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IN THE HIGH COURT OF DELHI AT NEW DELHI
Letters Patent Appeal No. 518/2011

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Reserved on: 21st July, 2011
Date of Decision: 16th August, 2011

Dr. Prem Lata

Through

In Person

....Appellant

VERSUS

Govt. of NCT of Delhi & Ors.

Through

....Respondents

Mr. N. Waziri, Standing Counsel with
Ms. Neha Kapoor, Advocate for
Respondent No. 1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SANJIV KHANNA, J.

We have heard Dr. Prem Lata, appellant in person who has assailed the decision dated 3rd May, 2011, dismissing her Writ Petition (Civil) No. 178/2011. The appellant claims that appointment of Mr. Rakesh Kapoor, Mr. C.K. Chaturvedi and Mr. S.N.A. Zaidi, respondents 4, 5 & 6 herein as a Presidents of respective District Forum, should be set aside and quashed and mandamus should be issued for appointment

of the appellant as a President of one of the District Forums in Delhi w.e.f. 1st December, 2010 with all consequential benefits.

2. The appellant is a member of District Forum and pursuant to advertisements published in newspapers on 18th March, 2010, inviting applications for the post of 5 Presidents, had applied for appointment as a President of one of District Forums in Delhi. 72 applications including that of the appellant were received and after scrutiny 63 candidates were called for interview.

3. As per Section 10(1)(A) of the Consumer Protection Act, 1986 (Consumer Act, for short), the Selection Committee consisting of Chairman/President, State Commission, Member Secretary, Law Department and Member Secretary (Consumer Affairs), considered the applications, had interviews and made the following recommendation:-

“After having interviewed and going through credential of all the candidates, in order to find out their suitability, the Selection Committee’s recommendation and panel of candidates in that order for the purpose of filling up of the vacancy is as under:-

<i>S.No</i>	<i>Selected</i>	<i>Under panel</i>	<i>Under panel</i>
<i>1.</i>	<i>Sh. Rakesh Kapoor</i> <i>(At Sr. No. 11)</i>	<i>Sh. D.C.Anand</i> <i>(At Sr. No. 19)</i>	<i>Sh. Chaturbhuj</i> <i>(At Sr. No. 33)</i>
<i>2.</i>	<i>Sh. C.K. Chaturvedi</i>	<i>Sh. Gurdeep</i>	<i>Sh. Syed Ghulam Muraza</i>

	<i>(At Sr. No. 16)</i>	<i>Kumar</i> <i>(At Sr. No. 17)</i>	<i>Rizvi</i> <i>(At Sr. No. 04)</i>
3.	<i>Sh. Babu Lal</i> <i>(At Sr. No. 31)</i>	<i>Sh. Lal Singh</i> <i>(At Sr. No. 05)</i>	<i>Sh. Ashoka Jain</i> <i>(At Sr. No. 07)</i>
4.	<i>Sh. M.C.Mehra</i> <i>(At Sr. No. 42)</i>	<i>Dr. Prem Lata</i> <i>(At Sr. No. 15)</i>	<i>Sh. Dr.</i> <i>V.B.Pandey</i> <i>(At Sr. No.29)</i>
5.	<i>Sh. S.N.A.Zaidi</i> <i>(At Sr. No. 18)</i>	<i>Sh. Sardar</i> <i>Akhtar</i> <i>(At Sr. No. 26)</i>	<i>Sh. Babu Ram</i> <i>Verma</i> <i>(At Sr. No. 14)</i>

The panel will remain valid for one year. In case the candidates selected fail to join within 45 days of offer of appointment, the appointment will lapse and the second or third person as the case may be in preference will be offered the appointment.

During the course of interview on our query the candidates already serving had candidly expressed before us that in case they are selected and offered appointment, they will join immediately.”

4. As per the aforesaid recommendations, the appellant was the first alternative in case Mr. M.C. Mehra, who was selected, did not join as a President. It is accepted that Mr. M.C. Mehra did join as a President

within 45 days of the issue of the appointment letter. His appointment, therefore, had the effect and the consequence that the appellant could not be appointed as a President. This factor was noticed by the learned single Judge and is one of the grounds for rejecting the writ petition. Learned single Judge, after examining the records, has observed that the case made out by the appellant that pursuant to the initial recommendation, a consolidated panel of selected candidates and candidates under panel was prepared and that she was placed at serial no. 6, is not correct. It is obvious that in case a consolidated panel was not prepared the appellant cannot claim any right to appointment except in case Mr. M.C. Mehra had not joined as a President.

