



2024:DHC:6517



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

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Date of Decision: 20th August, 2024

+ W.P.(C) 14116/2022 and CM APPL. 43126/2022

MOHD SHAKIR & ORS.Petitioners

Through: Mr. S. Sunil, Advocate

versus

DELHI PUBLIC LIBRARY & ANR.Respondents

Through: Mr. R.D. Vats, Advocate for R-1.

Mr. Himanshu Pathak, Senior Panel Counsel with
Mr. Amit Singh, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking a challenge to Advertisement dated 19.09.2022 issued by Respondent No.1/Delhi Public Library ('DPL') to the extent applications were invited for filling up 13 posts of Library Clerk ('LC') on deputation (including short term contract)/absorption basis, ignoring the Petitioners, who were eligible to be considered first for appointment to the post of LC by way of promotion as per the Recruitment Rules ('RRs') governing the post of LC.



2. Facts to the extent necessary are that Petitioners joined DPL as direct recruits in the post of MTS (Lib), a Group 'C' post in Pay Level-1 in different periods between January, 2018 to March, 2018. Appointments were on regular basis and Petitioners were placed on probation for a period of 2 years, extendable at the discretion of the Competent Authority.

3. It is averred that from the post of MTS (Lib), Petitioners were eligible for promotion to the post of LC and as per the RRs, appointment on the said post was through the mode of promotion, failing which by transfer on deputation/absorption, failing both by direct recruitment. The essential qualification required for appointment to the post of LC was three years regular service in the grade of MTS (Lib). All the Petitioners completed three years regular service in MTS (Lib) on different dates in the year 2021, being the appointees of 2018 batch. Petitioners have also successfully completed their probation period and were eligible in all respects for consideration for appointment to the post of LC.

4. Petitioners made representations from time to time to DPL to consider their case for promotion to the post of LC but no steps were taken. On 19.09.2022, impugned advertisement was issued by DPL, inviting applications for filling up the posts of Library & Information Officer, Library & Information Assistant, Assistant Library & Information Officer (Braille), LC and Consultant (Admn.), by transfer on deputation mode. In the present case, Petitioners are only concerned with the 13 posts of LC sought to be filled on deputation (including short term contract)/absorption basis. As the Petitioners had completed three years regular service in the grade of MTS (Lib) and were eligible for consideration for appointment to the post of LC, they approached this Court immediately and challenged the



impugned advertisement. When the writ petition was listed before the Court on 28.09.2022, the Court passed an interim order directing that though Respondents may proceed with the selection process pursuant to the advertisement, no appointment order will be issued in favour of the selected deputationists without the leave of the Court.

5. Mr. S. Sunil, learned counsel appearing on behalf of the Petitioners submits that the impugned advertisement is illegal and cannot be sustained in law for filling up the 13 posts of LC. The argument is that the RRs dated 17.06.2021, duly approved by Ministry of Culture, Nodal Ministry of DPL, stipulate that the post of LC will be filled up by promotion, failing which by transfer on deputation/absorption failing both, by direct recruitment and therefore, the advertisement inviting applications for the post of LC through the mode of deputation (including short term contract)/absorption basis deserves to be quashed being contrary to the approved RRs. In this context, learned counsel places reliance on a recent judgment of the Supreme Court in *Employees' State Insurance Corporation v. Union of India and Others*, (2022) 11 SCC 392, wherein the Supreme Court reiterated the legal proposition that any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription and referred and relied on earlier judgments of the Supreme Court in *Ashish Kumar v. State of Uttar Pradesh and Others*, (2018) 3 SCC 55 and *Malik Mazhar Sultan and Another v. U.P. Public Service Commission and Others*, (2006) 9 SCC 507.

6. Learned counsel for DPL, on the other hand, relying on the counter affidavit filed by DPL opposes the writ petition on a singular ground. It is urged that one Mr. Lokesh Sharma joined as Director General of DPL on



16.10.2017 and remained in office till 23.08.2019 on which date he submitted his resignation, which was accepted. During his tenure, he committed grave misconduct and flouted all prevailing rules and procedures including those relating to recruitment of employees. Charge sheet was issued against him but on a writ petition filed by him in this Court, the same was quashed. It is he who is responsible for appointment of the Petitioners once again flouting norms and procedures of appointment and since the appointments of the Petitioners are illegal, they have no locus to challenge the advertisement in question.

