



2024:DHC:4273



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

% Judgment delivered on: 13.05.2024

+ **W.P.(C) 6435/2013 & CM APPL. 17963/2023****SANJAY KUMAR** Petitioner

versus

UNIVERSITY OF DELHI & ORS Respondents**Advocates who appeared in this case:**

For the Petitioner : Mr. Vikalp Mudgal, Mr. K.V. Sriwas
Narayanan and Mr. Vignesh Raj T,
Advocates

For the Respondent : Mr. Kripa Shankar Prasad and Mr.
Kanishk Raj, Advocates for R-1.
Mr. Anurag Mathur, Advocate for R-2.
Mr. Gobind Kumar, Advocate for-3.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India *inter alia* seeking the following prayers:-

“i) Issue a Writ of Certiorari to call for the records of the case and quash and set aside the order dated 17.01.2013 issued by the Respondent No. 2 and/or



ii) Issue a Writ of Certiorari to quash and set aside the order of appointment of the Respondent no.3 to the post of Assistant and/or

iii) Issue a Writ of Mandamus to the Respondent No. 2 directing it to appoint the petitioner to the post of assistant and/or

iv) Pass such further order(s) and/or give direction (s) as deemed fit and proper in the facts and circumstances of the case.”

2. The petitioner was initially appointed to the post of Office Attendant by the respondent no.2 on the recommendations of the Selection Committee on 27.06.1996 in the pay scale of Rs. 750-12-870. By the letter dated 20.11.1997, the petitioner was confirmed by the respondent No.2 *w.e.f.* the date of his initial appointment. On 27.04.2004, the petitioner was promoted to the post of *Daftari* on the basis of skill test conducted by respondent no.2. Subsequently on 19.09.2008, the petitioner was promoted to the post of Junior Assistant on the basis of written as well as typing test conducted by respondent no.2.

3. It is stated by the petitioner that on 23.04.2011, the respondent no.2 had issued an advertisement inviting applications for the post of Assistant (Non-Teaching) Staff *vide* advertisement dated 23.04.2011. On 01.06.2011, the petitioner claims to have been called for the written examination for the post of Assistant pursuant to the aforesaid advertisement. The examination is stated to have been conducted on 27.06.2011. On 21.01.2012, the Governing Body was constituted to conduct the interview of the incumbents for the post of Assistants.



However, due to numerous complaints, the same was postponed.

4. On 17.01.2013, the respondent no.2 gave a fresh advertisement, which is impugned herein for filling up of single post of Assistant by way of an examination scheduled to be held on 09.02.2013. The petitioner claims to have not participated in the said examination. The said notification for filling up the post was kept open for Direct Recruitment and not for promotion.

5. The grievance of the petitioner arises from the fact that the impugned notification restricted the participation for the promotional post of Assistant to that of Direct Recruitment, which is contrary to the Rules and Regulations of the year 2008 (hereinafter as “RRs”) in respect of the non-teaching employees.

6. Learned counsel appearing for the petitioner directly invited attention of this Court to the RRs, particularly Rule 6(ii) and (ix)(b) to submit that so far as the departmental candidates are concerned, the RRs would not preclude the Upper Age Limit as per Rule 6(ii). Learned counsel relies upon the sub-Rule (ix) of Rule 6, particularly Clause (b), which stipulates that when the number of sanctioned posts in the cadre of Assistant and Senior Assistant is less than ‘4’, there will be no Direct Recruitment and the posts shall be filled by promotion. It further stipulated that if there is no qualified person with minimum number years of service available in the feeder cadre, the post shall be filled by Direct Recruitment.

7. The case of the petitioner is as portrayed before this Court is that the petitioner as on 17.01.2013 was qualified to participate in the said examination on the basis that he was a departmental candidate and under



the category of '*Limited Departmental Examination*' (hereinafter as "LDE"), he was fully eligible to participate in the said examination since it required only three years regular service in the cadre. He submits that since the impugned advertisement was restricted only to the Direct Recruitment, the petitioner was deprived from participating in the said examination by way of LDE.

8. Learned counsel also laid emphasis on the definition of LDE, which according to him, categorically indicates that the recruitment by way of LDE is stated to be the part of the '*Promotion Quota*' and not '*Direct Recruitment*'. On that basis, learned counsel submits that the petitioner's deprivation, is violation of his rights.

9. The petitioner also draws attention of this Court to Schedules of the RRs of 2008 at page 87, particularly to Serial No.10, whereby in case of recruitment by promotion/deputation, two different parameters have been indicated; one for the post of the Junior Assistant working in the stipulated pay scale of Rs.3050-4590/- with minimum period of 5 years regular service in the cadre and other being for departmental candidates seeking promotion by way of LDE with the minimum period of 3 years regular service in the cadre was stipulated.

10. He submits that as on 17.01.2013, the petitioner had qualified for the LDE since it is claimed that he had 3 years of regular service by that time. He also submits that by the time recruitment process under the said advertisement was completed on 28.09.2013, when respondent no.1 was recruited, the petitioner had also become qualified for the said post by way of promotion since he had, by that time, 5 years of regular service in the cadre.



