



2024:DHC:10178



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

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Date of Decision: 23rd December, 2024

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+ **W.P.(C) 2470/2019 and CM APPL. 11493/2019**

ROSHAN ARA & ORS.

.....Petitioners

Through: Mr. M.R. Shamshad, Senior Advocate
with Ms. Mayuri Raghuvanshi, Mr. Syed Hamza
G. and Mr. Wasey Khan, Advocates.

versus

JAMIA MILLIA ISLAMIA & ANR.

.....Respondents

Through: Mr. K.K. Mishra, ASC with
Mr. Deepak Panwar and Mr. Pranav Dwivedi,
Advocates for Respondent No.1.

Mr. Abhik Chimni, Mr. Maarooof, Mr. Gurupal
Singh and Ms. Pranjal Abrol, Advocates for
Respondent No.2.

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+ **W.P.(C) 9489/2019 and CM APPL. 39049/2019 and 39050/2019**

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Respondent No.2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH**



JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. W.P.(C) 2470/2019 is filed by the Petitioners laying a challenge to Office Order dated 19.12.2018 promoting Respondent No. 2 to the post of Assistant Librarian as also for a direction to Respondent No. 1/Jamia Millia Islamia to consider the Petitioners for promotion to the post of Assistant Librarian.
2. W.P.(C) 9489/2019 is filed for setting aside Minutes of Meeting of the Executive Council ('EC') dated 23.03.2011 adopting 100% direct recruitment as a mode for filling up the post of Assistant Librarian as also Advertisement No. 02/2018-19 dated 20.04.2018 and Advertisement No. 01/2019-20 dated 22.05.2019, with a further direction to restore the policy of promotion for the post of Assistant Librarian.
3. Factual score to the extent necessary is that Petitioners were appointed as Semi Professional Assistants in Dr. Zakir Husain Library of Respondent No.1 and worked in that capacity between 1990 and 1997 and were subsequently promoted as Professional Assistants on which post they continued to work till their respective retirements. Respondent No.1 circulated a draft seniority list of non-teaching staff on 30.11.2009 and amongst the Professional Assistants, Petitioner No.1 was placed at serial No. 2, Petitioner No.2 was at serial No.3, Petitioner No.3 was at serial No.5 and Petitioner No.4 was placed at serial No.6 while Respondent No.2 was at seniority position 16.
4. It is averred that Petitioners made representations for promotion to the next post of Assistant Librarian based on their seniority position in the seniority list of Professional Assistants as they were stagnating in the same



Pay Band Rs.9300-34800 with Grade Pay of Rs.4200/-. On 23.03.2011, EC approved the proposal for filling up the post of Assistant Librarian through 100% direct recruitment by an all-India advertisement, interpreting *Clause 4.5 i.e. "Minimum Qualifications for Direct Recruitment to the Posts of University Assistant Librarian/College Librarian, University Deputy Librarian And University Librarian"* of the "*University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the maintenance of Standards in Higher Education) Regulations, 2010*" ('2010 Regulations') to mean that the mode of promotion was dispensed with. On 01.04.2011, the EC confirmed the Minutes of the Meeting dated 23.03.2011.

5. On 28.07.2015, Petitioners again represented for promotion as they had received no promotion in the last 18 years. On 28.11.2016, Petitioners received a reply under Right to Information Act, 2005 that Jawahar Lal Nehru University ('JNU') was promoting Professional Assistants as Assistant Librarians by retaining the promotion mode and had promoted 8 Professional Assistants through Departmental Promotion Committees ('DPCs') convened between January, 2010 to August, 2016. Several representations made thereafter by the Petitioners did not yield any positive response and instead of redressing the grievance, Respondent No.1 issued an Advertisement No. 02/2018-19 dated 20.04.2018 inviting applications *inter alia* for 2 posts of Assistant Librarian. On 19.12.2018, Respondent No. 1 promoted Respondent No. 2 on recommendations of a DPC under the PwD category *albeit* he was junior to the Petitioners.

6. Aggrieved with this, Petitioners filed W.P.(C) 2470/2019 and the Court while issuing notice on 12.03.2019 directed that filling up of the post



of Assistant Librarian shall be subject to the outcome of the writ petition. Respondent No.1 issued another Advertisement No. 01/2019-20 dated 22.05.2019 again inviting application for filling up the same 2 posts of Assistant Librarian, which led to the Petitioners filing an application being CM APPL. 34708/2019 in W.P.(C) 2470/2019 praying that Respondent No.1 should be restrained from filling the advertised posts, which was dismissed vide order dated 02.08.2019, but the Court reiterated that filling up of the posts will be subject to the outcome of the writ petition. In this backdrop, Petitioners filed W.P.(C) 9489/2019 challenging the Minutes of the EC meeting dated 23.03.2011 as well as the advertisements.

