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

% *Date of decision: March 08, 2021*

\+ W.P.(C) 10564/2019
DR. KIRAN GUPTA

..... Petitioner

Through: Mr. V. Shekhar, Sr. Adv. with
Mr. Shashank Shekhar & Ms. Sheetal
Rajput, Advs.

versus

THE UNIVERSITY OF DELHI AND ORS.

..... Respondent

Through: Mr. Mohinder J.S. Rupal, Adv. for
University of Delhi
Mr. Apoorv Kurup, Adv. with
Ms. Nidhi Mittal, Adv. for R-2

\+ W.P.(C) 10744/2019
PROF. P. B. PANKAJA

..... Petitioner

Through: Mr. P.B. Suresh, Adv. with Mr. Vipin
Nair, Mr. Karthik Jayashankar,
Mr. Prasanna S. & Mr. Aakarsh
Kamra, Advs.

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondent

Through: Mr. Mohinder J.S. Rupal, Adv. for
University of Delhi
Mr. Apoorv Kurup, Adv. with
Ms. Nidhi Mittal, Adv. for R-2

AND

+ W.P.(C) 10789/2019, CM No. 44576/2019
MANJU ARORA RELAN

..... Petitioner

Through: Mr. Sanjay Relan, Adv.

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondent

Through: Mr. Mohinder J.S. Rupal, Adv. for University of Delhi
Mr. Apoorv Kurup, Adv. with
Ms. Nidhi Mittal, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. As identical issues arise for consideration in these three writ petitions, they are decided through this common order.

2. In substance, the prayer of the petitioners in these petitions is that they should be promoted to the post of Professor from the post of Associate Professor with effect from their date of eligibility and not from the date of interview i.e. June 25, 2019.

3. For a decision in the writ petitions, it is necessary to note certain facts in each of the writ petitions and the same shall be narrated separately.

FACTS IN W.P.(C) 10564/2019

4. The petitioner was appointed as a Lecturer on ad-hoc basis in the year 1986 in the Faculty of law, University of Delhi on August 04, 1992. After meeting all the requirements of the

University of Delhi, the petitioner was absorbed as a Lecturer on permanent basis on the roll of Faculty of Law, University of Delhi. On October 14, 1996, the petitioner was promoted as Lecturer, Senior Scale from the date of her eligibility i.e. August 04, 1994. On February 19, 2000, she was promoted as Reader w.e.f. July 27, 1998 that is the, date of her eligibility.

5. On January 01, 2006 the post of Reader, on which the petitioner was working, was re-designated as Assistant Professor. In the year 2010, the University Grants Commission ('UGC', for short) respondent No.2 came out with regulations in relation to service conditions of Teachers. On April 24, 2014, the UGC had issued a notification stating that promotion under the Career Advancement Scheme ('CAS', for short) shall be governed by the UGC Regulations, which are in operation on the date of eligibility, not on the date of interview.

6. On May 29, 2017, the petitioner applied for promotion to the post of Professor. On June 25, 2019, 10 candidates were called for the interview, petitioner being one of them. Out of the 10 candidates, one candidate was absent. Out of the remaining 9 candidates considered for promotion, 8 candidates were recommended for the same. Out of the 8 candidates, 3 candidates were promoted from the date of their eligibility for being appointed as Professors, whereas the other 5 remaining candidates were promoted from the date of interview i.e. June 25, 2019. Pursuant thereto, the University issued a communication dated July 04, 2019 promoting the petitioner as Professor in Law Centre-II, Faculty of Law w.e.f. June 25, 2019. The minutes of the Selection Committee

were approved by the Executive Council on July 01-02, 2019. Suffice to state, it is this order and the resolution of the Executive Council / minutes of the selection committee which have been challenged by the petitioner in this petition.

FACTS IN W.P.(C) 10744/2019

7. In this petition, the facts, as noted from the writ petition are, that the petitioner joined the respondent No.1 University as a Lecturer on May 11, 2005. The petitioner was promoted as Lecturer in Senior Scale w.e.f. May 11, 2005. The petitioner was further promoted to the post of Lecturer (Selection Grade) w.e.f. September 15, 2008. She was also promoted to the post of Associate Professor w.e.f. September 15, 2011. In the case of this petitioner also, the facts with regard to the deliberations of the Selection Committee / approval of the Council / order of appointment are identical to the writ petition being W.P.(C) 10564/2019.

