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**(2009) 05 DEL CK 0248**

**In the Delhi High Court**

**Case No : Writ Petition (Civil) No. 4570 of 2008**

Mrs. Naheed Chaudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 25-05-2009**

**Acts Referred:**

**Citation : (2009) 05 DEL CK 0248**

**Hon'ble Judges : V.K. Shali, J**

**Bench : Single Bench**

**Advocate :** Rana Ranjit Singh, for the Appellant; Amitesh Kumar, for UGC, V.K. Rao, Saket Sikri for Respondent No. 2 and A.S. Singh, Respondent No. 1, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

V.K. Shali, J.—The present writ petition has been filed by the petitioner seeking issuance of appointment letter to the post of Assistant Registrar with the respondent No. 2/Jamia Hamdard (Hamdard University) on the ground that the name of the petitioner was recommended on 18.12.2008 and approved by the competent authority for such an appointment. The petitioner has also prayed for quashing of notification/advertisement No. 11/2008 dated 22/23.4.2008 on the basis of which the said post of Assistant Registrar was re-advertised by respondent No. 2 for the purpose being filled up.

2. Briefly stated the facts leading to the filing of the present writ petition are that the petitioner had done her Graduation in 1989 and post Graduation in 1991 from Sultanpur (Awadh University) UP. It is stated by the petitioner that she has been teaching in different schools and colleges in UP and schools in Delhi as English Teacher/Lecturer and at present she is working at Senior Supervisor with M/s HCL Technology NOIDA. It is alleged that in the month of October, 2007, the respondent No. 2 had advertised two posts of Assistant Registrar to be filled in by direct recruitment. Since the petitioner was desirous of seeking appointment to the said post, she applied as she was fulfilling the eligibility criteria. On 4th

December, 2007, an intimation was sent to the petitioner for appearing before the Selection Committee on 18th December, 2007 in the office of Vice Chancellor, Jamia Hamdard (Hamdard University). She was also directed to produce her original as well as the attested copies of the certificates.

3. The case of the petitioner is that in pursuance to the interview held on 4.12.2007, the said Selection Committee recommended her name at serial No. 2 while as the name of one Mrs. R. Naaz was kept at serial No. 1 and recommended for the post of Assistant Registrar. The aforesaid minutes of the Selection Committee are alleged to have been approved by the competent authority but as he did not receive any letter of appointment till the month of April, she made a representation and her husband kept on going to the office of respondent No. 2 in order to find out as to why the letter of appointment had not been issued to the petitioner. It is alleged that despite the representation having been made on 22/23.4.2008, the respondent No. 2 instead of issuing the letter of appointment to the petitioner had chosen to advertise the second post of Assistant Registrar again vide advertisement No. 11/2008 on 22/23.4.2008.

4. It is further stated that when the advertisement appeared, she became suspicious and she applied under the RTI Act, 2003 and it was learnt by her at that point of time that although her name had been kept by the Selection Committee in the panel at serial No. 2 against the two vacancies but despite this on the same date, a decision was taken by the Vice Chancellor that only one post be filled up and the second post be re-advertised. Feeling aggrieved by this arbitrary and irrational action on the part of the respondent No. 2, the petitioner has filed the present writ.

5. The respondent No. 3/UGC filed its counter affidavit and supported the case of the petitioner by making an averment to the effect that the petitioner had been recommended against the post of Assistant Registrar but despite this the respondent No. 2/Jamia Hamdard did not appoint her to the said post and choose to re-advertise the same.

6. So far as the respondent No. 2 is concerned, it raised preliminary objection regarding maintainability of the writ petition itself on the ground that the petitioner has no legal right to seek appointment nor is there any infringement of the fundamental right or the statutory right and therefore, the writ petition itself is not maintainable.

7. On merits, it was averred that there was only one post of Assistant Registrar which was advertised in October, 2007 against which the petitioner had applied during the pendency of the selection, the second vacancy had also arisen and that is how on 18.12.2007 when the selection process for filling up the one vacancy was undertaken the factual position was shown in the proceeding sheet of the Selection Committee and that the number of vacancies available were two but the Selection Committee had recommended only one candidate against one vacancy which was advertised, while as the second candidate, namely the

petitioner, was kept on the panel.

8. Though the petitioner had not filed the advertisement which was issued by respondent No. 2 in October, 2007 but a copy thereof was produced during the course of oral arguments in which the number of vacancies were not specifically shown.