7. Learned Senior Counsel appearing on behalf of the Petitioners submits that the Recruitment Rules ('RRs') for the post of Assistant Librarian provide that 50% of the post shall be filled through the mode of promotion from amongst Professional Assistants as per seniority subject to satisfactory record of service and four years experience as Professional Assistants and fulfilment of minimum qualifications as stipulated therein. Petitioners fulfilled the promotion criteria under the RR's and there was no justifiable reason for not considering their case for promotions and due to non-promotion, Petitioners stagnated in one post for over two decades till their retirements.

8. It is argued that claim of the Petitioners has been wrongly rejected by Respondent No. 1 on the ground that as per 2010 Regulations, there was no provision for promotion of Professional Assistant to the post of Assistant Librarian. This is an erroneous reading and interpretation of 2010 Regulations by Respondent No.1 inasmuch as Clause 4.5 of 2010 Regulations only provides minimum qualifications for direct recruitment to



the post of University Assistant Librarian/College Librarian etc. but does not deal with the mode of appointment, which continues to be 50% promotion, as per the University RRs. There is nothing in the 2010 Regulations which even remotely suggests that the mode of appointment to the post of Assistant Librarian has been changed to '100% direct recruitment'. Mode of appointment to the post of Assistant Librarian in the University continues to be governed by its RRs providing for 50% promotion and 50% direct recruitment *albeit* a decision was taken by the EC in its meeting convened on 23.03.2011 for adopting 100% direct recruitment as a mode of appointment to the post of Assistant Librarian, but till date the RRs have not been amended. That promotion continues to be the mode of appointment is also evident from the fact that while Respondent No.1 issued an advertisement on 20.04.2018 for direct recruitment but Respondent No.2 was actually promoted on recommendation of the DPC i.e. through promotion mode.

9. It is urged that promotion of Respondent No. 2 to the post of Assistant Librarian is completely illegal and arbitrary as indisputably he was junior in the seniority list of Professional Assistants to the Petitioners. The reason put forth by Respondent No.1 to promote Respondent No. 2 out of turn is that he was promoted under the PwD category following the mandate of the Rights of Persons with Disabilities Act, 2016 ('2016 Act'), however, this reasoning is wholly flawed as neither in the advertisement nor in the counter affidavit filed before this Court, Respondent No.1 has been able to bring out as to when the roster was prepared and against which roster point reservation was made for PwD category.



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10. Learned ASC for Respondent No.1 submits that Petitioners were promoted to the post of Professional Assistants on recommendation of DPC held on 06.11.1996 and promotions were made effective from 07.11.1996. It is wrong for the Petitioners to contend that they have been stagnating since they were granted second financial upgradation under Modified Assured Career Progression ('MACP') Scheme in the Grade Pay of Rs.4600/- vide Office Order dated 26.07.2012. It is further argued that in the Meeting of the Academic Council dated 10.02.2011 proposal for filling up the post of Assistant Librarian by 100% direct recruitment was approved in light of the UGC letter dated 13.01.2009 in this respect and Majlis (AC) gave its assent to the amendment of the Bye-Laws of Jamia (1st Ordinance Clause). The EC in its meeting dated 23.03.2011 being the highest executive body of Respondent No.1 approved the agenda for 100% direct recruitment and for amendment of the Rules for appointment to the post of Assistant Librarian. In this background, advertisements were issued for direct recruitment and therefore, Petitioners cannot claim promotion to the said post once promotion mode was done away with by a decision of the EC. No recruitment could however take place pursuant to the first advertisement and therefore the second advertisement was issued on 22.05.2019 which was by way of a re-advertisement. However, the process did not move forward as Petitioners filed these writ petitions. In a nutshell, argument is that since promotion was no longer a mode of promotion to the post of Assistant Librarians, no relief can be granted to the Petitioners post the said decision by the EC in 2011.

11. Learned ASC for Respondent No. 1 also argues that there is no legal infirmity in appointment of Respondent No.2 as he was promoted to the post



of Assistant Librarian under PwD category in terms of the judgment of the Supreme Court in *Rajeev Kumar Gupta and Others v. Union of India and Others, (2016) 13 SCC 153*. EC in its meeting dated 27.09.2017 passed Resolution No. 9 for reviewing the reservation policy for PwD candidates as per provisions of 2016 Act and the judgment of the Supreme Court. DoPT sent letters to Respondent No.1 directing the University to consider the cases of PwD candidates in recruitments and promotions and the appointment of Respondent No.2 is in consonance with provisions of 2016 Act and the mandate of law under Section 34 thereof. Though subtly, it is also urged that during the pendency of the writ petitions, Petitioners have retired on superannuation and therefore, the writ petitions have been rendered infructuous.

