

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

+ **W.P.(C) No.1262/2017**

% **14th February, 2017**

SUNITA CHHAKARA Petitioner

Through: Mr. C. Rajaram, Adv.

versus

DIRECTOR NSIT & ANR. Respondents

Through: Ms. Latika Chaudhary, Adv. for
Ms. Avnish Ahlawat, Adv. for
R-1.

Mr. Devesh Singh and Mr.
Vinod Bhati, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner/Smt. Sunita Chhakara seeks the relief of quashing of the impugned order dated 25.10.2016 issued by the respondent no.1, being the employer of the late husband of the petitioner namely Sh. Dhirender Kumar Chhakara, and by which impugned order the petitioner has been denied the entitlement of family pension. This impugned order dated 25.10.2016 reads as under:-

“NETAJI SUBHASH INSTITUTE OF TECHNOLOGY

AZAD HIND FAUZ MARG, SECTOR-3, DWARKA
NEW DELHI-110078

No. F.95(311)/2016/Legal/NSIT/1975-1980

Date 25/10/2016

ORDER

Whereas in pursuance of order of Hon'ble High Court of Delhi dated 23.9.2016 in the matter WP(Civil) No.8134 of 2016-Sunita Chhakara V/s. Director, NSIT & Ors. In which the Hon'ble High Court has directed the Respondents therein to treat the petition as representation of the Respondent regarding regularization of the adhoc service rendered by her husband late Sh. Dhirender Kumar Chhakara, Ex. Statistical Assistance for the period from 8.2.1994 to 23.6.1998 and release pensionary benefits. The matter has been again considered by the Competent Authority.

Whereas, the institute has considered the matter and has taken into account the facts and decision taken earlier also in which the institute on the basis of approval of the then Chairman. BOG on a belated representation made by wife Smt. Sunita Chhakara on 07.10.2013 had issued Office Order F.No.121 (139)/94-Estt./NSIT/916 dated 11.7.2014 wherein the service of Sh. Dhirender Kumar Chhakara were regularized from 8.2.1994 to 23.6.1998 against the post of Statistical Assistant in the pay scale of Rs.4500-125-7000(pre-revised). Sh. Dhirender Kumar Chhakara expired on 23.6.1998 and all the pensionary benefits were ordered to be released w.e.f. 24.6.1998.

However, when the matter was placed for approval before the Board of Governors, (BOG) in its 40th meeting, the BOG did not approve the decision of Chairman BOG and instead held on 13.8.2014 vide item No 6/40 resolved the following.

"After prolonged discussion, it was resolved to refer this to the Government."

Whereas the DTTE, GNCTD examined the whole issue and concluded that the appointment of Sh. Dhirender Kumar Chhakara itself was not in accordance with the Rules. The appointment was made without following required formalities especially the fact that no advertisement was issued to fill up the post of Statistical Assistant in NSIT. In the minutes of the selection committee it is clearly mentioned that only one candidate Sh. Dhirender Kumar Chhakara appeared for interview which clearly shows that besides the fact that post was not advertised in the newspapers, no vide publicity was given in the NSIT or the Government Departments. He was given appointment purely on temporary basis for a period of three months or till the regular appointment is made whether is earlier. The tenure of Sh. Dhirender Kumar Chhakara was extended from time to time and lastly vide order dated 01.05.1998 it was extended upto 07.11.1998 on purely temporary basis. Sh. Dhirender Kumar Chhakara died on 23.06.1998.

The Government, the Department of Technical Education has categorically stated that no Rules and Regulations were followed by NSIT in making appointment of Sh. Dhirender Kumar Chhakara as Statistical Assistant and then giving compassionate appointment to wife Smt. Sunita Chhakara. Further, granting pensionary benefits to an adhoc appointee, purely on temporary basis, is also not as per Rules and Regulations. The Government has not approved such action.

Whereas department of Training & Technical Education, GNCTD stated that it would not be appropriate to consider the request of NSIT for regularization of services of late Sh. Dhirender Kumar Chhakara as Statistical Assistant for the period from 7.2.1994 to 23.6.1998 and Smt. Sunita Chhakara to the post of LDC w.e.f 03.03.2000.

