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

+ **W.P.(C) 6809/2011**

UNION OF INDIA & ORS.

.....Petitioners

Represented by: Mr.R.V.Sinha, Advocate with
Mr.R.N.Singh and Mr.P.K.Singh
Advocates

versus

MAHABIR SINGH GOSAIN & ORS.

..... Respondents

Represented by: None

W.P.(C) 6868/2011

UNION OF INDIA & ORS.

.....Petitioners

Represented by: Mr.R.V.Sinha, Advocate with
Mr.R.N.Singh and Mr.P.K.Singh
Advocates

versus

KAILASH CHANDRA DABRAL

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

ORDER

% **23.07.2013**

CM No.3552/2013 in W.P.(C) No.6809/2011

CM No.3530/2013 in W.P.(C) No.6868/2011

1. In spite of being served with the applications above captioned seeking early hearing of the two writ petitions, none has appeared for the respondents.

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2. For the reasons mentioned in the application early hearing is allowed and the writ petitions are taken up for hearing today itself.

W.P.(C) No.6809/2011 & W.P.(C) No.6868/2011

1. In a prolix decision spanning 30 pages, O.A.No.1855/2010 filed by the respondents of W.P.(C) No.6809/2011 has been allowed by the Tribunal. The decision is dated February 02, 2011. The same has been followed by the Tribunal to allow O.A.No.2057/2011 filed by the sole respondent of W.P.(C) No.6868/2011. The decision is dated February 02, 2011.

2. The three respondents of W.P.(C) No.6809/2011 and the sole respondent of W.P.(C) No.6868/2011 were working as Demonstrators in the Indian Military Academy, Dehradun. The said academy imparts military training and which includes academic study in Physics and Chemistry as well; and the syllabus for said courses is prescribed by the Jawahar Lal Nehru University; and needless to state the level of education imparted is of the undergraduate degree level. This means that laboratories exist in the Indian Military Academy i.e. a Physics Laboratory and a Chemistry Laboratory. As we all know, Laboratory Assistants and Demonstrators work in these laboratories.

3. The Demonstrators at the Indian Military Academy started claiming pay as per UGC pay scales and succeeded. The Allahabad Bench of the Central Administrative Tribunal held that since the staffing pattern on the academic side of the Indian Military Academy was as per pattern prescribed by UGC, the pay scales as adopted by UGC would be applicable. The Indian Military Academy accepted the decision.

4. But to the misfortune of the Demonstrators, UGC decided to restructure the staffing pattern and recommended to abolish the post of

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Demonstrators. Indian Military Academy accordingly intimated Demonstrators working in the Academy to either accept employment as a Demonstrator in such laboratories of the Government of India where the posts existed or to accept working against the post of Laboratory Assistant in the Physics and Chemistry Laboratory in the Indian Military Academy.

5. The respondents refused to accept the offer and filed Original Applications which, as noted above have been allowed by the Tribunal.

6. The reasoned decision allowing OA No.1855/2010 makes interesting reading. With reference to the decision reported as (1990) 2 SCC 707 Mallikarjuna Rao Vs. State of A.P. the Tribunal noted the law that the Administrative Tribunals cannot enter into policy matters, and to use the expression by the Tribunal '*issue advisory sermons*'. The decision notes that the constitution shows that India is a sovereign, socialist, secular and democratic republic and integrates justice, social, economic and political. The decision proceeds to hold that the Constitution is the living organic thing. The theory of basic structure of the Constitution has been discussed. Exploitation of human values has been discussed. Article 23 of the Constitution has been discussed. In a nut shell the Tribunal has indulged in '*advisory sermons*'. With reference to the facts that Demonstrators had litigated on pay parity as per UGC scales and had won, the Tribunal has opined that the decision to abolish posts of Demonstrators was mala-fide. The Tribunal has opined that only the academicians could take a decision whether Demonstrators were needed or not and not the Executive. Thus, direction has been issued to retain the respondents at the Academy in Dehradun.

7. Suffice would it be for us to state that Demonstrators
W.P.(C) Nos.6809/11 & 6868/11

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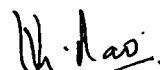
working in the laboratories at the Indian Military Academy claimed parity with Demonstrators working in colleges under the University Grants Commission claiming similarity in staffing pattern in the UGC funded colleges and the teaching wing of the Indian Military Academy. They succeeded. Thus, once UGC decided to change the staffing pattern, the consequences thereof had to follow. The reasoning of the Tribunal that it was academicians which could decide said fact i.e. change in the staffing pattern and not the Executive overlooked the fact that it was the academicians who took the decision: The Academicians in the University Grants Commission. The executive functionaries of the Indian Military Academy simply implemented the said decision.

8. Unfortunately, as a result of the impugned decision, which have not been stayed, the respondents are receiving salary for doing no work.

9. Allowing the writ petitions and quashing the impugned decisions dated February 02, 2011 we dismiss O.A.No.2057/2010 and O.A.No.1855/2010. However, we direct the petitioner to once again seek option from the respondents to either join any other laboratory where work of a Demonstrator is available or to accept employment in a lower post at the Indian Military Academy in Dehradun.

10. No costs.


PRADEEP NANDRAJOG, J.


