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

% **Judgment Dated: 24th August, 2016.**

+ W.P.(C) 7319/2015 & CM Nos. 13436/2015, 16333/2015, 19618/2016

VIJAY

..... Petitioner

Through : Ms. Esha Mazumdar, Mr. Setu Niket,
Advocates.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through : Mr. Anuj Aggarwal, ASC for GNCTD
with Ms. Niti Jain, Advocate for R1, 2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 30th April, 2015 passed in OA No. 3615/2013 by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). As rightly noticed by the Tribunal, when the petitioner approached the Tribunal, it was the second round of litigation.

2. The grievance of the petitioner is that the petitioner was not granted promotion being an Assistant Teacher (Nursery) and she was discriminated with respect to Assistant Teacher (Primary). The petitioner had filed a writ petition in Delhi High Court, which was then transferred to the Tribunal and registered as TA No. 1469/2009. This TA No. 1469/2009 was decided on 28th October, 2010. The operative portion of the order reads as under :-

9. *In the matter of interpretation the most cardinal*

principle is literal constructions with purpose and no provision of the rules should be interpreted in a manner to make the other provision as redundant. The recruitment rules for the post of TGT in the Department of Education, Govt. of NCT of Delhi promulgated on 11.12.1991 prescribe qualification for TGT for direct recruitment, which is fulfilled by the applicant by promotion from the feeder category and the mode of promotion is by promotion from Assistant Teachers of MCD having minimum 5 years regular service as Assistant Teacher and promotion is to be given to Assistant Teachers of Primary Schools. Accordingly, what has been required on a discerned reading is a feeder category of Assistant Teacher working in MCD in a Primary School. The interpretation given that Assistant Teacher (Nursery) is not an Assistant Teacher (Primary) is not eligible for promotion is an attempt on the part of the respondents to read out the recruitment rules, which cannot be countenanced. Assistant Teacher working in MCD in a primary school includes where the schools are run both at nursery and primary level is inclusive of Assistant Teacher (Nursery) working in the primary school and has to be treated as a feeder category for the post of TGT. MCD has wrongly not forwarded the cases of such Teachers to the Education Department of Government of NCT of Delhi, as a result of which claim of applicant has been prejudiced as well as denied promotion as TGT, which is a fundamental right guaranteed to a government servant as held by the Apex Court in Union of India & Others v. Hemraj Singh Chauhan & others, 2010 (3) SCALE 272.

10. Resultantly, for the foregoing reasons, TA is allowed to the extent of directing MCD to deem the category of applicant as a feeder category for the post of TGT in Education Department of Government of NCT of Delhi and forward the claim of applicant to

the Government of NCT of Delhi, which, in turn, shall consider the claim of applicant, subject to qualification prescribed under the Rules for promotion as TGT, from the due date, with all consequences, within a period of three months from the date of receipt of a copy of this order. No costs.

3. The complaint of the petitioner is that despite the aforesaid directions issued by the Tribunal in TA 1469/2009 on 28th October, 2010 having attained finality, the petitioner was not granted promotion from the date due. Resultantly, another OA being No. 3615/2013 (subject matter of the writ petition) was filed which was decided by the Tribunal on 30th April, 2015 by the impugned order. The operative portion of the order reads as under :

6. In the aforementioned order, the respondents were directed to consider the claim of the applicant "from the due date, with all consequences". It is noted that the applicant has not been able to establish her claim that her juniors were promoted as TGT earlier to the date of her promotion. The applicant has also not produced any seniority list that could throw light on her seniority vis-à-vis other Teachers (Primary/Nursery) whom she considered as her juniors. The applicant has also not pin pointed the DPC and the year in which she should have been considered for promotion. In such a situation the words "due date" cannot be interpreted to mean any date different from the date of DPC in her case. Further, the learned counsel for the applicant has admitted that if the relief, as prayed for is granted, it will affect the seniority position of many TGTs who were promoted prior to the order of this Tribunal dated 28.10.2010 but has not made any one of them as a party in this OA.

7. Considering such consequences, this OA is considered to be suffering from the defect of non-

joinder of necessary parties. The judgment of Hon'ble Supreme Court in K. V. Jankiraman (supra) does not support the claim of the applicant in as much as the applicant has been unable to establish her case for retrospective promotion and that she was kept away from work by the authorities from any specific date.

8. In the above background and for the reasons stated, we do not find any merit in this OA and the same is dismissed. No costs.

4. Counsel for the petitioner submits that the Tribunal has erred in observing that the onus was on the petitioner to produce the seniority list and to point out the names of those teachers, who feature junior to her and who have been promoted. Counsel contends that being State and having regard to the fact that records are being maintained by the respondents, it was upon the respondents to fairly disclose the names of such persons.

5. Ms. Mazumdar submits that based on a query raised under the Right to Information Act, a copy of which has been placed on record, she was able to ascertain that one Shalu Wadhwa, who was junior to her was promoted as TGT on 13th November, 1996, while, the petitioner was granted promotion from 30th May, 2011. The petitioner submits that there is no explanation as to how the magical date of 30th May, 2011 appears, because the petitioner should have been granted promotion either from the year 1996 or with effect from 28th October, 2010, the date after passing of the order of the Tribunal.

6. Learned counsel for the respondents submits that the petitioner has been working with the MCD and MCD would be a proper and necessary party, however, the petitioner has failed to implead the MCD before the Tribunal as also before this court.

7. After some hearing in the matter, it is agreed that the impugned order

of the Tribunal dated 30th April, 2015 be set aside and the matter be remanded back to the Tribunal for fresh hearing.

8. Leave granted to the petitioner to implead MCD as a party. Leave also granted to the petitioner to place additional documents on record before the Tribunal. The Tribunal, if considers it appropriate, may direct the respondent to produce the relevant record so as to enable the Tribunal to reach a conclusion as to from which date, the petitioner would be entitled to promotion.

9. Legal grounds of both the parties are kept open.

10. The parties are directed to appear before the Tribunal on 12th September, 2016.

11. This writ petition is disposed of in the above terms.

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In view of the order passed in the writ petition, all these applications have been rendered infructuous and are disposed of as such.

Dasti.

**G.S.SISTANI
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

AUGUST 24, 2016

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