12. Learned counsel for Respondent No.2 defends the appointment of Respondent No.2 and argues that Petitioners having retired on different dates between 2020 and 2021, both the writ petitions have become infructuous. It is submitted that Respondent No.2 has been promoted in consonance with the provisions of 2016 Act, wherein Section 34 mandates reservation of not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities, of which, one per cent each is to be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent under clauses (d) and (e). Being a public institution, Respondent No. 1 is bound to follow the mandate of law. Moreover, Respondent No. 2 joined Respondent No.1 as Professional Assistant on 04.11.2008 and his first promotion came only on 19.12.2018 after stagnating for nearly a decade and there is no justified reason to challenge his promotion.



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13. Heard learned Senior Counsel for the Petitioners, learned ASC for Respondent No. 1 and learned counsel for Respondent No. 2 and examined their rival contentions.

14. It is not disputed between the parties that Petitioners were promoted as Professional Assistants prior to Respondent No. 2 and in the draft seniority list as on 30.11.2009, they were senior to Respondent No.2. It is equally undisputed that as per the existing RRs for appointment to the post of Assistant Librarian, the mode of appointment was 50% through promotion and 50% by open recruitment and that Petitioners are eligible for promotion as per the said RRs and that these RRs were never amended.

15. Broadly understood, case of the Petitioners is that they fulfilled the eligibility criteria under the RRs and on completion of four years continuous service as Professional Assistants, they were entitled to be considered for promotion to the post of Assistant Librarian but despite multiple representations, DPC was not convened. Respondent No.1, on the other hand, places heavy reliance on 2010 Regulations to contend that mode of appointment was changed to 100% by direct recruitment by UGC and basis the binding Regulations, EC took a decision to adopt the said mode and dispense with the mode of promotion and therefore, Petitioners cannot claim promotion.

16. The first question that arises for consideration in light of the rival stands of the parties is whether promotion is one of the modes of appointment to the post of Assistant Librarian in Respondent No.1 after notification of 2010 Regulations. With the assistance of learned counsels for the parties, I have carefully examined 2010 Regulations, more particularly Clause 4.5 thereof, which is extracted hereunder for ready reference:



“4.5 MINIMUM QUALIFICATIONS FOR DIRECT RECRUITMENT TO THE POSTS OF UNIVESRITY ASSISTANT LIBRARIAN/ COLLEGE LIBRARIAN, UNIVERSITY DEPUTY LIBRARIAN AND UNIVERSITY LIBRARIAN

4.5.3. UNIVERSITY ASSISTANT LIBRARIAN / COLLEGE LIBRARIAN

- i. A Master's Degree in Library Science / Information Science / Documentation Science or an equivalent professional degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) and a consistently good academic record with knowledge of computerization of library.*
- ii. Qualifying in the national level test conducted for the purpose by the UGC or any other agency approved by the UGC.*
- iii. However, candidates, who are, or have been awarded Ph.D. degree in accordance with the “University Grands Commission (Minimum Standards and Procedure for Award of Ph.D. Degree), Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of University Assistant Director of Physical Education/College Director of Physical Education & Sports.”*

17. Plain reading of Clause 4.5 shows that this provision only lays down the minimum qualifications for direct recruitment to various posts including the post of Assistant Librarian. I am unable to read anything in Clause 4.5 which provides that post of Assistant Librarian will be filled 100% through direct recruitment. In fact, this clause does not even deal with the mode of recruitment and therefore, to this extent, contention of Respondent No. 1 is rejected.

18. There is merit in the submission of learned Senior Counsel for the Petitioners that the RRs for the post of Assistant Librarian issued by Respondent No. 1 have not been amended till date and in the absence of any amendment to the RRs, promotion continues to be the mode of appointment to the extent of 50% as per existing RRs. No doubt, EC took a decision in



the meeting held on 23.03.2011 to adopt 100% direct recruitment as a mode of appointment to the post of Assistant Librarian but there is nothing in the counter affidavit which even remotely suggests that post the decision, the RRs were amended. In fact, in the meeting itself, it was resolved that the RRs should be amended in accordance with the decision. Even during the course of hearing, Court has put a pointed query to counsel for Respondent No.1 if the RRs were amended and if so, whether the copy has been placed on record, in response to which it is fairly conceded that there has been no amendment to the RRs. Until the RRs are amended by Respondent No.1 to change the mode of appointment to 100% direct recruitment, case of the Petitioners will be governed only by the existing RRs, wherein 50% mode of appointment is admittedly promotion. As rightly placed by learned Senior Counsel for the Petitioners even Respondent No.1 itself recognized that promotion continued to be the mode of appointment and which is why despite issuance of advertisements for direct recruitment, Respondent No.2 was promoted on recommendation of a DPC, which is clearly evident from his promotion order dated 19.12.2018.

