
(2022) 08 DEL CK 0013

In the Delhi High Court

Case No : Letter Patent Appeal No. 405 Of 2021, Civil Miscellaneous No. 38836 Of 2021

Ravi Kant Sinha

APPELLANT

Vs

Jawaharlal Nehru University

RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Citation : (2022) 08 DEL CK 0013

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Santosh Kumar Pandey, Ginny J. Rautray, Navdeep Singh

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Appeal is arising out of judgment dated 17.08.2021 passed by Learned Single Judge in W.P.(C.) No. 8516/2021 titled Ravi Kant Sinha Vs. Jawaharlal Nehru University Through:Registrar.

2. The facts of the case reveal that the Appellant before this Court was an employee of Jawaharlal Nehru University (JNU), and was appointed as Assistant Registrar on 22.05.2008 in Pay Band-3 with Grade Pay of Rs. 5400/- (Pre-Revised).

3. The Appellant after eight years of service was placed in a Grade Pay of Rs. 6600/- with effect from 22.05.2016.

4. He came up before this Court claiming Ad-hoc promotion to the post of Deputy Registrar with effect from 05.06.2018 along with consequential benefits. The Petitioner in the Writ Petition stated, on 21.11.2015 the University had invited applications for recruitment of to Deputy Registrar (Pay Band-3 Grade Pay 7600/-) on Deputation/ Short term contract basis. However, he was not recommended for promotion to Deputation/ Short term contract basis.

5. The Petitioner has further stated that again on 09.12.2017, applications were invited for recruitment to Deputy Registrar (Pay Band-3 Grade pay 7600/-) on Deputation/ Short term contract basis, and Dr. Jwala Prasad and Sh. P. Ajai Babu were appointed on 05.06.2018 and 11.06.2018 vide order dated 14.06.2018 and 15.06.2018 respectively.

6. The Petitioner has further stated that again two more candidates, namely, Sh. Gagandeep Singh and Sh. Sanjeev Kumar were appointed on Deputation/ Short term contract basis vide order dated 27.08.2018 and 24.09.2018. However, Respondent once again ignored the claim of the present Appellant.

7. The Respondent JNU again issued an Advertisement on 24.11.2018 for recruitment of one Deputy Registrar on Deputation/ Short term basis, and the Appellant preferred a Writ Petition i.e. W.P.(C.) No. 13715/2018 being aggrieved by the Advertisement dated 24.11.2018. He preferred another Writ Petition i.e. W.P.(C.) No. 1018/2019 challenging the Deputation Order in respect of Sh. P. Ajai Babu and Sh. Gagandeep Singh.

8. The Petitioner who has now been promoted to the post of Deputy Registrar with effect from April 2021, preferred a third Writ Petition i.e. W.P.(C.) No. 8516/2021 claiming Ad-hoc promotion with effect from 05.06.2018 from the date from which other persons were granted Ad-hoc promotion/ appointed on Deputation to the post of Deputy Registrar, and the following reliefs were prayed by the Petitioner.

"a. To issue a writ of mandamus or pass any other direction to the Respondent University to give effect to the ad hoc promotion from 05.06.2018 and accordingly give all the consequential benefits to the Petitioner including pay fixation and annual increments; AND/OR

b. To issue a writ of mandamus directing the Respondent University to pay the Petitioner all the arrears due to him on account of higher grade pay which he would have received had his promotion taken place on 05.06.2018; AND/OR

c. To issue any appropriate writ or direction to Respondent University in the interest of justice"

9. The Learned Single Judge has dismissed the Writ Petition and Paragraph 2 to Paragraph 9 of the order passed by the Learned Single Judge reads as under:

"2. In effect, the prayer of the petitioner is that he should be given ad-hoc promotion to the post of Deputy Registrar w.e.f. June 05, 2018.

