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

+ **W.P.(C) 11096/2024**

SH. NAGENDRA

.....Petitioner

Through: Mr. Sanjay Sharawat and Mr. Ashok
Kumar, Advocates.

versus

LT. GOVERNOR OF DELHI & ORS.

.....Respondents

Through: Mr. Gaurav Dhingra and Mr.
Shashahk Singh, Advocates for R1 and R2.
Mr. Mohinder J.S. Rupal and Mr. Hardik Rupal
Advocates for R3.
Mr Anurag Mathur, Advocate for R4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

12.08.2024

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1. This writ petition has been preferred on behalf of the Petitioner seeking quashing of order dated 26.07.2024 passed by Respondent No.2/Directorate of Higher Education, Government of NCT of Delhi as well as for a direction to Respondents No.1, 2 and 4 to release the arrears of pay to the Petitioner arising on account of pay fixation carried out vide Office Order dated 23.05.2022, owing to the promotion of the Petitioner from the post of Assistant Professor in Senior Scale to Assistant Professor in Selection Grade and further promotion as Associate Professor. Interest @ 18% per annum is also claimed from the date the payments became due to the Petitioner till the date of actual payment of arrears.



2. Shorn of unnecessary details, facts to the extent relevant are that Petitioner was appointed as Lecturer (Computer Science) on probation in Bhagini Nivedita College/Respondent No.4 (hereinafter referred to as 'the College') on 18.11.1999 in the pay scale of Rs.8000-13500. The College is a constituent College of the University of Delhi, Respondent No.3. Petitioner was confirmed as a Lecturer from the date of his initial appointment vide confirmation letter dated 27.01.2003.

3. University Grants Commission ('UGC') issued a Merit Promotion Scheme, 1998 / Career Advancement Scheme, 2000, providing for various stages of promotion to a Lecturer and the schemes were adopted by the University of Delhi and were thus applicable in the case of the Petitioner as well. Relevant part of the Scheme is extracted hereunder:

"The different stages of promotion under this scheme and their period of assessment are as follows:

Lecturer to Lecturer in Senior Scale –

The promotion is considered after completion of 4/5/6 years for candidates with Ph. D/M.Phil/neither Ph.D nor M.Phil."

4. Petitioner became eligible for promotion as Lecturer in Senior Scale on 18.11.2005. UGC altered the designation of Teachers appointed in Colleges and Universities w.e.f. 01.01.2006 from Lecturer, Reader and Professor to Assistant Professor, Associate Professor and Professor. Petitioner avers that after a considerable delay, College constituted the Screening Committee in the year 2010 and the candidature of the Petitioner was considered for promotion to the post of Lecturer in Senior Scale. The College communicated its favourable recommendation to the University in 2010 itself, however, approval was granted by the University belatedly after 3 years and the formal letter was issued on 10.04.2013 promoting



the Petitioner as Lecturer in Senior Scale in pre-revised pay scale of Rs.10000-15200 w.e.f. 18.11.2005.

5. It is averred that Petitioner thus became entitled to grant of arrears of pay from 18.11.2005 both on account of promotion and implementation of 6th CPC. These arrears were sanctioned and released by Respondent No.2 to the College and were received by the Petitioner. Petitioner became entitled to consideration for promotion to the post of Assistant Professor in Selection Grade from 18.11.2010 and further to the post of Associate Professor from 17.03.2015. There was, however, no action on the part of the Respondents with respect to the appointments and promotions of Teachers for a long period of 11 years at all levels and finally, in the year 2021, University constituted two separate Selection Committees for considering the case of the Petitioner for promotion, i.e., one for promotion as Assistant Professor in Selection Grade and the other for promotion as Associate Professor. The Committees considered the case of the Petitioner on 19.01.2021 and 29.06.2021 respectively and recommended promotions. College conveyed the approval of promotion at both levels vide Office Orders, both dated 21.10.2021 and by a subsequent order dated 23.05.2022, College approved fixation of pay of the Petitioner as Associate Professor.

6. It is stated that upon pay fixation in the promoted posts, Petitioner became entitled to arrears of pay arising out of difference in the pay scales, i.e., arrears from 18.11.2010 to 17.03.2015 on account of promotion as Assistant Professor in Selection Grade and arrears from 17.03.2015 on account of promotion as Associate Professor. It is categorically averred that Petitioner was getting the pay scale of the post of Assistant Professor in Senior Scale between 18.11.2010 to 22.05.2022. Petitioner repeatedly



represented to the Principal of the College to release the arrears including a formal representation dated 22.05.2024.