19. It is pertinent to note that in ***Rambir v. Ministry of Human Resource Development, Department of Higher Education and Others, 2024 SCC OnLine Del 8644***, a similar issue had arisen *albeit* the Respondent University was JNU and during the course of hearing, it was brought out by the Petitioners that from the response under RTI Act, it was revealed that UGC had taken a stand that it had not notified any uniform service conditions for non-teaching staff of central universities and the universities could frame their own cadre recruitment rules and lay down requisite qualifications, promotion policies etc. It was also brought out that several



universities such as Jamia Hamdard, Central University of Karnataka etc. continue to fill up the post of Assistant Librarian by promotion and direct recruitment. In fact, in these petitions also Petitioners have brought forth that JNU has filled up 8 posts of Assistant Librarian through promotion between the years January, 2010 to August, 2016. Therefore, the emphasis of Respondent No.1 on 2010 Regulations of UGC as the sole ground for not considering the Petitioners for promotion to the post of Assistant Librarians is wholly misconceived.

20. As for the argument of Respondent No. 1 that during the pendency of the writ petitions, Petitioners have retired and the petitions are rendered infructuous is concerned, the same only merits rejection. There is no dispute that Petitioner No.1 has retired on 31.03.2020; Petitioner No. 2 on 28.02.2021; Petitioner No. 3 on 30.06.2022; and Petitioner No. 4 on 28.02.2021 but this cannot be a reason to deny them consideration for promotion and in this context, I may refer to DoPT O.M. dated 12.10.1998, wherein it is stipulated that there is no bar in considering retired employees while preparing year-wise panels, who were within the zone of consideration in the relevant years. In fact, it is also stated in the O.M. that it would not be in order if eligible employees, who were within the zone of consideration for the relevant years but not actually in service when DPC was held, are not considered and consequently their juniors are considered, who would not have been in the zone of consideration if the DPC(s) were held in time. In this context, learned Senior Counsel for the Petitioners has also rightly relied on the judgment of this Court in *V.P. Kathuria and Others v. Cement Corporation of India and Another*, 2024 SCC OnLine Del 7799 wherein, relying on this very O.M. and the judgment of the Division Bench of this



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Court in *Union of India and Another v. Bishan Dass, 2023 SCC OnLine Del 5914*, the writ petition was allowed directing consideration of the Petitioners therein for promotions despite their retirements with a caveat that if recommended for promotions, the same shall be given on notional basis. Therefore, in my view, there can be no embargo against consideration of the Petitioners on account of their retirements during the pendency of the writ petitions, which if I may note is a normal feature in service jurisprudence.

21. Coming to the last plank of the arguments of the Petitioners. It is contended that Respondent No. 2 was wrongly promoted as he was junior to the Petitioners and there was no justifiable reason to promote him out of turn, by-passing the seniority of the Petitioners. In response, the Respondents contend that Respondent No.2 was promoted under the PwD category as per the mandate of Section 34 of 2016 Act. Pertinently, neither in the counter affidavits nor during the course of hearing, counsels for the said Respondents have referred to any roster prepared on the basis of existing vacancies showing the reservation point for PwD category. It will be pertinent to highlight that it is admitted during the course of hearing that no such roster was prepared. The mandate of Section 34 of 2016 Act is beyond any dispute. However, Respondent No.1 was first required to carry out an exercise of preparing a roster as per the norms for horizontal reservations prescribed by DoPT, from time to time, to ascertain the PwD category roster point before convening the DPC based on the existing vacancies, which was not done and to this extent there is merit in the grievance of the Petitioners that Respondent No.2 could not be promoted out of turn, being junior to them.



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22. Accordingly, both these writ petitions are partially allowed to the aforesaid extent, with a direction to Respondent No.1 to consider the Petitioners for promotions to the post of Assistant Librarians in consonance with the existing RRs. Respondent No.2 has been promoted against one of the vacancies in the reckoning and therefore, before convening the DPC, Respondent No.1 shall prepare a roster in consonance with the DoPT OM's on the subject of preparation of rosters including reservation rosters. Thereafter, DPC shall be convened to consider the Petitioners and Respondent No.2 and further action will be taken based on recommendations of the DPC and existence of vacancies. Needless to state, if Petitioners are recommended for promotions, promotion orders shall be issued granting them promotions on notional basis. Promotion of Respondent No.2 will be subject to the reservation point in the roster and in case of any grievance, he will be at liberty to take recourse to appropriate legal remedies.

23. Writ petitions stand disposed of along with pending applications.

JYOTI SINGH, J

DECEMBER 23, 2024

B.S. Rohella/shivam