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

% Judgment delivered on: 07.05.2024

+ W.P.(C) 9072/2020

GIRIDHARI PAL

..... Petitioner

versus

VICE CHANCELLOR UNIVERSITY OF DELHI

&amp; ORS.

..... Respondents

**Advocates who appeared in this case:**For the Petitioner : Mr. Gajendra Giri and Mr. Aditya Giri,  
Advocates

For the Respondent : Mr. M. K. Singh, Advocate for R-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, 1950, seeking inter alia the following reliefs:-

*“a) directing the Respondents to consider the petitioner for promotion as STA in the Department of Pharmacology of respondent No.3 in the year 2005 when he fulfilled the condition of requisite experience and qualification, or in the year 2008 when the respondent No.3 wrongfully and illegally advertised the said post of STA in the Department of Pharmacology for being filled up as reserved for OBC; or when his junior in the Department of Microbiology of respondent No.3 was considered for promotion vide DPC held on 06.06.2008, with all consequential reliefs.*



*b) directing the respondents to pay the additional pay and allowances admissible to the petitioner for performing duty of STA in addition to his own duties as TA w.e.f. 01.01.2005 till his promotion as STA in the year 2019.”*

2. Learned counsel appearing for the petitioner submits that the petitioner was working as a Technical Assistant (TA) w.e.f. 10.01.2002. According to the petitioner, the promotional post of Senior Technical Assistant (STA) fell vacant w.e.f. 01.01.2005 and as per the reservation rules, the same should be kept for an unreserved category candidate. Subsequently in the year 2008, the Recruitment Rules (Non Teaching) Employees, 2008, stipulated that the promotion to the post of STA would be based on seniority-cum-fitness; quality of ACRs for the last five years; and vigilance clearance. It is stated that the post of STA is a group B post. The petitioner claims to be eligible for the promotion to the post of STA on the basis of his qualification and experience on the feeder cadre of TA in the Department of Pharmacology.

3. It is also stated by the petitioner that before joining the Department of Pharmacology, he possessed experience of six and a half years of working as TA on a project in the Chemistry Department of the respondent no.3.

4. On that basis, the petitioner submits that he had adequate experience and qualification in the feeder cadre of TA to be eligible for consideration as on 01.01.2005 for the promotional post of senior technical assistant (STA). Vide the notification dated 14.02.2013 the Recruitment Rules (Non Teaching) Employees 2008 were modified and for the post of STA five years regular service in the post of TA was prescribed. The petitioner claims that the respondent had unjustly and



unlawfully denied the petitioner his promotion to the post of STA. The petitioner had mentioned hostile discrimination on the basis that one Mr. Jitender Yadav, TA and Mr. Vishwa Mohan, TA in the department of Microbiology and Virology were promoted w.e.f. 06.06.2008 and 21.05.2009, respectively. It was submitted that it was only the petitioner who was singled out and ignored. From 2008 till 2017, the petitioner made a number of representations requesting the respondent no.3 to consider his case for promotion to the post of STA in the Department of Pharmacology.

5. He submits that in the year 2015, the respondent no.3 issued a communication dated 21.01.2015 intimating that the promotion of the laboratory staff was under consideration. Suffice it to say that subsequently, the petitioner was not considered and only on 01.07.2019 after the Recruitment Rules were amended in the year 2018, the petitioner was promoted on 01.07.2019 as STA without any financial benefit, since he had got the financial upgradation under the MACP scheme under 7<sup>th</sup> CPC. Being aggrieved of the non-grant of promotion with retrospective effect, the petitioner has filed the present petition.

6. Learned counsel appearing for the petitioner promptly draws attention of this Court to page 55 which is the statement of sanctioned and vacant posts as on 01.12.2018 issued by the respondent no.3. According to learned counsel, in the Department of Pharmacology there is only one sanctioned post and the said post was lying vacant w.e.f. 01.01.2005. Learned counsel submits that it is apparent from the document that the petitioner could have been promoted to the post of STA even as on 01.01.2005. Learned counsel refers to the Recruitment



Rules at page 68 of the petition which is the part of the annexure P-10 to submit that the Note in the said Recruitment Rules specifies that where the number of sanctioned posts in the cadre of STA is less than Two (upto One), there would be no direct recruitment and the posts shall be filled by promotion, failing which by direct recruitment or deputation. He submits that even the recruitment rules of the respondent stipulated that when there is one post in STA, the preferable mode or the only mode, would be promotion, failing which by direct recruitment. He submits that having regard to the said Recruitment Rules, there is no reason why the respondent could not have promoted the petitioner, that too, with retrospective effect. He submits that this Court may consider the same and may pass appropriate orders.

7. *Per contra*, Mr. M. K. Singh, learned counsel appearing for the respondent no.3 submits that subtratum of the petitioner's case is on an erroneous reading of the Recruitment Rules. He submits that recruitment rules referred to by the petitioner at page 68, are the Recruitment Rules which have been amended only in the year 2018. Hitherto before, the particular Note, which the learned counsel appearing for the petitioner is relying upon was conspicuous by its absence in the previous Rules. Learned counsel draws attention of this Court to the Notification dated 09.08.1999 issued by the University, particularly para 2 to submit that according to the said notification, the post of STA was directed to be filled up on fifty-fifty basis i.e., 50% posts by promotion and 50% by open recruitment, as per approved norms and qualifications. He submits that since the petitioner was seeking promotion and as per the Notification dated 09.08.1999, the Delhi University has directed that the



post should be filled up by fifty-fifty by promotion and also by open recruitment, the petitioner could not have been considered.

