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

Date of decision: 29th November, 2018

+ W.P.(C) 2910/2010

BHIM SAIN

..... Petitioner

Through : Mr. N.K. Singh, Advocate for
Ms.Avnish Ahlawat, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondent

Through : Mr. Sumeet Pushkarna, Standing
Counsel for Pension Trust.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present writ petition, the petitioner seeks direction to the respondents to implement resolution No. 216 dated 16.07.1997 notified vide office order No. F.51(11)/A&G/PRC/217 dated 23.7.1997 and consequently direct the respondents to release the difference in salary and also difference in pension and any other consequential benefits to the petitioner.

2. The brief facts of the case are that the petitioner was employed in Delhi Electric Supply Undertaking (hereinafter referred as DESU) against Employees No. 2947 and was selected to the post of Legal Assistant w.c.f. 14.06.1989 and posted in Legal Cell of DESU vide office order No. F.1(70)/87/AO(P.IV)/110 dated 13.06.1989. DESU

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was succeeded by Delhi Vidyut Board (hereinafter referred as DVB), the erstwhile organizations of the present successor company Delhi Transco Ltd. (A govt. of NCT of Delhi Undertaking), impleaded herein as Respondent No. 2 and the holding company is Delhi Power Company Limited (A subsidiary of the Government of NCT of Delhi) impleaded herein as Respondent No. 3 and Manager Pension (Trust) D.V.B. Employees Terminal Benefits Fund, 2002 has been impleaded as respondent No. 4.

3. Learned counsel for the petitioner submits that the petitioner was permanently transferred on the post of Legal Assistant vide office Order No. E/NT/AO(P.IV)95-95/349 dated 13.01.1995. The petitioner was compulsorily retired from his services on the post of Legal Assistant w.e.f. 08.08.2001 from the office of Legal Cell of DVB vide Additional General Manager (Administration) letter No. November/2001/76 dated 10.12.2001. The petitioner after his retirement is drawing his pension on the post of Legal Assistant in the pay scale of Rs.6500-10900/-.

4. Learned counsel further submits that, the petitioner completed service of more than 10 years on the post of Legal Assistant on 14.06.1999, as such is eligible for the first time bound promotion benefits in scales of Rs.8000-13775/- for the post of Assistant Legal Officer in view of Resolution No.216 dated 16.07.1997 passed by Delhi Vidyut Board and Notified vide Office Order No. F.51/A&G/PRC/217 dated 23.07.1997. This order also assured time bound promotion to the retired employees of DESU/DVB w.e.f. 01.04.1994. Petitioner as such is entitled for difference in salary for

the period 14.06.1999 to 07.08.2001 and difference in pension w.e.f. 08.08.2001 to till date.

5. On the other hand, learned counsel appearing on behalf of Delhi Transco Limited submits that the petitioner was placed under suspension vide order dated 29.09.1999 resulting into imposition of penalty of compulsory retirement vide order dated 08.08.2001, therefore, the petitioner is not found fit for grant of time bound promotion scale.

6. Whereas, learned counsel for petitioner submits that due to discriminatory implementation of the office order issued by DVB, some of the petitioners got their benefits but those who ceased to be in service between 01.04.1994 to 23.07.1997 were still deprived of their benefit of time bound promotion to the next higher pay scales

7. Learned counsel for the petitioner submits that vide judgment dated 11.02.2004 passed in *CW 4316/2004* titled as ***BS Goswami and Ors. v. Delhi Vidyut Board***, and *CW 3134/2002* titled as ***SL Chadha v. Delhi Vidyut Board***, this court allowed these writ petitions and Mandamus was issued to Delhi Power Company Limited or any other successor company of DVB to forthwith give benefit to the petitioners who cased to be in the employment of DVB between the dated 01.04.1994 till the date 23.07.1997, with effect from the date they became eligible for the benefit of the time bound promotional scale as per the scheme notified vide office order dated 23.07.1997. Arrears were directed to be paid with interest at the rate of 6% per annum from the date of order till the date of payment along with pensionary benefits of the petitioners after suitably revised.

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8. Learned counsel appearing on behalf of the respondents has disputed the above submission and submitted that the said judgment is not applicable in the facts and circumstances of the present case. Further submits that MD Mishra, employee No. 51 and the petitioner herein were transferred on deputation vide letter dated 13.06.1889 and both joined as Legal Assistant on 14.06.1989. In case of Mr. M.D. Mishra also, the time bound promotion was not given, therefore, Mr. M.D. Mishra and similarly situated persons filed W.P.(C) 2594/2010 with batch of petitions and same were decided vide order dated 31.01.2013 by directing as under :

“10. Another reason for me not to accept the argument of delay and laches is that it is only in 2010 that the Supreme Court decided as to who was liable i.e. the liability was held to be of the DISCOMs/transferee companies and thus there was no certainty before 2010 as to the entity which will be liable. Thus it cannot be said that there is such delay and laches for denying the service/terminal benefits to the employees.

