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

\+ W.P.(C) 9029/2015

T.C. GUPTA & ANR

..... Petitioner

Through: Mr. Ujjwal Kr. Jha, Adv.

versus

DELHI ELECTRICITY REGULATORY COMMISSION & ANR

..... Respondent

Through: Ms. Pratima K. Gupta, Adv. for R-1
Mr. Manish Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% 27.04.2017

1. The present petition has been filed by the petitioners with the following reliefs:-

> *"In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-*
>
> *a) Issue a writ, order or direction in the nature of a writ of certiorari or any other appropriate writ, order or direction thereby directing the Respondents to treat the Appointment of the petitioners as re-appointment instead of treating the appointment vide letter no. f11(29)DERC/2003/VOL.VIII/5169 dated 04.01.2013 as fresh for the post of Chairman and Member(Legal) respectively and give the consequential benefit*

to the Petitioners and;

b) Any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner in the interest of justice."

2. It is the case of the petitioners that they were appointed as Chairman (CGRF) for TPDDL and Member (Law) for TPDDL on January 9, 2010 and December 21, 2009 respectively for a period of three years. Their monthly emoluments were Rs.32,000/- and Rs.32,400/- respectively with annual increment of 5%. It is their case that the monthly emoluments were revised from time to time. The last emoluments drawn by the petitioners at the time of expiry of their tenure of three years was Rs.44,100/- and Rs. 42,000/- respectively. It is their case, in terms of Regulation 6 of the DERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulation 2003, they were eligible for re-appointment on their respective positions for another term of three years.

3. It is also their case that they had made representations to the respondents for their re-appointment for another period of three years on January 4, 2013 and January 8, 2013 on the ground that they fulfil the terms and conditions of eligibility criteria for re-appointment. It is also averred that on November 2, 2012, the respondent No.1 intimated to the petitioners

that the Commission has not acceded to the request made by the petitioners for re-appointment and they may apply for the posts afresh when the posts shall be advertised, subject to eligibility. They concede to the fact that on November 10, 2012 the respondent No.2 had advertised the posts against which both the petitioners had applied and both have been appointed as Chairman (CGRF) for TPDDL and Member (Law) for TPDDL vide the appointment letters dated January 4, 2013.

4. It is their case that they had made representations to the respondents on February 6, 2013 and May 14, 2013 requesting them for protection of their last remuneration/salary drawn by them but no action has been taken by the respondent No.1 in that regard. It is their case that one Mr. Pradeep Singh was re-appointed as Electricity Ombudsman w.e.f. May 25, 2015 and there was no reason for the respondents, not to re-appoint the petitioners on their respective posts as they would get the benefit of pay protection.

5. Mr. Ujjwal Kumar Jha would submit, even though petition was filed while the petitioners were holding the said posts but they have since demitted the office on the expiry of the tenure. He presses for the relief of treating their appointment on the posts as re-appointment.

6. On the other hand, Ms. Pratima K. Gupta, learned counsel appearing

for the respondent No.1 would submit that the petitioners' appointment vide letters dated January 4, 2013 was a fresh appointment and not a re-appointment and their pay need to be fixed at the starting of the pay as applicable to the said posts. She also draws my attention to page 66 Annexure P-14 (colly) wherein the respondent No.1, in response to the letter of the petitioners has informed them that the case of Mr. Pradeep Singh is not identical to the case of the petitioners, inasmuch as Mr. Pradeep Singh was re-appointed only for a period of three months and nine days till his superannuation as an interim measure without any increment and subsequently the vacancy was advertised on June 20, 2015. In other words, it is her submission that the re-appointment of Mr. Pradeep Singh was in exigency till such time, a regular incumbent was appointed. That apart, Mr. Pradeep Singh was not given any benefit of increment.

7. The learned counsel for the respondent No.2 would reiterate the submissions of Ms. Pratima K. Gupta.

8. Having heard the learned counsel for the parties, the only issue raised by Mr. Jha, on behalf of the petitioner is for treating their appointment as re-appointment on their respective posts, so that they can get the benefit of pay protection. Such a relief cannot be granted for more than one reason.

Firstly, the appointment of the petitioners was not a re-appointment but a fresh appointment in terms of letters dated January 4, 2013. Secondly, the appointment was made pursuant to an advertisement issued by the respondent No.2, against which the petitioners had also applied. Thirdly, the appointment as approved by the respondent No.1 as seen from the letter dated January 4, 2013 addressed to Chief Executive Officer of respondent No.2 was as under:-

> *"It may be ensured that these are fresh appointments to each of the above posts and hence the offer of appointment may be sent to the candidates accordingly as per existing terms and conditions."*

9. Suffice to state, the Approving Authority the respondent No.1 has clearly held the appointment to be a fresh appointment as different from re-appointment under Regulation 6. The relief if granted would result in modifying the nature of appointment of the petitioners, which is impermissible.

10. Insofar as the plea of Mr. Jha that Mr. Pradeep Singh has been given the benefit of re-appointment is concerned, as noted above and contended by Ms. Pratima K. Gupta that Mr. Pradeep Singh was re-appointed only for a period of three months and nine days. That apart, he was not given any benefit of increment is appealing. Mr. Jha cannot rely upon the case of

Mr.Pradeep Singh to put forth the petitioners claim for re-appointment and protection of pay thereof in this petition. The petitioners have not challenged the decision of the respondents rejecting their request for re-appointment. Further, the petitioners have with open eyes applied against the advertisement issued by the respondent No.2 for fresh appointment to the posts in question and they have been selected. It would be quite late in the day for the petitioners to seek the relief of their appointment be treated as re-appointment. If the appointments on the posts cannot be treated as re-appointments, surely the contention of Mr. Jha of pay protection cannot be granted.

11. I do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

APRIL 27, 2017/*ak*