7. Heard learned counsels for the parties and examined their rival submissions.

8. The issue arising for consideration before this Court is in a narrow compass i.e. whether the impugned advertisement dated 19.09.2022 is in consonance with the RRs for the post of LC. Petitioners were appointed on different dates to the post of MTS (Lib) in Pay Level-1 through the process of direct recruitment having undergone a due process of selection and with the approval of the Competent Authority. The appointment letters placed on record reflect that the appointments were on regular basis. Accepting the offer of appointments, Petitioners joined on different dates in 2018 as indicated in the writ petition in a tabular form and were placed on probation for a period of two years.

9. The RRs for the post of LC, duly approved by the Ministry of Culture provide the mode and method of recruitment and the relevant portion is extracted hereunder, for ease of reference:-



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RECRUITMENT RULES FOR THE SENIOR LIBRARIAN CLERK, DELHI PUBLIC LIBRARY, DELHI

Name of Post	Number of Posts	Classification	Grade/Step	Whether Service post or Non-Service Post
Senior Clerk	02 (02)	Non-Applicable	Not Applicable	Not Applicable

Age Limit for candidates	Qualification and other conditions required for recruitment	Other conditions
Not exceeding 33 years of age as on 01.01.2024. Government employees upto 40 years of age as on 01.01.2024. Candidates must have completed the minimum age limit as on 01.01.2024.	Essential: 110-2 or equivalent from a recognized Board/Institution. 110-2 or equivalent from a recognized Board/Institution. One year Diploma in Librarianship from a recognized Institution.	Other conditions: Candidates must have completed the minimum age limit as on 01.01.2024. Candidates must have completed the minimum age limit as on 01.01.2024.

Librarian Clerk and Senior Librarian Clerk of Chandigarh District of Haryana Pradesh, Government of India, Ministry of Education, Government of India.	
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Period of recruitment	Method of recruitment	Mode of recruitment
Not exceeding 33 years of age as on 01.01.2024. Government employees upto 40 years of age as on 01.01.2024. Candidates must have completed the minimum age limit as on 01.01.2024.	Not exceeding 33 years of age as on 01.01.2024. Government employees upto 40 years of age as on 01.01.2024. Candidates must have completed the minimum age limit as on 01.01.2024.	Not exceeding 33 years of age as on 01.01.2024. Government employees upto 40 years of age as on 01.01.2024. Candidates must have completed the minimum age limit as on 01.01.2024.

10. It is evident from a bare perusal of the RRs that the method of recruitment to the post of LC is by promotion, failing which by transfer on deputation/absorption failing both, by direct recruitment. The RRs also provide that for appointment through the mode of promotion, the feeder grade is MTS (Lib) with three years regular service in the grade. The impugned advertisement issued by DPL on 19.09.2022 shows that



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applications were invited for 13 posts of LC on deputation (including short term contract)/absorption basis. Relevant portion of the advertisement is as under:-

DELHI PUBLIC LIBRARY
(Govt. of India Organization, Ministry of Culture)

APPLICATIONS ARE INVITED FOR THE FOLLOWING POSTS

Sl. No.	Name of Posts	No. of posts	Method of Recruitment
1.	Library & Information officer (LIO) Level-11 (Rs. 67700-208700)	02	Deputation (including short-term contract) basis
2.	Library & Information Assistant Level-6 (Rs. 35400-112400)	13	Deputation (including short-term contract)
3.	Assistant Library & Information Officer (Braille) Level-7 (Rs. 44900-142400)	01	Deputation (including short-term contract) absorption basis
4.	Library Clerk (LC) Level-2 (Rs. 19900-63200)	13	Deputation (including short-term contract) absorption basis.
5.	Consultant (Admn) (Purely on contract basis)	01	1. Eligibility: Persons retired from the post of Deputy Secretary/ Under Secretary – (Deputy Secretary) 2. Age: Not more than 64 years of age on the last date of application. 3. Remuneration: Rs. 40,000/- p.m. (Consolidated) 4. Engagement: For six month only (Purely on contract basis) 5. Job Responsibilities: Administrative Matter, Recruitment, Vigilance/RTI and



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			Court Cases etc. of the Deptt./Org. Any other work which may be assigned by the Competent Authority.
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Details of advertisement with terms & conditions in respect of posts at Sl. 1 to 5 are available on DPL website www.dpl.gov.in.

