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

+ **CONT.CAS(C) 825/2015**

DR JAI SINGH

..... Petitioner

Through **Mr.L.R.Khatana, Advocate.**

versus

V S OBEROI

..... Respondent

Through **Mr.Arindam Mukherjee, Advocate.**

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Date of Decision: 08th November, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 19th December, 2013 passed in W.P.(C) No.6736/2010, wherein a Division Bench of this Court held that the present petitioner was entitled to the benefit of FR.49(i) w.e.f. from the date he was given the charge of the post of Technical Advisor till the date of his superannuation. It was further held that the petitioner would be entitled to pay fixation from the date he had taken over the charge of Technical Advisor.

2. Learned counsel for the petitioner states that as the Ministry of Law had declined to give permission to the respondent to file a special leave petition to challenge the Division Bench order dated 19th December, 2013,

the said order has attained finality.

3. Learned counsel for the petitioner contends that the respondent ignoring a conclusive judicial order passed an office order dated 24th December, 2014 under FR.35, whereby it added only Rs.2,000/- to the petitioner's existing pay-scale of Joint Technical Advisor. He states that the petitioner was entitled to the pay-scale of the post of Technical Advisor under FR.49(i) as approved by the then Minister of Women & Child Development, Govt. of India, the competent authority of the petitioner and as directed by the Division Bench of this Court.

4. Learned counsel for petitioner submits that in view of the Division Bench judgment and order dated 19th December, 2013, the respondent while re-fixing the petitioner's pay could not have relied upon FR.35. According to him, the petitioner's pay had to be re-fixed in accordance with FR.49(i) alone.

5. It is important to note that FR.49(i), which the petitioner himself seeks to rely upon, makes reference to FR.35 and states that the competent authority can restrict the benefit under FR.49 by applying FR.35. The relevant portion of FR.49(i) reads as under:-

“FR. 49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows:-

(i) Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher

post, unless the Competent Authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;”

(emphasis supplied)

6. In the present case, the respondent has issued an office order dated 24th December, 2014 in pursuance to the Division Bench judgment and order dated 19th December, 2013. The relevant portion of the said office order reads as under:-

“5. In the light of the directions of the Hon’ble High Court of Delhi, the DoPT was consulted on regulation of pay under FR 49(i). The DoPT advised to fix the pay of Dr. Jai Singh by allowing the benefit of FR 49, subject to restriction under FR 35. FR 49(i) dealing with combination of appointments provided that ‘where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under FR-35.’

7. Accordingly, with the approval of the competent authority and in compliance with the order passed by the Hon’ble High Court of Delhi on 19th December, 2013 in W.P.(C) 6736/2010 in the matter of UOI & Ors Vs Dr. Jai Singh & Anr, the pay of Dr. Jai Singh, Joint Technical Adviser (ad hoc) [retired on 31-10-2008] is hereby re-fixed with effect from 01.10.2007 as detailed below:-

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|-------|--------------------------------------|-----------------------------|
| (i) | Pay as JTA (ad hoc) as on 20.09.2007 | Rs.28,890/- plus Rs.7,600/- |
| | [PB-3 with Grade Pay of Rs.7,6000/-] | |
| (ii) | Notional Increment @ 3% | Rs.1,100/- |
| (iii) | Pay as Technical Adviser under | Rs.37,400/- plus |
| | normal Rules as on 01.10.2007 | Rs. 8,700/- (minimum) |

(iv) Pay re-fixed as Technical Adviser Rs.30,890/- plus Rs.7,600/-
Subject to restriction under FR 35
as on 01.10.2007
[benefit of Rs.2,000/- as (i) above]

(v) Pay as on 01.07.2008 Rs.32,050/- plus Rs.7,600/-”
(annual increment)

(emphasis supplied)

8. In the opinion of this Court, the Division Bench directed the respondent to grant the benefit of FR.49(i) and since the said FR, in turn, gave discretion to the competent authority to reduce the officiating pay under FR.35, the petitioner's contention that FR.35 could not have been invoked by the respondent is untenable in law.

9. Consequently, this Court in the present proceedings cannot reach the conclusion that the office order dated 24th December, 2014 is an act of wilful disobedience of the judgment and order dated 19th December, 2013 passed by a Division Bench of this Court in W.P.(C) No.6736/2010.

10. However, in the event the petitioner is aggrieved by the office order dated 24th December, 2014 either on merits or on the ground that the mandate of FR.35 has not been followed, he shall be at liberty to file appropriate proceedings in accordance with law. With the aforesaid liberty, present contempt petition stands disposed of. It is clarified that this Court has not expressed any opinion on the merits of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

NOVEMBER 08, 2016
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