



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.CAS(C) 308/2021, CM APPL. 27935/2021, CM APPL.
897/2022

KUSUMLATA MALIK

.....Petitioner

Through: Mr. S.K. Rungta, Sr. Advocate with
Mr. Prashant Singh, Adv.

versus

VIBHA SINGH CHAUHAN PRINCIPAL KIRORIMAL
COLLEGE

.....Respondent

Through: Ms. Monika Arora, Mr. Subhrodeep
Saha, Mr. Prabhat Kumar, Advs. for
Kirori Mal College (M: 9810246300)
Mr. Mohinder J.S. Rupal, Mr. Hardik
Rupal, Ms. Aishwarya Malhotra, Mr.
Neetish Panchauri, Advs. for
University of Delhi
Mr. Manoj Ranjan Sinha and Mr.
Vishal Agrawal, Advs. for UGC

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

%

14.02.2025

CM APPL. 6694/2025

1. This application has been moved on behalf of the respondent/University of Delhi¹ seeking recalling and setting aside of the order dated 18.12.2024 passed by this Court in the present petition.
2. Notice of the present application has been served upon the non-applicant/petitioner. Although, no reply is filed, however, the same is opposed.
3. Briefly stated, the petitioner instituted the present petition seeking

¹ DU



initiation of the contempt proceedings against the respondent for non-compliance with the directions contained in judgment dated 19.01.2018 passed by the learned Single Judge of this Court in W.P.(C) No. 2496/2008 as modified by the judgements/order dated 10.01.2020 in LPA No. 206/2018.

4. In nutshell, the petitioner, who is a visually impaired person, applied for the post of Hindi Lecturer in Kirori Mal College², affiliated to DU and upon meeting the minimum eligibility qualification, she was duly considered under 3% reservation for visually impaired persons. However, she was found to be unfit by the Selection Committee for the appointment in the permanent post of Hindi Lecturer and instead found fit for appointment on such post on part-time basis. Accordingly, the petitioner joined the service in such capacity in July, 1997, and she worked in such capacity till 15.04.2001, and thereafter, she was appointed against a Leave Vacancy of Hindi Lecturer on 16.04.2001, after due selection.

5. The petitioner claimed her entitlement to be on the permanent post from the date of joining and on filing of the aforesaid writ, the learned Single Judge *vide* order dated 19.01.2018 made the following observations:

8. Upon hearing and on perusal of material on record and the decisions cited, I find it to be wholly illogical that a person is fit for parttime appointment, but is not fit for regular appointment against a post. In the counter-affidavit, it has not been-explained as to how it can be so said. Even during the course of hearing, no plausible explanation on this aspect was forthcoming from learned counsel for respondent-College. It is pertinent to note that petitioner was given appointment on the post of Hindi Lecturer on part-time basis way back in the year 1997. Although in this petition quashing of appointment of third respondent made in the year 1998 has been sought, but I find no justification to quash the appointment of third respondent for the reason that his appointment was against a post

² KMC



under the Scheduled Caste category and petitioner belongs to an altogether different category of handicapped persons i.e. differently abled category.

9. The crucial question which requires to be considered in this petition is whether 3% reservation for the physically impaired persons was given by respondent-College or not. In the case Pushkar Singh (*supra*), the aspect of 3% reservation for the physically impaired was considered and the said writ petition was disposed of with a mandamus to give 3% reservation to visually and orthopedically handicapped persons and if need be, supernumerary post be created to ensure that due representation is given to the visually and orthopedically handicapped persons. The decision in Pushkar Singh (*supra*) has attained finality. It is quite evident from recommendation of 28th August, 1998 of the Selection Committee (*Annexure R-6*) that physically impaired person was appointed on the post of Lecturer in English against an unreserved post. In view thereof, '100 Point Roster' (*Annexure R-1*) indicating that reservation was given to visually impaired in the year 1998 is factually incorrect. Since Someshwar Sati was appointed against an unreserved post, therefore, reservation to visually handicapped persons has to essentially relate back to the year 1998 as per the '100 Point Roster' (*Annexure R-1*). Merely because in a Public Interest Litigation, it has not come to light that reservation has not been given to physically handicapped, cannot be a ground to turn blind eye to the anomaly in the '100 Point Roster' (*Annexure R-1*) as noticed above.

10. Consequentially, a mandamus is issued to respondent-College to give the slot of visually handicapped in the year 1998 in the '100 Point Roster' (*Annexure R-1*) to petitioner as her entitlement to 3% reservation has to essentially relate back to the first available vacancy, which was infact existing in the year 1997. Since petitioner has been erroneously appointed on part-time basis on post of Hindi Lecturer in the year 1997 whereas she should have been appointed against a regular vacancy of Hindi Lecturer, therefore, the relief granted to petitioner is confined to the prayer made in this petition i.e. the seniority of petitioner has to relate back to the year 1998 and not to the year 2001, as has been already granted by respondent-College. All consequential benefits accruing upon grant of 3% reservation to petitioner w.e.f. the year 1998 shall follow. However, it is clarified that the monetary benefits as a consequence of this decision will relate back to the year 1998 and not to three years prior to filing of this writ petition. Such a clarification is made for the reason that when petitioner's earlier writ petition was disposed of vide order of 22nd November, 2007, liberty was granted to petitioner to claim seniority etc. and all consequential benefits from the year 1998. Since petitioner had filed the earlier writ petition in the year 2001, therefore, all consequential monetary benefits would relate back to period of three years prior to filing of W.P. (C) 1784/2001.



