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

% Judgment delivered on: 11.01.2024

+ W.P.(C) 10769/2020

SUNIL KUMAR

..... Petitioner

versus

THE PRINCIPAL DISTRICT JUDGE AND SESSIONS
JUDGE HQ

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Tarun Chandio, Advocate

For the Respondents : Mr. Nitesh Kumar Singh and Ms. Laavanya
Kaushik, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

(The proceeding has been conducted through Hybrid Mode)

1. The petitioner challenges the dismissal of rejection of his representation vide the minutes of the meeting dated 06.06.2019 of the selection committee depriving the petitioner from the financial upgradation as Upper Division Clerk (Judicial Assistant) from 26.07.2008 with consequential reliefs emanating therefrom.

2. Mr. Chandio, learned counsel for the petitioner submits that it is undisputed that the petitioner was appointed as Lower Division Clerk on 25.07.2003 and had been rendering continuous services thereafter. He submits that by virtue of the order dated 22.03.2010 in



Writ Petition No. 5686/1998 captioned as ***Shri Jagdish Rana & Ors. Vs. Government of NCT of Delhi & Ors.***, the learned Coordinate Bench of this Court had on similar circumstances, involving similar employees directed that the respondent/GNCTD forthwith sanction the upgradation for post of LDC to UDC in terms of the Office Memorandum dated 01.10.1979 and 20.03.1994 of the staff working in the office of District & Sessions Judge, Delhi and other similar courts. The Court had also directed consequential benefits should also be disbursed.

3. Learned counsel for the petitioner submits that the petitioner had on 01.09.2010 submitted his technical resignation which was accepted and he had joined the services of Central Secretariat Services subsequently. Learned counsel for the petitioner submits that when the order passed by this Court was not implemented, some of the petitioners therein had filed the contempt case (C)1079/2016 whereby the respondent was directed to comply with the said orders within the stipulated period of time. Consequent thereto, according to learned counsel for the petitioner, the respondent in compliance of the order of 22.03.2010 in ***Jagish Rana case (Supra)*** as also the contempt order dated 26.09.2016 passed by this Court had issued a circular dated 16.08.2017 giving a list of almost 1421 employees across the District Courts who were upgraded from the post of LDC to UDC with all consequential benefits. Learned counsel for the petitioner submits that the petitioner was surprised to see that in the list of 1421 employees, the name of the petitioner was conspicuous by its absence. In fact, learned counsel invites attention of this Court at serial number



1358 as a case study in the case of Manish Saroja who was considered to be promoted to the post of UDC w.e.f. 26.07.2008 was in fact the batch mate of the petitioner. However, the name of the petitioner was missing from the said list. The petitioner, as a follow up of finding his name not present in the said list, had submitted a representation dated 30.08.2017 which was considered and rejected by the committee vide the minutes of meeting /office order dated 15.12.2017.

4. Learned counsel for the petitioner submits that the second representation was submitted thereafter by the petitioner which too was considered and dismissed, purely on the basis of judgment of the learned Division Bench of this Court in W.P.(C)4194/2012 captioned ***Ghanshyam Prasad Vs. The District And Sessions Judge, Delhi And Anr.*** vide the order dated 02.08.2017.

5. Learned counsel submits that the reliance on the aforesaid judgment while rejecting his representation was completely misplaced inasmuch the issue raised therein had no similarity to the issue raised by the present petitioner in the second representation. In fact, according to Mr. Chandoik, the issue in the case of ***Ghanshyam Prasad (Supra)*** was revolving around as to whether the period of lien should be extended or not, however, in the present case, the petitioner was merely seeking the implementation of the order dated 22.03.2010 in respect of his financial upgradation and that too for the period of his service from 26.07.2008 through till his technical resignation was accepted on 01.09.2010.

6. According to Mr. Chandiok, the rejection of the second representation on the aforesaid basis is absolutely flawed and there is



no justification for depriving the petitioner from the same benefits as were given and applied to the employees who were similarly situated. Mr. Chandiok submits that the issue of lien so far as the present petition is concerned, does not arise for the reason that neither was the petitioner repatriated nor did the petitioner seek return to the parent department. On that basis, Mr. Chandiok submits that the respondent could not have been deprived him from the benefits of the consequences flowing from the order dated 22.03.2010.

