
(2010) 08 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (C) 851 of 2010 and CM No. 6329 of 2010

Delhi Technological University

APPELLANT

Vs

Mrs. Archana Rani

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 08 DEL CK 0034

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Arun Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The present decision disposes of the above captioned writ petitions as also CM No. 6329/2010 filed in W.P.(C) No. 851/2010 and CM No. 6328/2010 filed in W.P.(C) No. 892/2010.

2. The two civil miscellaneous applications pray that the Joint Registrar (Administration) Cum Administrative Officer of the first petitioner be proceeded against for having committed perjury. The averments on which it is stated that action for perjury be initiated is that he falsely filed an affidavit disclosing that at the selection committee meeting held on 10.9.2003 the candidature of the respondents and other persons was considered as per the applicable guidelines notified in the year 2003, whereas the fact was that the Selection Committee applied the new guidelines notified on 7.3.2008.

3. We shall be dealing with the two applications at the end of our decision and before that we shall be dealing with the main writ petitions.

4. Archana Rani, the respondent of W.P.(C) No. 851/2010 had taught at Mahila Degree College from 27.3.1996 till 31.7.2000. Sangita Kansal, the respondent of W.P.(C) No. 892/2010 had taught at Vaish Girls College from 18.12.1995 to 6.6.2000. Both of them joined as Lecturer in chemistry and Mathematics under

the first petitioner pursuant to letters of appointment offered to them. The dates are not very clear, but it appears that Archana Rani joined the first petitioner on 1.8.2000 and Sangita Kansal joined on 6.6.2000.

5. Both of them are Ph.D. in their respective subjects.

6. On 31.7.2001 AICTE issued guidelines notifying a Career Advancement Scheme (hereinafter referred to as CAS) laying down guidelines and the procedure to be followed for promotion in the teaching cadre in the degree level technical institutes in India.

7. Relevant would it be to note that the posts in the teaching cadre in technical institutes imparting degrees is the post of Lecturer at the lowest rung followed by the post of Lecturer (Senior Scale), Lecturer (Selection Grade), Assistant Professor and Professor in the preceding order.

8. The claim of the respondents in the two writ petitions pertain to their entitlement for promotion as Assistant Professors and hence we note only the relevant extract of the notification dated 31.7.2001 reads as under:

The Promotions under Career Advancement Scheme will follow the guidelines given below. All the promotions in career advancement will be on "in-situe" basis and therefore the work allocation (teaching load, etc.) will remain the same after promotion.

1.1.0 General

1.1.0 Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M.Phil., M.Tech and six years for other at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade)/Asstt. Professor, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

1.1.1 For movement into grades of Asstt. Professor and above, the minimum eligibility criterion would be Ph.D. Those without Ph.D. can go up to the level of Lecturer (Selection Grade).

1.1.2 An Asstt. Professor with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor.

1.1.3 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category.

1.2.0 Lecturer (Senior Scale)

1.3.0 Lecturer (Selection Grade)

1.4.0 Assistant Professor

1.4.1. A Lecturer in the Senior Scale will be eligible for promotion to the post of

Asstt. Professor in she/he has:

- (i) Completed 5 years of service in the Senior Scale.
- (ii) Obtained a Ph.D. degree or has equivalent published work.
- (iii) Made some mark in the areas of scholarship and research as evidence e.g. self-assessment, reports of referees, quality of publications, contribution to education innovation, design of new courses and curricula and extension activities.
- (iv) After placement in the Senior Scale participated in winter/summer schools (short-term courses) of total duration of 4 weeks, or engaged in other appropriate continuing education programmes of comparable quality as may be specified/approved by the All India Council for Technical Education (AICTE).
- (v) Possesses consistently good performances appraisal reports.

1.4.2 Promotion to the Post of Asstt. Professor will be through a process of selection by a Selection Committee to be set up under Statutes/Ordinances of the concerned Institute/University or other similar Committees set up by the appointing authorities.