5. The case made out by the appellant before us is that doctrine of estoppel should be applied and as respondents No. 4 to 6 did not join within 45 days after issue of the letters dated 13th October, 2010, they have not been validly appointed and their subsequent joining is illegal and invalid. Accordingly, the appellant should be appointed as a President of a District forum.

6. We do not find any merit in the said contention for the reasons stated below.

7. After the recommendations were made by the Selection Committee, the names were sent for approval of the Lt. Governor. After approval was granted by the Lt. Governor, offer letters dated 13th October, 2010, were written to the 5 selected candidates including respondents 4 to 6 herein. Appellant was not issued any offer letter as she was under panel and was not in the list of 5 selected candidates. The offer letter dated 13th October, 2010, sent to the said respondents reads as under:-

“I am directed to convey the approval of Lt. Governor, Delhi for appointment to the post of President, in one of the District Forum of Delhi. The offer of appointment is on the following terms and conditions:-

1. The appointment is on whole time basis.
2. The appointment shall be for a term of five years or till you attain the age of 65 years whichever is earlier.
3. The salary, allowances and other perquisites of appointment are governed by the provision of the Delhi Consumer Protection Rules 1987 as amended from time to time.
4. The other terms and conditions of your service shall be regularized through the order issued by Protection Act, 1986 and read with Delhi Consumer Protection Rules, as amended from time to time.
5. Under Rule 3(4) of the Delhi Consumer Protection Rules, 1987 you are required to give an undertaking before assuming the charge to the effect that you do not and will not have any such financial or other

interest as are likely to affect prejudicially your function as a President of the District Forum.

The acceptance of offer may please be intimated within 10 days from the date of issue of this letter. The formal appointment letter subject to your acceptance will be issued in due course of time.”

8. It is accepted case that respondents 4 to 6 accepted their appointments and thereafter appointment letter dated 25th October, 2010 was issued to them.

9. Subsequently, Government of NCT of Delhi, issued letter dated 9th November, 2010, to respondents 4 & 5. For the sake of convenience, the said letter is reproduced below:-

“I am directed to inform you that an offer for appointment to the post of President, District forum, Delhi was issued to you vide this office letter No. F.50(39)/F&S/CA/2006/1752 dated 13.10.2010. Consequent upon your acceptance vide your letter dated 20.10.2010, appointment letter was issued to you vide office order No. F.50(39)/2006/ F&S/CA/1825 dated 25.10.2010. Whereas you have not submitted your joining report till date.

Whereas the Competent Authority has agreed to the officer of appointment subject to the condition that the selected candidates should join within 45 days. Therefore, you are hereby informed that if you are unable to join by 27.11.2010 the offer of appointment to the above said post will automatically lapse & the next candidate on the panel will be considered for appointment for the post.”

10. The said respondents replied pointing out that the respondent No. 4 was the then Principal District & Sessions Judge, Delhi and the respondent No. 5 was District Judge-II, Delhi and respondent No. 6 was Additional District Judge, Mathura and they had written to the respective High Courts to be relieved. It was also stated that High Court of Delhi had written a letter to the Lt. Governor, Delhi for extension of time.

11. The Government of NCT of Delhi then extended the time. Subsequently, respondent No. 4 joined as President of the respective Forum on 28th February, 2011 and respondents No. 5 and 6 joined the respective forum on 25th February, 2011. Whether or not to extend time is within the domain and a power/right to be exercised by the respondent authorities. If the respondent authorities have a right to fix a period/time of joining then they also have the right to extend the period or time of joining. The two powers go hand in hand. It is not the case of the appellant that there is a statutory provision or rule which fixes the period or time of joining.

12. Time or period of joining is extended by the authorities and is not an unusual feature. We had occasion to deal with the said aspect in Writ Petition (Civil) No. 3818/1998, ***K.P. Dubey and Ors. vs. Union of India***

and Ors., decided on 8th April, 2011. In the said case, dispute arose about the seniority as one of the incumbents had joined after the stipulated date but within the extended period. In the said case, reference was made to Office Memorandum dated 6th June, 1978, and it was held that if the candidate joins within the extended period, he would not lose his seniority.

