terms and Conditions of Services) Rules, 2013 (Under Ordinance XXII-D) does not apply on the appointment of the petitioner. They have also failed to explain if the said Rules gave permission to the Executive Council of the University of Delhi to grant relaxation of any provision of the recruitment rules, then how it is not maintainable in the present case.

9. It is submitted on behalf of the petitioner that in the intervening period between passing of the order by the Coordinate Bench of this Court dated 3rd April 2018, in W.P (C) No. 8239/2017, and deciding of the representation by the respondents, the petitioner also preferred a contempt petition bearing Cont. Cas. No. 535/2018. It is submitted that only after an order was passed in the contempt case, the respondents passed the impugned order rejecting the representation of the petitioner without any reasons or explanations.



10. The learned counsel for the petitioner submitted that the impugned order has been passed without hearing the petitioner and hence, against the principles of natural justice. Further, the impugned order does not state any ground or reason for rejection of the representation of the petitioner.

11. It submitted that for the reasons and objections raised against impugned order, the same may be set aside and a seat may be reserved for the petitioner for the post of SA, on which he may be appointed.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition and submitted that the instant petition is not maintainable as the petitioner has failed to show that there has been any violation of his fundamental or statutory right. It is submitted that the recruitment process underwent changes in the *interregnum* and hence, the selection process for the post of SA never got completed, and that no final list of selected candidates was ever released. Therefore, there is no vested right in favour of the petitioner which makes him entitled to any relief by way of this petition.

13. It is also submitted that the present petition is barred by the provisions of *res judicata* /constructive *res judicata*, and /or waiver, because the factum of applicability of expiry of the advertisement beyond 18 months was not under challenge in the petition filed in the previous round by the petitioner and thus, he is not entitled to raise these grounds in the present petition.



14. The learned counsel also submitted that part (ii) of the Resolution dated 2nd March 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 apply to both. No distinction was made therein between teaching and non-teaching posts. The said para (ii) refers to appointments in general and there is no co-relation with para (i) whatsoever. It is submitted that the words used cannot be imported into a resolution so as to completely alter the interpretation or the intention of the Executive Council for passing the resolution. Moreover, the order dated 28th July 2018, also noted that EC Resolution No. 236, dated 2nd March 1994, is applicable *mutatis mutandis* to all the teaching and non-teaching Cadre and no question to reconsider the same arises as it has policy implication.

15. It is submitted that the petitioner has sought clarification as to the root of the 18 months’ validity of the advertisement, however, in this petition, he, himself, referred Rules 43-H and 82 of the University Non-Teaching Employees (Terms and Conditions of Services) Rules, 2013 (Under Ordinance XXII-D), which give the Executive Council the power to relax any rule and extend the time period under any rule, respectively.

16. The learned counsel submitted that this Court in W.P. (C) 8239/2017, had directed the petitioner to file a representation for re-consideration of the order dated 23rd June 2016, as the University Rules permit the Executive Council to grant relaxation of any provision of the recruitment rules and had



also asked the respondent no. 2 to clarify whether the EC Resolution would be applicable to non-teaching posts. The issues have been addressed in the order dated 23rd July 2018, hence, the grievance of the petitioner has already been addressed.

17. The learned counsel for the respondents also strongly contended that after re-advertisement of the same post, once, the petitioner had again participated in the subsequent recruitment, he is barred by estoppel to challenge the same. Therefore, the contentions raised on behalf of the petitioner are devoid of merit and the petition is liable to be dismissed.

18. Heard the learned counsel for the parties and perused the record.

19. The matter in dispute before this Court, as raised on behalf of the petitioner pertains to his recruitment with the respondent. He raises the grounds that, *firstly*, the respondent has failed to show that the advertisement which was originally issued was to be in operation only for 18 months, *secondly*, the information that interviews will not be held for junior level posts was delayed and, *thirdly*, the petitioner was entitled to be recruited to the vacant post.

20. On the other hand, it has been argued on behalf of the respondent that, *firstly*, the communication regarding the validity of the advertisement inviting applications was rightly held to be 18 months on the basis of several Executive Council Resolutions, *secondly*, the petitioner participated in the recruitment process initiated after the advertisement was re-issued upon the



lapse of 18 months, i.e. the stipulated time period, and hence, he is now barred by estoppel, and *thirdly*, that the concerned authority, in pursuance of the directions of the Coordinate Bench of this Court has already passed an order addressing his concerns.

21. The petitioner had participated in the recruitment process, in pursuance of the advertisement dated 9th December 2014 and 13th December 2014 which called for applications pertaining to the non-teaching posts. The petitioner applied and had also participated in the said process. However, before the finality or even declaration of the final selection list, the entire process of selection and recruitment was changed. The petitioner has relied upon communications by which the process of recruitment was changed and it was adopted that no interview shall be held for junior posts, and the period of validity of the advertisement issued by the respondent College would operate only upto 18 months from the date of its issuance. Accordingly, the advertisement which was issued on 9th December 2014 and 13th December 2014, was valid only till July 2016 and not beyond that.