9. A comment may be penned qua the notification dated 31.7.2001. To move into the grade of Assistant Professor, Lecturers having Ph.D. acquired eligibility after rendering 5 years" service in the post of Lecturer, but whether or not past service rendered before joining as Lecturer in a degree college under the first petitioner has been not made clear. Secondly, to move to the grade of Assistant Professor the candidate does not have an automatic right of being so placed. The candidate has to be evaluated through a process of selection by a duly constituted Selection Committee which has to evaluate the candidature on three criteria being the ones specified in Clause (iii), (iv) and (v) of Para 1.4.1 of the notification. Suffice would it be to state the evaluation criteria is to determine, vide Clause (iii) research work with reference to quality of publication, contribution to education innovation and design of new courses and curricula; vide Clause (iv) to evaluate the engagement by the candidate in appropriate continuing education programmes of quality; and lastly vide Clause (v) consistent good performance appraisal report.

10. On 5.9.2003 AICTE issued a notification the relevant part whereof which reads as under:

Previous service, without any break as a lecturer of equivalent, in a university, college national laboratory, or other scientific organization, e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of lecturer in Senior Scale/Selection Grade provided that:

8.1.0 The post was in an equivalent grade/scale of pay as the post of a lecturer.

8.2.0 The qualifications for the post were not lower than the qualifications

prescribed by the UGC for the post of lecturer,

8.3.0 The candidates who apply for direct recruitment should apply through proper channels;

8.4.0 The concerned Lecturers possessed the minimum qualifications prescribed by the UGC for appointment as lecturers;

8.5.0 The post was filled in accordance with the prescribed selection procedure as laid down by the university/State Government/central governments/institution's regulations.

8.6.0 The appointment was no ad-hoc or in a leave vacancy of less than one year duration. Ad hoc service of more than one year duration can be counted provided-

(a) The ad hoc service was of more than one year duration.

(b) The incumbent was appointed on the recommendation of duly constituted Selection Committee and

(c) The incumbent was selected to the permanent post in continuation to the ad hoc service, without any break.

11. Needless to state the mandate of the notification requires previous service rendered before joining an institute imparting technical education for graduation degree to be reckoned for purposes of computing qualifying service as a Lecturer i.e. 5 years? service.

12. On 24.3.2004 the petitioners invited application from the eligible candidates who desired their candidature to be considered for in situ advancement of career. The respondent No. 1 of both writ petitions submitted the application on 8.4.2004 and 6.4.2004 respectively. Self assessment reports required as per the rules were submitted by them.

13. Needless to state, granting benefit of past service rendered by the said respondents before they joined service under the petitioner as Lecturer, holding a Ph.D. degree, the respondents were entitled to be considered under the career advancement scheme to be designated as Assistant Professors. Further, as per the Career Advancement Scheme notified on 31.7.2001 a Selection Committee had to be constituted to evaluate them under the parameters specified under Clause (iii), (iv) and (v) of para 1.4.1 of the scheme.

14. The Committee which met in the month of July/August 2005 did not evaluate the respondents with reference to parameters specified under Clause (iii), (iv) and (v) of para 1.4.1 of the scheme. Why this was not done has not been brought out in the pleadings of the parties.

15. On 6.2.2006, once again applications were invited from the eligible candidates to be considered under the Career Advancement Scheme dated 31.7.2001. Respondents applied with a specific request that they became entitled for upgradation to the post of Assistant Professor in the month of March 2005

and December 2004 respectively and prayed that their candidature be considered with retrospective effect.