DPL reserves the right to cancel/suspend/revised the process to fill up any post without assigning any notice. the decision of DPL shall be final and no appeal shall be entertained in this regard.

The vacancies can be increased or decreased in posts at any stage.
No TA/DA will be paid for appearing before interview etc.

Applications complete in all respect should be sent to Dy. Director (Admn), Delhi Public Library, Dr. Shyama Prasad Mukherjee Marg, Opp. Old Delhi Railway Station, Delhi-110006 (though proper channel in respect of posts on deputation) so as to reach within a period of 30 days from the date of publication of the notification in Employment News. Applications received after due date and without supporting documents will not be considered.

Dy. Dir. (Admn.), DPL
EN 25/21

11. From a reading of the advertisement, it is evident that DPL invited applications only on deputation/absorption basis. It was open to DPL to resort to the mode of deputation/absorption only failing promotion as per the RRs. In the present case, Petitioners who were appointed in 2018 in the post of MTS (Lib) had completed three years regular service in 2021 and therefore, persons within the DPL were available and eligible in the promotion quota and there was no reason to adopt the method of recruitment through deputation/absorption and therefore, learned counsel for the Petitioners is correct in his argument that the advertisement was not in



consonance with the RRs for the post in question.

12. The only defence taken by DPL in the counter affidavit is that the appointments of the Petitioners were illegal as they were appointed during the tenure of Mr. Lokesh Sharma, the Director General of DPL, who himself was guilty of grave misconduct and flouted procedures and rules of DPL including rules of appointment of employees and was charge sheeted. This argument in my considered view is wholly misconceived. First and foremost, no action has been taken by DPL against the Petitioners from 2018 on the ground that they were allegedly illegally appointed and moreover, the appointment letters of the Petitioners show that the appointments were made on a regular basis and they were placed on probation for a period of two years. The terms and conditions of the appointments also indicate that the appointments were approved by the Competent Authority and Petitioners are governed by provisions of New Pension Scheme, 2004. It is therefore too late in the day for DPL to defend the impugned advertisement on the basis of a frivolous stand that the appointments of the Petitioners were illegal. Insofar as Mr. Lokesh Sharma is concerned, it is true that a charge sheet was issued against him for certain alleged irregularities but the same was quashed by this Court in W.P.(C) No. 6928/2020 on the ground that DPL had wrongly invoked Rule 9 of CCS (Pension) Rules, 1972. Even otherwise, whether or not Mr. Lokesh Sharma had committed any grave misconduct, is irrelevant to the present case inasmuch as the appointments of the Petitioners on regular basis are till date unquestioned and unassailed. Therefore, once the Petitioners were available in the feeder grade of MTS (Lib) and had completed the eligibility criteria of three years regular service in the said grade, DPL could not have resorted to the mode of recruitment to the post of



LC through deputation/absorption. The advertisement is, therefore, in the teeth of the RRs of the post in question and cannot be sustained.

13. It is a settled law that an advertisement cannot be contrary to the statutory RRs and as held by the Supreme Court in *Ashish Kumar (supra)*, if there is variance in the advertisement and the statutory Rules, the latter shall take precedence. This position of law has been recently re-stated and re-affirmed by the Supreme Court in *Employees' State Insurance Corporation (supra)*. I may quote the relevant passage from *Ashish Kumar (supra)*, as follows:-

"27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence...."

14. In light of the principles laid down by the Supreme Court, the impugned advertisement is untenable in law and deserves to be quashed. It may be noted that after the advertisement was issued, Petitioners had approached this Court and vide order dated 28.09.2022 directed that no appointment orders shall be issued in favour of the selected deputationists. During the course of hearing, I am informed by both sides that on account of the interim order, DPL took a decision not to proceed beyond the stage of advertisement and therefore, significantly, no third party rights are effected by quashing the impugned advertisement.

15. For all the aforesaid reasons, impugned advertisement dated 19.09.2022 is hereby quashed and set aside. This would, however, not preclude DPL from re-advertising the posts in accordance with the



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applicable Recruitment Rules for appointment to the post of Library Clerk.

16. Writ petition is allowed to the aforesaid extent and disposed of along with the pending application.

JYOTI SINGH, J

AUGUST 20, 2024/kks/shivam