V.KAMESWAR RAO, J.

JULY 23, 2013

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Frmt R.P. No. 464/13 for review of above or.

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..... Petitioners

Represented by: Mr.R.V.Sinha, Advocate with
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versus

MAHABIR SINGH GOSAIN & ORS.

..... Respondents

Represented by: Ms.Meenu Mainee, Advocate for
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respondent/ review petitioner

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.12.2013

R.P.No.463/2013 in W.P.(C) No.6809/2011

R.P.No.464/2013 in W.P.(C) No.6868/2011

1. Notwithstanding various contentions put forth in the two review

W.P.(C) 6809/2011 & conn.matter

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petitions, learned counsel for the review applicants/respondents states that if observations made in paragraph 8 of the order under review are removed the respondents would be happy for the reason as a matter of fact the respondents are continuing to work at the Indian Military Academy and are not being paid salary for sitting idle.

2. In paragraph 8 of our order dated July 23, 2013 we had recorded as under:-

"8. Unfortunately, as a result of the impugned decision, which have not been stayed, the respondents are receiving salary for doing no work."

3. Needless to state the observations is not a determinative finding of fact. It was so recorded because it was so told to us by learned counsel for the petitioner and as is apparent from the order dated July 23, 2013, there was no representation from the side of the respondents.

4. We note that learned counsel for the respondents has shown to us photocopies of various documents which would reveal that the respondents are working and earning wages for work done and not sitting idle.

5. We do not comment upon the said documents for the reason we are inclined to remove paragraph 8 from our decision dated July 23, 2013 on account of the fact that what is recorded therein is not central to our decision. It merely notes a fact stated at the bar to us when decision dated July 23, 2013 was pronounced.

6. The two review petitions accordingly stand disposed of deleting paragraph 8 from the decision dated July 23, 2013 and as a consequence para 9 and 10 being renumbered as 8 and 9.

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7. The decision dated July 23, 2013 shall henceforth read as under:-

“W.P.(C) No.6809/2011 & W.P.(C) No.6868/2011

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3. The Demonstrators at the Indian Military Academy started claiming pay as per UGC pay scales and succeeded. The Allahabad Bench of the Central Administrative Tribunal held that since the staffing pattern on the academic side of the Indian Military Academy was as per pattern prescribed by UGC, the pay scales as adopted by UGC would be applicable. The Indian Military Academy accepted the decision.

4. But to the misfortune of the Demonstrators, UGC decided to restructure the staffing pattern and recommended to abolish the post of Demonstrators. Indian Military Academy

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accordingly intimated Demonstrators working in the Academy to either accept employment as a Demonstrator in such laboratories of the Government of India where the posts existed or to accept working against the post of Laboratory Assistant in the Physics and Chemistry Laboratory in the Indian Military Academy.

5. The respondents refused to accept the offer and filed Original Applications which, as noted above have been allowed by the Tribunal.

6. The reasoned decision allowing OA No.1855/2010 makes interesting reading. With reference to the decision reported as (1990) 2 SCC 707 Mallikarjuna Rao Vs. State of A.P. the Tribunal noted the law that the Administrative Tribunals cannot enter into policy matters, and to use the expression by the Tribunal 'issue advisory sermons'. The decision notes that the constitution shows that India is a sovereign, socialist, secular and democratic republic and integrates justice, social, economic and political. The decision proceeds to hold that the Constitution is the living organic thing. The theory of basic structure of the Constitution has been discussed. Exploitation of human values has been discussed. Article 23 of the Constitution has been discussed. In a nut shell the Tribunal has indulged in 'advisory sermons'. With reference to the facts that Demonstrators had litigated on pay parity as per UGC scales and had won, the Tribunal has opined that the decision to abolish posts of Demonstrators was mala-fide. The Tribunal has opined that only the academicians could take a decision whether Demonstrators were needed or not and not the Executive. Thus, direction has been issued to retain the respondents at the Academy in Dehradun.

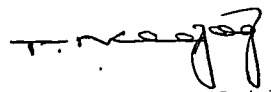
7. Suffice would it be for us to state that Demonstrators working in the laboratories at the Indian Military Academy claimed parity with Demonstrators working in colleges under the University Grants Commission claiming similarity in

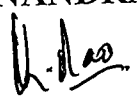
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staffing pattern in the UGC funded colleges and the teaching wing of the Indian Military Academy. They succeeded. Thus, once UGC decided to change the staffing pattern, the consequences thereof had to follow. The reasoning of the Tribunal that it was academicians which could decide said fact i.e. change in the staffing pattern and not the Executive overlooked the fact that it was the academicians who took the decision: The Academicians in the University Grants Commission. The executive functionaries of the Indian Military Academy simply implemented the said decision.

8. Allowing the writ petitions and quashing the impugned decisions dated February 02, 2011 we dismiss O.A.No.2057/2010 and O.A.No.1855/2010. However, we direct the petitioner to once again seek option from the respondents to either join any other laboratory where work of a Demonstrator is available or to accept employment in a lower post at the Indian Military Academy in Dehradun.

9. No costs."


PRADEEP NANDRAJOG, J.


V. KAMESWAR RAO, J.

DECEMBER 12, 2013

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