16. The Committee which met on 13.12.2007 was a Screening Committee and not a Selection Committee i.e. the Committee only scrutinized the applications to determine whether they were in order and whether the applicants were entitled to be considered for career advancement. Though not expressly stated, but probably for the reason there were various parameters which required to be considered for determining suitability as per the notification dated 31.7.2001, the Screening Committee recommended, obviously for purposes of bringing transparency, to have an objective criteria on which the candidates could be graded. The Committee recommended that the Selection Committee should consist of 5 Members and further weightage to the relevant criteria be as under:

ACR

Research & Development Consultancy

Research order/conference

Institute Development and Allied works

50%

15%

20%

15%

17. The competent authority accepted the weighted criteria proposed by the Committee and notified the same on 7.3.2008. The order notifying the same reads as under:

The Hon"ble Lt. Governor, National Capital Territory of Delhi is pleased to constitute the following Selection Committee to consider the cases of lecturer (Senior Scale) for placement in the grade of lecturer (Selection Grade/Assistant Professor) under the Career Advancement Scheme of AICTE in respect of Degree level colleges under the Department of Training & Technical Education, Delhi.

1. Secretary (TTE) - Chairman 2. Principal concerned - Member 3. Subject experts (maximum Three as per Requirement of the disciplines) - Member The following criteria shall be adopted for placement of Lecturer (Senior Scale) in the grade of lecturer (Selection Grade/Assistant Professor) by giving the weightage to various parameters.

ACR

Research & Development Consultancy

Research order/conference

Institute Development and Allied works

50%

15%

20%

15%

Sd/-xxx

(MUKESH PRASAD)

JOINT SECRETARY (TTE)

18. Unfortunately, the Selection Committee required to be constituted was never constituted. The respondents of the two writ petitions sent various representations requesting that their candidature be considered under Career Advancement Scheme to upgrade them as Assistant Professors. Yet in spite thereof, Selection Committee was not constituted till the year 2009 compelling said respondents to file two original applications registered as OA No. 316/2009 and OA No. 317/2009 praying to the Central Administrative Tribunal that they be designated as Assistant Professor with effect from 27.3.2005 (Archana Rani) and 18.12.2004 (Sangita Kansal).

19. In brief, they pleaded that the notification dated 31.7.2001 envisaged in situ upgradation and that they were fully eligible on 27.3.2005 (Archana Rani) and 18.12.2004 (Sangita Kansal) to be upgraded as Assistant Professor as both of them had a Ph.D. Degree and reckoning their past service as per the notification dated 5.9.2003 had completed 5 years? service as Lecturer on the said respective dates. They pleaded that the notification dated 7.3.2008 was not applicable to them and that their candidature had to be considered with reference to the notification dated 31.7.2001.

20. The case of the petitioner in response before the Tribunal was that the entitlement of the respondents had to be in terms of a notification dated 11.12.2003, which we note makes no difference to the entitlement of the respondents for career advancement to the post of Assistant Professor. Without explaining as to why the candidature of the two respondents was not considered, the reply to the two original applications ended abruptly.

21. Needless to state none could deny to the two respondents the entitlement to be considered for being upgraded as Assistant Professors from the date they became eligible under the Career Advancement Scheme notified on 31.7.2001 or the notification dated 11.12.2003.

22. But, what arose for consideration before the Tribunal was: (a) whether the respondents had an automatic right of upgradation or whether a Selection Committee had to consider their applications; and (b) whether the notification dated 7.3.2008 laid down a new criteria vis-?-vis the notification dated

31.7.2001 and could it be said that the notification dated 7.3.2008 could not be applicable to the respondents whose candidature had to be considered as of December 2004 and March 2005.

23. Unfortunately, the Tribunal has neither posed these questions and thus obviously has not answered them.

24. In a cryptic order spanning 6 paragraphs, after noting the relevant facts in the first 4 paragraphs, has concluded the issue in para 5 and 6 as under:

5. Pursuant to notice issued by this Tribunal, respondents have entered appearance and filed their reply. Counsel for respondents in view of the admitted position of facts is unable to oppose the case of the applicants on any ground whatsoever. The applicants being eligible on all counts, as rightly urged by the counsel for applicants appear to have been wrongly ignored for the post of Assistant Professor. Inasmuch as the applicants meet the eligibility criteria, not giving them requisite designation and rather deferring their case is totally incorrect.