FACTS IN W.P.(C) 10789/2019

8. The facts as noted from the writ petition are, that the petitioner was appointed as ad-hoc Lecturer in Faculty of Law, University of Delhi on March 13, 1995. On April 01, 2005, she was appointed as a Lecturer on regular basis in Law Centre-I, University of Delhi. On April 18, 2012, the petitioner was promoted as Lecturer in Senior Scale on April 27, 2006 (re-designated as Assistant Professor). She was further promoted to the post of Reader w.e.f. April 26, 2009, which was later re-designated as Associate Professor. In the case of this petitioner as well, the

Selection Committee considered the case of the petitioner for promotion to the post of Professor on June 25, 2019 when the petitioner was also called for interview. Similarly, in her case also, the Executive Council has approved the minutes of the Selection Committee on July 01-02, 2019 and an order was issued promoting the petitioner as Professor on July 04, 2019.

SUBMISSIONS:-

9. It is the submission of Mr. V. Shekhar, learned Sr. Counsel for the petitioner in WP (C) 10564/2019 that the petitioner was eligible for being promoted as Professor on May 08, 2009 itself. According to him, there is no dispute that the case of the petitioner, who was found fit for promotion, was to be considered under the CAS of 2010. The petitioner fulfills the requirement for being promoted as Professor as she has completed three years of service as Associate Professor and possesses Ph.D. degree in the relevant discipline. According to him, the Selection Committee, for no reason has made the promotion of the petitioner prospective from June 25, 2019 and not from May 08, 2009, which according to him, is untenable inasmuch as the UGC, which regulates the University education and has issued the Regulations, has taken a stand in the counter affidavit that the promotion must relate back to the date of eligibility and not from the date of interview.

10. Mr. Shekhar also states that even in the past, the petitioner has been given promotions, though retrospectively from the date when she has attained the eligibility for the next higher post. He states that persons, who are Junior to the petitioner i.e who joined

the University later, have been given promotion from the date of eligibility. He states that the petitioner is seeking parity qua such persons, who have been given promotion from the date of eligibility. He states that in view of the notification of the UGC dated November 21, 2014, the petitioner is entitled to the relief, as prayed for in the present petition.

11. Mr. P.B. Suresh, learned counsel appearing for the petitioner in W.P.(C) 10744/2019 makes similar submissions as made by Mr. Shekhar. He also draws my attention to the counter affidavit filed by the UGC, wherein the UGC has referred to the UGC (Minimum Qualifications for appointment of Teachers and other Academic Staff in University and Colleges and measurers for the maintenance of standard in Higher Education), Regulations 2010 ('UGC Regulations 2010', for short) more specifically sub clause 6.3.12, which vide Clause (a) stipulates that if a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion will be from the date of minimum eligibility. In other words, the date of eligibility must be the date when a person is entitled to promotion, if he is found fit. He also relies upon the judgment of the Supreme Court in the case of ***Bhupendra Nath Hazarika & Ors. Vs. State of Assam and Ors. reported as (2013) 2 SCC 516.*** He seeks the reliefs in favour of the petitioner.

12. Similarly, Mr. Sanjay Relan learned counsel appearing for the petitioner in W.P.(C) 10789/2019 has also made similar submissions and states that there is no reason for the respondents to deny the promotion to the petitioner from the date of eligibility. In

fact, he goes further to state that the Selection Committee except making the promotion prospective, has not given any reasons for not giving the promotion from the date of eligibility.

13. Mr. Rupal, learned counsel for the respondent-University would submit that there is no illegality in the promotion of the petitioners as Professor, prospectively. According to him, it is a well settled principle of law that promotions under CAS are personal to the Teacher concerned. The petitioners have been promoted under the CAS as per the assessment of the Selection Committee and after due deliberations following due process concerning the screening and evaluation. According to him, the Selection Committee is the final authority to promote a Teacher under CAS and on the terms as may be found to be commensurated with and appropriate to the merits and performance of each candidate. In the case of the petitioners, the Selection Committee though, has approved promotion of the petitioners as Professors, but the same was decided to be prospective in effect. That apart, the minutes of the Selection Committee had been approved by the Executive Council, in its meeting held on July 01-02, 2019.

14. He also states that the petitioners cannot compare their promotion with the other Teachers, who have been given promotion from the date of eligibility as each case is considered by the Selection Committee on its own merit and no comparison can be drawn with other Teachers, whose promotion under CAS have been treated retrospectively. He states that there is no obligation on the part of the Selection Committee to give reasons for giving / denying promotion. In this regard, he has relied upon a judgment of the

Supreme Court in the case of ***National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman and Others (1992) Supp 2 SCC 481.***

15. Mr. Kurup, learned counsel appearing for the UGC has reiterated the stand of the UGC as depicted in its short counter affidavit that the date of promotion must relate back to the date of eligibility. He also relied upon sub clause 6.3.12, which contemplates selection procedure, to contend that in terms of the aforesaid Regulations, in order to be promoted as Professor under CAS, a candidate (Associate Professor) is required to fulfill all the conditions prescribed therein for the post of Professor and the public notification dated November 21, 2014 clarifies that CAS shall be governed by UGC Regulations, which are in operation on the date of eligibility and not on the date of interview.

