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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 2391/2016

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10th November, 2016

KANHIYA LAL

..... Petitioner

Through: Mr. R.K. Saini, Advocate.

versus

THE LD. DISTRICT AND SESSIONS JUDGE (HQ)

..... Respondent

Through: Mr. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioner in spite of repeated queries of the Court does not want to answer the question that if there is an order of the disciplinary authority which has imposed punishment of non-grant of pay and only grant of the suspension allowance during the period of suspension then where is the order of the disciplinary authority prayed for being quashed or set aside in this writ petition filed under Article 226 of the Constitution of India.

2. Counsel for the petitioner keeps on endeavoring to take this Court to the documents filed with the writ petition whereas documents filed with the

writ petition can only support a cause of action and a prayer clause if so already made in the writ petition.

3. In the prayer clause I do not find that any prayer is made for quashing and setting aside of the Order of the disciplinary authority dated 22.2.2011 which has ordered the entitlement of the petitioner to be only of grant of suspension allowance during the period of suspension, besides imposing the penalty of stoppage of one increment with cumulative effect.

4. In the entire body of the writ petition no cause of action is pleaded, and nor so is pointed out to this Court, as to why the Order of the disciplinary authority dated 22.2.2011 is illegal and bad and is bound to be set aside to the extent that petitioner should be granted entire pay during the period of suspension and not only the suspension allowance.

5. When notice in this writ petition was issued on 21.3.2016 by a learned Single Judge of this Court it was recorded that the petitioner gave up prayers (b) and (c) of the writ petition. This Order dated 21.3.2016 reads as under:-

“The petitioner has filed the present petition seeking the following prayers:-

- (a) A writ of certiorari calling for the records of the case for perusal;
- (b) A writ of certiorari, quashing suspension order dated 17.09.2005 (Annexure P-1) passed by the Ld. District & Sessions Judge, Delhi, being illegal, arbitrary, unjust, invalid after 90 days under sub-Rules (6) & (7) of CCS (CCA) Rules, 1965;

(c) A writ of certiorari, quashing suspension order dated 17.09.2005 (Annexure P-1) passed by the Ld. District & Sessions Judge, Delhi to the extent that the petitioner will not get any benefits for the period of suspension other than the subsistence allowance already received by him during the period of suspension, being illegal, arbitrary, unjust, invalid after 90 days under sub-Rules (6) & (7) of CCS (CCA) Rules, 1965;

(d) A writ of Mandamus commanding the respondent to pay the full pay & allowances etc. and annual increments and other consequential benefits to the petitioner during his suspension from 17.09.2005 to 22.02.2001 and his pay be stepped up accordingly.

(e) A writ of mandamus commanding the respondent to pay the cost of the petition to the petitioner.”

Learned counsel for the petitioner submits that he does not want to press the prayers (b) and (c) of the petition.

Issue notice to show-cause to respondent as to why the petition be not admitted.

Mr. Manu Padalia, Advocate accepts notice on behalf of respondent and seeks time to file counter affidavit.

Let the counter affidavit be filed within four weeks with advance copy to counsel for the petitioner. Rejoinder, if any, be filed within two weeks thereafter with advance copy to counsel for the respondent.

Renotify on 04.05.2016.”

6. In view of the aforesaid discussion it is clear that in the absence of any cause of action pleaded in the writ petition and any prayer made for setting aside the Order of the disciplinary authority dated 22.2.2011 which has imposed the punishment on the petitioner, including of only grant of suspension allowance during the period of suspension, no relief can be granted to the petitioner of grant of complete pay and consequential increments on the basis of entitlement of complete pay for the period of suspension.

7. The writ petition is accordingly dismissed.

NOVEMBER 10, 2016/ MK

VALMIKI J. MEHTA, J

