

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

Date of Decision: October 30, 2017

+ **W.P.(C) 9509/2017 & C.Ms. 38636-37/2017**

DR. NIZAM ELANHI

..... Petitioner

Through: Mr. S.S. Sastry & Mr. Ankur
Gosain, Advocates

Versus

NORTH DELHI MUNICIPAL CORPORATION AND ANR.

..... Respondents

Through: Ms. Prabhsahay Kaur & Mr. Shakti
Priyan Nair, Advocates for respondent No.1
Ms. Manika Tripathy Pandey & Mr. Ashutosh
Kaushik, Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

1. Petitioner was as Assistant Teacher in a school of respondent-North, Municipal Corporation of Delhi (*hereinafter referred to as the 'North MCD'*) and as per discharge Certificate of 6th November, 1989 (*Annexure P-2*), he was relieved from his duties on the said date and had joined second respondent- *State Council of Educational Research & Training (henceforth referred to as the 'SCERT')* on 7th November, 1989 as a Lecturer and though, petitioner had sought technical resignation, but he was treated as discharged as per Discharge Certificate (*Annexure P-2*).

Petitioner had retained his lien for two years and in August, 2010, petitioner had made a Representation (*Annexure P-7*) to first respondent- *North, MCD* and according to petitioner's counsel, it was responded to on 17th September, 2010 vide communication (*Annexure P-8*) wherein it was disclosed that petitioner is entitled to pension on the basis of fourteen years' of service. It is the claim of petitioner that he had retired in August, 2009 from second respondent- *SCERT* and he had been continuously making efforts, though orally, to seek retiral benefits from first respondent- *North, MCD* and in November, 2016 only, petitioner had approached the Public Grievance Commission (*henceforth referred to as the 'PGC'*), who vide impugned order of 8th march, 2017 has found that petitioner had completed only 12 years' of service with first respondent- *North, MCD* and is ineligible for pro rata pension from first respondent- *North, MCD* in terms of O.M. of 20th August, 1984 of Department of Personnel and Training.

2. Upon notice, learned counsel for first respondent submits that the PGC, who has passed the impugned order, has no jurisdiction to deal with the subject matter of this petition. To submit so, counsel for first respondent has placed reliance upon a booklet of PGC, which contains the rules and procedure and attention of this court is drawn to Clause-12 thereof, which clearly mandates that the complaints pertaining to service matters, shall not be entertained. Undisputedly, the subject matter of this petition is indeed a service matter.

3. Be that as it may. Petitioner cannot be left without a remedy. In the facts and circumstances of this case, it is deemed appropriate to permit petitioner to make a comprehensive and concise representation to

first respondent within two weeks. If any such representation is received by first respondent- *North, MCD*, then it shall be dealt with by passing a speaking order, uninfluenced by the impugned order of 8th March, 2017 of PGC and with reference to O.M. of 20th August, 1984 of Department of Personnel and Training as also its communication of 17th September, 2010 (*Annexure P-8*). The first respondent- *North, MCD* shall decide the said Representation within six weeks of receipt thereof and its fate be communicated to petitioner within a week thereafter, so that petitioner may avail of the remedies, as available in law, if need be.

4. With aforesaid directions, this petition and applications are disposed of.

5. *Dasti.*

SUNIL GAUR
(JUDGE)

OCTOBER 30, 2017

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