7. That apart Mr. Chandoik relies upon the judgment of the learned Coordinate Bench of this Court in ***Amit Kataria & Ors. Vs. Office of the District & Session Judge (HQ) & Anr.*** in *W.P.(C) 11518/2009* which was delivered on 25.08.2022. The ratio in the case of ***Amit Kataria & Ors.*** (*supra*), according to Mr. Chandiok, is squarely applicable on all fours since the issues in both cases are identical.

8. In view of the aforesaid submissions, Mr. Chandiok submits that there is no impediment in allowing the writ petition and directing the respondent from implementing the order dated 22.03.2010 in the case of the petitioner too with the consequential benefits.

9. *Per contra* Ms. Kaushik, learned counsel for the respondent submits that so far as the case of ***Amit Kataria & Ors.*** (*Supra*) is concerned, the respondent had assailed the same by way of an LPA No.575/2022 which was disposed of by the learned Division Bench vide the order dated 12.10.2022 giving directions to the respondent to constitute a Review Scrutiny Committee / Review DPC to scrutiny the cases of the respondent employee within a period of three months



from the receipt of the said order.

10. This Court has considered the arguments of Mr. Chandiok as also Ms. Kaushik. This Court has also considered the relevant documents placed on record as also the judgment of the learned Single Bench in the case of *Amit Kataria & Ors. (Supra)* as also the LPA in the case of *Amit Kataria & Ors. (Supra)* delivered by the Division Bench on 12.10.2022.

11. It is undisputed that the petitioner was admittedly employed as LDC on 25.07.2003. Thereafter the technical resignation of the petitioner was accepted by the respondent on 01.09.2010. Undoubtedly, the petitioner's services uptill 01.09.2010 has not been disputed by the respondent. It is also undisputed that in compliance of the order dated 22.03.2010 in the case of *Sh. Jagdish Rana (Supra)* as also the orders of this Court in Contempt Case No. (C)1079/2016 dated 26.09.2016, the respondent had in fact brought out a circular dated 16.08.2017 in compliance with the aforesaid judgment.

12. It is also clear that the name of the petitioner surprisingly is not mentioned in the said list of 1421 employees. So far as the reference to serial number 1358 in the case of Manish Saroja is concerned, there is no counter argument addressed on behalf of the respondent. The said Mr. Manish Saroja was undoubtedly provided the benefits as a UDC w.e.f. 26.07.2008 and in fact there is no dispute also to the fact that the petitioner was also a batch mate of the said Manish Saroja. On this count itself there is no reason or justification, as to why the petitioner would also not be entitled to the same benefits as was conferred upon Mr. Manish Saroja w.e.f. 26.07.2008.



13. In fact the judgment of the coordinate Bench of this Court in **Sh. Jagdish Rana** had categorically held that the qualifying service for the post of UDC would be 5 years. In case the said judgment is implemented then the petitioner is clearly qualified since undoubtedly the petitioner was employed as an LDC w.e.f. 25.07.2003 and by 26.07.2008 at least he would have surely completed five years of qualifying service.

14. It is apparent that the reliance of the respondent on the judgment of the learned Division Bench in **Ghanshyam Prasad (Supra)** is absolutely misplaced since the same was on a different point of law. The dismissal or the rejection of the second representation is unjustified in the facts which arise in the present case. Moreover, the facts as obtaining in the present case are almost identical to the facts which obtained in the case of **Amit Kataria & Ors. (supra)**. The reasoning rendered by the learned Single Judge in the aforesaid case in para 6 would squarely be applicable to the present case.