6. There is no need now to direct the respondents to consider the case of the applicants for the post of Assistant Professor as they have already become entitled for in situ promotion. Whereas Sangita Kansal is entitled for in situ promotion w.e.f. 27.03.2005, the other applicant is entitled for such promotion w.e.f. 18.12.2004, when they completed five years service on the respective dates. Respondents shall pass the required orders for in situ promotion as expeditiously as possible and preferably within a period of three weeks from today. There will be no order as to costs. Any consequential benefit the applicants may be entitled to in consequence of in situ promotion from 27.03.2005 and 18.12.2004 respectively, the same shall also be given to the applicants.

25. We are baffled at what has been done by the Tribunal. A reflection on para 5 shows that the probable reason was a sub-standard representation of counsel before the Tribunal.

26. A reflection on para 6 shows that the Tribunal has been either misled or has misled itself as to what is the meaning of "in situ promotion", the expression used in the notification dated 31.7.2001. The notification states: "all the promotions in career advancement will be on "in situ" basis".

27. Career advancement on "in situ" basis would mean that a person holding a post in a particular institution would be upgraded to the higher post in his institution i.e. in situ and not to any other. It does not mean that whosoever is in place (in situ) would be upgraded. To read the notification dated 31.7.2001 as read by the Tribunal would render otiose Clauses (iii) (iv) and (v) of para 1.4.1 of the notification dated 31.7.2001, which as noted in para 9 above requires the candidates to be evaluated on the criteria, vide Clause (iii) research work with reference to quality of publication, contribution to education innovation

and design of new courses and curricula; vide Clause (iv) to evaluate the engagement by the candidate in appropriate continuing education programmes of quality; and lastly vide Clause (v) consistent good performance appraisal report. We note that the same is the purport and implication of the notification dated 11.12.2003 relied upon by the petitioner before the Tribunal.

28. Thus, the Tribunal is wholly unjustified in issuing the direction as per para 6 of the impugned order dated 3.11.2009.

29. As regards the controversy whether the notification dated 7.3.2008 is retrospective in operation or not, as is to be noted from our discussion above, the criteria laid down for evaluation vide notification dated 31.7.2001 were fairly subjective and to bring objectivity the Selection Committee would have been required, to give objectivity, lay down a criteria for a fair selection. It is settled law that every Selection Committee is empowered to lay down an objective criteria to regulate the selection procedure. Rather than having the Selection Committee to bring objectivity by apportioning the weightage to the criteria listed under the notification dated 31.7.2001, what the petitioner's did was to apportion the weightage vide notification dated 7.3.2008, which obviously has to be treated as a clarificatory notification. It is settled law a clarificatory notification is always treated as retrospective. In any case, even if it is to be held that the notification dated 7.3.2008 cannot be applied, the only direction which could be issued would be to direct that a Selection Committee be constituted to consider the candidature of the two respondents in terms of the notification dated 31.7.2001, leaving it open to the Selection Committee to devise a procedure for awarding weightage to the various criteria for evaluation specified in terms of the notification dated 31.7.2001.

30. The two writ petitions are accordingly allowed. Impugned order dated 3.11.2009 is set aside. OA No. 316/2009 and OA No. 317/2009 are disposed of with a direction to the petitioner to convene within 2 months from today a Selection Committee to consider the candidature of the respondents under the notification dated 31.7.2001 and by applying the weighted criteria as per the notification dated 7.3.2008; the candidature of the respondents would be considered as of the date they became eligible under the Career Advancement Scheme to become Assistant Professors. Further action would be as per the recommendations of the Selection Committee.

31. As regards the two civil miscellaneous applications, suffice would it be to state that in view of the facts noted hereinabove and our opinion that the notification dated 7.3.2008 is merely clarificatory we find that no perjury has been committed and hence we dismiss CM No. 6329/2010 and CM No. 6328/2010.

32. No costs.