

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5828/2016**

Reserved on: 23.09.2016
Date of Decision: 01.12.2016

SANJAY KUMAR THAKUR AND ORS Petitioners

Through: Mr. Apurb Lal & Ms. Meenu Pandey,
Advocates.

versus

**NORTH DELHI MUNICIPAL CORPORATION OF DELHI
AND ORS** Respondents

Through: Ms. Biji Rajesh, Ms. Aditi Gupta &
Mr. Gaurang Kanth, Advocate for NDMC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SUNITA GUPTA, J.

The present writ petition impugns the order dated 10.5.2016 passed by the Principal Bench of the Central Administrative Tribunal, whereby O.A. No.1749/2015 filed by the petitioners has been dismissed.

2. The petitioners were appointed as Laboratory Assistants in the erstwhile Municipal Corporation of Delhi between July, 2004 and October, 2004. After trifurcation of the Municipal Corporation of Delhi, the petitioners were assigned to the North Delhi Municipal Corporation (Corporation for short).

3. The petitioners proclaim that they should be covered under the Central Civil Services (Pension) Rules, 1972 (herein after referred to as the

Old Pension Scheme) and not under the New Contributory Pension Scheme, effective from 1.1.2004 (hereinafter referred to as the New Pension Scheme). The claim is predicated on the argument that they were appointed to posts in which vacancies had arisen in the year 2002-2003. The date of appointment being after 1.1.2004 would be inconsequential to decide the applicability of the old or new pension schemes to the petitioners. They attribute delay in appointment/joining to the respondents.

4. For the sake of clarity, we would like to state the relevant facts. On 27.12.2002, the respondent No.1 Corporation had requisitioned the Delhi Subordinate Services Selection Board ('DSSSB' for short), for filling up of various posts including the vacant posts of Laboratory Assistants. The advertisement inviting applications was published on 5.6.2003 and the written examination was conducted on 19.10.2003. The DSSSB had declared the results, vide Office Order No.109 dated 29.10.2003, and the dossiers of the selected candidates were sent to respondent No.1 Corporation by the DSSSB on 6.11.2003. The offer of appointment was made to the petitioners on 19.03.2004 and the petitioners were appointed to the post of Laboratory Assistants between July, 2004 and October, 2004.

5. The petitioners submit that the New Pension Scheme which was brought into effect from 1.1.2004 would not be applicable to the petitioners as they were recruited prior to 31.12.2003. There was no rational and basis for fixing 1.1.2004 as the cut off date for applicability of the New Pension Scheme and the date should be struck down as being violative and infringing Article 14 of the Constitution of India.

6. Learned counsel for the petitioners relies on the decision of the Supreme Court in *Marripati Nagaraja & Others vs. Government of Andhra*

Pradesh & Ors.; (2007) 11 SCC 522 and the decision dated 28.06.2013 of the Central Administrative Tribunal, Ernakulam Bench in O.A. No.724/2012 titled *P. Rajesh Kumar & Ors. vs. State of Kerala* and the order dated 11.12.2013 in O.A. No.1869/2011 titled *Rabinder Kumar Pattanayak vs. Union of India & Ors.* decided by the Central Administrative Tribunal, Principal Bench, New Delhi.

7. We have considered contentions raised by the petitioners but do not find any merit in them.

8. The Delhi Municipal Corporation Service Regulations, 1959 apply to all municipal officers and employees, except those appointed under a contract, rendering part time service or earning daily wages. Regulation 4 (1) reads as under:-

“4. Conditions of service of municipal officers and other municipal employees-

(1) Unless otherwise provided in the Act or these Regulations, the Rules for the time being in force and applicable to Government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers and other municipal employees except in respect of matters relating to provident funds, subject to the modifications that any reference in the Rules to a Government servant, the Consolidated Fund of India, the Civil Surgeon and the Medical Committee shall be construed as a reference respectively to a municipal officer or other municipal employees, the Municipal Fund, the Municipal Health Officer and Medical Board constituted by the Commissioner.”

As per the said Regulation, unless it is specifically provided in the

Municipal Act or in the present Regulations, the Rules in force and applicable to the Government servants in service of the Central Government would regulate the conditions of service of municipal officers and employees with the exception of matters relating to provident fund.