FINDINGS:-

16. I have heard learned counsel for the parties. A short issue, which arises for consideration is, whether the petitioners are entitled to promotion from the date of eligibility or from the date of interview. There is no dispute that the case of the petitioners have to be considered under CAS 2010. The relevant clause of CAS 2010, which relates to the selection procedure is sub clause 6.3.12 and, the same is reproduced as under:-

> *"6.3.12.(a) If a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion will be from that of minimum period of eligibility.*

(b) If, however, the candidates find that he/ she fulfills the eligibility conditions at a later date and applies on that date and is successful, his/ her promotion will be effected from that date of application fulfilling the criteria.

(c) If the candidate does not succeed in the first assessment, but succeeds in the eventual assessment, his/ her promotion will be deemed to be from the later date of successful assessment."

17. From the perusal of clause 6.3.12 sub clause (a), it is clear that if a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion will be from the date of minimum period of eligibility. There is no dispute that the petitioners have been assessed fit for promotion. If that be so, then the promotion must relate back to the date of minimum period of eligibility, which in the case of the writ petitioners, shall be the following:-

May 08, 2009 - in case of writ petitioner in W.P.(C) 10564/2019

September 15, 2014 - in case of writ petitioner in W.P.(C) 10744/2019

April 27, 2012 - in case of writ petitioner in W.P.(C) 10789/2019

18. No doubt, sub clause (c) contemplates that if a candidate does not succeed in the first assessment, but succeeds in the later assessment, his/ her promotion will be deemed to be from the later date of successful assessment. This sub clause contemplates that an assessment can be from a later date than the date of eligibility but surely from the minutes of the Selection Committee, which I reproduce as under, it is clear that there is no conclusion of the

Selection Committee that the petitioners have not been found fit from the date of their eligibility.

> *"1. Dr. Kiran Gupta for promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from 25.06.2019.*
>
> *2. Dr. V.K.Ahuja for promotion from Associate Professor (Stage-4) to Professor (Stage- 5) with effect from the date of his eligibility*
>
> *3. Dr. Raman Mittal for promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from the date of his eligibility.*
>
> *4. Dr. Manju Arora Relan for promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from 25.06.2019.*
>
> *5. Dr. Sarabjit Kaur for promotion from Associate Professor (Stage-4) to Professor (Stage 5) with effect from the date of her eligibility.*
>
> *6. Dr. P.B. Pankaja tor promotion from Associate Professor (Stage-4) to Professor (Stage-5) with effect from 25.06.2019.*
>
> *xxxx xxxxx xxxxx*"

19. Rather, it is seen that the petitioners have been found fit on their first assessment itself for promotion to the post of Professor. If that be so, the petitioners could not have been denied the promotion from the date of eligibility when the promotion with prospective effect is based on the same material. In fact, I find that by giving the recommendations prospectively, the Selection Committee has deferred the promotion of the petitioners from May 08, 2009 to June 25, 2019 in W.P.(C) No. 10564/2019; from September 15, 2014 to June 25, 2019 in W.P.(C) No. 10744/2019 and from April 27, 2012

to June 25, 2019 in W.P.(C) No. 10789/2019. The same clearly demonstrates the prejudice that has been caused to the petitioners due to the recommendation of the Selection Committee, promoting the petitioners prospectively from the date of interview.

20. Insofar as the reliance placed by Mr. Rupal on the judgment of the Supreme Court in the case of ***National Institute of Mental Health and Neuro Sciences (supra)*** that it is not necessary for the Selection Committee to give reasons for its conclusion, suffice to state, the Supreme Court had given a finding to that effect in cases where the rules do not contemplate so. There is no dispute on the said proposition of law. But in view of reading of the relevant Regulations, which I have already referred to above, surely there must be some expression of the fact / reason in case a teacher is not found fit in a particular year but found fit in a later year. In the absence of such conclusion, it must be said that this teacher is found fit from the date of eligibility.

21. In view of the above, the petitions need to be allowed. The proceedings of the Selection Committee / Executive Council / communication dated July 04, 2019 are set aside to the extent that promotion has been given to the petitioners to the post of Professor is made prospectively i.e. from June 25, 2019. The said promotion shall relate back to their date of eligibility. No costs.

V. KAMESWAR RAO, J

MARCH 08, 2021*/ak*