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

+ LPA 150/2017 & C.M.No.8369/2017 (*stay*)

DR LALIT LATTA

..... Appellant

Through: Mr.Deepak A.Masih, Adv. with
Ms.Manjeet Kaur, Adv.

Versus

NILERD & ORS

..... Respondents

Through: Mr.S.K. Das, Adv. for R-1 with
Mr.Raj Kumar, AO.
Mr.Jitesh Vikram Srivastava, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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10.03.2017

Ms.G.ROHINI (CHIEF JUSTICE):

1. The petitioner in W.P.(C) No.1395/2017 is the appellant before us.
2. The said writ petition which has been filed challenging the order of the respondent No.1 dated 01.02.2017 reverting the petitioner/appellant herein to the substantive post of Deputy Director is still pending and stands posted to 06.07.2017.
3. By the order under appeal dated 17.02.2017, the learned Single Judge while directing the respondents to file their counter affidavits within six weeks, declined to grant the interim stay of the impugned order dated 01.02.2017 observing that no such ex-parte interim order which has the effect of allowing the writ petition can be passed.
4. We have heard the learned counsel for both the parties.

5. The appellant/writ petitioner who was working with the respondent No.1 as Senior Research Officer, stated to be equal to the post of Deputy Director in rank, was promoted as Joint Director in the Pay Band-3 of Rs.15,600-39,100/- against leave vacancy vide Office Order dated 07.11.2013. Subsequently, by Office Order dated 16.08.2016, it was made clear that his promotion as Joint Director vide order dated 07.11.2013 be treated as on *ad hoc* basis until further orders.

6. Thereafter, the order dated 01.02.2017, i.e., the order impugned in the writ petition, came to be passed stating that certain serious irregularities and violation of statutory service rules were found in his promotion to the post of Joint Director with effect from 07.11.2013 against a lien vacancy and therefore, he is reverted to the substantive post of Deputy Director. His second financial upgradation in the Grade Pay of Rs.7600/- has also been withdrawn with immediate effect.

7. It is alleged in the order dated 01.02.2017 that the appellant/petitioner's ACRs for the preceding three years were found to be "good" which is below benchmark and that as per DoPT Guidelines, the benchmark during the last five consecutive years must be minimum "very good" for granting MACP or promotion in the Grade Pay of Rs.7600/-. However, the contention of the appellant/petitioner is that the respondents cannot act upon the ACRs which are not communicated to him.

8. The further contention is that no notice was issued to the appellant/petitioner before passing the impugned order dated 01.02.2017 and he was not given an opportunity of being heard with regard to the alleged irregularities in his promotion to the post of Joint Director.

9. No doubt, these are all contentious issues which need consideration in the main writ petition after the response is filed by the respondents. However, at this stage we are only concerned with the question as to whether the appellant/petitioner is entitled to the interim relief.

10. It may be true the promotion of the petitioner/appellant to the post of Joint Director was not a regular promotion as clarified in the order dated 16.08.2016, but the fact remains that he has been working in the post of Joint Director in the Grade Pay of Rs.7600/- from November, 2013.

11. The specific case of the petitioner/appellant is that nobody else has been posted till date against the post of Joint Director held by him.

12. In these circumstances, we are of the view that balance of convenience is in favour of the petitioner/appellant and no prejudice would be caused to the respondents by allowing the petitioner/appellant to continue in the post of Joint Director till appropriate order is passed in the writ petition after hearing both the parties. However, we direct that such continuation shall be subject to the outcome of the writ petition and in case the petitioner does not succeed in writ petition, he shall return all the financial benefits in the Grade Pay of Rs.7600/- with effect from 01.02.2017. The petitioner/appellant shall file an undertaking to that effect.

13. We are also of the view that the writ petition deserves expeditious hearing. We, therefore, direct the respondent No.1 to file the counter affidavit within two weeks from today. The rejoinder, if any, by the petitioner within one week thereafter. The writ petition be listed before the learned Single Judge for directions on 17.04.2017. Till an appropriate order is passed in the writ petition after hearing both the parties, the petitioner/appellant be continued in the post held by him as on 01.02.2017,

subject to the condition of filing an undertaking as mentioned in the preceding paragraph.

14. The date fixed in the writ petition as 06.07.2017 shall stand cancelled.

15. The appeal along with CM No.8369/2017 shall stand disposed of accordingly.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

MARCH 10, 2017

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