9. Clause (1) of Regulation 3 of the Municipal Corporation Services (Death-cum-Retirement and Benefits) Regulations, 1971 (1971 Regulations, for short) reads as under:-

“3. Unless otherwise provided in the Act or these regulations, these regulations shall apply to all officers and other Municipal Employees of the M.C.D. whose pay is chargeable to the "General Account" or the "Water Supply & Sewage Disposal Account" of the Municipal Fund.

Provided that nothing in these regulations shall apply to such Municipal Officers and other Municipal employees as are appointed under any contract or temporary deputation or render part time service or are in receipt of daily wages.

(1) In future Municipal Officer and other Municipal employees will be eligible for grant, in place of existing benefits of contributory provident fund and gratuity of person and death-cum-retirement gratuity with all related benefits, to the extent and subject to the condition restrictions prescribed in the Liberalized Pension Rules of the Central Government of 1950 and Family Pension Scheme, 1964, as amended from time to time, and these Rules and the relevant chapter of the civil service Regulations, the Civil Pension Commutation Rules and all orders, rulings and procedural instructions issued thereunder by the Central Government and the Comptroller and Auditor General of India, shall apply *mutatis mutandis* to the Municipal Officers and employees.

Provided that those of the Municipal Officers and employees who on the introduction of these regulations

are, already subscribing to the contributory provident fund, may, at their option continue to subscribe to the fund under existing regulations or surrender the Municipal contribution paid into their provident fund accounts and interest thereof, to the Corporation and instead count their service towards pension, such option shall be exercised in writing within six months of the promulgation of these regulations and the option once exercised shall be treated as final and irrevocable."

A reading of the said Regulation would indicate that benefit of the Rules and relevant chapter of the Central Civil Services Regulations, Civil Pension Commutation Rules, all orders and rulings, and procedural instructions issued by the Central Government and the Comptroller and Auditor General of India, were to apply *mutatis mutandis* to municipal officers and employees and were subject to the conditions and restrictions prescribed. The proviso deals with municipal employees and officers, who were already subscribing to contributory provident fund.

10. The Central Civil Services (Pension) Rules, 1972 had come into force on 1st June, 1972. By amendment dated 30th May, 2003, published in the Gazette of India on the same date, the Central Civil Services (Pension) Rules, 1972 were made applicable only to the Government servants appointed on or before 31st December, 2003. As a sequitur, the aforesaid pension regulations would not apply to any Government servant appointed on the 1st day of January 2004, or thereafter. Simultaneously, the Government of India vide notification No.5/7/2003-ECB & PR dated 22nd December, 2003 had introduced a new pension scheme for the Government employees who had entered into service on or after 1st January, 2004.

11. The Commissioner's letter No.F.33/CA-FA/665/C&C dated

29.7.2005 refers to the New Pension Scheme applicable to all employees of autonomous bodies under various Central Ministries/Departments recruited on or after 1.1.2004, as per the O.M. No.1(13)/EV/2001 dated 13.11.2003 of Ministry of Finance, Government of India. For the sake of clarity, we would like to reproduce the relevant portion of the said letter which reads as under:-

“By virtue of Delhi Municipal Corporation Service (Death-cum-Retirement & Benefits) Regulations, 1971 notified vide Delhi Administrative Gazette Notification No.F. 2(130) 67-LSG dated 29.10.1971 Part-IV (Extra-ordinary), Liberalized Pension Rules of the Central Government of 1950 and Family Pension Scheme 1964 as amended from time to time, along with relevant chapter of Civil Service Regulation with Civil Pension Commutation Rules and all orders ruling procedural instruction issued hereunder by the Central Government and Comptroller and Auditor General are applicable mutatis mutandis to Municipal Officer and employees.

Now the Government of India, Ministry of Finance vide O.M. No.5/7/2003/ECB&PR dated 2.12.2003 has introduced new defined Contribution Pension Scheme for new entrants in Central Government Service except Armed Forces replacing the existing scheme of Defined Benefit Pension Scheme. Subsequently Government of India, Ministry of Finance vide No.1(7)(2)/2003/TA/11 dated 7.1.2004 read with O.M. No. 1(7)(2)/2003/TA/67-74 dated 4.12.2004 have defined the important provisions (placed as Annexure-I). Salient features of the scheme are :-

- (i) The new pension scheme will be applicable to all employees of Autonomous Bodies under various Central Ministries/Departments recruited on or after 1.1.2004 as per Govt. of India, Ministry of*

Finance O.M. No. 1(13)/EV/2001 dated 13.11.2003.

