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

+ **LPA 473/2017 & CMs 24576-77/2017**

Date of decision: 20th July, 2017

SACHIN

..... Petitioner

Through: Ms.Neelam Tiwari, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION

.....Respondent

Through: Counsel (appearance not given)

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

1. The appeal impugns order dated 5th May, 2017 disposing of writ petition filed by the present appellant-Sachin.
2. The appellant and some others have filed Statement of Claim before the Industrial Tribunal for adjudication in the reference made by Deputy Labour Commissioner vide order bearing no.F.24(22)/CD/15/Lab./119 dated 26th February, 2015 on the following terms:-

“Whether the demand of the workmen Sh. Sachin & 18 ors. (As per Annexure-A) for regularization their services on the post of AMI & APhi with retrospective effect from the initial date of their joining into the employment and to pay them entire difference to salary

on the principle of 'Equal Pay for Equal Work' for the initial joining onwards, is legal and justified; and if so, to what relief are they entitled and what directions are necessary in this respect?"

3. During pendency of the aforesaid proceeding, the appellant and some others had filed an application seeking interim award/order restraining the respondent i.e. North Delhi Municipal Corporation from going ahead with the process of recruitment to the post of Assistant Malaria Inspector and Assistant Public Health Inspector vide advertisement no.01/14 (Post Code-21/14 and 22/14). In alternative, it was prayed that sufficient seats /posts be kept vacant /reserved and should not be filled up so that the applicants, in case they succeed, can be appointed.

4. The application was dismissed by the Industrial Tribunal vide order dated 27th February, 2017 for various reasons. This order notes that any decision in favour of the present appellant would amount to pre-judging the case without final adjudication and determination on merits. The Tribunal has made reference to Sections 33 and 33-A of the Industrial Disputes Act, 1947. Ultimately, the application was dismissed holding that no interim order should be passed. The appellant, we may notice, was appointed on contractual basis as Assistant Malaria Inspector on 21st September, 2010. As noticed above, the statement of claim was filed in 2015, in terms of the reference order.

5. The impugned order passed by the learned Single Judge refers to the decision of the Supreme Court in *Hongkong and Shanghai Banking Corporation Limited vs. Government of India & Anr.* (2009) 13 SCC 771 and the same was distinguished. In our opinion, the learned Single Judge was right in distinguishing the said decision which was relating to an interim award for payment of Rs.30,000/- per month by the Industrial Tribunal. The peculiar facts of the said case have been highlighted in the order under challenge.

6. In the present case, the appellant is still working as a contractual employee with the respondent Corporation. His services have not been terminated. The balance of convenience does not justify passing of an interim order restraining the recruitment process, which would have far reaching effect and consequences. Further, the appellant is yet to firmly establish his right for regularization, which is the subject matter of dispute pending before the Tribunal. In case the appellant succeeds, suitable and appropriate orders can be passed, notwithstanding the adverse orders under challenge in the appeal and the present order.

7. Learned counsel for the appellant has drawn our attention to the observations of the learned Single Judge that in case the appellant succeeds before the Tribunal, he can be adequately compensated on his absorption to the post which falls vacant in future etc. It is submitted that the aforesaid observations, may

cause prejudice to the appellant when the matter is heard and decided by the Industrial Tribunal, as these could be construed as directions of the High Court. We would only observe that the aforesaid observations would not be treated as binding and affirmative finding given by the learned single Judge, in case the appellant succeeds. We have already quoted the order of reference. In case the appellant and others succeed, they would be entitled to relief in accordance with law. These are the aspects for the Industrial Tribunal to examine and decide.

8. Learned counsel for the appellant submits that he want expeditious disposal of the industrial dispute. He can make the said prayer to the Tribunal.

9. With the aforesaid observations, we dismiss the present appeal. There would be no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 20, 2017

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