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

% ***Judgment Dated: 26th July, 2016***

\+ W.P.(C) 6353/2016 & CM Nos. 26036-37/2016

PROTECTION OF PLANT VARITIES AND FARMERS RIGHTS AUTHORITY ..... Petitioner

Through : Mr. Rajinder Nischal, Advocate.

versus

MANOJ SRIVASTAVA AND ORS ..... Respondents

Through : Mr. Gautam Bhol, Advocate for R1.
Mr. Anil Soni, CGSC with
Mr.Naginder
Benipal, Advocate for R2/UOI.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (*ORAL)*

CM No. 26037/2016 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

Caveat No. 592/2016

The Caveator has entered appearance. Accordingly, the caveat petition is disposed of.

W.P.(C) 6353/2016 & CM No. 26036/2016(stay)

1. Challenge in this writ petition is to the order dated 6th May, 2016

passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal' in short) by which the OA filed by the respondent has been partly allowed.

2. Some necessary facts which are required to be noticed are that the respondent No. 1 herein was working on deputation as a Registrar with the petitioner with effect from 24th April, 2009, the period of deputation was initially for three years, which was extended for another two years till 23rd April, 2014. Since, the respondent was not being considered for absorption, he approached the Tribunal. The Tribunal, while issuing notice in the OA No. 552/2014 by an order dated 14th February, 2014, stayed the repatriation of the respondent herein (petitioner before the Tribunal). Finally, the OA No. 552/2014 was decided by the Tribunal on 20th July, 2015 by which, directions were issued to the respondent before the Tribunal (petitioner herein) to first consider the applicant/respondent herein for absorption and then repatriate him only, if he was found unfit for absorption. The petitioner passed a speaking order rejecting the claim of the respondent for absorption and also sought to recover the deputation allowance paid to him for a period of six months which amounts to approximately Rs.28,933/- , which led to the filing of the second OA being OA No. 547/2015 challenging the recovery proceedings. The Tribunal allowed the OA and directed that the recovery made would be refunded back to the applicant (respondent herein). It is this order, which is the subject matter of challenge in this writ petition.

3. Learned counsel for the petitioner has strongly urged before us that the period of deputation cannot exceed five years and thus, the respondent herein

cannot be paid the deputation allowance for a period beyond five years and thus, the Tribunal has exceeded its jurisdiction in directing refund of the deputation allowance. It is also submitted that it is the respondent herein, who had approached the Tribunal and the stay order was granted at his instance and once his prayer was declined, he would not be entitled to the deputation allowance.

4. Learned counsel for the Caveator/respondent on the other hand, submits that the stand of the respondent stands vindicated by the fact that the Tribunal directed the petitioner herein to consider his case for absorption which order was not challenged by the petitioner herein. In fact, his case was considered and rejected, which is also being challenged by him in a subsequent OA. He further submits that since, the respondent herein is not being absorbed by the petitioner, his status for the extended period would be of a Deputationist and therefore for this reason, he would be entitled to deputation allowance.

5. We have heard the learned counsel for the parties and are deciding the matter at the notice stage itself, since, only a short point is involved. It is not in dispute that the deputation of the respondent herein was initially for a period of three years which was extended by another two years after which, order for his repatriation was passed. This order was challenged by the respondent before the Tribunal. It is worthwhile to notice that while issuing notice in the OA, the order of repatriation was stayed. After hearing, the Tribunal found merit in the submission of the applicant and issued a direction to the petitioner herein to consider his case for absorption. The case was

considered and rejected. The effect of which would be that the period of the respondent in the department continued to be that of a Deputationist and in view thereof, we see no reason that the respondent would not be entitled to the deputation allowance. The extended period of respondent, no doubt was subject to the interim order passed by the court. It was upon the petitioner herein to have contested the matter and opposed the stay or sought vacation of the stay, which was not done till the matter was finally decided. If the respondent continued to be on the post of a Deputationist, in our view that would not flout the Rule, if any, of the petitioner, as this order was passed in the facts of the said case. In view of above, we do not find any ground to interfere with the order of the Tribunal. The writ petition and the application are accordingly dismissed.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

JULY 26, 2016
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