- (ii) Contribution to be recovered from every employee/officer @ 10% of his Pay + Dearness Pay + Dearness Allowance every month. Equal amount of Corporation contribution is to be paid by the Corporation.*
- (iii) The amount so collected will be invested to created Pension Fund.*
- (iv) The modalities of managing the fund are yet to be finalized on the lines of Govt. of India as well Govt. of NCT of Delhi.*

*In view of the provision of Delhi Municipal Corporation Services (Death-cum-Retirement & Benefits) Regulations 1971, **new Pension Scheme will also be applicable to all officers and employees of the Municipal Corporation of Delhi recruited on or after 1.1.2004.***

It is, therefore, proposed that new defined Contribution Pension Scheme introduced by Govt. of India with all procedures, instructions, orders and future amendments issued there under [sic. under] by the Central Govt. of [sic. or] Comptroller & Auditor General from time to time be adopted mutatis and mutandis for Municipal officers and employees recruited on or after 1.1.2004.

The matter may please be placed before the Corporation through the Standing Committee for approval.”

(emphasis supplied)

The letter of the Commissioner dated 29.07.2005 was in conformity with the Delhi Municipal Corporation Service Regulations, 1959 as well as

the Municipal Corporation Services (Death-cum-Retirement Benefits) Regulations, 1971. A reading of the aforesaid letter elucidates that the respondent No.1-Corporation had followed the mandate issued by the Central Government, i.e. the New Pension Scheme was made applicable to all employees joining on or after 1.1.2004. The Central Government as a matter of policy and for good reason has taken the date of joining as the determining factor for deciding whether a Government employee would be covered under the Old Pension Scheme or the New Pension Scheme, for it would curtail litigation and make the New Pension Scheme applicable prospectively and not retrospectively. The letter uses the expression “recruited on or after 1.1.2004” The said expression has to be read as per the Central Government’s interpretation and instructions.

12. The penultimate paragraph of the Commissioner’s letter dated 29.7.2005 is lucid and categorical. The letter specifically records that the New Pension Scheme introduced by the Government of India with all procedures, instructions, orders and future amendments issued there under by the Central Government from time to time, would be adopted mutatis mutandis by the Corporation and the employees recruited on or after 1.1.2004. It was specifically clarified that the New Pension Scheme would be applicable as per the Government of India, Ministry of Finance O.M. No.1(13)/EV/2001 dated 13.11.2003. The cut-off date of 31st December, 2003 for applicability of the old pension scheme was dependent upon the date of joining and not on the date when the recruitment process was initiated.

13. Accordingly, the matter was placed before the Standing Committee, who vide their Resolution No.210 dated 10th August, 2005 had resolved to

apply the new contributory pension scheme to municipal employees recruited in service on or after 1st January, 2004.

14. The Commissioner of Municipal Corporation vide letter No.F.33/CA-cum-FA/1320/C&C dated 10th December, 2007 proposed the procedure for implementation of the New Pension Scheme in the MCD for employees who had been recruited on or after 1.1.2004. In the said letter, the expression used is "joined service on or after 1.1.2004." The contention of the petitioner that the old pension scheme would be applicable to all employees dependent upon the date when the recruitment process was initiated is clearly contrary to the letters of the Commissioner mentioned above.

15. It is pertinent to note that the letter dated 29.7.2005 itself is not under challenge or questioned on the ground of ultra vires either the provisions of the Act or the Regulations. The prayer made in the OA was restricted to setting aside of the order dated 23rd April, 2015 by which the Administrative Officer (Health) of the North Delhi Municipal Corporation had informed the petitioners that they would be covered by the new pension scheme as they had joined municipal service on or after 1st January, 2004 and were not eligible for benefits under the old pension scheme.

