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

% *Date of decision: 23rd July, 2024*

+ W.P.(C) 10065/2024 & CM APPL.41210-12/2024

THE STATE COUNCIL OF EDUCATION RESEARCH TRAINING
AND ORS

....Petitioners

Through: Mrs. Avnish Ahlawat, St. Counsel
with Mr. Nitesh Kumar Singh and
Ms. Laavanya Kaushik, Advocates

versus

MS HEMLATA

.....Respondent

Through: Mr. Aditya Narayan Tripathy, Mr.
Raghunath Pathak and Mr. Anurag
Yadav, Advocates

CORAM:

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

J U D G M E N T (oral)

CAV 331/2024

1. Since the learned counsel for respondent has entered appearance, caveat stands discharged.

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2. The present writ petition has been preferred by the petitioners under Article 226 read with 227 of the Constitution of India seeking quashing and setting aside of the order dated 16.01.2024 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.563/2019, whereby a direction has been issued to the petitioners to regularize



promotion of respondent on regular basis from 09.12.2003, granting consequential benefit from pay and seniority on notional basis w.e.f. 09.12.2003 and on actual basis from 21.06.2017.

3. Notice issued.

4. Mr. Aditya Narayan Tripathy, Advocate accepts notice on behalf of respondent.

5. With the consent of learned counsel for parties, the present petition is taken up for final disposal.

6. The brief facts as spelt out in the impugned order passed by learned Tribunal are that the respondent joined services in the State Council of Educational Research and Training (SCERT) on 02.12.1994 as a Stenographer (Hindi). On completion of two years of service on 02.12.1996, she was confirmed on the said post.

7. On 09.12.2003, respondent was promoted to the post of Sr. Stenographer in the pay scale plus allowances attached to the said post on *ad hoc* basis for a period of six months or regular promotion, whichever is earlier. The *ad hoc* promotion got to be extended from time to time resulting in the respondent holding the post of Sr. Stenographer continuously and uninterruptedly till her regular promotion on 21.06.2017. She had represented to the petitioners that she should be regularised to the post of Sr. Stenographer w.e.f. 10.12.2003, i.e, the date of her *ad hoc* promotion. However, her claim was not extended and the petitioners vide their communication dated 24.08.2018 conveyed her that her promotion can only have a prospective effect, even in cases where the vacancies relate to earlier years.



8. Aggrieved by denial of regular promotion to her with effect from the date of her *ad-hoc* appointment, respondent preferred O.A. 563/2019 before learned Tribunal seeking directions to the petitioners to regularize her on the post of Senior Stenographer w.e.f. 10.12.2003, i.e. the day and date of her *ad hoc* promotion to the said post.

9. The case of the petitioners before learned Tribunal was that promotion is one of the methods of appointment to a particular post and such an appointment is to be made strictly within the ambit of the notified recruitment rules. Learned counsel for petitioners elaborated before the learned Tribunal that the condition precedent for promotion of a particular person is availability of vacancy. In the instant case, regular vacancy was not available, hence, the petitioners promoted the respondent on *ad hoc* basis. Also that even though the vacancy was not available, the petitioners protected the genuine aspirations of the respondent by giving her promotion to the post so that she might not feel deprived of her claim. Thereafter, as and when vacancy arose, the petitioners took immediate steps to consider her case for promotion through a DPC and promoted her. The petitioners did not concede to the claim of respondent that vacancy became available on 21.11.2015 pursuant to demise of Mrs. Reena Sharma, OS (*ad hoc*), when the process to revise the recruitment rules was in progress and therefore, it was a wise decision not to take a decision on the basis of recruitment rules. The petitioners also raised a preliminary objection qua the issue of limitation submitting that the OA was filed in February, 2019 seeking the benefit w.e.f. the year, 2003 which is hopelessly time bared.

