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

+ **W.P.(C) No.7379/2013**

Date of Decision: 30.11.2017

RUKMANI DEVI PATHAK Petitioner
Through Mr.Harshit Sanwal, Adv.

versus

B.N. VAISH & ANR. Respondents
Through Mr.Saurabh Chadda, Adv. with
Ms.Alka Dhupar, ASO from the
Deptt.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J (ORAL)

1. The legal heir of late Shri B.K. Pathak/petitioner herein, has prayed for quashing the order dated 28th June, 2013, passed by Central Administrative Tribunal, Principal Bench, New Delhi in C.P. No.61/2004 filed against the respondent/Indian System of Medicare & Homeopathy, on the ground that they had not complied with the order dated 31st July, 1992 passed by the Tribunal in O.A 1207/1990, the order dated 26th February, 1996 passed in CP No.227/1995 and the

order dated 11th October, 2001 passed by the Supreme Court in C.A. No.213/1999.

2. Before dealing with the submissions made by learned counsel for the petitioner, it is necessary to briefly refer to the facts that are relevant to decide the present petition.

3. In the year 1987, Smt. Nirmal Rai and some other employees had filed a writ petition in the Delhi High Court registered as WP (C) No.1775/1987 for restraining the respondents from closing down the College and for directions to pay them their salary in accordance with the approved UGC scale, along with all consequential benefits. The said petition was dismissed by the Court on 3rd June, 1987 and the review petition filed by the petitioner therein, was also dismissed on 14th August, 1987.

4. Subsequently, OA No.1340/1988 was filed by Smt.Nirmal Rai and some other employees stating *inter alia* that they were working as Laboratory Assistants on an *ad hoc* basis with the Sanatan Dharam Ayurvedic College and Hospital which was a private institution managed by a Society and was affiliated with the examining body of Delhi Administration for B.A.M.S since 1977. The aforesaid OA was

allowed by the Tribunal vide order dated 25th October, 1991, by observing therein that the fact of the takeover of the management of the College by the Delhi Administration, had not been disputed and the said takeover appeared to have been formalized by a Government Resolution which was not on record. The contention of the Delhi Administration that they had taken over only the responsibility of the students and not the staff, was turned down and the Tribunal observed that once the management of the College had been taken over by the Delhi Administration, then the teaching and non-teaching staff would also automatically come on the payrolls of the Delhi Government. As a result, the Tribunal disposed of the captioned Original Application filed by Smt.Nirmal Rai and other employees on 25th October, 1991,with directions to the Delhi Government to treat them as its employees since they had been rendered surplus consequent upon closure of the College w.e.f. April, 1991. It was further directed that the applicants shall be given an alternate placement in Delhi Administration, commensurate with their qualifications and experience. They were also held entitled to payment of allowances for the period from the date of takeover of the management of the

College, till they were given alternate jobs along with all consequential benefits.

5. Relying on the aforesaid order passed by the Tribunal in the case of *Smt. Nirmal Rai (supra)*, Shri Birender Kishore Pathak, the Predecessor-in-interest of the petitioner herein, filed OA No.1207/1990 before the Tribunal praying for identical relief, as granted to Smt.Nirmal Rai and other employees in OA No.1340/1988. The said original application was allowed by the Tribunal vide judgment dated 31st July, 1992 by holding that the facts involved were identical and the ratio of the judgment dated 25th October, 1991 in *Nirmal Rai's case*, shall apply to the case of Sh. Birender Kishore Pathak.

6. Aggrieved by the judgment dated 25th October, 1991 passed in OA No.1340/1988, the Delhi Administration preferred SLP No.3524/1992, which was dismissed by the Supreme Court vide its order dated 21st July, 1992.

7. Thereafter, the Delhi Government approached the Tribunal by way of an application, for seeking clarification of the operative part of the judgment dated 25th October, 1991, which came to be decided on

9th November, 1992, wherein the Tribunal had clarified that the petitioners in the Original Application, shall be paid the pay and allowances for the period from the date of takeover of the management of the College, till they were given alternate jobs by the Delhi Administration, at the same rate as applicable to employees of the corresponding ranks in the Delhi Administration.

