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

+ **W.P.(C) 3768/2017**

GOVT OF NCT OF DELHI

..... Petitioner

Through Mr. Saurabh Chadda, Advocate.
Dr. Balesh, DEO/Z-15 and Mr. S.P.
Singh, LA, Z-15.

versus

BHOJ PRAKASH

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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03.05.2017

C.M. No. 16586/2017 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands allowed.

W.P.(C) 3768/2017 and C.M. No. 16585/2017 (stay)

3. The petitioner has preferred the present petition to assail the order dated 04.05.2016 passed by the Central Administrative Tribunal (Tribunal) in O.A. No. 3597/2011. The said original application preferred by the respondents has been allowed by the Tribunal with the following directions:

“1. On the strength of the promotion order dated 22.10.2008, the pay of the applicants shall be notionally fixed from the date

they have been adjusted against the available vacancies.

They will be entitled to consequential pensionary benefit by counting aforesaid pay fixation.

The applicants will not be entitled to any financial benefit of differential of salary between post of Vice Principal and Principal for the period they were holding the charge of Principal or have been discharging the duties.

Let the impact of the above directions be calculated and consequential benefit released to the applicant within a period of three months. In the event the benefit is not released within the aforesaid period, the applicants will be entitled to the interest at the GPF rates for the period of delay.”

4. The respondents were working as Vice Principals in different Senior Secondary Schools under the Directorate of Education in the Government of NCT of Delhi. All of them were given charge of the post of Principals in various schools. They all retired from service in the substantive capacity of Vice Principals while discharging the duties attached to the post of Principals. After their retirement, they were granted promotion as Principals on the recommendation of the Departmental Promotion Committee and adjusted against the clear vacancies vide order dated 22.10.2008. By this order, 313 male teachers named therein were promoted as Principals. Names of the respondents figured at Serial Nos. 53, 204, 258, 250 and 277 respectively in the said list. The promotions were granted to the respondents and others on notional basis without any financial benefits.

5. The respondents preferred the original application seeking a direction for granting them the benefit of judgments passed by the Tribunal in O.A. No. 367/2010 (*V.P. Singh vs. GNCTD*) decided on 10.11.2010. The

respondents contended that the said judgment has since been implemented by the petitioner herein and they were similarly situated as the applicants in *V.P. Singh* (supra). The original application was opposed by the learned counsel for the respondents, firstly, on the ground that the same was barred by limitation and, secondly, that the Tribunal in subsequent decision in O.A. No. 3926/2011 (*Lakshman Dass Batra vs. Govt. of NCT of Delhi & Ors.*) and O.A. No. 3913/2011 (*Smt. Vimla Paul vs. Govt. of NCT of Delhi & Ors.*) decided on 24.09.2012, had taken a view based upon the facts, and referring to the earlier judgments that such a relief is not permissible in law where the applications are barred by time, and where the relief claimed is impermissible in law. The Tribunal in its reasoning distinguished the aforesaid decisions relied upon by the petitioner in *Lakshman Dass Batra* (supra) and *Smt. Vimla Paul* (supra) by observing that in those cases, the promotions to the higher posts were not made. The incumbents were only given the charge i.e. officiating in the higher post of Principal at the time of their retirement. However, in the present case, admittedly, the respondents have not only discharged the responsibilities in the higher post of Principals but they have also been subsequently promoted after their retirement to the post of Principal. The Tribunal held that since the respondents had been granted benefit of promotion vide a subsequent order dated 22.10.2008, they were at least entitled for fixation of their salary from the date they were adjusted on promotion against the available vacancies. Consequently, the Tribunal allowed the original application and passed the aforesaid directions.

6. Learned counsel for the petitioner has, firstly, submitted that the

original application was barred by limitation and the Tribunal allowed the applications seeking condonation of delay without recording any reasons. The applications for condonation of delay were allowed by observing that

“for the reason mentioned therein, MA No. 2637/2011 filed for joining together and MA No. 2630/2011 for condonation of delay are allowed.”

7. The only reason mentioned in the said application was that the applicant was seeking extension of benefits of the Tribunal order dated 05.02.2010 passed in O.A. No. 809/2009 which had been upheld by this Court and by the Supreme Court and the applicants were similarly situated.

8. Learned counsel for the petitioner has sought to place reliance on the Division Bench judgement of this Court in ***Prakash Singh vs. Union of India and Anr.***, W.P. (C) No. 9580/2015 decided on 03.06.2016, to submit that an unchallenged or unquestioned earlier decision or position adopted would continue to be binding on the parties concerned, if the concerned party does not challenge and question the said decision or position by way of a writ or appeal or by taking recourse to an appropriate judicial remedy and that where the law of limitation or principles of delay and laches, as the case may be, apply, they would come in the way and prevent the party concerned from enforcing the claim in a judicial forum or Court of law.

9. A perusal of the said decision in ***Prakash Singh*** (supra) shows that the dispute in the said case related to the seniority of the petitioner. In the present case, the only impact that the grant of the relief claimed by the respondents has had, is on the fixation of the pensionary benefits of the respondents. The claim relating to the wrong fixation of pension, in our view

gives rise to a continuing cause of action inasmuch as pension is disbursed every month and if the pension has wrongly been fixed, that wrong fixation of pension, though made at an earlier point of time, affects the retired employee continuously month after month. Thus, in our view reliance placed on ***Prakash Singh*** (supra) is not apposite in the facts and circumstances of the present case.

10. The present case is squarely covered by the decision of this Court in ***Lieutenant Governor of Delhi & Others vs. Gauri Shankar Sharma & Ors.***, W.P. (C) No. 5344/2010 decided on 22.09.2010, arising out of O.A. No.809/2009. In the said case, just like the present case, the applicants/respondents, who were Vice Principals were asked to officiate and discharge the responsibilities of Principals. They had retired in the substantive posts of Vice Principals and subsequently, they were granted notional promotion after their retirement on account of delay in holding of the DPC. The Division Bench referred to its earlier decision in ***Govt. of NCT of Delhi & Ors. vs. M.P. Singh***, W.P. (C) No. 8111/2002 decided on 22.03.2007 and dismissed the writ petition preferred by the Government against the decision of the Tribunal in O.A. No. 809/2009 titled *Shri Gauri Shankar Sharma and Ors. vs. Lieutenant Governor of Delhi & Ors.* The relief granted to the applicants in *Shri Gauri Shankar Sharma* (supra) by the Tribunal was as follows:-

14. "Thus, to sum up, on promotion of notional basis, the applicants would be eligible for proper fixation of salary from the date of their notional promotion and their benefits on retirement would be recalculated. By virtue of the fact that the applicants have actually worked on the post of Principal, they

would on the basis of ratio laid down by the Honourable Supreme Court and the Honourable High Court, be eligible for payment of back wages also beside salary for the post of Principal from the date they have been notionally promoted to that post.

15. The O.A. succeeds. The respondents are directed to fix correct salary of the applicants from the dates each one of them has been promoted notionally to the aforesaid post and pay the arrears of salary for the period they were in service and revised retirement benefits after their retirement with six per cent interest on the arrears. The aforesaid directions would be complied with within four months from the date of receipt of a certified copy of this order. No costs."

11. The Special Leave Petition preferred by the Government against the decision in *Shri Gauri Shankar Sharma & Ors. vs. Lieutenant Governor of Delhi* was also dismissed by the Supreme Court on 18.07.2011.

12. In the aforesaid circumstances, we are not inclined to interfere with the judgment passed by the Tribunal in the present case.

13. Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 03, 2017

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