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

\+ **WRIT PETITION (CIVIL) No. 11610/2015**

Date of decision: 18th January, 2016

DEVENDRA PAL SINGH ..... Petitioner

Through Bijendra Singh Methaila, Advocate.

versus

GOVT OF NCT DELHI & ORS. ..... Respondents

Through Mr. Devesh Singh, ASC for GNCTD-respondent No. 1.
Ms. Latika Chaudhary, Advocate for Ms. Avnish Ahlawat, Advocate for respondent Nos. 2, 3 & 4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL):

Dr. Devendra Pal Singh, in this writ petition filed on 1st December, 2015, impugns and challenges the final judgment and order dated 14th November, 2014 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (Tribunal, for short), dismissing his Original Application No. 3006/2011. Delay and laches in filing this writ petition is apparent.

2. On 1st January, 1971, the petitioner was appointed as a trained graduate teacher in the Directorate of Education, Government of National Capital Territory of Delhi. In December, 1986, the petitioner was

promoted to the post of Principal in the Directorate of Social Welfare, Government of NCT of Delhi. On 15th October, 1992, the petitioner was selected for appointment as a Principal with the District Institute of Education and Training (DIET, for short).

3. On 31st December, 1992, the petitioner opted and joined the State Council of Educational Research and Training (SCERT), an autonomous organisation, as its Principal. He continued to work in the said institute till he attained age of 60 years and retired on 30th June, 2003.

4. The petitioner in Writ Petition (C) No. 3347/2003 challenged his retirement at the age of 60 years, asserting that he should retire at the age of 62 years relying on Rule 67 of the SCERT and professing parity with the academic staff of the National Council for Educational Research and Training. The prayer clause of the said writ petition reads as hereunder:-

> "It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased:
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> (i) To issue a writ, order or direction in the nature of certiorari to quash/set aside the order bearing No. F.No. 1.39(199)92/SCERT/10698 dated 13.02.2003 (Annexure-A) issued under the signatures of Dr. Janaki Rajan, Director, SCERT wherein it is stated that the petitioner will retire from the post of Principal, DIET, Daryaganj, Delhi on 30.06.2003 (AN) and
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> (ii) To issue a writ, order or direction in the nature of mandamus directing the respondents that the petitioner will be allowed to work till he attains the age of 62 years with all financial benefits and be retired only on 30.06.2005 when he attains the age of 62 years instead of 30.06.2003 when he will attain the age of only 60 years as he is entitled to avail the benefit of raised age of retirement of two years granted to academic staff

working with NCERT and also to Dr. T.C. Sharma & Dr. D.K. Roy of SCERT.

(iii) To issue any other suitable writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case.

(iv) To award the cost of the petition."

5. The aforesaid writ petition was subsequently withdrawn as recorded in the order dated 27th January, 2010 with liberty to seek appropriate legal remedy. The said order mentions that the Supreme Court had held that SCERT was not amenable to writ jurisdiction. The reference would be to the decision of the Supreme Court in ***Lieutenant Governor of Delhi and Others versus V.K. Sodhi and others***, (2007) 15 SCC 136.

6. Thereafter, the petitioner filed OA No. 3006/2011 before the Central Administrative Tribunal, Principal Bench, New Delhi which, as noticed above, has been dismissed by the impugned order dated 14th November, 2014.

7. The grounds urged in OA No. 3006/2011 were substantially different and at variance from the grounds and pleas raised in W.P. (C) No. 3347/2003. Primarily relief was sought from and against the Government of NCT of Delhi. The petitioner contrary to his pleading in W.P.(C) No.3347/2003, in this OA had urged that he had continued to retain his lien and was an employee of the Government of NCT of Delhi till his retirement on 30th June, 2003 and, therefore, his service in SCERT from 1st

January, 1995 till 30th June, 2003 should be counted and qualified for pension. The pension payable should be accordingly enhanced, as his pension as fixed was on pro rata basis, i.e., for the period the petitioner had worked as a teacher and then as the Principal in the Department of Education, Government of NCT of Delhi. While computing the pensionable period, service rendered by the petitioner in the SCERT had not been added.

8. We have narrated the aforesaid facts and pointed out the marked difference in pleadings and the cause of action as pleaded in the Writ Petition (C) No. 3347/2003 filed in the High Court and in the OA No. 3006/2011filed before the tribunal. In the writ petition, the primary grievance raised was that the petitioner should retire at the age of 62 years and not at the age of 60. Reliance was placed on Rule 67 of the service condition applicable to the employees of SCERT. The grievance raised in OA was on a different, and apparently on a specious plea; that the petitioner had never exercised and opted for absorption in the SCERT and had continued to work on deputation with the SCERT till the date of retirement on 30th June, 2003. It is obvious that the said plea was an afterthought and belated. The petitioner in his Writ Petition (C) No. 3347/2003 in paragraph 3.(ii) had himself stated as under:-

> "3.(ii) The petitioner prior to joining in DIET on the aforementioned post was employed with the Directorate of Education, Government of NCT (GNCT), Delhi and

> was working there also as Principal. On his appointment as Principal with DIET, he tendered his technical resignation to resign from the post of Principal, Directorate of Education, GNCT, Delhi w.e.f. 31.12.1994 (AN) as he was holding his lien there and the said resignation was accepted (Annexure-C1) and the petitioner was absorbed in DIET w.e.f. 01.01.1995 (FN). In this way he is regular employee of respondent no. 3 w.e.f. the day and date of his joining on the said post of Principal i.e. 01.01.1993."