16. The second prayer in the OA was to direct the respondents to give pension to the petitioners under the old pension scheme as was done in the case of other employees. The OA referred to office order dated 1st June, 2010 and 10th August, 2011 by which benefit of old pension scheme was granted to Dr. Alka Chandra, Specialist (Grade-II), Anaesthesia and Dr. Rachna Rustgi Gupta, GDMO-II. These letters accept their representations to be governed by the old pension scheme. In these cases, benefit of old pension scheme was allowed after noticing that the candidates from the

same batch including those junior had joined before 31st December, 2003 and had been admitted to the old pension scheme. These cases, therefore, would fall in a separate category, for some of the candidates of the same batch, including those who were junior, were appointed earlier in point of time and were covered by the old pension scheme and, therefore, directions were given to cover the other candidates who had joined after 1st January, 2004 under the old pension scheme. We are not determining and commenting upon the merits of the said orders, for that is not the subject matter before us. In the present case, all appointments as Laboratory Assistants were made between July, 2004 and October, 2004. It is not a case wherein some candidates or juniors were appointed as Laboratory Assistant on or before 31st December, 2003 and were accordingly entitled to benefit under the old pension scheme.

17. Reliance placed by the counsel for the petitioners on the decision of the Principal Bench of the Central Administrative Tribunal in OA No.1869/2011, ***Rabinder Kumar Pattanayak Vs. Union of India & Ors.***, dated 11th December, 2013 is misconceived and is distinguishable on facts. In the said case, selection to the post of Assistant Legislative Council advertised by the Union Public Service Commission vide advertisement No.14/2002 became subject matter of challenge before the Tribunal and then before the High Court in a writ petition. This had resulted in delay in issue of appointment letters to some of the candidates, who were ultimately declared successful and were offered appointments. Applying the maxim and the dictum that the Court shall not prejudice anyone, relief was granted by extending benefit of the old pension rules noticing that provisional appointment had been granted from the date of appointment of junior.

Direction was given that the candidate should be treated at par with his batch mates for all consequential purposes except back wages. In the present case, we do not have anyone from the same recruitment process or a junior joining the post of Laboratory Assistant prior to 1st January, 2004. No one has been given benefit of the old pension scheme.

18. We are not inclined to accept the reasoning of the Central Administrative Tribunal, Ernakulam Bench in the decision dated 28.06.2013 in OA No. 724/2012, ***P. Rajesh Kumar and Ors. Vs. The Union of India & Ors.***, which records that benefit of the old pension scheme would be available to the applicants therein for the reason that the vacancies had arisen and related to the period prior to 1st January, 2004. The ratio and reasoning is unacceptable in view of the prescribed cut-off date of 1.1.2004, with reference to the date of joining and not the date of vacancies. The aforesaid criterion, i.e. the date of joining, is not arbitrary or whimsical but is with salutary and good reason. Courts cannot substitute the said criterion with another criterion as has been done by the Tribunal in the case of ***P. Rajesh Kumar*** (supra), wherein the date of vacancy, it has been observed, would be the fair and just criterion. This is impermissible and cannot be accepted. The courts or judicial forums cannot legislate and substitute dates. It is well-settled that the courts do not interfere with cut-off date as these are matters of discretion and within the domain of the Executive or the Legislature. The power to specify a date from which terminal or pensionary benefits, as the case may be, shall take effect is concomitant of the power of the State or Corporation to change the conditions of service unilaterally. So long as the date specified is reasonable and not wayward with reference to the requirement of fixing a point of time etc., no interference by the Court is

called for. (See *State of West Bengal & Ors. Vs. Ratan Behari Dey & Ors.* (1993) 4 SCC 62). When classification is permissible, choice of date being a basis of classification, the date so fixed cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the given circumstances. When a line or point is to be fixed and there is no mathematical formula or logical way to fix the same precisely, the decision of the Legislature or its delegate must be accepted unless it can be said that the date or point so fixed is widely of the reasonable mark. (See *Union of India Vs. Parameswaran Matchworks* (1975) 1 SCC 305 and *A. Manjula Bhashini Vs. A.P. Women's Coop Finance Corpn. Ltd.* (2009) 8 SCC 431). Whenever a law is enacted or an amendment is made, the same has to be with effect from a particular date. When it is otherwise permissible and legitimate to fix a date, the date so fixed is open to scrutiny on the limited grounds of whimsicality and capriciousness. If the choice made is burdensome to those to whom the wrong done is sought to be rectified, it would be open to the Court to examine the choice of date and find out whether it has resulted in any discrimination. (See *B. Prabhakar Rao Vs. State of A.P.*, (1985) Supp SCC 432). Further, it is a well-settled and accepted principle of law that the name of a candidate appearing on a select list would not give him an indefeasible right to appointment and it would be open to the Government to not fill up the vacancies. The Government cannot be compelled to fill up vacancies where the decision not to do so is sound and rational, especially in the case of direct recruits. (See *Neelima Shangla Vs. State of Haryana* (1986) 4 SCC 268), *Manoj Manu vs. UOI* (2013) 12 SCC 171, *Kulwinder Pal Singh Vs. State of Punjab* (2016) 6 SCC 532). Thus, we would hold that there can