13. A similar issue had also arisen before the Supreme Court in *P. Srinivas vs. M. Radhakrishna Murthy and Ors.*, (2004) 2 SCC 456. The dispute was again about seniority as one of the candidates had not joined within the stipulated time and the contention raised was that his name should be removed from the said list. The contention was rejected holding that there was no statutory rule or provision stipulating time of joining. The Government order empowered the Service Commission to extend the time for joining, if it considers necessary. It was accordingly observed as under:-

“**10.** We find that GOMs No. 822 dated 18-9-1967 issued by the Government of Andhra Pradesh was dealing with the question of fixing the time-limit for the candidates selected by the Commission to join when they were to be appointed by direct recruitment. Taking the factual position as prevailing then, it was indicated that the time-limit was to be normally sixty days. It was further stipulated therein that in case they did not join within the stipulated time, their names

could be removed from list of selected candidates. The Service Commission was enabled to extend and give further time for joining before deleting the name of the candidate concerned from the select list for not joining in time. The power of extending time given to the Commission under the GO was not in relation to any statutory prescription, and cannot also be said to be in derogation of the powers of the State Government as the ultimate repository of all executive power. On the other hand, the Government itself provided that the time could be extended if the Commission considered it necessary. This was merely an enabling power conferred by the Government only and the GO cannot be construed to be self-destructive of the power of the Government, in the absence of any statutory rules as such, in this regard. The Commission appears to have been enabled to grant time to effectively monitor the operation of the main list as well as the waiting list (in order of merit) without any undue lapse of time, in case the selected candidates did not join within the indicated time period. It was an executive decision of the Government. When the Government itself extended the time, in case of the petitioner, on the basis of the reasonableness of the request, it cannot be said that in the absence of any order passed by the Commission extending the time, the extension granted by the Government was without authority in law.”

14. Whether or not to extend the time of joining was a right of the Government of NCT of Delhi. Merely because the Govt. of NCT of Delhi had earlier written a letter stating that the respondents should join within 45 days or the Selection Committee had recorded the fact that the

candidates candidly accepted that if they were issued appointment letters they would join immediately, does not mean that for valid and good cause or reason their joining time could not be extended. The three of the selected candidates were already serving as judicial officers in the Higher Judicial Service in Delhi and Uttar Pradesh. Respondents No. 4 and 5 were to superannuate on attaining age of 60 years on 31st March, 2011, whereas respondent No. 6 to superannuate on attaining the age of 60 years on 30th June, 2011. Therefore, they had to follow rules and procedure prescribed before they were to be relieved and appointed as the Presidents. This required completion of formalities and compliance with the Rules.

15. We fail to understand how and in what circumstances the appellant feels that the principle of estoppel applies and the extension could not have been granted. Principle of estoppel necessarily requires change of position pursuant to a promise/statement made which adversely affects the party which has come to the court. The Supreme Court in *Gyarsi Bai v. Dhansukh Lal*, (1965) 2 SCR 154, it is stated as under:

“8. ..The doctrine of estoppel embodied in Section 115 of the Evidence Act has been explained by

the Judicial Committee in *C.D. Sugar Co. v. C.N. Steamship* in the following terms:

“estoppel is a complex legal notion, involving a combination of several essential elements, the statement to be acted upon, action on the faith of it, resulting detriment to the actor”.

To invoke the doctrine of estoppel three conditions must be satisfied: (1) representation by a person to another, (2) the other shall have acted upon the said representation, and (3) such action shall have been detrimental to the interests of the person to whom the representation has been made....”

16. In **B.L. Sreedhar v. K.M. Munireddy**, (2003) 2 SCC 355 it has been held as under :

“15. On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. Estoppel is based on the maxim *allegans contraria non est audiendus* (a party is not to be heard to allege the contrary) and is that species of presumption *juries et de jure* (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of *argumentum ad hominem*.”

It is not unusual and abnormal for the appointing authorities to extend the time for joining.

17. It is not even pleaded before us that the time for joining was extended without any reasonable cause or ground.

18. In view of the aforesaid the appeal is dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

August 16th, 2011
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