6. In view of the aforesaid observations, the aforesaid writ petition was disposed of by the learned Single Judge.

7. The KMC, however, challenged the aforesaid order in LPA No. 206/2018 which was decided by the Division Bench of this Court *vide* judgment/order dated 10.01.2020, and it would be expedient to reproduce the operative portion of the directions contained in such order, which reads as under:-

10. The Appellant does not dispute the position that it was bound to comply with the decision of the Executive Council contained in Resolution No. 193(3) of 16.07.1994, whereby the Executive Council approved the recommendations of the Committee appointed by the university to work out the modalities for the representation of disabled persons in teaching positions in the university and colleges. The said Committee had strongly recommended that reservation for the handicapped category candidates, which included the visually handicapped, auditorily handicapped and orthopedically handicapped candidates, should be granted reservation in teaching positions. This was applied to posts in Group 'C' and 'D' categories only. However, the communication dated 25.10.1994 contained the resolution of the Executive Council that reservations in teaching posts be extended to blind and orthopedically handicapped persons.

11. The aforesaid decision, which bound the Appellant, obliged the Appellant to appoint at least one disabled person during the Academic Year 1994-95. Despite the aforesaid binding direction issued by the University of Delhi to the Appellant College, the Appellant did not provide reservation for physically handicapped category candidates while filling up permanent post of Lecturer in Hindi which was advertised in 1997. Pertinently, when the said advertisement was issued, not only the aforesaid binding decision of the University was in existence, but also the writ petition preferred by Pushkar Singh and Others wherein the Appellant College was also impleaded as a party Respondent, was also pending since 1995 and the Court had clearly stated that appointments made by the colleges of the university would be subject to the outcome of the said writ petition. The direction issued by the learned Single Judge in Pushkar Singh (*supra*) in its decision dated 30.01.2001 required the Respondent, which included the Appellant herein, to comply with the Resolution No. 193/3 dated 16.07.1994 of the Execution Council of Delhi University w.e.f. from the date of the said resolution i.e. w.e.f. 16.07.1994. The Court also described the manner of implementation in its second direction quoted hereinabove, which required the Respondents (including the



Appellant herein) to calculate the number of posts which would have to be reserved for visually and orthopaedically handicapped persons in terms of the resolution dated 16.07.1994 and the provisions of the

Disabilities Act, and the number of posts which are to be reserved in the prescribed manner were not required to be earmarked subject wise keeping in view the criterion laid down in O.M. dated 25.11.1986. The direction issued in paragraph 19(5) is most relevant. The same required creation of supernumerary post, if number of posts were not available - to implement the decision by the Respondent. Alternatively, the Respondent was required to terminate the services of those, who were appointed subject to decision of the said writ petition, in terms of the order dated 14.07.1995. Though the Respondent had not filed the said writ petition and was not a party to it, the Appellant and all other colleges of Delhi University, including the Delhi University were party to the said writ petition preferred by Pushkar Singh and Others. It is clear from the decision in Pushkar Singh (supra) that the same did not relate only to the rights of the petitioner therein, but to the entire body of physically handicapped category candidates. The Respondent may not have challenged appointment of Ms. Pragya, who was appointed to the permanent post of Hindi Lecturer in the selection process in which she also participated, and was appointed against the part-time vacancy. The learned Single Judge proceeded to grant seniority and other reliefs to the Respondent by directing that the Respondent be given a slot as a visually handicapped category candidate in the year 1998, and the Respondent has accepted the said direction.

12. We are, therefore, not inclined to interfere with the said direction, even though, strictly in terms of the decision rendered in **Pushkar Singh** (supra), she may have been entitled to permanent appointment on a permanent full time post from the date when Ms. Pragya was appointed to the permanent post of Hindi Lecturer. At the same time, there is no denying the fact that the Respondent actually served only in part-time capacity between 16.07.1997 - when she was appointed as part-time Hindi Lecturer, and 16.04.2001 - when she was appointed to the temporary post of Hindi Lecturer against leave vacancy.