11. In view of the aforesaid discussion, the writ petitions are allowed. Petitioners are directed to be paid the entire consequential monetary benefits on they being given the benefits of the circulars dated 23.7.1997 and 21.12.1999. the petitioners will also be entitled to interest at the rate of 6% per annum simple till the payment of the monetary benefits payable to

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them from the dates of filing of these petitions provided that such monetary benefits are paid on or before a period of three months from today. In case, there is delay in payment of the monetary benefits to the petitioners beyond three months, then the petitioners will be entitled to interest at the rate of 9% per annum simple for the period after three months.

9. I note that vide office order dated 13.06.1989, the petitioner and Mr.M.D. Mishra along with seven others were transferred on deputation to the post of Legal Assistant in the scale of Rs.1800-3500 and the petitioner and Mr. M.D. Mishra along with others were transferred permanently to the post of Legal Assistant in the scale of pay of Rs.1800-3500 with immediate effect.

10. I further note that in the additional affidavit filed on behalf of Delhi Transo Limited in Annexure A, it is stated that two Legal Assistants could not be allowed any time bound promotion/scale of Junior Clerk/Senior Clerk under the scheme of grant of TBPS introduced vide office order, as they both had been appointed as Legal Assistant by transfer on deputation w.e.f. 13.06.1989 followed by permanent transfer/absorption in the cadre of Legal Assistant w.e.f. 13.01.1995. The grant of first TBPS in the case of Legal Assistants has therefore been treated as the date of their appointment by transfer on deputation i.e. 13.06.1989 followed by permanent absorption w.e.f. 13.01.1995.

11. From the minutes, which is annexed with the Affidavit dated 16.07.2012 filed by the Delhi Transco Limited, it is admitted that the

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appointment of the petitioner with others was on deputation w.e.f. 13.06.1989. As argued by learned counsel for the petitioner that by June, 1999, the petitioner has completed 10 years, thus, he is entitled for first time bound promotion scales.

12. The case of the respondents is that since the petitioner was made permanent employee and was absorbed w.e.f. 1995 and was under suspension vide order dated 29.09.1999 resulting in imposition of penalty of compulsory retirement, therefore, the petitioner is not entitled for grant of first time bound promotion scale.

13. It is not in dispute that M.D.Mishra, who was transferred on deputation vide letter dated 13.06.1989 and joined on 14.06.1989 has also completed 10 years in the month of June, 1989. Since, the benefit of the same was not given to the above named M.D.Mishra, he therefore, filed W.P.(C) 2594/2010 along with other petitioners. The same was disposed of vide order dated 31.01.2013 as discussed above.

14. Since, the issue raised in the present writ petition has already been decided in the writ petition mentioned above and the petitioner is similarly situated person as was M.D. Mishra who got relief in order dated 31.01.2013, therefore, I am of the considered view that the petitioner who was transferred on deputation vide order dated 13.06.1989 as Legal Assistant and who joined on 14.06.1989, thus, had completed 10 years in the month of June, 1999. Whereas, his suspension order dated 29.09.1999 was after the completion of 10 Years, therefore, the petitioner cannot be denied the same benefit as was granted to M.D. Mishra, who is similarly situated person.

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Moreover, the punishment, if any, after June 1999, cannot be applied retrospectively.

15. Accordingly, I hereby direct the respondents to give the same relief to the petitioner as was awarded to Mr.M.D. Mishra in case of *Murli Dhar Mishra v. GNCT of Delhi And Ors.* in W.P.(C) 2594/2010 vide order dated 31.01.2013.

16. I hereby made it clear that arrears of the petitioner shall be released within a period of four weeks from the receipt of a copy of this order and revised benefit thereof with the revised rates would be realised to the petitioner within six weeks from the receipt of this order along with the interest as awarded in W.P.(C) 2594/2010.

17. The writ petition is, accordingly allowed with the above directions.

Suresh

SURESH KUMAR KAIT, J

NOVEMBER 29, 2018

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- fresh cm 5842/19 — for Correction
in Judgment
dt- 29/11/18

- D/Off on 29/11/18

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

+ W.P.(C) 2910/2010 & CM APPL. 5842/2019

BHIM SAIN

..... Petitioner

Through: Petitioner in person

versus

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

..... Respondents

Through: Mr. S.C. Gupta, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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06.02.2019

CM APPLN. 5842/2019

Vide the present application, applicant/counsel for respondent no.2 seeks direction thereby to make correction in order dated 29.11.2018.

Mr. S.C. Gupta, learned counsel appearing on behalf of the applicant submits that he argued the case on 29.11.2018 and the petitioner argued in person, however, the said facts are omitted in order dated 29.11.2018.

Since the appearance of Mr. N.K. Singh, Advocate for Ms.Avnish Ahlawat, Advocate for the petitioner and Mr.Sumeet Pushkarna standing counsel for respondent has been recorded, however, at this stage I only can believe that the petition was argued by Mr.Bhim Sain, petitioner in person and Mr.S.C. Gupta, Advocate appeared on behalf of respondent no.2. Accordingly, I expect from the respondent no.2 that the statement of Mr.Gupta be believed and presumed that Mr.Gupta appeared on 29.11.2018 and argued on behalf of the respondent no.2.

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The application is accordingly disposed of.

Suresh

SURESH KUMAR KAIT, J

FEBRUARY 06, 2019/tp