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

% *Judgment delivered on: 07th May, 2012*

+ **CM 546/2012 in W.P.(C) 7727/2008**

GENERATION ENGINEERS & SUPERVISORS
ASSOCIATION THR. ITS GENERAL
SECRETARY & ANR.

..... Petitioners

Through : Mr.Amit Kumar, Adv.

versus

GOVT. OF N.C.T. OF DELHI & ORS.

..... Respondents

Through : Mr.Vinay Sabharwal, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant application, the applicant/respondent has sought the modification of the order dated 01.11.2011 passed by this Court and also sought clarifications – as referred in para No.6 thereto.

2. The order passed by this Court on 01.11.2011 is as under:-

'In view of the above Respondents shall comply with the letter dated 5th August, 2010 of the Respondent/IPGCL to the Principal Secretary, Govt. of NCT of Delhi subject to the petitioner withdrawing the present Writ Petition. The Respondents are directed to do so within a period of eight weeks from today.

In view of above Counsel for the Petitioner seeks leave to withdraw this Petition. The Writ

Petition is dismissed as withdrawn in the above terms. All pending applications also stand disposed.

Copy of this order be given dasti to Counsel for parties.'

3. In the instant application, it is submitted that in another connected writ petition i.e. W.P.(C) No.797/2009, this Court had granted *ad-interim* order in respect of the appointment to the post of Deputy General Manager (HR); however, respondent No.2 had simultaneously, moved an application in the said case for immediately vacation of the stay order.

4. Further submitted, in the letter dated 05.08.2010, written by the Chief Vigilance Officer to the Secretary (Power) referred to above, on the basis of which the order dated 01.11.2011 was passed, it is mentioned that the main file in which the recruitment process was initiated on the basis of the advertisement dated 30.06.2008, was missing and was not traceable.

5. It is further stated that the recruitment cell had issued another office note dated 14.12.2011 to find out the records from the then officers, who were dealing with the subject and as well handling the files in the past. As such at this stage, it could not be ascertained exactly how many candidates had applied against the first advertisement and the second advertisement specifically. Out of the total applications received originally, the exact numbers of which cannot be known now in the absence of main file, only 19 numbers applications are available, except available 06 applications in one of the file who were called for the interview, scheduled on 03.11.2008.

6. Apart from these 13, applications were also made available by the

earlier dealing officer (Deputy Manager (HR)-V) in response to the recent letter dated 14.12.2011. However, it cannot be established that the list of all the applications are available against the un-amended advertisement dated 30.06.2008 and amended advertisement dated 31.07.2008.

7. It is further stated that in view of this factual position, it may not be possible to communicate to all those candidates who might have applied as per the first un-amended advertisement dated 30.06.2008, regarding resumption of the selection process.

8. The applicant/respondent has also apprehended the possibility that most of the candidates might have already got settled elsewhere during the interregnum, since a long time has already elapsed ever since the initiation of the original recruitment process, therefore, such candidates may not even be available or interested in pursuing their candidature for the said post.

9. In the circumstances, applicant/respondent would suggest that a fresh notification/advertisement for recruitment to the said post of Deputy General Manager (HR) would be issued inviting fresh applications apart from the interested candidates from those who had originally applied on the basis of R & P Regulations which were applicable then (in terms of advertisement dated 30.06.2008) including the ones who applied after amended R & P Rules, in case they qualify as per the un-amended R & P Rules with age relaxation to the extent of the period from the filing of writ petition till the issuance of fresh notifications, to original applicants including the petitioner.

10. Learned counsel for petitioner submitted and clarified that order passed on 05.10.2011 in W.P.(C) No.797/2009 has nothing to do with the

case of the petitioner. Therefore, mentioning of same, in the instant application, itself misleading this Court. Their only purpose is to delay and not to comply the same.

12. Learned counsel for petitioner has further pointed out that vide order dated 04.08.2008, Chief Vigilance Officer requested DG (HR) has conveyed to trace the file. And in case it is not traceable, FIR may be lodged for the lost of the file.

13. Vide the internal noting dated 12.08.2010, it is noted that ‘The file since got traced. Same may be sent to D M (Vig) for n.a.’. Moreso, in the note dated 08.10.2010, it is noted as under:-

“As desired telephonically, the file containing pages 1-/N and G2/ is returned back for doing the needful and returning after then.”

14. Learned counsel further submits that the FIR has not been lodged against the erring officers nor effective steps have been taken by the respondents.

15. He has drawn the attention of this Court to the communication dated 30.11.2011 by Mr.Vinay Sabharwal, learned counsel appearing on behalf of the applicant/respondent as under:-

Since the petition filed by Shri S.R. Sagar against IPGCL bearing W.P.(C)No.797/2009 was also listed on the same day, it was appropriate both for the counsel for Shri S.R.Sagar and the counsel for IPGCL in W.P.(C) No.797/2009 to have brought to the notice of this Hon’ble Court that there was a stay operating in the said petition filed by Sh.S.R.Sagar. Having failed to do that, it would

not be appropriate to immediately move an application in the W.P.(C) No.797/2009 filed by Shri S.R.Sagar seeking further appropriate directions in the matter in view of the interim stay granted in the said petition of Sh.S.R.Sagar. Needful should be done immediately.”

16. Learned counsel further submitted that instead of complying the order dated 01.11.2011, respondents are resorting to delaying tactics on one pretext or the other.

17. After hearing both the parties, I find no merit in the application. Same is dismissed with costs of ₹15,000/- to be paid in favour of petitioner.

18. I further direct that if the order in question is not complied within six weeks from today, respondent shall pay further costs of ₹50,000/- to petitioner.

19. Copy of order *dasti* to both sides for compliance.

SURESH KAIT, J

MAY 07, 2012

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