13. We, therefore, modify the directions issued by the learned Single Judge to the extent that though her permanent appointment would notionally relate back to the year 1998, and her pay would accordingly be fixed on a notional basis from 1998, she would be entitled to actual payment of arrears from 16.04.2001. We also find that the learned Single Judge has not fixed a specific date in the year 1998 from which the Respondent would count her seniority as a permanent Hindi Lecturer. Considering the fact that the Respondent was appointed as a part-time Hindi Lecturer in 1997, we direct that she would be deemed to be appointed on a permanent post of Hindi Lecturer in the Appellant College from 01.01.1998 onwards. On this basis, her seniority would be reckoned



and her notional pay would be fixed for the purpose of computation of arrears of pay that she would be entitled to from 16.04.2001 onwards.

14. The Appellant college shall ensure that the Respondent is paid the arrears of pay is fixed within the next eight weeks.

8. This petition seeking initiation of contempt proceedings came to preferred for the deliberate non-compliance on the part of the respondent/DU, of the aforesaid directions passed by this Court.

ANALYSIS AND DECISION

9. Having heard the learned senior counsel for the petitioner, as well as the learned counsel for the applicant/respondent/DU, it is an admitted fact that the petitioner has already been granted all monetary benefits on notional basis w.e.f. 01.01.1998 onwards and her seniority has been reckoned w.e.f. 16.04.2001 onwards for computation of her notional pay for the purpose of computation of arrears of pay. In other words, the petitioner is deemed to have been appointed on a permanent post of Lecturer in Hindi from 01.01.1998 and her seniority is to be reckoned from such date including grant of her pay on notional basis, but the actual payment of arrears were to be paid, and which have in fact has been paid, from 16.04.2001.

10. It is also an admitted fact that two advance increments on the basis of acquiring M. Phil qualification in the pay scale of Rs. 8000-275-13500 have been granted to the petitioner w.e.f. 01.01.1998, besides an advance increment on qualification of PhD w.e.f. 15.12.2003. Evidently, the arrears amounting to Rs. 8,84,583/- have been paid to the petitioner and pay & increments have further been granted in terms of recommendations of 6th Pay Commission.

11. It was also pointed by Mr. Rupal, learned counsel for the



applicant/respondent/DU that an amount of Rs. 4,59,436/- on account of NPS has been transferred in the account of the petitioner with DU for the period beginning from 04.03.2006 to 12.02.2010, after payment of gratuity amounting of Rs. 3,01,320/- for the period 01.01.1998 to 12.02.2010. The undisputed position that emerges is that the petitioner has since left the services of KMC, and has joined DU in Hindi Department w.e.f. 12.02.2010, as an Associate Professor through direct recruitment.

12. In the said backdrop, when the matter came up before this Court on 18.12.2024, another grievance was espoused by the petitioner that the respondent college had principally accorded approval for granting promotion to the petitioner to the post of Reader w.e.f. 01.01.2007 till 10.04.2010, based on her period of qualifying service in the college. It was however pointed out that in accordance with the relevant rules, the DU has to constitute a Selection Committee so as to complete the entire process of selecting the petitioner for the post of a Reader. It is in the teeth of such submissions that the following direction was passed :-

6. Having heard the learned counsels for the parties present, it is directed that a Selection Committee be constituted within four weeks from today by the respondent/Delhi University and an appropriate decision be taken within two weeks thereafter. A copy of this order be sent to Mr. Rupal learned Standing counsel for the Delhi University for information and necessary compliance.

7. A compliance report be placed before this Court on the next date of hearing i.e. 01.02.2025.

8. Let the matter be kept in the category of "Part Heard".

13. Mr. Rupal, learned counsel for DU urged that the petitioner ceased to be in the employment of the KMC w.e.f. 12.02.2010 and the DU has already written to KMC that there could be no question of according principal approval for granted promotion to the petitioner for the post of Reader w.e.f. 01.01.2007



till 12.02.2010 since there is no post of Reader as such.

14. Additionally, it is also urged that promotion to the post of Reader depends on the Academic performance, which is assessed on a case-to-case basis, by the Selection Committee, as per the University Grants Commission/University norms and mere length of service is not the sole criterion. In summary, as the petitioner is now a senior professor since 2023, and as she has already left the service of KMC, there could be no question of automatic promotion to the post of a Reader, which is a selection post and also for the fact that she has left the services of KMC, but has joined an independent autonomous organization and getting the requisite benefits.

15. The plea by Mr. Rungta, learned Senior Counsel for the petitioner that the directions passed by the learned Single Judge of this Court dated 19.01.2018 and as modified/approved by the Division Bench of this Court dated 10.01.2020, would also encompass grant of notional promotion to the aforesaid post does not cut any ice. At the cost of repetition, the benefits in the nature of notional appointment, seniority, pay fixation, promotion, gratuity, GPF arrears, have been granted to the petitioner in accordance with her entitlement.

16. In view of the foregoing discussion, the order dated 18.12.2024 passed by this Court is hereby recalled and set-aside. Accordingly, the present application is hereby allowed.

CONT.CAS(C) 308/2021

17. Since nothing survives in the present contempt petition, the same is dismissed as satisfied. All pending applications stand disposed of.

DHARMESH SHARMA, J.

FEBRUARY 14, 2025/sp