10. The learned Tribunal, after due consideration of averments of both the sides, held as under:-



“10. We have no doubt in holding that the applicant's promotion on ad hoc basis on 09.12.2003 was against a vacant post as the promotion order makes it abundantly clear. This ad hoc promotion got to be extended from time to time and continued as such till the date of her regular promotion and further that the applicant's promotion in the year 2003 was strictly in terms of her eligibility and entitlement as per the recruitment rules applicable at that time. Further, it is also substantiated that the ad hoc promotion was not done in tan ad hoc manner but after going through a procedure of due assessment by the Screening Committee and it was on the recommendations of the said Screening Committee that the promotion order was issued. Therefore, even the said ad hoc promotion duly observed the procedure which is applicable for consideration of cases for promotion.”

11. The challenge to the aforesaid order passed by the learned Tribunal has been confined to the grounds noted in Paras- G, J & I of the present petition, which are as under:

“G. Because the Ld. Tribunal failed to consider the fact that one post of Sr. Stenographer became vacant after the demise of Ms. Reena Sharma on 21.11.2015, and, thereafter, DPC was convened on 19.06.2017 and the Respondent was promoted from the date of ad-hoc promotion Respondent has been paid the salary of the post of Sr. Stenographer with increments every year, therefore, when the regular promotion was made while fixing her salary under FR-22 she was granted pay protection, there is no loss to her on any account so far as pay and allowances are concerned and with respect to seniority also.



I. Because the Ld. Tribunal also failed to consider that RRs for the Stenographer Cadre were under revision during the period of 2014 to 2017 and were finalized on 10.02.2017. Thereafter, DPC was convened in 19.06.2017 and the Respondent was given regular promotion to the post of Sr. Stenographer.

J. Because the Ld. Tribunal failed to appreciate that the Respondent was promoted to the post of Sr. Stenographer on ad-hoc basis due to chain vacancy as both the employees holding the regular post of Sr. Stenographer were promote to the post of Office Superintendent on adhoc basis.”

12. Upon hearing both the sides and on perusal of the impugned order and other material placed on record of this case, we find that the respondent was promoted against a vacant post of Sr. Stenographer on *ad hoc* basis vide order dated 09.12.2003 vide which reads as under:-

“In pursuance of decision taken in the meeting of Executive Committee held on 8.9.03 and on the recommendations of the Screening Committee, the Director SCERT is pleased to promote Ms. Hemlata, Stenographer working in the pay scale of Rs. 4000-6000 to the post of Sr. Stenographer in the pay scale of Rs.5000-8,000 plus usual allowances as admissible under the rules from time to time on ad-hoc basis for a period of six months or regular promotion, whichever is earlier from the date she take over charge of the post. On her promotion to the post of Sr. Stenographer, Ms. Hemlata is posted against the vacant post of Sr. Stenographer at SCERT HQR. in the Personal Branch of Director It. Director SCERT.”



13. The afore-noted order dated 09.12.2003 clearly shows that respondent has been appointed against a vacant post of Sr. Stenographer and it is not in dispute that she has continuously been working on the said post since 09.12.2003. So, petitioner's contention that respondent was working against a non-existent vacancy, does not sustain. Moreover, the fact cannot be overlooked that the petitioners kept extending the *ad hoc* promotion of the respondent from time to time. While extending this *ad hoc* promotion of the respondent, the *ad hoc* promotion of some other employees holding the post of Officer Superintendent and Head Clerk too was extended and all other whose name figured in the order of extension got to be considered in the DPC of 2007, which recommended their regularization with effect from the date of their *ad hoc* promotion. But for the reasons best known to the petitioners, a different yardstick has been applied in the case of the respondent, which demonstrates a clear case of discriminatory treatment against her.

14. Moreover, in the DPC of 2007, even though case of respondent was considered but the final decision was kept in abeyance for obtaining some legal advice and as to what transpired thereafter till her regular promotion, is not disclosed in the pleadings. The plea of petitioners that the process for amendment in the Recruitment Rules was underway, is rejected as the respondent has sought regularisation w.e.f. the year 2003 whereas the process came to existence in the year 2015 and continued till the year 2017.

15. Finding no error or perversity in the impugned order dated 16.01.2024, the present petition is dismissed with directions to the petitioners to implement the directions contained in Para-12 of the



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impugned order within four weeks. Pending application, if any also stand disposed of being infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 23, 2024/rk/r