Therefore, the matter has been examined as per the directions of the Hon'ble High Court of Delhi, in view of the fact that whole issue has already been examined in consultation with Department of TTE, Govt. of NCT of Delhi in the past and this time too, the competent authority does not find any merit to regularize the services of late Sh. Dhirender Kumar Chhakara and as such his spouse Smt. Sunita Chhakara is not entitled for any family pension benefits. Accordingly, the order F.No.121(139)/94-Estt./NSIT/916 dt. 11.7.2014 cannot be given effect to same being contrary to the Rules and the same has not been approved by the BOG and the Government.

Sd/-
(PROF. YOGESH SINGH)
DIRECTOR

Ms. Sunita Chhakara
R/o- C-498, Saraswati Vihar
2nd Floor, Saraswati Vihar, Delhi-110034

Copy to:

1. The Registrar, High Court of Delhi, Delhi- in compliance to the order dated 23.09.2016 in the matter of WP (Civil) No. 8134 of 2016- Sunita Chhakara V/s. Director, NSIT & Ors
2. The Director (TTE), Dte. Of Trg. & Tech. Edn., GNCTD Delhi
3. Dy. Registrar (A/cs)/(Admn)
4. AR to Director, NSIT
5. PS to Registrar, NSIT

Sd/-
(PROF. YOGESH SINGH)
DIRECTOR"

2. It is not disputed that petitioner's husband only worked with the respondent no.1 for about four years only from 7.2.1994 to

23.6.1998, and that too only as a temporary employee and not as a permanent employee of the respondent no.1. Petitioner claims benefit of the Minutes of the Meeting of the Board of Governors dated 23.4.1999 and 10.6.1999 of the Governing Body of the respondent no.1 which proposed to regularize employees working with the respondent no.1, and who had worked for between 2 to 8 years with the respondent no.1 from 1990 to 1998.

3. A reading of the Minutes of Meeting dated 23.4.1999 and 10.6.1999 only show that a committee which was appointed in terms of Minutes of Meeting of the Governing Body of the respondent no.1 so as to examine the cases of regularization of those employees who had worked between 2 to 8 years for the reason that the respondent no.1 did not want to lose the experience of services of those employees who are alive, and who were working with respondent no.1 at the time of the recording of the Minutes of Meeting dated 23.4.1999 and 10.6.1999, and such temporary employees were desired to be made permanent so as to continue to avail experience for the jobs at which they were already employed and working with the respondent no.1. Therefore, an employee who may have worked with the respondent no.1 for 2 to 8 years between 1990-1998 would not get automatic regularization unless and until such employee was in fact alive when the decision was

taken to form a committee as per the Minutes of Meeting dated 23.4.1999 and 10.6.1999. Petitioner's husband had however expired on 23.6.1998 i.e much before the Meeting of the Board of Governors dated 23.4.1999 and 10.6.1999 with the fact that once an employee is no longer alive, there does not arise any issue of taking benefit of work experience of such an employee who is no longer alive, and therefore such an employee will not fall within the scope of the Minutes of Meeting dated 23.4.1999 and 10.6.1999 of the Governing Body of the respondent no.1.

4. No doubt, an office order dated 11.7.2014 was passed by the respondent no.1 which regularized the services of late Sh. Dhirender Kumar Chhakara, however, if respondent no.1 wants to rectify its genuine mistake, by finding the deceased husband of the petitioner as rightly not falling within the scope of the Minutes of the Meetings of the Governing Body, for non-regularization of services of a particular class of employees who were not alive, then correction of a mistake made, will not prevent the respondent no.1 from passing the impugned order dated 25.10.2016 because there is no estoppel against law or estoppel against the right legal action.

5. Accordingly, it is found that the claim of the petitioner that her husband should have been regularized on account of 4 years of

services with the respondent no.1, and hence petitioner on account of regularization of service of late husband should get family pension, is a cause of action without any substance, inasmuch as, the same is predicated on an incorrect basis of an employee being alive, and which *sine qua non* aspect of being alive to seek regularization in terms of the Minutes of Meeting of the Governing Body of the respondent no.1 dated 23.4.1999 and 10.6.1999; is not found to exist in the present case.

6. In view of the above, I do not find any merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 14, 2017
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VALMIKI J. MEHTA, J