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**(2017) 08 DEL CK 0095**

**In the Delhi High Court**

**Case No : 4491 of 2017**

LALIT MOHAN GAUTAM

APPELLANT

Vs

UNIVERSITY OF DELHI

RESPONDENT

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**Date of Decision : 28-08-2017**

**Acts Referred:**

**Citation : (2017) 08 DEL CK 0095**

**Hon'ble Judges : V. Kameswar Rao**

**Bench : SINGLE BENCH**

**Advocate : Ankur Chhibber**

**Final Decision : Dismissed**

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## **Judgement**

1. The present petition has been filed by the petitioner with the following prayers:-

"In the aforesaid facts and circumstances, the petitioner humbly prays for the following order and/or orders: A) A writ or order or direction in the nature of mandamus commanding the respondent to consider the services of the petitioner on and from January 1, 1987 till his superannuation on December 31, 2015 and pay him his retiral benefits including pension together with all other arrears; B) A writ or order or direction in the nature of mandamus commanding the respondent to consider the representations of the petitioner dated August 24, 2013, December 5, 2013, April 7, 2014 and November 5, 2016; C) Rule NISI in terms of prayers above; D) Costs."

2. Some of the facts as noted from the writ petition are, the petitioner joined the respondent University as a "Lawyer Lecturer". The petitioner completed his Master's Degree and joined back the University and continued to teach as a Lawyer Lecturer. In

the year 1998, he qualified National Eligibility Test. On July 1, 1998, the petitioner was

appointed as an ad-hoc Assistant Professor and continued to work as such till December

31, 2015. It is the case of the petitioner, that respondent University vide its letter dated

October 23, 2006 in response to a representation made by the petitioner advised the

petitioner to apply for the post of Professor of Law as and when the same is advertised. On June 29, 2007, the petitioner submitted an application for the post of Professor,

Campus Law Centre. He has referred to the fact that the respondent proposed the candidature of the petitioner working as Assistant Professor on ad-hoc basis as a permanent faculty in the Faculty of Law. It is also averred that the Dean, Faculty of

Law of the respondent University recommended that the petitioner be offered the position of permanent faculty member in the Faculty of Law.

3. On April 17, 2014 a representation was made by the petitioner seeking appointment to the post of Professor. He filed a writ petition being W.P.(C) No. 2545/2014, inter-alia seeking a mandamus commanding the respondent to appoint the

petitioner to the post of the Professor from July 1, 1987 and to consider the representation of the petitioner dated April 17, 2014. The aforesaid writ petition was

disposed of by this Court inter-alia directing the respondent to deal with the representation of the petitioner dated March 15, 2014. Pursuant thereto, the respondent

University sent a letter dated July 9, 2014 disposing off the representation. It is his case

that the respondent University deliberately, with ulterior motive supplied incomplete

documents.

4. The petitioner filed a further Writ Petition being W.P.(C) No. 8042/2015, which writ petition was subsequently amended by the petitioner, wherein the following prayers

were made:-

"The petitioner has filed the present petition seeking the following reliefs:- "i) To issue a writ of mandamus or any other appropriate writ regularizing the Petitioner's employment with the Respondent University in the position of Lecturer in Reader's Grade with effect from July 1988 and thereafter position of Professor from 1998 as per time-bound promotion; ii) Issue a writ in the nature of mandamus directing the respondent to consider/decide on the representation of the petitioner dated 24 August, 2013 and 5 December, 2013 through a speaking order; and iii) Issue a writ in the nature of Mandamus directing the Respondent to furnish a copy of the advisory made by the Selection Committee which met in the first week of March 2005 for appointments to positions in the faculty of law, University of Delhi; and iv) Issue a writ in the nature of mandamus to provide documents as detailed in letter/representation dated 15.03.2014 addressed to the respondents by the petitioner; and v) Issue writ in the nature of mandamus to provide the materials if any, considered in passing the non-speaking order dated 23 October 2006 regarding Petitioner's appointment as Professor."

5. During the pendency of the writ petition, it transpired that the respondent

University had advertised various posts of Professor, Associate Professor and Assistant

Professor and as the petitioner has not made any application against the said advertisement, the Court held, as the petitioner has not availed the opportunity of regular appointment, the reliefs as prayed for by him, cannot be granted. A Review

Petition was filed by the petitioner being Review Petition No. 611/2015, which was dismissed. Subsequently, the petitioner filed an Intra Court Appeal being LPA No.