9. The stand of the respondent is that had the number of vacancies been more than one, then the same would have been reflected in the advertisement itself. It was also averred by the counsel for the respondent that if one sees the proceedings of the Selection Committee, the name of the petitioner is shown in the panel at serial No. 2 and the second candidate though found fit is not recommended as was done in the case of one Mrs. R. Naaz. These proceedings are signed by three experts Mr. Avais Ahmad, Mr. R.K. Chauhan and Mr. Sunil Kumar and Professor Nafis Ahmad Chancellor's Nominee and Dr. S. Ahmad, Vice Chancellor and Chairman. The proceedings show that the Selection Committee interviewed in all 20 candidates out of total 27 and recommended the name of Mrs. R. Naaz against the appointment of one vacancy while as the petitioner's name was kept in the panel. The very fact the name of the petitioner was kept in panel as against being recommended is indicative of the fact that there was only one vacancy and that is why the Vice Chancellor has taken a decision to re-advertise the second vacancy and thus on the basis of these facts, it is alleged that the writ petition deserves to be dismissed.

10. The petitioner in his rejoinder affidavit has refuted the averments made in the counter. It has also taken the help of the averments made by UGC so far as the case of the petitioner for appointment to the post of Assistant Registrar is concerned. 11. I have heard the learned Counsel for the parties and perused the record.

12. The learned Counsel for the petitioner has vehemently contended that the malafides of the respondent is evident from the proceedings of 18.12.2007 wherein specifically it has stated that two vacancies of Assistant Registrars were available. It is on the basis of the said fact that it was urged that the respondent No. 2 through selection Committee had interviewed as many as 20 people out of 27 and found the petitioner not only eligible but also suitable to be appointed to the post of Assistant Registrar, however instead of being recommended against one of the vacancies, the name of the petitioner was shown to be on the panel. Further on 18.12.2007 itself a decision is taken by respondent No. 2 through the Vice Chancellor only to re-advertise the second post. This clearly shows that the respondent No. 2 was interested in obliging their own blue eyed person by re-advertising the post which they did on 22-23.4.2008.

13. Per contra, Mr. Rao, learned Counsel for respondent No. 2 has vehemently contested the submission of the petitioner's counsel. The learned Counsel for respondent No. 2 has also produced an advertisement for perusal of the Court which clearly shows that in October, 2007 on the basis of which vacancy the

petitioner had averred the total number of vacancies is not given in respect of any of the posts advertised in the said advertisement. Therefore, it can safely be assumed that there was only one post in respect of which the process of recruitment was set into motion. Since the post was advertised in October, 2007 and the interview by the Selection Committee had taken place in the middle of December, 2004, one more post having fallen vacant, it was reflected by way of factual position in the proceeding sheet of the Selection Committee.

14. There seems to be merit in the contention of the counsel for respondent No. 2 that second post has been fallen vacant after the advertisement for one post was given. The factual position shows only the proceedings before the Selection Committee by mentioning the total number of vacancies as two. It is further urged by him that the very fact that the name of the petitioner was not recommended and was only shown in the panel fortifies that there was only one post, which was intended to be filled up. Had the petitioner been found to be suitable and there were two posts requiring to be filled up, the name of the petitioner instead of being shown in the panel would have been recommended for appointment like the name of Ms. R. Naaz, the candidate who was recommended against the first vacancy. Since this has not been done, therefore, it can safely be assumed that the second vacancy had arisen only after the process of selection was set in motion in respect of the first vacancy. Merely because the name of the petitioner was shown in the panel does not mean that any vacancy which falls vacant after the advertisement is floated the same needs to be filled up by offering the same to a person whose name is kept in panel. Learned Counsel for the respondent has cited a case titled as *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, wherein the Supreme Court has observed that in respect of appointment to the public post, there should be wide circulation in the newspaper by publication of advertisement apart from display of vacancy on the notice board, announcement on radio and television etc. in order to have a wide publicity so that the best person is selected for a public post. The said post obviously has rightfully to be filled in, by floating a fresh advertisement in the National Daily and giving wide publicity for recruitment to the said post as the respondent No. 2 may be deemed fit.

15. For the reasons mentioned above, I am of the considered opinion that there was only one post of the Assistant Registrar which was advertised by respondent No. 2 in respect of which the petitioner had applied. The said post was filled up by first recommendee Ms. R. Naaz and having done so, it was not open for the respondent to appoint the petitioner whose name was only on the panel against the second vacancy of Assistant Registrar which seems to have arisen during the pendency of the selection process.

16. I, accordingly, dismiss the writ petition being without any merit. No order as to costs.