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

+ **WRIT PETITION (CIVIL) No. 9025/2015**

Date of decision : 16th January, 2018.

SUNITA RAJU & ORS.

..... Petitioners

Through Nemo.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms. Vertika Sharma, Advocate for the
applicants.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

R.P. No. 6/2018 & CM Nos. 221/2018 & 222/2018 & 223/2018

This is an application for review of the order dated 27th January, 2017 alongwith the application for stay, application for filing additional documents and condonation of delay of 290 days.

2. Before issuing notice on the application for additional documents, application for stay and application for condonation of delay, we have deemed it appropriate to examine the review application on merits.

3. The problem faced by the applicants is as a result of the applicants' action. Services of fourteen direct recruit Production Assistants appointed in 1984 were terminated on account of malpractices, favouritism and nepotism in selection. The termination order was challenged by the terminated

Production Assistants, but they were not successful and the termination orders became final. Nevertheless, the applicants re-engaged the terminated Production Assistants vide order dated 6th January, 1994 treating them as a fresh appointees. Benefit of previous service was not to be given for the purpose of seniority. In spite of the afore-stated stipulation in the order dated 6th January, 1994, these re-engaged terminated employees were granted benefit of increments by taking into account past service. This resulted in higher salary being paid to these re-engaged employees as compared to their seniors appointed prior to 1994.

4. Some of non-applicants, who were petitioners in W.P. (C) No. 9025/2015 had filed OA No. 1191/2001, which was allowed by the Tribunal vide order dated 7th May, 2002, recording as under:-

"12. It is further surprising that though the appointment letter shows that they were appointed afresh on sympathetic grounds and it was made clear at the time of appointment on 6.1.1994 that their past services will not be taken into consideration for the purpose of seniority still on the basis of their past services subsequent to the appointment those applicants were given increments and their pay was fixed higher than the petitioners in the O.A.

13. Further still surprising the respondents had audacity to admit that even out of the present 34 applicants, 11 of them had been appointed prior to 6.1.1994 and can be said to be senior to those appointees who were appointed on sympathetic consideration on 6.1.1994. So by fixing those candidates at higher salary even these 11 applicants have been affected and their salary is fixed at a lower stage than those appointees who had not come through proper selection and who had come only on sympathetic consideration.

14. Thus this administrative action on the part of the respondents fixing the salary of those appointees at a higher stage definitely discriminate the petitioners as equals have been treated in an unequal manner. Thus there is clear violation of fundamental rights as enshrined in Articles 14 and 16 of the Constitution of India so we have no hesitation to allow the OA. Accordingly, we allow the O'A and direct the respondents to re-examine the case of the applicants and those applicants who had been appointed prior to 6.1.1994 their pay should be fixed at par, with their juniors and whatever criteria had been adopted to give increments those applicants that may be applied to all the applicants. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs."

5. The applicants had challenged the aforesaid directions in Writ Petition (C) No. 5271/2003, which was dismissed on 24th September, 2003. Special Leave Petition preferred by the applicants was also dismissed. Thus, directions given in the order of the Tribunal, viz, the petitioners in W.P. (C) No. 9025/2015 became final.

6. In these circumstances, the applicants implemented the directions given by the Tribunal in their order dated 7th May, 2002 passed in OA No. 1191/2001 and re-fixed the pay of the said employees.

7. In the meanwhile, another group of Production Assistants, who were appointed on regular basis in 1992 filed another OA NO. 1653/2007 for being treated at par and claimed parity. The same was disposed of by the Tribunal vide order dated 18th January, 2008. This decision was implemented by the applicants by stepping up their pay at par with their juniors.

8. Thereafter, the third set of appointees filed OA No. 1636/2008, which was allowed by the Tribunal vide order dated 13th September, 2010. Writ Petition (C) No. 2070/2010 filed by the applicants was dismissed by this Court vide decision dated 25th March, 2010. However, the applicants did not comply with the directions, which resulted in filing of a contempt petition. At that stage, instead of granting benefit to the petitioners in OA No. 1636/2008, the applicants recalled their earlier order granting stepping up of pay to the petitioners in OA No. 1191/2001 and OA No. 1653/2007.

9. Aggrieved, the petitioners in OA No. 1191/2001 and OA No. 1653/2007 approached the Tribunal by way of OA No. 3520/2010 and OA No. 674/2011. These OAs were dismissed by the Tribunal vide order dated 7th July, 2015. By the judgment dated 27th January, 2017, we have allowed the said OAs and have directed that the petitioners would be given benefit of the decisions in their favour, which have attained finality and had been implemented.

10. We have heard learned counsel for the applicants and do not find any ground to review our order dated 27th January, 2017. Counsel for the applicants has stated that there will be several other employees, about 600 in number, who would be entitled to similar benefits. We have not decided the other cases. In case there are similar claims by third parties, it will be open to the applicants to take the plea of limitation, etc. Accordingly, the relief can be moderated. The next submission is that the applicants have passed an order dated 24th November, 2017 whereby the terminated re-engaged Production Assistants, who were given fresh appointment on 6th January, 1994, have been given back dated seniority by counting their service and

appointment from 1984. Application for additional documents, is to place this order, passed after decision dated 27th January, 2017, on record. We do not think that the applicants vide the said order can obliterate the orders passed by the Tribunal in OA No. 1191/2001, decided on 7th May, 2002 or the order dated 18th January, 2008 passed in OA No. 1653/2007, which direction upon consideration by the applicants had resulted in stepping up of the pay of the petitioners in OA No. 1653/2007. Directions given by the Tribunal which have attained finality and have been implemented cannot be unwritten and erased, in this manner. Neither can our decision dated 27th January, 2017, be effaced and obliterated.

9. In the aforesaid circumstances, we are not issuing notice on the applications for additional documents and condonation of delay. The review application is accordingly dismissed, as we do not find any merit in the same. Consequently, all pending applications are dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 16, 2018
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