57/2016 before the Division Bench and the Division Bench dismissed the Appeal vide

its order dated January 27, 2016 by holding as under:-

"The above facts would disclose that the petitioner was made aware of his non-selection in 2005; after a selection took place for post of Professor in the Faculty of Law, University of Delhi. It is also clear that the petitioner was informed about the outcome of the selection through a letter dated 23.10.2006. Even though this letter was not explicit in terms of its furnishing of reasons for his non-selection, there was evidently no appointment letter. In these circumstances, the long and inexplicable delay in approaching the Courts has not been explained. There is nothing to show that the petitioner was prevented in any manner from seeking relief from the Courts instead of seeking a remedy through representations to the University. Given that the petitioner cannot be said to be ignorant of the process of the law; he being a teacher of the law himself, we hold that the claim to relief is highly belated. Resultantly, this Court finds no

reason to fault the order of the Single Judges. The appeal is bereft of merit and is therefore dismissed."

6. The Review Petition filed by the petitioner seeking review of order dated January

27, 2016 was dismissed by the Division Bench on April 1, 2016. Subsequently, the SLP

filed by the petitioner against the orders dated April 01, 2016 and January 27, 2016 was

withdrawn by the petitioner.

7. The petitioner, who appeared in person, has placed before me a compilation of documents, which included the extract of Ordinance XIII, XIII-B, and XXIV and the

various representations made by him from time to time; the time table of the classes he

took, in the University of Delhi from time to time; the application forms submitted by

him for various posts from time to time. Suffice to state, the prayer as made by the

petitioner in this petition is for grant of pensionary benefits. It cannot be disputed that

the prayer of the petitioner seeking regularization of his employment stands settled with

the withdrawal of the SLP being CC No. 15443/2016.

8. One of the plea of the petitioner is, that the W.P.(C) No. 8042/2015 emanated from his non selection in the year 2005 even though he sought regularization of his

services. In other words, the said writ petition was not premised on the basis of the

judgment of the Supreme Court in the case reported as (2006) 4 SCC 1 State of Karnataka v. Uma Devi . The said submission of the petitioner is not appealing for the

simple reason, that the petitioner was within his right to urge all pleas as available to

him both on facts and in law. There was a specific prayer seeking regularization of his

employment, which was not accepted by this Court; the Division Bench. The SLP filed

before the Supreme Court was withdrawn. It must be reiterated the issue of regularization has attained finality. In fact, no prayer for regularization has been made

in this petition. The petitioner cannot re-agitate the issue of regularization in this petition on that ground also.

9. That apart, insofar as the prayer of the petitioner for grant of pension is concerned, Clause 11 of Ordinance XIII, which I reproduce as under, clearly stipulates

that a part time teachers be not given the benefit of Provident Fund, Pension etc as being

given to regular Teachers of the University.

"11. Part-time teachers be not given the benefit of provident fund, Pension etc normally given to regular teachers of the University. They may, however, be given leave benefits as those given to the teachers appointed on a temporary basis."

In other words, it is the regular Teachers, who are entitled to pension.

10. In view of the aforesaid position, the fact that the petitioner was not a regular Teacher of the University, he cannot claim pensionary benefits, which is the only prayer

of the petitioner in this petition and the same need to be rejected.

11. Insofar as the other documents in the compilation placed by the petitioner before

me during the course of his submissions are concerned, they primarily are representations made by him; applications submitted for appointment to various posts

from time to time. In this regard, I may state that W.P.(C) No. 8042/2015 was dismissed by holding that "petitioner having not availed the opportunity of regular appointment, the reliefs as prayed for by the petitioner cannot be granted." The reference that he has not availed the opportunity of regular appointment was primarily

with regard to the advertisement issued by the University for making appointments to

various posts of Professor, Associate Professor and Assistant Professor during the pendency of the writ petition. The representations made earlier to that period would be

of no consequence. In any case, the issue of regular appointment in the University,

having been settled, the reliance placed by the petitioner on these representations/applications/time table is of no consequence.

12. I do not see any merit in the petition. The same is dismissed.