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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 9910/2016

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10th November, 2016

SMT. POOJA SAXENA

.....Petitioner

Through: Mr. V.P.S. Tyagi, Advocate.

versus

UNION BANK OF INDIA & OTHERS

..... Respondents

Through: Mr. O.P. Gaggar and Ms. Runashree
Saikia, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 9910/2016 and C.M. Appl. No. 39421/2016 (for stay under Section 151 CPC)

1. There are two reliefs which are claimed in this writ petition filed under Article 226 of the Constitution of India by the petitioner against the respondent no.1/Union Bank of India. The first relief is the claim for regularization and the second relief is for claiming of a variable component of monetary entitlement payable as per the contract of employment.

2. So far as the grant of regularization of services of the petitioner are concerned, it is seen that the petitioner had earlier filed a writ petition being W.P. (C) No. 4056/2014 for the same relief and that writ petition was dismissed by a Single Judge of this Court vide Judgment dated 5.8.2014, and which is annexed at page 87 to 93 of this writ petition. Therefore, the decision in the earlier writ petition being W.P. (C) No. 4056/2014 dated 5.8.2014 operates as *res judicata* against the petitioner and petitioner cannot file a writ petition again for the same cause of action and relief. I may note that in the Judgment dated 5.8.2014 a learned Single Judge of this Court has relied upon the Constitution Bench judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others, (2006) 4 SCC 1*, to hold that a contractual employee cannot be regularized by giving permanent employment in the post which was contractual by nature. The first relief, therefore, prayed by the petitioner cannot be granted.

3. So far as the second relief is concerned, counsel for the respondent no.1 says that as per the contract of employment whatever were the monetary amounts which were payable to the petitioner stand duly paid and the necessary calculation chart to this effect will be sent to the petitioner within eight weeks from today. It is also stated that if by any advertence

any amount remains to be paid to the petitioner under the variable component payment under the contract, such payment will be made to the petitioner within the period of eight weeks. I may also note that in the entire writ petition there is complete vagueness as to which and what is the variable component part, how the same is due to the petitioner, etc. and which details of cause of action have not been stated, but in any case, directions are issued because counsel for the respondent no.1 says that there is a variable component payable to the petitioner as per term of the contract.

4. Ordinarily this Court would have imposed costs upon the petitioner for frivolous litigation, but the writ petition is only dismissed subject to the aforesaid observations, leaving the parties to bear their own costs.

NOVEMBER 10, 2016

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VALMIKI J. MEHTA, J