8. He further submits that in fact on 02.06.2008, a DPC was constituted for considering the case of the petitioner for the purposes of promotion to the post of STA. However, the same was rejected for good reasons, i.e., since the last incumbent was promoted to the post of STA, according to the Notification dated 09.08.1999, the post now needed to be advertized for open / direct recruitment. He submits that it was on this logical reasoning flowing from the Notification dated 09.08.1999, that the petitioner was denied promotion and not due to any malafide or other reasons as falsely averred by the petitioner.

9. That apart he submits that the present writ petition is not maintainable and is hopelessly barred by limitation since the petition was filed in the year 2020 seeking a relief of promotion w.e.f. 01.01.2005. He submits that it is settled law that the promotions to the post cannot be agitated after a long time period of time lest the right of other persons who have been, in the meantime, promoted to such posts, are affected by the litigation filed subsequently. He submits that in that view of the matter too, the petition should be dismissed.

10. This court has heard the arguments of learned counsel appearing for the petitioner as also learned counsel appearing for the respondent no.3 and perused the documents the record.

11. What is apparent from the perusal of the statement of sanctioned and vacant posts as on 01.12.2018 placed at page 55 of the present petition is that, so far as the post of STA in Pharmacology Department is



concerned, there was only one sanctioned post which was laying vacant since 01.01.2005.

12. This position admittedly was continuing as on 01.12.2018.

13. Even if this Court agrees with the contentions of the learned counsel appearing for the respondent no.3 that the Recruitment Rules drawn attention to by learned counsel appearing for the petitioner at page 68 is ignored, taking that the said rules were amended or implemented only in the year 2018, the fact would still remain that this post remained vacant all through. Learned counsel for the respondent no.3 had referred to the DPC held on 02.06.2008, in respect of the petitioner for the post of STA, which was rejected solely on the ground that the last incumbent to the said promotional post after demitting the office and the post having fallen vacant, the post now have to be advertized for the purpose of open / direct recruitment. According to learned counsel, this would be in consonance with the para 2 of the notification dated 09.08.1999.

14. As per the advertisement dated 29.11.2008-05.12.2008 of the employment newspaper placed at page 59 of the present petition, the post of STA is to be filled up by direct recruitment was advertised by the respondent no.3. It appears that no suitable candidate was short listed and the said post remained vacant despite efforts to fill it up by direct recruitment. The said vacant post continued to remain till the year 2019 when the petitioner was promoted as STA on 28.06.2019.

15. This position is not disputed.

16. This Court has also considered the issue on the angle of as to



whether the petitioner was qualified for the said post or not. To that extent, it appears that the petitioner was entitled to be promoted at least in the year 2008. The reason for this conclusion is the consideration of the petitioner for the post of STA by the DPC on 02.06.2008. In case the petitioner was not eligible or not falling within the zone for the consideration for the promotional post of STA, the question of constitution of DPC for the promotion to the post of STA would not have arisen at all. It is a different matter that the promotion was rejected on an issue which had nothing to do with his experience or qualification or eligibility to the promotional post.

17. Even if this Court were to go by the arguments and contentions by the respondent no.3 and keeping in mind para 2 of notification dated 02.09.1999 of the Delhi University, the respondent no.3 having made an attempt to fill up the post by direct recruitment in the year 2008 and having failed thereon, would have to abide by the said notification and then seek to fill the said post by promotion. In any case there is nothing placed on record by the respondent no.3 to indicate as to what would be the Rules governing a single post and as to how the said post is to be filled.

18. The other objection by learned counsel appearing for the respondent no.3 in respect of the petitioner unsettling the seniority list is concerned, it is apparent that the said promotional post of STA is single post and would therefore not affect any other person, and therefore, the said argument is rejected.

19. So far as the question of delay and laches is concerned, undoubtedly the petitioner has approached this Court after a long lapse



of time and the number of representations would still not come to his rescue. However, since the petitioner was informed by letter dated 21.01.2015, that the case of promotion of laboratory staff is under consideration, may entitle the petitioner to seek redressal before this Court under Article 226 of the Constitution of India. Even otherwise, unless the said relief would cause any impediment or unsettlement of any other person or employee of the respondent no.3, it cannot be said that the petitioner is completely barred from seeking redressal before this Court.

20. Having regard to the above, this Court is of the considered opinion that though the petitioner had given representations from the year 2008 itself, however, had waited till the year 2020 for redressal of his grievance before this Court, it appears that the petitioner could be entitled to the promotion to the post of STA w.e.f. 21.07.2016 when the circular was issued by respondent no.3 with subject Promotion of Technical Staff of VPCI, wherein the status of vacant posts in technical cadre, as on that date, was informed, which included the post of STA too.

21. In view of above, the petitioner would be entitled to his seniority w.e.f. 21.07.2016. Since the petitioner has been given all the financial benefits under the financial upgradation under the MACP scheme, there shall be no orders for such benefits.

22. In view of above, the petition is disposed of with the aforesaid directions, with no order as to costs.

**TUSHAR RAO GEDELA, J.**

**MAY 7, 2024/ms**