8. It is undisputed that the petitioner's predecessor-in-interest was absorbed as a Demonstrator on 3rd January, 1996 in Delhi Administration and vide order dated 15th June, 2002, the Delhi Government had paid a sum of Rs.51,300 to the petitioner herein, as arrears of backwages for the period from March, 1989 to 2nd January, 1996, at the rate of Rs.625/- per month in terms of a certificate issued by the College in the same manner in which he was being paid by the College. Amounts were also disbursed to Smt.Nirmal Rai in a similar manner.

9. As Sh.Birender Kishore Pathak was not satisfied with the amounts received, he filed a contempt petition registered as CP No.61/2004, questioning the basis of the calculation of the amounts paid to him. Vide order dated 7th May, 2004, the Tribunal directed the

Delhi Government to pay the amounts to the petitioner w.e.f. April, 1986 to February, 1989 and also granted him liberty to revive the contempt petition in case of non-payment. While passing the aforesaid order, the stand taken by the Delhi Government that the College had not been taken over by it during the period reckoned from 1986 to 1989, was turned down by the Tribunal, in the absence of any proof produced by the respondents to demonstrate the same.

10. The Delhi Administration challenged the order dated 7th May, 2004 and the review order dated 4th August, 2004 passed by the Tribunal, by filing a writ petition in the High Court, registered as WP (C) No.6530/2005. Vide order dated 30th August, 2010, passed in the aforesaid petition, the Division Bench restored CP No.61/2004 filed by the petitioner and directed the Tribunal to decide the same afresh after taking into consideration the contentions urged by both sides.

11. Based on the aforesaid order, the matter was placed back before the Tribunal which has passed the impugned order dated 28th June, 2013, recording *inter alia* that the decision in the case of **Smt.Nirmal Rai (supra)**, stood overruled by a Full Bench of the Tribunal vide judgment dated 3rd July, 1995 in the case titled **Dr.J.P. Sharma &**

Ors. Vs. Chief Secretary, Delhi Administration & Ors., wherein it was held that none of the employees of the College had become employees of the Delhi Administration, as there was no material on record that could demonstrate that Delhi Administration had taken over the College, though undoubtedly, a proposal to the said effect was mooted in the year 1987. We are informed that the decision dated 3rd July, 1995 passed in the captioned case, was challenged by the aggrieved parties before the Supreme Court but the SLP was later on dismissed as withdrawn. As a result, the said judgment of the Full Bench of the Tribunal has attained finality.

12. In the impugned judgment, after holding that once it is clear that the Delhi Government had never taken over the management of the College and all the employees of the College were merely being paid the salary from out of the grant-in-aid which was being released as assistance to the management of College. The Tribunal disposed of the contempt petition with the observation that there was no question of wilful disobedience of any order passed by the Tribunal that would warrant action in contempt proceedings and resultantly, the question of payment of any backwages by the Delhi Administration in any pay

scale before the absorption of Sh.Pathak, as a Demonstrator, would also not arise. Aggrieved by the said judgment, the petitioner has filed the present petition.

13. Learned counsel for the petitioner submits that there was a clear direction issued by the Tribunal vide order dated 26th February, 1996 in CP No.227/1994 that the Delhi Administration shall pay salary, allowances and all other consequential benefits to Shri Patnaik, from the date of takeover of the management of the College by the Delhi Government, till he was absorbed elsewhere. He submits that non-compliance of the direction amounts to wilful disobedience of an order passed by the Tribunal, which fact has not been appreciated in the impugned order. He also submits that a meeting had taken place in April, 1986 between the Delhi Administration and the management and the students of the College for the purposes of taking over of the College and in principle, a decision on that lines was taken and based on the said decision, the College had continued to function till the year 1991. In these circumstances, the respondents-Delhi Government cannot be permitted to urge at such a belated stage that the College was never taken over by it.