7. Petitioner states that the College informed the Petitioner that the arrears will be released immediately after the fund is received from Respondent No.2 but nothing was received, constraining the Petitioner to file writ petition being W.P.(C) 8574/2024 seeking a direction to Respondents No. 1, 2 and 4 to release and pay the arrears with interest @ 18% per annum. The writ petition was disposed of on 31.05.2024 directing Respondent No.2 to treat the writ petition as a representation and pass a reasoned order within 8 weeks after affording an opportunity of hearing to the Petitioner. In compliance of the said order, Respondent No.2 issued a notice of hearing dated 11.07.2024 intimating the Petitioner to attend the personal hearing before Director (Higher Education) on 16.07.2024, which the Petitioner attended. However, vide the impugned order dated 26.07.2024, the representation has been disposed of directing the Principal of the College to pay the outstanding arrears to the Petitioner within a stipulated timeframe. Till date, however, the arrears have not been released compelling the Petitioner to file the present petition.

8. Learned counsel for the Petitioner submits that Petitioner has been gravely prejudiced as he was granted his due promotions belatedly and even after the grant of the two promotions and passing an order fixing the pay of the Petitioner in the higher posts, arrears of pay fixation have not been released till date and Respondent No.2 are only shifting the blame on each other. The College has by a detailed communication dated 05.08.2024 written to Respondent No.2 enclosing therewith the calculations of the arrears payable along with interest component requesting for making a



provision in the budget and Allocating the Fund for disbursement of the arrears of the Petitioner and on the other hand, Respondent No.2 has simply directed the Principal of the College to comply with the directions of this Court in the earlier round of litigation and pay the outstanding arrears to the Petitioner, within a stipulated timeframe. It is, thus, evident that none of the two authorities are ready to own up the responsibility to pay and in the process, the Petitioner is suffering a huge monetary loss.

9. Issue notice.

10. Learned counsels, as above, accept notice on behalf of the Respondents.

11. Mr. Gaurav Dhingra, learned counsel appearing for Respondents No.1 and 2 submits that no fault can be found in the conduct of Respondent No.2 since a direction has already been issued to the Principal of the College to pay the outstanding arrears to the Petitioner, as per Rules, within a stipulated timeframe and nothing more is required to be done at the end of Respondent No.2. Directorate of Higher Education only releases grant-in-aid under 'General' & 'Salary' head to the 12 Delhi University Colleges as per 'Pattern of Assistance' and Budget allocated by the Finance/Planning Department, GNCTD and releases the same to the College and after the release of grant-in-aid, it is the Principal of Bhagini Nivedita College, who is responsible for disbursing the payments to the staff working under their control. In the present case, first instalment of grant-in-aid amounting to Rs.6.75 crores has been released to the College vide sanction order dated 16.05.2024 and second instalment is under process. Instructions have been given to the Principal to release the payments to the Petitioner and the answering Respondent cannot be blamed for inaction.



12. Mr. Anurag Mathur, learned counsel appearing for the College defends the College and drawing the attention of the Court to a letter dated 05.08.2024 submits that the College has written to Respondent No.2 for releasing the funds for payment of the arrears to the Petitioner giving the details of the amounts due in the letter and enclosing a detailed calculation and in the absence of provision in the Budget and allocation of the fund, the College is not in a position to release the arrears.

13. Heard learned counsels for the parties and examined their stands.

14. The undisputed facts are that Petitioner was promoted as Assistant Professor in Selection Grade w.e.f. 18.11.2010 and as Associate Professor from 17.03.2015 and vide Office Order dated 23.05.2022, College approved his pay fixation on the promoted posts. Petitioner is entitled to arrears of pay from 18.11.2010 to 17.03.2015 on account of promotion as Assistant Professor in Selection Grade and arrears w.e.f. 17.03.2015 on account of promotion as Associate Professor. It is also undisputed and a hard reality that till date, the arrears have not been released to the Petitioner though none of the Respondent stands to deny his entitlement to receive the same. Conjoint reading of impugned order dated 26.07.2024 and letter dated 05.08.2024 leaves little doubt that while the College is seeking allocation of Budget and release of funds from Respondent No.2, the latter states that first instalment of grant-in-aid has been released to the College and now it is for the College to release the funds. Result of this blame-game is that the Petitioner, who even otherwise received his promotions belatedly is being deprived of his legitimate dues, a situation which cannot be accepted by the Court. It is for the Respondents to put their house in order and ensure that employees do not suffer because of their inaction.



15. In view of the aforesaid, this writ petition is disposed of with a direction to the Director (Higher Education) and the Principal of the College to convene a meeting within 10 days from today to formalize and work out the modalities for releasing the arrears of pay fixation to the Petitioner. Once the decision is taken, the outstanding arrears amounting to Rs.51,38,000/- towards principal amount shall be released within 3 months thereafter. It is left open to the Petitioner to make a representation for interest component due to delayed payment of the arrears, to the College and as and when the representation is received, the College shall take a decision in accordance with law.

JYOTI SINGH, J

AUGUST 12, 2024/jg/kks