22. In accordance with the said rule, the respondent re-issued an advertisement inviting applications for non-teaching posts. Undisputedly, the petitioner had participated in the said recruitment process. In the interregnum, the petitioner filed a writ petition seeking setting aside of the Notification dated 30th December 2016, which invited applications for recruitment of non-teaching staff including the post of SA and also against the order dated 23rd June 2016, addressed to the Principal of respondent No.



2 College from the respondent no. 2, which stated that the recruitment process cannot go beyond 18 months.

23. In the aforesaid Writ Petition bearing W.P. (C) No. 8239/2017, the Coordinate Bench of this Court, while considering the argument that the order dated 23rd June 2016 was cryptic, passed the following order on 3rd April 2018:

“3. It is matter of record that after the counter was filed by the respondents, petitioner-Vikas Sharma has placed on record additional documents in November, 2017. Reliance has been placed upon University Non-Teaching Employees (Terms and Conditions of Service) Rules, 2013 and minutes of the Executive Council meetings to make out a case that the bar of 18 months would not apply where appointments are made in respect of non-teaching staff. Since authenticity of the additional documents so filed cannot be determined in writ proceedings, therefore, it is deemed appropriate to permit petitioners to make a concise and effective representation seeking reconsideration of the cryptic order of 23rd June, 2016 of respondent-University as the University Non-Teaching Employees (Terms and Conditions of Service) Rules, 2013 permit the Executive Council of the University of Delhi to grant relaxation of any provision of the recruitment rules. The respondent-University is also required to clarify as to whether 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 as amended on 14th November, 2013 would apply to non-teaching posts as the said resolution appears to be in the context of teaching posts.

4. In the peculiar circumstances of these cases, the writ



petitions and the applications are disposed of with permission to petitioners to file concise representations within a week to respondent-University. Upon receipt of such representations, the Competent Authority shall pass a speaking order thereon, within a period of six weeks and the fate of the representations be made known to petitioners within a week thereafter, so that petitioners may avail of the remedy as available in law, if need be. Needless to say, if process for filling up the posts in question is not continuing, then it be not proceeded with, till fate of the Representations is conveyed to petitioners.”

24. The Coordinate Bench while disposing of the said petition directed the petitioner to make a representation before the respondent University and accordingly, the University was also given directions to pass a speaking order on the said representation. In accordance with the same, the petitioner filed his representation dated 12th April 2018 agitating the grounds which have also been argued before this Court and seeking as to which provision provides for the rule of 18 months and whether such rule applies to non-teaching posts.

25. On the representations made by the petitioner, the respondent passed the order/communication bearing No. CS-SDC/112/2018/16/MNC(Eve.)/36 dated 23rd July 2018, which has been impugned by the petitioner herein. The relevant portion of the order is reproduced hereunder:

“II. In this regard, it is stated that the Principal, Moti Lai Nehru College (Evening) vide letter No. MLN/Eve./2016-17/151 dated 16/19.05.2016 had sought the clarification/advise regarding validity of the



advertisement issued in the month of December, 2014 for filling up the following position:

1	<i>Sr. Technical Assistant (Computer)</i>	<i>One</i>
2	<i>Senior Assistant</i>	<i>One</i>
3	<i>Semi Professional Assistant</i>	<i>One</i>
4	<i>Assistant</i>	<i>One</i>
5	<i>Junor Assistant</i>	<i>Four</i>
6	<i>Computer Lab. Attendant (MTS Comp.)</i>	<i>One</i>
7	<i>Library Attendant</i>	<i>One</i>

The University while examining the matter had noted that:

- The College advertised the non-teaching posts in the month of December, 2014 and the last date of receipt of application was 6.1.2015*
- The College has already initiated the process of recruitment of filling up the posts.*
- The period of validity of the advertisement for appointments was July, 2016.*
- The College had sought the approval of the University to the College so that the validity of the advertisement for appointments may continue even after the expiry of required period of 18 months.*
- In observance, the University vide its letter No. CS-III/149/MLN(E)-SDC/2016/Min./1012 dated 23/27.06.2016 in response to college letter dated 16/19.05.2016 conveyed that the recruitment process cannot go beyond 18 months.*

III. And whereas in response to above, the University



of Delhi has received the representations from Sh. Vikas Sharma (for the post of Senior Technical Assistant (Computer)), Sh. Jamil Malik (for the post of Senior Assistant) and Sh. Shyam (for the post of Computer Lab. Attendant) putting forward therein cases in pursuance to the orders of the Hon'ble High Court dated 03.04.2018 referred above inter-alia requesting there as under:

