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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2756/2016

Date of decision: 30th March, 2016

PANKAJ KUMAR PATHAK

..... Petitioner

Through Mr. V.K. Garg, Sr. Advocate with Mr. Sagar Saxena, Ms. Noopur Dubey and Ms. Himanshi Saini, Advocates.

versus

UNION OF INDIA & ORS

..... Respondent

Through Mr. Umang Mittal and Mr. Vikas Chopra, Advocates for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

C.M.No.11592/2016

Exemption allowed, subject to all just exceptions.

W.P.(C) 2756/2016

We have heard Mr. Vinay Kumar Garg, Sr. Advocate on behalf of the petitioner, who submits that the issue of eligibility prescribed by the Recruitment Rules for promotion to the post of Surveyor of Works [re-designated as Executive Engineer (QS&C)] was sub judice in different forums since 1996. The issue was finally decided by the

Supreme Court in Civil Appeal No.5944/2015, titled ***Akhilesh Shukla & Ors. Vs. Union of India & Ors.*** vide judgment dated 4th August, 2015. In view of the said judgment, the petitioner was eligible and had been wrongly denied promotion at the right time. He submits that as the matter was sub judice and pending litigation, the final decision of the Supreme Court has to be enforced and applied to the entire class of employees, who were eligible and were entitled to be promoted as per the Recruitment Rules, to the post of Executive Engineer (QS&C) and then to the post of Executive Engineer (QS&C) (NFSG). He relies upon recent decision of the Supreme Court in ***State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others***, (2015) 1 SCC 347.

2. We note that the Tribunal in the impugned order dated 4th March, 2016, has directed that to avoid further litigation, the OA itself should be heard and decided at the earliest. The Tribunal has also directed that promotion, if any, of the private respondents, to the post of Superintending Engineer would remain subject to the outcome of the OA No.240/2016.

3. Learned senior counsel appearing for the petitioner submits that hearing in OA No.240/2016 could not take place on 15th March, 2016 and now the said OA is fixed on 26th April, 2016. It is submitted that promotions to the post of Superintending Engineer (QS&C) are being made.

4. Litigation on the question of interpretation of Recruitment Rules has remained pending for nearly 19 years. As per the petitioner this question is fully covered by the decision of the Supreme Court in ***Akhilesh Shukla & Ors (supra)***. Our attention is also drawn to the order dated 29th March, 2016, passed by the Director General, Military Engineering Service, whereby promotions have been made to the post of Superintending Engineer (QS&C), subject to the outcome of the O.A. The petitioner is right that the issue should be resolved and decided at the earliest. We notice that the tribunal is also conscious and aware of this urgency and the O.A. is listed for final hearing and disposal. In these circumstances we are not inclined to issue notice as the impugned order decides the application for stay. We hope and trust that the parties would not seek adjournment and the matter would be heard and disposed of by the Tribunal by 31st May, 2016. Learned

counsel appearing on behalf of the official respondents states that they will not seek adjournment and will argue the matter on the next date of hearing before the Tribunal.

5. With the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 30, 2016

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