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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3683/2016 & C.M. No.15759/2016**

GOVT. OF NCT OF DELHI & ORS Petitioners
Through: Mr.Anuj Aggarwal, Advocate

versus

S.K. SHRIVASTAVA Respondent
Through : Mr.A.K. Behera, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
% **02.05.2016**

1. The present petition has been received on transfer from another Bench due to an urgency expressed by learned counsel for the petitioners.
2. The present petition has been filed by the petitioner praying *inter alia* for quashing/setting aside the order dated 21.4.2016, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short '**the Tribunal**') in OA No.1386/2016. By the impugned order, the Tribunal had issued notice on the OA filed by the respondent under Section 19 of the AT Act, 1985 praying *inter alia* for quashing the Office Orders dated 19.6.2015, 2.12.2015 and 19.1.2016, whereunder he was informed that on his attaining the age of superannuation as a Foreman Instructor at the Aryabhat Institute of Technology, G.T. Karnal Road, Delhi, he would stand retired from duty w.e.f. 30.4.2016 and further, his request for being granted benefits at par

with Lecturer (Polytechnic) and for enhancement of his retirement age from 60 years to 62 years had been examined and rejected by the competent authority. The respondent has also prayed for directions to the petitioners for being declared as a holder of a teaching post/lecturer and seeks entitlement to the benefits of Career Advancement Scheme of the AICTE.

3. By the impugned order, while issuing notice to the respondent (petitioner herein) and granting time to the counsel for the respondent to file a reply, the Tribunal had adjourned the case to 31.5.2016 and passed an interim order to the effect that the respondent (petitioner herein) will be allowed to continue in service till further orders, at his own risk and that his continuance in service shall not confer any right on him.

4. Aggrieved by the aforesaid order, the petitioners/Govt. of NCT of Delhi has filed the present petition.

5. Counsel for the petitioners submits that the petitioners are aggrieved by the aforesaid order inasmuch as the respondent had deliberately chosen to approach the Tribunal at the eleventh hour knowing very well that, vide order dated 19.1.2016, he had been intimated of the date of his superannuation and his representation for considering his age of retirement at 62 years at par with Lecturers (Polytechnic) had been rejected and duly conveyed to him on 2.12.2015. He further states that vide letter dated 19.1.2016, the petitioners had requested the respondent to provide necessary documents for processing his retirement case. Therefore, the respondent cannot plead that he was ignorant of the date of his superannuation for him to have approached the Tribunal as late as in the second half of April, 2016, and if he did choose to approach the Tribunal so belatedly, then he was in any case disentitled to any interim relief particularly of the nature granted by

the Tribunal.

6. When the present petition was listed before the regular Bench on 29.4.2016, having regard to the urgency of the matter and keeping in mind the fact that the respondent was to retire on the very next day, i.e., on 30.4.2016, which was a Saturday and 1.5.2016 was a Sunday, notice was issued to the respondent, returnable for today with instructions to the counsel for the petitioners to serve a copy of the order dated 21.4.2016 to the other side, alongwith a set of the writ petition.

7. Counsel for the respondent enters appearance and states that the contention of the learned counsel for the petitioners that the judgment dated 11.3.2013 passed by the Division Bench of this Court in **WP(C) 5044/2012** entitled 'Dinesh Dutt Sharma vs. Govt. of NCT of Delhi & Ors., has clarified the position that a Workshop Instructor or the next senior post of Foreman Instructor cannot be treated at par with a Lecturer, is incorrect inasmuch as the said issue had not been clarified and it was left open for the petitioner in the said case to agitate the same by filing an appropriate Original Application. He seeks to explain the delay on the part of the respondent in approaching the Tribunal by stating that the respondent had applied to the petitioners under the RTI in January, 2016 for gathering certain information/documents and the said documents were furnished to the respondent only in the second week of April, 2016, immediately whereafter he had filed a petition before the Tribunal.

8. This can hardly be a ground for the respondent to have filed the Original Application so belatedly particularly when he was all along aware of the fact that as per the petitioners, his date of superannuation was 30.4.2016 and his request for enhancing the date of retirement from 60 years

to 62 years had already been turned down, vide order dated 2.12.2015. Given the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 21.4.2016 is rather ambiguous and shall create an anomaly. Further, it will open a pandora box as other similarly placed employees of the petitioners who are on the verge of superannuation, are bound to seek parity with the respondent herein by asking for similar interim orders. Given the fact that such an order shall have serious administrative and financial implications, the interim order dated 21.4.2016 cannot be permitted to continue.

9. Accordingly, the order dated 21.4.2016, insofar as an interim relief has been granted to the respondent to continue in service at his own risk, is vacated. Needless to state that while passing the aforesaid order, we have refrained from examining the merits of the case and it shall be open for both the parties to make their submissions, both on facts and in law before the Tribunal on the date fixed, i.e., 31.5.2016, which shall then be considered and decided in accordance with law. If the respondent ultimately succeeds in the Original Application, he shall be entitled to such benefits as may be granted by the Tribunal.

10. The writ petition is disposed of, along with the pending application.

11. At this stage, counsel for the respondent expresses an apprehension that the petitioner/Govt. of NCT of Delhi may drag its feet and delay the hearing in the Original Application. In response, counsel for the petitioners assures us that a reply to the Original Application shall be filed within the time granted by the Tribunal and no attempt shall be made by the petitioners/Govt. of NCT of Delhi to delay the proceedings.

12. The Tribunal is requested to expedite the hearing in the case, if possible.

HIMA KOHLI, J

SUNIL GAUR, J

MAY 02, 2016
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