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

% ***Date of decision: 4th July, 2024***

+ LPA 538/2024 and CM APPL. 36731/2024, CM APPL. 36732/2024
VALLABHBHAI PATEL CHEST INSTITUTEAppellant
Through: Mr. Mantu Kumar Singh,
Advocate

versus

GIRIDHARI PAL AND ANRRespondents
Through: Mr. Mohinder J.S. Rupal and
Mr. Hardik Rupal, Advocates
for University of Delhi

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present appeal under clause 10 of Letters Patent has been filed against the judgment and order dated 07.05.2024 in W.P.(C) 9072/2020 whereby the learned Single Judge of this Court has allowed respondents' promotion to the post of Senior Technical Assistant (STA) w.e.f. 21.07.2016 without considering contentions raised by the appellant.
2. The appellant is an institute and hospital under the Ministry of Health and Family Welfare, Union of India and is primarily engaged in research working in the field of chest and allied diseases besides providing medicines and other medical facilities, free of cost or at a very nominal cost.
3. The brief facts of the case are that respondent No.1-Mr. Giridhari Pal joined services of appellant-Institute on 10.01.2002 on the post of Technical



Assistant (TA) in the Department of Pharmacology. The Departmental Promotional Committee (DPC) of appellant-Institute was convened on 02.06.2008 for consideration of candidates for promotion from the post of TA to STA. The respondent vide his request letter dated 12.09.2008 to the DPC sought promotion to the post of STA in Pharmacology Department, however, the Committee in the light of practice and promotion norms of University of Delhi issued vide Notification Estab.III/lab.Staff/99/ dated 09.08.1999, was of the view that the same has to be filled through direct recruitment.

4. The appellant vide Circular No.VPCI/Admn.II/DPC/2016/1178 dated 21.07.2016 informed all the technical staff of the appellant-institute that process of merger of various departments as per MCI/FMSc, DU requirements is underway and any promotional case would be taken up in terms of new recruitment norms. The appellant thus vide Recruitment Rules, 2017 revised the Recruitment Rules and sent the same to respondent No.2-University for vetting.

5. Respondent No.2-University vide its letter dated 04.05.2018 informed the appellant-Institute framing of modalities and distribution of posts in respect of non-teaching staff. Thereafter, the appellant-Institute immediately thereafter called a DPC on 28.06.2016 and respondent No.1 was promoted from the post of TA to STA.

6. The respondent No.1 preferred a writ petition being W.P.(C) 9072/2020 before this Court seeking promotion to the post of STA in Department of Pharmacology from the year 2005 when the said seat fell vacant or 2008 when the advertisement for the said post was notified or when the DPC meeting was held on 06.06.2008. In addition, he also sought



additional pay allowance w.e.f. 01.01.2005 till 2019.

7. In the aforesaid writ petition before the learned Single Bench, the stand of appellant-Institute was that the Recruitment Rules relied upon by the respondent No.1 pertained to the year 2018 whereas the respondent No.2-University vide its Notification dated 09.08.1999 has directed that the post has to be filled-up by promotion and recruitment in the ratio of 50-50 and so, respondent No.1 could not have been considered for the said post. Therefore, the vacant post of STA was required to be advertised through open/direct recruitment.

8. Learned Single Bench vide the impugned judgment held as under:

“20. Having regard to the above, this Court is of the considered opinion that though the petitioner had given representations from the year 2008 itself, however, had waited till the year 2020 for redressal of his grievance before this Court, it appears that the petitioner could be entitled to the promotion to the post of STA w.e.f. 21.07.2016 when the circular was issued by respondent no.3 with subject Promotion of Technical Staff of VPCI, wherein the status of vacant posts in technical cadre as on that date, was informed, which included the post of STA too.

21. In view of above, the petitioner would be entitled to his seniority w.e.f. 21.07.2016. Since the petitioner has been given all the financial benefits under the financial upgradation under the MACP scheme, there shall be no orders for such benefits.”

9. The challenge to the aforesaid impugned judgment passed by the learned Single Bench is on the ground that respondent No.1 had filed petition seeking promotion in the year 2020 w.e.f. 2005 or 2008, which



cannot be entertained after a long gap of 15 years and merely because he had filed various representations does not, in any manner, permits extension of period of limitation.

10. During the course of hearing, learned counsel for appellant submitted that the learned Single Judge did not appreciate the fact that the Circular dated 21.07.2016 merely mentioned that the appellant-Institute was in the process of merger of various departments as per MCI/FMSc, DU requirements and revised post based recruitment roster was sent to respondent No.2 herein on 11.04.2017 for vetting and as such, the revised roster was approved on 04.05.2018. In such a situation, the promotion could not have been considered prior to 04.05.2018. Also submitted that no reason is forthcoming for huge delay in filing the writ petition. Hence, setting aside of impugned judgment and order dated 07.05.2024 is sought by the appellant- Institute.

11. After hearing learned counsel for parties at length and on perusal of the impugned judgment and other material placed on record, we find that the post of STA in appellant-Institute fell vacant on 02.08.2008, however, since the said post was required to be filled through direct recruitment, an advertisement was published in the year 2008. The respondent No.1 was granted first financial upgradation under MACP w.e.f. 10.01.2012 and thereby started getting pay-scale of STA. The Recruitment Rules for technical cadre of appellant-institute were modified as per Recruitment Rules, 2017 which were finally vetted by the respondent No.2-University on 04.08.2018. Soon thereafter, the DPC was convened by appellant-institute on 28.06.2019 for filling-up the post of STA. Recruitment Rules were notified in 2017, however, the Circular with regard to vacancy of post in the



technical cadre and for the post of STA was notified on 21.07.2016. The respondent No.1 has already been granted scale of STA in the year 2012 and in our opinion, he has rightly been granted promotion w.e.f. 21.07.2016 when vacant post of STA was notified. The claim of respondent No.1 that he was entitled for promotion since the year 2005 when the post first fell vacant or in the year 2008 when the first DPC was convened; has rightly been turned down by the learned Single Judge as the said post was required to be filled-up by direct recruitment for which an advertisement was also published, however, no candidate was appointed. The Recruitment Rules, merging posts as per MCI, FMCs DU requirements, were vetted out in the year 2016 so, respondent No.1 is entitled to seniority from the 2016, which has rightly been granted by the learned Single Judge.

12. Finding no error in the impugned judgment and order dated 07.05.2024, the present appeal is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 4, 2024
rk/r