be a gap between the date of vacancy, selection and appointment. On some occasions, appointments may not be made at all or may be made after a long delay.

19. Reliance placed on the judgment of the Supreme Court in *Marripati Nagaraja and Ors. Vs. Government of Andhra Pradesh and Ors.*, (2007) 11 SCC 522 is misplaced. The said case related to recruitment to 34 posts of Assistant Director of Agriculture in the Andhra Pradesh Agricultural Service pursuant to the notification issued on 1.10.1992. Subsequently, there was an amendment in the recruitment rules and Rule 22-A providing for reservation for women was substituted. On interpreting the said Rule, the Supreme Court observed that the women candidates were entitled to preference and the percentage of reservation was increased from 30 to 33.33 per cent. The Supreme Court held that though the notification amending the rule had been given retrospective effect, no existing right of any person was taken away by issue of the said notification. Referring to Article 309 of the Constitution, it was observed that the Government is entitled to make rules with retrospective effect and retroactive operation. However, in the absence of any rule being given a retrospective effect by an express provision or stipulation, the rules prevailing on the date of notification were to be applied. Going by the dictum, in the present case, the new pension scheme has been made applicable to all those who had joined on or after 1st January, 2004. Significantly, it was held that whether or not a rule was to be given retrospective effect is within the domain of the State and unless the rule was set aside, it would not be unconstitutional.

20. The third prayer made by the petitioner in the OA was that rules/amendments/instructions were not in consonance with the Article 14 of

the Constitution. The challenge, it appears, is to the entire new pension scheme, but the said challenge has been made without any basis or foundation. Even before us, no such attempt was made to challenge the very basis of the new pension scheme. For the reasons stated in paragraph 18 above, the challenge to the date of joining as the determining criteria, and 1.1.2004 as the cut-off date must be rejected.

21. The impugned order of the Tribunal follows the Division Bench judgment of this court in ***Shailender Kumar and Ors. vs. Delhi High Court (Through Registrar General) and Anr.***; (2012) 189 DLT 524. The said case related to appointment of petitioners who were unable to join the post of Lower Division Clerk by 31.12.2003, though they were offered appointment by letters dated 15.9.2003, 15.11.2003 and 12.12.2003, and the said offer of appointment was accepted. An identical plea was raised. Pertinently, the contention in the said case was on a better footing as letters of offer were issued pre 31.12.2003 but actual date of joining was post 31.12.2003. Rejecting the plea of the petitioners therein, it was held as under :-

“2. The main contention of the petitioners is that the offer of appointment having been made to them prior to 01.01.2004 and their inability to join the post by 31.12.2003 not being attributable to any lapse on their part, the benefit of CCS(Pension) Rules, cannot be denied to them, particularly, when this was extended to those who were selected simultaneously with them but were able to join on or before 31.12.2003, on account of their medical examination and police verification having been completed by that date. In our view, the contention is devoid of any merit. The Government was well within its right in discontinuing the applicability of CCS (Pension) Rules, 1972 and applying a new pension scheme to those who were to join the service after

