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

+ **W.P.(C) 36/2017 & CM No.199/2017**

D.K. SHARMA
Through: Mr. R.A. Sharma, Advocate

Date of Decision : 4th January, 2017
..... Petitioner

versus

GOVT. OF NCT OF DELHI & ORS
Through: Mr. Sumit Kumar Batra, Advocate for
respondent Nos.1 to 3
Mr. Abhishek Pundir, Advocate for
respondent No.4

..... Respondents

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

1. Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned order dated 14.7.2016, whereby OA No.439/2014 filed by the petitioner was dismissed. In our opinion, the Tribunal has rightly held that the petitioner would not be entitled to backwages and consequential benefits for the period between 23.11.2006 and 1.12.2009 on the principle of “no pay for no work.”
2. The petitioner had joined the Delhi Energy Development Agency (‘DEDA’) as a Junior Engineer on 01.05.1986 and was promoted as Assistant Engineer on 31.01.1994.

3. By the Office Order dated 5.10.2004, DEDA had declared 97 personnel, including the present petitioner, as surplus, to be redeployed by the Services Department of the Government of National Capital Territory of Delhi.

4. The petitioner, vide Office Order dated 2.12.2005, was redeployed as Grade-II(DASS) in the pay scale of Rs.5000-8000/-.

5. Aggrieved, the petitioner had filed WP(C) No.8194/2006 before the High Court, which was subsequently transferred to the Tribunal and registered as TA No.900/09. The Tribunal, vide order dated 5.8.2009, held that the redeployment of the petitioner and other applicants on the lower post and on a lower pay-scale was wrong. The respondents were directed to accommodate the petitioner and other applicants on the vacant posts that may be equivalent in status and the pay scale paid to the petitioner and other applicants in DEDA.

6. The petitioner in WP(C) No.8194/2006 had also filed an interim application. The High Court had, vide order dated 24.5.2006, directed as under:

“It is directed that anything done by the respondent during pendency shall be subject to final outcome of the writ petition.”

7. The petitioner has not filed a copy of the interim application, in which the said order was passed.

8. The petitioner, inspite of the aforesaid interim order, did not join and work at the post on which he was redeployed. This fact was also not brought to the notice of the Tribunal, when TA No.900/2009 was disposed of vide order dated 5.8.2009.

9. It is in the aforesaid circumstances, that the Tribunal, in the impugned order, has recorded that the petitioner was absenting himself from duty, inspite of the fact that no interim order was passed. Thus, the petitioner had not joined and worked during the period 23.11.2006 to 1.12.2009 at his own risk and peril. The grievance of the petitioner was that he was redeployed to a post and pay scale in the Education Department lower than the pay scale and post at which he was employed in the DEDA. This was the dispute which had to be adjudicated. As long as the said dispute was *sub judice* and pending in the High Court and the Tribunal and there was no interim stay, the petitioner should have complied with the posting order give to him and till the issue/dispute was adjudicated. The petitioner, therefore, has been rightly denied the benefit of backwages for the period 23.11.2006 to 1.12.2009.

10. During the course of hearing, we had asked learned counsel for the petitioner whether the aforesaid order passed by the Tribunal would affect the petitioner's pension. It is stated that the job of the petitioner is not pensionable. It is also accepted that the period between 23.11.2008 and 1.12.2009 has not been treated as "break-in-service."

11. Learned counsel for the petitioner submits that the petitioner has accrued leave which can be adjusted for the break between 23.11.2006 and 1.12.2009. It is open to the petitioner to move an appropriate application in this regard, and if any such application is moved, the same would be considered as per law.

12. With the aforesaid observations, the writ petition is dismissed. CM No.199/2017 is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 04, 2017
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