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

\+ W.P.(C) No.5473/2002

% **20th May, 2015**

APEDA ASSISTANT/STENOGRAPHER-I EMPLOYEES ASSOCIATION ..... Petitioners

Through: Mr. Prem Prakash and Mr. Anshul Narayan, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Before me, on behalf of the petitioners it is argued that petitioners who are Assistants and Stenographers working in the respondent no.3/APEDA, have been granted lower pay-scales by the 4th & 5th Central Pay Commissions although, historically they were having parity with respect to higher posts and higher pay-scales. Relief is therefore prayed of higher pay-scales than otherwise granted by the 4th & 5th Central Pay Commission Reports as adapted by the employer/respondent no. 3.

2. In effect, what is argued is that the 4th & 5th Central Pay Commissions have wrongly given lower pay-scales to the petitioners and petitioners must be given higher pay-scales as were granted by parity with the pay-scales of higher posts in terms of the earlier Central Pay Commission Reports.

3. The argument urged on behalf of the petitioners is totally misconceived because it is settled law that it is an employer which will decide what should be the pay-scale of a person holding a particular post. This Court is ill-equipped to decide whether a person should or should not be granted a particular pay-scale and this job is best left to the administrative authority/Pay Commission Recommendations, and which recommendations are arrived at after obviously hours and hours of deliberations between various committees etc etc. The Supreme Court in the case of ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408*** has held that courts should not step into the Executive's field and start prescribing what should be the pay-scales of employees of an organization. The relevant paras of the judgment in the case of ***Indian Drugs & Pharmaceuticals Ltd. (supra)*** are paras 37, 38 and 40 and the same read as under:-

> " 37.Creation and abolition of posts and regularisation are purely executive functions vide *P.U. Joshi v. Accountant General.* Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. <u>There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.</u>
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> 38. The respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment of regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the court for continuation in service or payment of regular salary to a casual, ad hoc, or daily-rated employee. Such directions are executive functions, and it is not appropriate for the court to encroach into the functions of another organ of the State. The courts must exercise judicial restraint in this connection. The tendency in some courts/tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situations can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.
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> 40. <u>The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for</u> creation of posts, appointment or these posts, regularisation, <u>**fixing pay scales**</u>, continuation in service, promotions, etc. <u>are all executive or legislative functions, and it is highly improver for Judges to step into this sphere,</u> except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam v. Dy. Supdt. Of Police* and we fully agree with the views expressed therein."
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> (emphasis is mine)

4. The Supreme Court has in fact in this judgment in the case of ***Indian Drugs & Pharmaceuticals Ltd. (supra)*** cautioned the courts that

they must not over-step their jurisdiction and enter into the field of Executive for deciding the pay-scales of employees.

5. Learned counsel for the petitioner places reliance upon an Office Memorandum (OM) dated 31.7.1990 filed as Annexure P-3 to the writ petition to argue that petitioners must get particular pay-scales, however, a reading of this OM does not show that the same has in its subject matter employees of autonomous organizations such as APEDA/respondent no.3, and this circular only applies to Central Government employees. Petitioners, therefore can derive no benefit of the OM dated 31.7.1990.

6. Reliance placed by the petitioner upon the judgment of the Supreme Court in the case of ***Union of India Vs. Rajesh Kumar Gond 2013 (9) Scale 749*** is misplaced because the facts of the said case show the claim of parity *inter se* Central Government employees, whereas in the present case, petitioners are not employees of different branches of the Central Government but are employees of an autonomous organization of the Central Government being the respondent no.3/APEDA.

7. In view of the above, petitioners cannot claim that they should be granted higher pay-scales by effectively this Court changing the recommendations of the 4th and 5th Central Pay Commissions.

8. Dismissed.

MAY 20, 2015 **VALMIKI J. MEHTA, J**

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