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

\+ W.P.(C) 15442/2024

DR. UMA NIJHAWAN .....Petitioner

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

versus

LT. GOVERNOR OF DELHI & ORS. .....Respondents

Through: Mr. Gaurav Dhingra and Mr. Shashank Singh, Advocates for R-1 and R-2.
Mr. Mohinder JS Rupal and Mr. Hardik Rupal, Advocates for R-3.
Mr.Anurag Mathur, Advocate for R-4.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **06.11.2024**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

> *"[a] Issue a writ of mandamus and direct the Respondent Nos.2 and 4 to pay to the Petitioner a sum of Rs.1,10,00,000/- [Rupees one crore ten lakhs only] being the arears of pay upon fixation of her pay vide Office Order dated 04/16.08.2022 issued by the Respondent No.4 on account of her promotion from the post of Assistant Professor in Senior Scale to Assistant Professor in Selection Grade and thereafter promotion from the post of Assistant Professor in Selection Grade to Associate Professor; and*
>
> *[b] Issue a writ of mandamus and direct the Respondent No.2 and 4 to pay to the Petitioner upto date interest @ 18% per annum w.e.f the date of accrual till the date of payment of the aforesaid arrears of pay."*

2. Factual matrix to the extent necessary is that Petitioner was appointed as a Lecturer in Economics on ad-hoc basis in Bhagini Nivedita College/ Respondent No.4 on 29.08.1995 and her services were confirmed by the

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College vide letter dated 28.02.1996. The College is a constituent College of the University of Delhi and is fully funded by the Government of NCT of Delhi/Respondent No.1.

3. It is averred in the petition that University Grants Commission ('UGC') issued a Merit Promotion Scheme, 1998/Career Advancement Scheme, 2000 ('CAS'), providing for various stages of promotion and the Scheme was adopted by the University of Delhi/Respondent No.3 and was thus applicable to the Petitioner as well. On 01.01.2006, UGC altered the designations of teachers appointed in Colleges and Universities from Lecturer, Reader and Professor to Assistant Professor, Associate Professor and Professor, respectively.

4. It is further averred that by virtue of the promotion scheme, Petitioner became eligible for promotion to the post of Lecturer in Senior Scale from 27.07.1998; to Lecturer in Senior Grade from 27.07.2003 and to the post of Associate Professor from 27.07.2006. Notwithstanding the eligibility of the Petitioner, Competent Authorities in the College and the University took no steps to constitute Selection Committees for consideration of candidates for promotion to different posts and there was complete inaction between 2010 to 2021. After an inordinate delay, Petitioner was granted promotion to the post of Lecturer in Senior Scale on 01.07.2001; to the post of Lecturer in Senior Grade on 21.10.2021 and to the post of Associate Professor on 21.10.2021 *albeit* the promotions were given w.e.f. the due dates of eligibility respectively.

5. Petitioner avers that vide office order dated 04/16.08.2022, College approved pay fixation of the Petitioner consequent upon her promotions and therefore, Petitioner became entitled to receive arrears on account of pay

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revision. However, despite several representations, the arrears were not released and Petitioner retired on 31.01.2024 on superannuation. Despite payment of post-retirement benefits, arrears of pay revision were still not paid to the Petitioner and she made another representation through e-mail dated 04.06.2024. College informed the Petitioner that arrears of pay shall be released immediately after the funds are received from Directorate of Higher Education/Respondent No.2. As no steps were taken by any of the Authorities, Petitioner filed W.P.(C.) 8870/2024 before this Court, which was disposed of on 02.07.2024 directing Respondent No.2 to treat the writ petition as a representation and pass a reasoned order within eight weeks.

6. It is stated by the Petitioner that after calling her for a personal hearing, Respondent No.2 passed the impugned order dated 23.08.2024 directing the College to pay the outstanding arrears within a stipulated time frame, which according to the Petitioner, was a futile exercise as the College is 100% funded and financed by Respondent No.2 and till the funds are allocated and released the College expresses its helplessness and in the bargain the sufferer is the Petitioner. Relying on an earlier order passed by this Court on 22.10.2024 in a batch of writ petitions, where directions were given to the Respondents to release arrears of pay within six weeks, Petitioner has now approached this Court again.

7. Issue notice.

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

9. Learned counsel for the Petitioner submits that Petitioner has been prejudiced on two counts. Firstly, she was granted her due promotions belatedly and secondly, while promotions have been made effective from the

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due dates of eligibility, the fruits of the promotions have not been made available inasmuch as the difference in the pay and allowances payable in the promoted posts have not been given to the Petitioner in the form of arrears. It is urged by the learned counsel that it is a statutory and a legal obligation of the Respondents to ensure that Petitioner gets her legitimate dues on time particularly when the promotions were granted after inordinate and unexplained delay. It is vehemently submitted that Petitioner has earned the difference in the pay by virtue of her hard work and having received promotions and it is not open to the Respondents to disburse the arrears at their whims and fancies as though these arrears are their bounty. Mr. Sanjay Sharawat submits that despite two earlier decisions of the Court given on 12.08.2024 and 27.09.2024 on similar issues, Respondents have not released the arrears to the Petitioner.

10. Insofar as the College is concerned, the stand as always is that it is willing to disburse the arrears but is unable to do so in the absence of budget and allocation of funds from the concerned Authorities. The other Respondents plead lack of budgetary allocations, a routine argument in every similar matter.

11. Having heard learned counsels for the parties, I may painfully note that Petitioner is having to struggle to receive arrears of pay, which she is legitimately entitled to. Despite the Petitioner being eligible for promotions to different posts, there was total inaction on the part of the University/Colleges in taking steps towards promotions for over a decade. Finally, the said Respondents woke up from their deep slumber in 2021 and carried out the promotion exercise and Petitioner was promoted from due dates of eligibility. Having received promotions on paper, Petitioner has

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been deprived of the fruits of her promotions, which admittedly came belatedly. Pay fixations qua the promoted posts have been carried out and approvals have been received, still arrears have not been released to the Petitioner and going by the common stand the hindrance is 'budgetary allocations'. Mr. Sanjay Sharawat is right in his contention, which he painfully articulates that despite earlier orders of this Court granting opportunity to the Directorate of Higher Education, Colleges and the University to hold high level meetings to work out the modalities for releasing arrears of pay to the Petitioners therein, no action has been taken and it appears that the Respondents have scant regard for the orders of this Court. There can be no trace of doubt that an employee on promotion cannot be deprived of the benefit of the higher pay scale. Every employee works hard and dedicatedly and aspires for promotion and the action of the Respondents in depriving the Petitioner of her hard-earned arrears cannot be countenanced either in law or in equity.

12. Therefore, instead of directing the Respondents to hold meetings and work out modalities to release the arrears, as was done in the earlier cases, where no action has been taken so far, this writ petition is allowed directing the Respondents to ensure that arrears of pay due to the Petitioner on account of her promotions are released to her as expeditiously as possible and not later than a period of six weeks from the date of receipt of this order by the College. It would be for the Respondents to put their house in order and make arrangements in the budgetary allocations/planned estimates so that the order passed by this Court is complied with in letter and spirit without any delay. The issue of payment of interest on delayed payments of arrears of pay is left open.

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13. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 06, 2024/shivam

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