3. This petition is a third round of litigation by the petitioner, inasmuch as he had earlier filed writ petitions being W.P.(C) No. 13715/2018 and W.P.(C) 1018/2019. In one of the writ petitions, the challenge of the petitioner was, to certain appointments made to the post of Deputy Registrar by way of deputation. Suffice to state, both the writ petitions were disposed of by this Court on December 21, 2020 by stating as under:-

"21. Accordingly it is directed that the University shall consider the case of the Petitioner for granting relaxation in the qualifying service for eligibility to the post of Deputy Registrar, on adhoc basis, within a period of 4 weeks from today. Needless to state that once the relaxation is granted, the University shall consider the case of the Petitioner for appointment on adhoc basis in accordance with law and as per the terms of adhoc appointment. Since the present incumbents have already served a substantial period of their deputation, this Court does not deem it fit to quash the Advertisement or their appointments. In case the Petitioner is considered fit for appointment, University shall repatriate one of the Officers appointed against the temporary vacancy on deputation basis and issue appointment letter to the Petitioner."

4. The said judgment was taken in appeal before the Division Bench and the appeal was disposed of by the Division Bench in the following manner:-

"16. Accordingly, these appeals are disposed of in terms of above and by:

(I) recording the statement of the counsel for the appellant JNU that there is a post of Deputy Registrar, to which the writ petitioner Ravi Kant Sinha can be appointed, if found eligible pursuant to the directions of the Single Judge and the continuation of the respondents No.2 to 4 in LPA No.18/2021 as Deputy Registrars on deputation shall not affect the writ petitioner Ravi Kant Sinha in any way whatsoever, and binding the appellant JNU thereto;

(II) modifying the directions of the Single Judge, by deleting therefrom the direction to the appellant JNU to repatriate one of the Officers appointed against the temporary vacancy, on deputation basis, upon the writ petitioner Ravi Kant Sinha being found fit for appointment;

(III) clarifying, that the findings/observations in the impugned judgment, of (a) the Recruitment Rules of the appellant JNU not providing for deputation; and, (b) the appellant JNU having not rebutted the plea of the writ petitioner Ravi Kant Sinha that certain Cadre Officers were given ad hoc promotions against temporary vacancies caused when the regular Deputy Registrars left on deputation, shall not bind the parties or constitute a precedent in any further/ other matter."

5. It is the submission of the learned counsel for the petitioner, pursuant to the judgment of the Division Bench, the respondents had, in fact, promoted the petitioner to the post of Deputy Registrar, on ad-hoc basis w.e.f. April, 2021. The promotion was only a formality, inasmuch as the petitioner had got regular promotion after 20 days of being granted the adhoc promotion. He states that his promotion to the post of Deputy Registrar must relate back to June 05, 2018 i.e. the date on which the outsiders were brought on deputation to the University. 6. The submission made the learned counsel for the petitioner is unmerited for the simple reason, such a prayer could have been made in the earlier round of litigation. In fact, I find from the prayers as made in the earlier writ petition, which has been screen shared by the petitioner, one of the prayer reads as

under:-

"b) Issue a writ of mandamus directing the respondent to consider the case of the petitioner for the said post on ad-hoc basis."

7. It is clear from the above, it is not the prayer of the petitioner that his promotion must relate back to 2018. In any case, the Coordinate Bench of this Court while disposing off the batch of writ petitions, as seen from above, has not said that the promotion must relate back to 2018. In fact, the direction was only to consider the case of the petitioner for granting relaxation in qualifying service for considering his case for Deputy Registrar on ad-hoc basis within a period of four weeks, which clearly depicts that any promotion to be made of the petitioner on ad-hoc basis was to be prospective.

8. The Division Bench has also by recording the statement of the counsel for the University that there is a post of Deputy Registrar, which is vacant to which the petitioner can be appointed, if found eligible had also not stated that it must relate back to 2018.

9. In view of the above and also the fact that the petitioner could have made a similar prayer, in the earlier petitions and also such a relief has not been granted, I am afraid a prayer in that regard cannot be made now nor can be considered by this Court. I am of the view that the petition shall be hit by principles of constructive res-judicata. The petition is dismissed."

10. The undisputed facts of the case reveal that when the Appellant was appointed as an Assistant Registrar on 22.05.2018, and for promotion to the post of Deputy Registrar, 13 years service as Assistant Registrar is required keeping in view the statutory provisions governing the field.