15. For the benefit of this Court, the contents of para 6 of **Amit Kataria & Ors.** case is extracted hereunder:-

“6. Having considered the submissions of the learned counsel for the parties and perused the record, I am of the view that the plea of respondent no.1 that since the petitioners were no longer in service of the said respondent when the decision for upgradation was taken, needs to be noted only to be rejected. It is settled law that an employee, merely because he is no longer in service, cannot be deprived of the benefits like upgradation of pay scale which are made effective from the date he/she was in service. Once it is an admitted position that the decision to upgrade the post of LDC to UDC after 5 years, as decided on



17.04.2017 has been made effective w.e.f. 01.10.1979, the respondent no.2 could not have denied benefits of the said upgradation to the petitioners for the period during which they were in service. The respondent no.1, having extended the said benefit to all similarly placed employee who are in service, cannot be permitted to discriminate against the petitioners, who had all completed five years of service as LDC before they left the service of respondent no.1 to join respondent no.2.”

16. A perusal of the aforesaid reasoning, leaves no doubt in the mind of this Court that so far as the present petition is concerned, the same will be applicable on all fours. Moreover, Ms. Kaushik has very fairly handed over the bench judgment of the learned Division Bench in LPA No. 575/2022 the relevant portion is extracted hereunder:-

5. The learned Single Judge allowed the writ petition holding that the employees were entitled to be considered even though they had joined the High Court of Delhi, as at the relevant point of time, they were certainly in the services of the Delhi District Court and had completed five years of service as LDC, which was a mandatory requirement of the conditions for upgradation. Paragraph 6 of the Judgment dated 25.08.2022 passed by the learned Single Judge in W.P.(C) 11518/2019, reads as under:-

6. Having considered the submissions of the learned counsel for the parties and perused the record, I am of the view that the plea of respondent no.1 that since the petitioners were no longer in service of the said respondent when the decision for upgradation was taken, needs to be noted only to be rejected. It is settled law that an employee, merely because he is no longer in service, cannot be deprived of the benefits like upgradation of pay scale which are made effective from the date he/she was in service. Once it is an admitted



position that the decision to upgrade the post of LDC to UDC after 5 years, as decided on 17.04.2017 has been made effective w.e.f. 01.10.1979, the respondent no.2 could not have denied benefits of the said upgradation to the petitioners for the period during which they were in service. The respondent no.1, having extended the said benefit to all similarly placed employee who are in service, cannot be permitted to discriminate against the petitioners, who had all completed five years of service as LDC before they left the service of respondent no.1 to join respondent no.2”

6. This Court has carefully perused the Judgment passed by the learned Single Judge, and the grounds raised by the Appellant. The fact remains that the case of the Respondents/employees had not been considered at all, and, therefore, a Review DPC and a fresh scrutiny is required to review the entire exercise by considering the case of the Respondents herein. This must be underscored by the fact that the Respondents had completed five years of service as LDC.

7. In light of the above, this Court does not find any reason to interfere with the Judgment passed by the learned Single Judge. The mere fact that the employees had been transferred to the High Court of Delhi and absorbed in the services of the High Court will not disentitle them for consideration, as a right accrued in their favour at the relevant point of time.

8. The other ground raised by the Appellant is in respect of limitation. This Court is of the opinion that the denial of higher pay is a recurring cause of action, keeping in view the judgment passed by the Apex Court in M.R. Gupta vs. Union of India & Ors., (1995) 5 SCC 628.

9. In view of the above, the Appellant is certainly obligated to constitute a Review Scrutiny Committee/Review DPC to scrutinise the cases of the Respondent employees within a period of three months from the date of receipt of certified copy



of this Order.

10. It is needless to mention that if the employees are entitled for higher grade pay, the Appellant shall pay the arrears of salary to them.

11. The LPA stands disposed of, with the above observations along with pending applications, if any.

17. Learned Division Bench had categorically directed the respondent to constitute a Review Scrutiny Committee / Review DPC to scrutinize the cases of the respondent employees within a period of three months from the date of receipt of certified copy of this order.

18. It appears that despite having received the same, the respondent has not, on their own, considered / reconsidered the case of the petitioner.

19. However, since it is mandated by the learned Division Bench, the respondents are directed to implement the directions contained in the order of the learned Division Bench in the aforesaid LPA in the case of petitioner too within three months from the date of this order and all the consequential benefits accruing to the petitioner for the period of service from the date, the petitioner is held eligible for financial upgradation to the post of UDC till the date of his technical resignation be also released.

20. In view of above, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J

JANUARY 11, 2024/ms