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

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Date of Decision : January 06, 2016

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LPA 883/2015

HARI KISHORE SHARMA

..... Appellant

Represented by: Ms.Rashmi Chopra, Advocate with
Ms.Asiya, Advocate

versus

CHIEF SECRETARY GOVT OF NCT
OF DELHI & ORS

..... Respondents

Represented by: Mr.Uttam, Advocate for R-1
Ms.Avnish Ahlawat, Advocate with
Ms.Latika Chaudhary, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Having heard learned counsel for the parties we concur with the view taken by the learned Single Judge that pending hearing of the writ petition no case was made out to grant interim stay, as prayed for by the appellant.
2. Our reasons for agreeing with the final view taken by the learned Single Judge, who has not given any reasons for declining interim stay.
3. The appellant was appointed on contract by the second respondent, a juristic entity under the Government of NCT of Delhi, to work as an

Assistant Engineer (Civil). The contract was for a period of one year. It expired, and was extended till further orders.

4. Extending the contract further, respondent No.2 issued an advertisement inviting applications from Assistant Engineer (Civil) working under the Central or the State Government as also autonomous bodies under the Central or the State Government to work as Assistant Engineer (Civil) on deputation basis.

5. Appellant approached the learned Single Judge relying upon a policy decision taken by the Government of Delhi on February 16, 2015 that contractual employees should be made permanent. The advertisement was challenged. Interim prayer was made to restrain respondent No.2 from filling up the post of Assistant Engineer (Civil) by transfer on deputation.

6. Issuing notice in the writ petition the learned Single Judge declined to pass any interim order. No reasons have been given to decline interim stay as prayed for.

7. As per the affidavit filed in support of the writ petition by the appellant, he has disclosed his age to be 58 years.

8. The substantive issue which would arise for consideration before the learned Single Judge would be whether the policy decision to hitherto fore appoint Assistant Engineer (Civil) only on transfer by deputation basis is rational or irrational. As per the respondent the rational would be to have some kind of accountability fixed on the incumbent of the post. Holding post on a contract basis, save and except to terminate the contract, no further accountability can be fastened on the holder of the post.

9. The issue concerning the office memorandum dated February 16, 2015 issued by the first respondent concerning permanent absorption of

contract employees, would require it to be considered whether the same would be applicable to persons who had served as Assistant Engineer (Civil) in different organizations and having probably resigned or taken voluntary retirement applied for appointment on contract at an age when the superannuation was in the realm of a destination to be reached. This is the importance of a fact noted by us hereinabove that when the appellant filed the writ petition he was already 58 years of age. The age of superannuation under respondent No.2 is 60 years.

10. In the decision reported as 1988 (Vol.14) DRJ 134 H.K.Sharma Vs. Municipal Corporation of Delhi the view taken by the Full Bench was that in matters concerning employment interim orders should normally not be granted for the reason the grant of an interim order in favour of a petitioner would be putting the respondent in an irretrievable situation, for if the writ petition was ultimately dismissed, the writ petitioner would be entitled to wages for the work done on the principle of quantum meruit. If interim stay was declined, and ultimately the writ petitioner succeeded he could be compensated with money. It was only when an exceptional strong case was made out could the Court be justified in granting an interim stay.

11. For the facts noted hereinabove it cannot be said that the case of the appellant, as pleaded in the writ petition, is of an exceptional merit envisaged by the decision in H.K.Sharma's case for grant of an interim stay.

12. While dismissing the appeal we would simply observe that the learned Single Judge would decide the writ petition uninfluenced by any observations made by us. The scope of the appeal does not concern the ultimate merits of the writ petition filed by the appellant. It only concerns whether an exceptional meritorious case was prima-facie made out entitling

the appellant to the grant of an interim stay.

13. The appeal is dismissed.

14. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 06, 2016
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