14. Learned counsel also relies on the judgment in the case of **Smt. Nirmal Rai (supra)**, to state that in the said case, it was clearly held that the College had been taken over by the Delhi Administration in the year 1986 and employees of the College were to be treated as Government employees and in the year 1996, they were also absorbed as employees of the Delhi Government and on the same analogy, Shri Patnaik should also be treated at par with Smt.Nirmal Rai.

15. Mr.Chadda, learned counsel for the respondents counters the aforesaid submissions by relying on the judgment dated 3rd July, 1995 passed by a Full Bench of the Tribunal in the case of **Dr.J.P. Sharma (supra)**, to state that the entire matter has achieved a quietus after the said judgment having attained finality and it can no longer be urged by the petitioner that the contempt petition was maintainable once it has been declared that the Delhi Government had never taken over the College and all that it had done was to extend grant-in-aid to it for the purposes of meeting the requirement of payment of salaries etc. to the teaching and non-teaching staff. He submits that even the judgment passed by the Tribunal in favour of Shri Patnaik, was based on the decision in the case of **Smt.Nirmal Rai (supra)** and once the said

decision has been overruled by a Full Bench of the Tribunal, the petitioner cannot claim any benefit under the said judgment. He adds that in any case, the Delhi Government had released an amount of Rs.51,300/-as arrears of backwages in favour of the petitioner which was also actually not payable as the College had never been taken over by the Delhi Government.

16. We have heard the learned counsels for the parties and carefully perused the relevant orders. It is an admitted position that after the judgment dated 25th October, 1991 passed by the Tribunal in the case of **Smt.Nirmal Rai (supra)** followed by the judgment dated 31st July, 1992, passed in the case of Shri Birender Kishore Pathak, the predecessor-in-interest of the petitioner herein, the entire issue was revisited by a Full Bench of the Tribunal in the case of **Dr.J.P. Sharma & Ors. (supra)**, wherein it was clearly held that at no stage had the Delhi Government taken over the subject College though there was a move in that direction in the year 1986. Further, it has been observed that the decision in the case of **Smt. Nirmal Rai (supra)** was not delivered in the correct perspective and in these circumstances, the said judgment could not apply *in rem* to the other employees of the

College. In fact the judgment in the case of *Smt.Nirmal Rai (supra)* had been specifically overruled by the Full Bench of the Tribunal and it was also declared that the employees of the Society did not become the employees of the Delhi Administration and their status remained as that of employees of the Society, even though salaries were disbursed to them from out of the grant-in-aid released by the Delhi Administration to the management of the College.

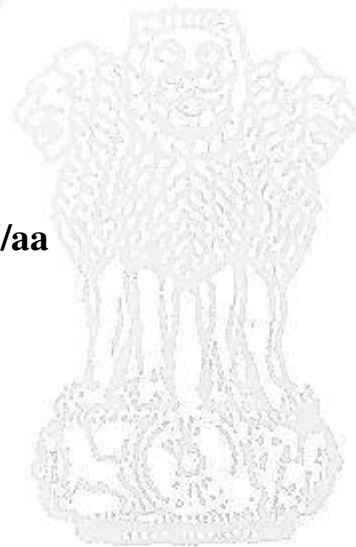
17. In view of the fact that the aforesaid judgment has attained finality, the Tribunal cannot be faulted in dismissing the contempt petition filed by the petitioner and arriving at a conclusion that there was no wilful disobedience of the order dated 31st July, 1992. The entire judgment in the case of *Smt.Nirmal Rai (supra)* was premised on the fact that the management of the College, had been taken over by the Delhi Administration, which premise was subsequently held to be wrong in the case of *Dr.J.P. Sharma (supra)* and it was further clarified that the College had in fact remained with the Society and the decision to its takeover in 1986, had actually not fructified. Thus, the question of non-compliance by the Delhi Administration, of any order passed by the Tribunal, does not arise.

18. In the above facts and circumstances, we have no reason to disagree with the findings returned by the Tribunal. Accordingly, the present petition is dismissed. In the facts of the case, the parties are liable to bear their own costs.

(HIMA KOHLI)
JUDGE

(REKHA PALLI)
JUDGE

NOVEMBER 30, 2017/aa



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