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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29th March, 2023

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W.P.(C) 10785/2018 & CM APPL. 41638/2021

RANVEER SINGH CHAUHAN

..... Petitioner

Through: Mr. Anand Nandan, Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for R-1 to R-3

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. The present writ petition has been filed seeking the following reliefs :-

"I. Pass an order directing the respondents to comply/implement with the orders dated 23/03/2015 of the Court of Commissioner For Persons with Disabilities and in effect promote the petitioner from the post of Staff Nurse to Senior Nursing Officer.

II. Pass an order directing respondents to ensure maintenance of one hundred point reservation roster register for promotion of group C since 1996, compute the backlog vacancies and then fill them up through special DPC in the time bound manner.

III. Pass an order directing the respondents to expedite the matter and hold a Departmental Promotion Committee for taking the decision upon the representation of the Petitioner."

2. When the matter was listed for admission on 09.10.2018, the Court had passed the following order:-

".... Learned counsel for the petitioner relies on an order dated 23rd March, 2015, passed by the Court of the Commissioner for Persons with Disabilities, annexed as annexure P-2 to the writ petition. The operative portion of the said order reads thus :

"....In the facts and circumstances of the case the department of Health and Family Welfare is directed to maintain one hundred point Reservation Roster Register for promotion in Group C since 1996, compute the backlog, vacancies and then fill them up through special DPC in a time bound manner. An Action Taken Report shall be filed by the Secretary Health and Family Welfare Department Government of NCT of Delhi within three months and in any case by 1st July, 2015.

Ordered accordingly."

*Prayers (i) and (ii) in the Writ Petition are clearly amenable to the jurisdiction of the Tribunal and cannot, therefore, be ventilated before this court at the first instance, in view of para 93 of the judgment of the Supreme Court in **L. Chandra Kumar v. UOI, (1997) 3 SCC 261.***

At this stage, Mr. Kamlesh Kumar Mishra restricts his prayer only to issuance of a direction to the respondents to enforce the operative portion of the order of the Commissioner For Persons with Disabilities, which has already been extracted hereinabove.

Issue notice on the writ petition limited, therefore, to prayer (i) to the respondents to file their response within a period of four weeks with advance copy to the petitioner who may file rejoinder thereto if any within four weeks thereof.

List before the Registrar (Writ) for completion of pleadings on 19th December, 2018."

3. Relevance of referring to the above order is that the Petitioner had given up claims with respect to prayers I and II in the writ petition and had restricted the reliefs to issuance of directions to Respondents to enforce the operative portion of the order of the Commissioner for Persons with Disabilities. As per the operative part of the order of the Commissioner, directions were issued to the Department of Health and Family Welfare of Government of NCT of Delhi to maintain a 100 point reservation roster for promotion in Group 'C' from 1996, compute the backlog vacancies and fill them through a special DPC, in a time bound manner.

4. An application being C.M. No. 35433/2019 was filed by the Department of Health and Family Welfare praying that the present petition has become infructuous since the Department is maintaining 100 point reservation roster in Group 'C'. This application was treated as counter affidavit on behalf of the Respondents. Thereafter, an

application being C.M. No. 41638/2021 was filed by the Petitioner seeking promotion to the post of Assistant Nursing Superintendent from the post of Senior Nursing Officer and reply was filed by the Respondents to the said application.

5. I have considered the pleadings on record and heard the counsels for the parties.

6. When C.M. No. 35433/2019 was filed by the Respondents it was the categorical stand of the Department of Health and Family Welfare that it is maintaining a 100 point reservation roster of Group 'C' employees and pursuant thereto, steps are being taken to constitute special DPC to fill up 18 posts of PH category from Staff Nurse to Nursing Sister which process shall be completed by 30.09.2019 for all PH category employees including the Petitioner.

7. In the reply filed on 15.03.2022, it is further stated that the orders of Commissioner for Persons with Disabilities dated 23.03.2015 and 21.04.2017 have been implemented by order dated 03.01.2020 and 18 PH category Staff Nurses have been promoted to the post of Senior Nursing Officer. Copy of the promotion order has been appended to the reply. It is further stated that the direction of granting 3% reservation to PH categories taking into account all backlog vacancies since 1996 stands duly complied with. The reply further clarifies that as per DoPT O.M. dated 05.01.2006, zone of consideration for general category is 'twice the number of vacancies + four' and in case of SC/ST, it is 'five times the number of vacancies'. There are 141 vacancies for the post of Assistant Nursing Superintendent and accordingly, ACR/IC/VC had been called upto seniority number 1005 for UR and 1466 for reserved category. There is no provision for a separate consideration zone for PH candidates, as PH is a horizontal reservation and need to be adjusted against the

vacancies of UR/SC/ST as per roster. Since the post of Assistant Nursing Superintendent is a Group 'B' post and as per DoPT O.M. 01.08.2011, all persons with disabilities in feeder cadre have to be considered for promotion by applying the same criteria.

8. Learned counsel for the Petitioner submits that the post of Assistant Nursing Superintendent is a Group 'C' post and separate steps ought to have been taken with respect to promotion of the Petitioner from the post of Senior Nursing Officer and therefore, the order of which enforcement is sought in the present petition has not been complied with in letter and spirit.

9. Ms. Ahlawat draws the attention of the Court to para 5 of the reply and points out that the zone of consideration has to be fixed as per DoPT O.M. dated 05.01.2006 and also states that Petitioner is incorrect in stating that post of Assistant Nursing Superintendent is a Group 'C' post. She submits that the post is a Group 'B' post and no separate methodology can be followed for promoting the Petitioner as the Department is bound to follow the DoPT O.M. dated 01.08.2011 which is annexed to the reply and the laid down procedure has been scrupulously followed. Insofar as the eligibility of the Petitioner is concerned, this Court finds that Respondents have stated in paras 6 and 7 of the reply that Petitioner was promoted to the post of Senior Nursing Officer on 03.01.2020 and since he had not completed 03 years service on the said post, he was at that stage not eligible for promotion to the post of Assistant Nursing Superintendent.

10. In view of the stand of the Respondents, in my view, the grievances ventilated by the Petitioner stand redressed and no further orders are required to be passed. Needless to state as and when the Petitioner attains eligibility, he shall be considered in accordance with law.

11. Writ petition along with pending application is disposed of in the aforesaid terms.

JYOTI SINGH, J

MARCH 29, 2023/pkv/shivam