11. The Respondent JNU by passing a resolution in the Executive Council had resolved to adopt UGC Rules/ Regulations/Instructions in all service matters of JNU teaching and non-teaching employees including inquiry, conduct and disciplinary rules, where the University Statutes/ Rules/ Regulations are silent. Meaning thereby, the regulations/ the notifications issued by UGC are very much applicable in case of JNU, and the UGC vide Notification dated 01.10.2014 has issued instructions in respect of promotion to the Post of Deputy Registrar, and for promotion to the Deputy Registrar, total 13 years of service as Assistant Registrar is required – out of which five years of regular service in Senior Scale is a mandatory qualification. The relevant extract of the Notification dated 01.10.2014 issued by the UGC is reproduced as under:

"The undersigned is directed to state that on the request of the MHRD, UGC had constituted the Joint Cadre Review Committee (JCRC) to recommend uniform staffing pattern, services conditions etc. of non-teaching staff (Group A, B, C & D) of Central Universities, UGC-maintained Deemed to be Universities and the colleges affiliated to Delhi University. The Report of JCRC containing its recommendations on 24 cadres (Non-teaching) were submitted to the MHRD vide

letters dated 18.1.2008, 12.6.2009 and 23.9.2010. in this regard MHRD has conveyed its decision vide their letter No. F.No. 19-16/2008-Desk(U) dated 7.05.2014 on the following aspects of the report.

(i) As per MHRD letter No. 1-32/2006-U.II/U(II) dated 31.12.2008, Deputy Registrar, in the pay scale of 15600-39100 with Grade Pay of 7600, on completion of 5 years is eligible to move to the Pay Band of Rs. 37400-67000 with a Grade Pay of Rs. 8700. MHRD has now approved the proposal to re-designate such Deputy Registrars as Joint Registrar, with the stipulation that the post will revert as Deputy Registrar when it falls vacant.

(ii) The requirement of 8 years' service in respect of Assistant Registrars who are placed in PB 3 with Grade Pay 6600, is reduced to 5 years' service for promotion to Deputy Registrar."

12. The Appellant could not have been earlier considered to the post of Deputy Registrar as per executive instructions issued by UGC dated 01.10.2014, as he has not put in 13 years of service as Assistant Registrar, out of which five years regular service in Senior Scale was mandatory.

13. He became eligible for promotion to the Post of Deputy Registrar on 21.05.2021, and he has been granted Promotion to the Post of Deputy Registrar. The Petitioner while filing successive Writ Petition is claiming promotion with effect from 2018 which is impermissible in this case, and it is nobody's case that the Petitioner has been superseded by promoting a Junior Officer.

14. The Respondent, keeping in view the urgency of service as Post of Deputy Registrar were lying vacant, have filled up the post of Deputy Registrars by posting persons on Deputation and the posts – which were filled up by posting persons on deputation, were, in fact, the posts where the post holder had to leave the University to work elsewhere on Deputation. Meaning thereby, certain other persons were holding lien against those posts, and, therefore, it not a case where a regular vacancy which was available in the University has been filled up by posting persons on Deputation to the post of Deputy Registrar.

15. So far as the posts of Deputy Registrar in the University are concerned, there are 11 posts of Deputy Registrar. There are 6 Deputy Registrar in the University, out of which 3 are on Deputation, and 1 on lien. Meaning thereby, 5 posts of Deputy Registrar are vacant, and 2 were to be filled up by direct recruitment, and 3 by way of promotion.

16. The record of the case reveals that the process of filling up the post of Direct Recruitment is under process, and the petitioner, the moment he completed the eligibility criteria, has been granted promotion on Ad-hoc post with effect from year 2021.

17. Undisputedly, the Petitioner was also granted regular promotion just after 20 days of Ad-hoc Promotion, as he was fulfilling the eligibility criteria, and, therefore, keeping in view the earlier order passed by this Court, the Learned

Single Judge were justified in dismissing the Writ Petition.

18. The Petitioner in the earlier round of litigation i.e. by filing W.P.(C.) No. 1675/2018 and 1018/2019 had challenged the appointment made to the Deputy Registrar by way of Deputation, and was claiming appointment with effect from 2018 to the post of Deputy Registrar. No relief was granted to the Petitioner for granting him Ad-hoc promotion with effect from 2018, and third Petition was a repetitive attempt on the part of the Petitioner for claiming the reliefs which were not granted in the earlier two rounds of litigation.

19. In view of the above, this Court does not find any reason to interfere with the order passed by the learned Single Judge, and, therefore, the present LPA stands dismissed.