11. *Per Contra*, Mr. Anurag Mathur, learned counsel appearing for respondent no.2 submits that in the initial stages when the petitioner had participated under the advertisement of 2011, the petitioner was neither having 3 years of regular service for the purposes of promotion in the ordinary course nor did he have the essential 3 years regular service in the said cadre for the purpose of LDE.

12. He submits that even as on 17.01.2013, the respondent-college did not find any person suitable for promotion by the ordinary course and as such had no option other than to call for an advertisement for recruitment by way of 'Direct Recruitment' rather than promotion.

13. He draws attention of this Court to page 36 of the paper book which is sub-rule (ix) of Rule 6 particularly Clause (b), to submit that it was only when there was no employee found suitable with the minimum number of years of service in the feeder cadre, that the post would be filled by 'Direct Recruitment'. He submits that consequent upon the letter dated 21.11.2012 issued by the Delhi University, which is at page 200 of the present petition, that the respondent no.2 had no choice other than to issue the impugned advertisement dated 17.01.2013.

14. On that basis, learned counsel submits that the petitioner does not have any case, being not qualified as on the date of the advertisement dated 17.01.2013, in that, not having 5 years of regular service in the said cadre. The grievance of the petitioner that the post ought to have filled by the promotion, is unsustainable.

15. This Court has heard the argument of learned counsel for the parties and perused the record.

16. The question which has been called for interpretation of this



Court is Clause (b) of sub-Rule (ix) of Rule 6 of the NTE Rules, 2008. It is not disputed that the Clause (b) of the aforesaid Rules stipulates that wherever the number of sanctioned post in the cadre of Assistant or Senior Assistant, is less than '4', the recruitment would be only by promotion and the method of direct recruitment is prohibited. However, the said stipulation had a default clause that in case where there is no employee found eligible or qualified with the minimum number of years available for the feeder grade, the post would in default then be filled by Direct Recruitment.

17. So far as the advertisement of the year 2011 is concerned, the petitioner does not dispute that he neither had 5 years of regular service for the purpose of promotion nor did he have the 3 years regular service in the said cadre for the purpose of LDE.

18. Be that as it may.

19. Since the original recruitment process was scrapped by the Delhi University and by the letter dated 21.11.2012, the Delhi University directed respondent no.2 to proceed with the recruitment procedure as laid down in the Recruitment Rules, 2008 for the post of Assistant, the impugned advertisement dated 17.01.2023 was issued in pursuance and in compliance of the aforesaid letter of the University.

20. It would be relevant to consider the Schedule attached with the Recruitment Rules by way of which various stipulations have been indicated.

21. The Schedule for the Recruitment Rules in respect of the post of Assistant is at page 86. If one were to examine the method of recruitment at Serial No.9, it has been stipulated that the 50% by



promotion, failing which by Direct Recruitment, 25% by LDE, failing which by Direct Recruitment and 25% by Direct Recruitment. On a closer scrutiny of the said Schedule, it would apply strictly where there are atleast 4 posts, where this distribution would be 50% by promotion, failing which by Direct Recruitment and 25% by LDE, failing which by 25% Direct Recruitment. In the present case, since there was only one post, as per the Clause (b) of sub-Rule (ix) of Rule 6 of said Recruitment Rules, 2008, the post ought to have been filled by promotion.

22. Serial No.10, which stipulates that in case of recruitment by promotion, the grades for which promotions/deputations have been stipulated in two categories; the first being by promotion from amongst the Junior Assistant working in the pay scale of Rs.3050-4590 with minimum period of 5 years regular service in the cadre and the second being by LDE amongst the Junior Assistants, Care Takers working in the pay scale of Rs.3050-4590 with minimum period of 3 years regular service in the cadre.

23. Since only one post was available, the respondents had to apply the same against Promotional Quota first. Having regard thereto, the respondents have averred that as on the date of the advertisement, there was no Junior Assistant employed in the respondent no.2, who was found eligible with a minimum period of 5 years of regular service in the cadre. The petitioner too does not dispute this situation, since his 5 years' regular service was completed only in September 2013, by which date, the recruitment by way of Direct Recruitment had already concluded.

24. The arguments of the learned counsel that the filling up the post



2024:DHC:4273



by promotion, if was not found suitable, the next method could only have been Limited Departmental Examination, which should have been afforded to the petitioner.

25. This Court is not able to agree to such argument. This is for the reason that the Limited Departmental Examination, though may have been considered as part of the promotion, yet does not disentitle the respondents from filling up the post by 'Direct Recruitment'. The stipulation *viz* provided in sub-Clause (b) of sub-Rule (ix) of Rule 6 of NTE Rules, 2008 categorically stipulates that where there is no person qualified with minimum number years of service available in the feeder grade, the post would be filled by 'Direct Recruitment'. This is precisely what respondent no.2 has done in the present situation.

26. Respondent no.2 having complied with the Recruitment Rules as directed by the Delhi University *vide* its letter dated 21.12.2012, the impugned advertisement dated 17.01.2013 cannot be found fault with.

27. In that view of the matter, the case of the petitioner is without any merit and is dismissed as such alongwith pending application, without any order as to costs.

TUSHAR RAO GEDELA, J

MAY 13, 2024

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