- To re-consider the cryptic order dated 23.06.2016 issued by the University as the University Non-Teaching employees (Terms and Conditions of service) Rules, 2013 permit the Executive Council of the University of Delhi to grant relaxation of any provision to the recruitment rules.*
- To clarify as to whether 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 as amended on 14.11.2013 would apply to non-teaching posts as the said resolution appears to be in context of teaching posts.*
- To pass a speaking order thereon, within a period of six weeks thereafter, so that petitioners may avail of the remedy as available in law, if need be. Needless to say, if process for filling up the posts in question is not continuing, then it be not proceeded with, till fate of the Representations is conveyed to petitioners.*
- To clarify if rule of 18 months applied to the non-teaching post, if so under which provision.*

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.

This issues with the approval of the Competent Authority.”

26. The respondent while passing the said order took note of the EC Resolution No. 236 dated 2nd March 1994 and stated that the decision of the Executive Council is *mutatis mutandis* applicable to all the teaching and non-teaching cadre.

27. The said EC Resolution No. 236 dated 2nd March 1994 reads as under:

“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)''

28. The notification stated about a Selection Committee and that the validity of the appointments, as per Chapter IV Para 10, shall stand extended from 15 months to 18 months. In the case at hand, the respondent no. 1 College had resolved that the posts in question shall also be filled up by the Selection Committee on permanent basis, as was resolved in the aforesaid Resolution.

29. At this juncture, it is extremely pertinent to note that the EC Resolution No. 236 dated 2nd March 1994 and the contents thereof were never under challenge before any authority or Court of law. The validity of advertisement for appointments being extended to 18 months from 15 months by way of the said Resolution was also never challenged by any concerned party ever. Therefore, the same attained finality and continued to operate for the appointments made subsequently by the respondents.

30. In this regard, the respondent had acted in accordance with the directions passed by the Coordinate Bench of this Court and clarified the position of 18 months arising out of the EC Resolution No. 236 and also clarified that the resolutions so passed by the Executive Council extended to both teaching and non-teaching staff. The order passed by the competent



authority considered all the relevant facts and circumstances, the position as stated by the Coordinate Bench and only then passed the order which has been impugned by the petitioner herein.

31. Moreover, the applicability of 18 months, arising from the EC Resolution No. 236, was confirmed by the University and the College when the advertisements for the subject posts were issued and when they subsequently lapsed. Therefore, the validity of the advertisement being 18 months commenced vide the Resolution dated 2nd March 1994 and was confirmed by way of the decision/communication by the University, on 23rd June 2016, which in fact has also not been set aside till date.

32. Therefore, there remains no doubt to the effect that the validity of the advertisement stood for 18 months which duly lapsed in July 2016. The second part of the challenge pertains to whether the petitioner is entitled to be recruited against the posts notified and advertised.

33. The position in this regard stands settled that recruitment or appointment is not a matter of right. The petitioner participated in the recruitment process but his appointment was not made in the terms as sought. Thereafter, upon the re-issuance of the advertisement for the subject post, the petitioner participated in the same. It is not the case of the petitioner that the participation in the subsequent process of appointment was under protest. Hence, the arguments now raised on behalf of the petitioner seem counter-productive.



34. Objections have also been raised pertaining to the inaction on the part of the Executive Council. There is no doubt that the Executive Council has the power to relax the considerations for appointment, however, the same is a power and not an obligation. There is ample discretionary power with the Executive Council to relax the applicability of the rule for appointment when the case is fit for such relaxation and are supported by facts and circumstances. The directions passed by the Coordinate Bench of this Court for consideration of the case of the petitioner for relaxation of the relevant rules was indeed considered by the concerned authority, however, there can be no compulsion placed upon the Executive Council to pass an order in favour of the aggrieved party.

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.

36. In view of the aforesaid facts, circumstances, submissions and contentions as well as the position of law, this Court is of the view that there is no relief which may be granted in the favour of the petitioner. The concerned and competent authority has passed a reasoned order while



rejecting the application upon considering the entirety of the position settled by way of various communications and notifications as well as resolutions. The validity of the 18-month period stood absolute and the decision to proceed in accordance with the appointment rules and procedure settled by the concerned authorities cannot be held to be illegal or irregular.

37. Accordingly, considering the observations made in the foregoing paragraphs, this Court is of the view that there is no irregularity or illegality in the impugned communication which invites the interference of this Court. Moreover, appointment cannot be granted to the petitioner as a matter of right. Hence, this petition being devoid of merit is liable to be dismissed.

38. This instant petition, hence, stands dismissed, along with pending application, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 23, 2023

SV/MS

Click here to check corrigendum, if any