The contradiction and variance in stand taken by the petitioner in the OA is apparent and conspicuous.

9. The correct factual position was highlighted and referred to in the additional affidavit filed by the SCERT before the tribunal in the OA No. 3006/2011, in the following words:-

> "(ii) That his date of birth was 01.07.1943. As per rules, he was to superannuate on 30.06.2003 and the notification of retirement is to be issued 6 months before the actual date of superannuation i.e. 13.02.2003. Copy of the notification dated 13.02.2003 is enclosed hereas Annexure M1.
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> (iii) That till that time technical resignation submitted by the applicant was not accepted by the DOE i.e. his parent department. Therefore, it was indicated in order dated 13.02.2003 that settlement of retiral benefits of applicant would be subject to accepting of technical resignation. As per record, his technical resignation was accepted by DOE vide their letter dated 31.03.2003 w.e.f. 31.12.1994. Copy of the same is annexed here as Annexure M2.
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> (iv)That after acceptance of the Technical resignation, it was also conveyed to DIET vide order dated 01.05.2003 that technical resignation of applicant from the post of Principal held by him in the Directorate of Education

> w.e.f. 31.12.1994 has been accepted by the Directorate vide order dated 31.03.2003. Copy of the order dated 01.05.2003 is annexed here as Annexure M3."

10. The aforesaid narration of facts in the additional affidavit filed by SCERT would be in accord with and as per the averments made by the petitioner himself in Writ Petition (C) No. 3347/2003, which was filed on or about 14th May, 2003 in the Delhi High Court.

11. It is also pertinent to record and state that the petitioner had received retirement benefits for his service rendered in SCERT as per the applicable rules on his retirement on 30th June, 2003. Counsel for the petitioner is unable to state the nature and extent of benefits, which were paid to the petitioner on his superannuation by the SCERT on 30th June, 2003. Details of the said benefits have not been set out and stated.

12. This apart, we find that the petitioner in 2008 had filed another OA No.2527/2008 before the tribunal, for failure on the part of the Government of NCT of Delhi in releasing full pension/retirement benefits. The said OA was allowed vide order dated 10th July, 2009 with the direction that encashment of extraordinary leave should be granted. The plea and contention that the petitioner's service in the SCERT should be counted as qualifying for pension, was not raised. We do not agree with the counsel for the petitioner that the said prayer could not have been

made in the OA No.2527/2008, for Writ Petition (C) No. 3347/2003 was still pending in the High Court. We have noticed the issue raised and subject matter in Writ Petition (C) No. 3347/2003, wherein the petitioner had clearly accepted that he had tendered technical resignation and was absorbed and had become an employee of the SCERT and had ceased to be an employee of the Directorate of Education. This stand and stance of the petitioner, was the reason and cause for the petitioner not raising the plea.

13. The SCERT is a separate organisation, an autonomous body, as was held by the Supreme Court in the case of ***V.K. Sodhi*** (supra). The SCERT, it was observed, was not a State or an authority within the meaning of Article 12 of the Constitution of India.

14. The decision in ***V.K. Sodhi*** (supra) also refers to the contention raised by the SCERT that the courts cannot ignore the financial implication of implementing directions like grant of pension and had made the following observations with reference to the non-implementation of Regulation 67:-

> "**23.** It appears to us that in the case of bodies like SCERT, the court cannot ignore the financial implications of implementing the directions that it is called upon to issue. The object of SCERT is laudable and it has to coordinate and promote education in the State. Its resources are limited and the main income is by way of grant from the State Government. When SCERT pleads that it cannot spend the whole of the grant or a major portion of the grant in paying salaries and emoluments to its employees and if it does so, that may tend to frustrate the very object with which the Society was formed, it is an argument that

> has to be considered weighty by a court called upon to exercise jurisdiction under Article 226 of the Constitution of India. A court cannot issue a direction which would tend to frustrate the very object with which a society like SCERTis formed or a body like SCERT is created. After all, there may be a point of time in a welfare State where the right of the employees must be subservient to the right of the society. In the matter of education, surely, the interests of the society at large should prevail and issue of any direction that may endanger such interests must be done with extreme caution and only after careful deliberation."

15. For the reasons set out above, the writ petition has no merit and is dismissed.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

JANUARY 18, 2016
VKR/NA