promulgation of the new pension scheme. It was for the Government to decide, in its wisdom, as to whether it wanted to apply the new pension scheme to those who had entered service on or after 01.01.2004 or to those who were offered appointment on or after 01.01.2004. The Government having decided to discontinue the applicability of CCS (Pension) Rules and to extend the new pension scheme to all those who were to join service on or after 01.01.2004, irrespective of the date on which offer of appointment was made to them, the petitioners do not have any legal right to claim applicability of CCS(Pension) Rules, 1972 to them. It is not as if the new pension scheme has been introduced after the petitioners had joined service of the Government. The petitioners were not in the service of the Government prior to 01.01.2004 and, therefore, they had no right to the posts of LDC in District Sessions Court, when the new scheme was promulgated by the Government. Thus, this is not a case of service condition of the employees being varied by the Government to their detriment. Even if the petitioners could not join the service on or before 31.12.03 on account of no fault on their part that would make no difference since the relevant date is the date of joining the service and not the date on which the employment was offered to them. If we accept the contention that the offer of appointment having been made to the petitioners prior to 01.01.2004, they are entitled to be governed by CCS (Pension) Rules, that would be contrary to the terms of the scheme framed by the Government. We must take note of the fact that there has necessarily to be some timelag between the making of offer for appointment and the selected candidate joining the service of the Government because medical examination and police verification must necessarily precede the joining of service by him. If the medical examination of some persons who are offered employment along with the petitioners was conducted and/or their police verification was done before the

medical examination and/or police verification of the petitioners and consequently, those persons were able to join service on or before 31.12.2003 no benefit on that account accrues to the petitioners since completion of medical examination and police verification depends upon a lot of factors including the place where the candidate is residing, the hospital in which he is to be medically examined, the date fixed by that hospital for medical examination, the time taken by the concerned police official in verification of the antecedents etc. If a person is offered employment say in last week of December, 2003, he cannot claim benefit of CCS (Pension) Rules because some time is necessarily required for his medical examination and police verification and, therefore, it will not be possible for him to join the service of the Government on or before 31.12.2003.

xxxxxxxxxxxxx

5. *However, in the case before us, there was no order passed by any Court restraining the respondents from making appointments to the post of LDC in District & Sessions Court. They were in a position to join service soon after their medical examination and police verification was complete. On the other hand, in the case of Dr. Pawan Kumar N. Mali (supra), relief was granted to the petitioners, primarily applying the principle that the order of the Court cannot prejudice anyone. Had there been no stay order in that case, the respondents in that case would have joined service prior to 01.01.2004, since not only the offer of appointment had been made to them, even their medical examination had been conducted well before the cut-off date of 01.01.2004. They were prevented from joining service, only because of stay order granted by the Court. On the other hand, none of the petitioners before this Court could have been allowed to join service prior to 01.01.2004 since the*

character verification in respect of all the three petitioners was received after 31.12.2003. This judgment, therefore, cannot be applied to the case before us.

6. *This is not the case of the petitioners that their inability to join on or before 31.12.2003 was attributable to any negligence or lapse on the part of the respondents. If inability of the petitioners to join service on or before 31.12.2003 is not attributable to the respondents or to any order passed by a Court and was only on account of the time taken by the Hospital/Police in conducting medical examination and police verification, the petitioners cannot claim parity with the petitioners in the case of Dr. Pawan Kumar N.Mali (supra). For the reasons given in the preceding paragraphs, we find no merit in the writ petition and the same is hereby dismissed.”*

22. The Division Bench of this court in ***Shailender Kumar and Ors*** (*supra*) distinguished the decision in W.P. (C) No.5983/2010 titled ***Government of NCT of Delhi & Anr. vs. Dr. Pawan Kumar N. Mali & Ors.*** dated 3.2.2011. Notably, in ***Dr. Pawan Kumar N. Mali*** (*supra*) case, the doctors in question were selected by UPSC in October, 2002 and 3 out of 13 selected officers had joined on 20.1.2003. The remaining 10 doctors had undergone the medical examination, but they could not be given placement on account of the interim order passed in the writ petition filed by the doctors who were appointed on contractual basis seeking their regularization. It was held that the status quo order in respect of the doctors on contractual basis which was subsequently vacated and the writ petition was dismissed, would not prejudice the respondents. This case carves, and relates to, an exception to the general rule.

23. In the present case, the delay in issue of appointment letters was not malafide or intentional. The results were declared and thereafter the dossiers of selected candidates were sent by the DSSSB on 06.12.2003. The files had to be processed and by the time the appointment letters were issued, the New Pension Scheme enforceable with effect from 1.1.2004 had become applicable. Thus, the decision of the Division Bench in the case of *Shailendra Kumar* (supra) would be squarely applicable.

24. In the light of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed affirming and upholding the order passed by the Tribunal. There would be no order as to costs.

SUNITA GUPTA, J.

SANJIV KHANNA, J.

DECEMBER 01, 2016
‘AA’