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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2876 OF 2018

Union of India	... Petitioner
Vs.	
Shri Nilesh Gaikwad & Ors.	... Respondents

Ms. Neeta Masurkar a/w Mr. D.P. Singh for the Petitioner.
Mr. Phogat Daljit Singh Ramkaran for the Respondent No.1.
Mr. Abdulrajjak Ibrahim Bhatkar for the Applicant in NMW/392/2018.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 31st OCTOBER 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Notice for final disposal was issued on 8th October 2018. The petitioner – Union of India has taken an exception to the judgment and order dated 9th November 2017 passed by the Central Administrative Tribunal, Mumbai Bench in Original Application No.482 of 2017 filed by the respondents. The operative part of the impugned order reads thus :-

“12. In the circumstances, it would be appropriate to quash the impugned promotional panels and orders of promotion that have followed the orders of the DoPT commencing from the order in O.M. No.36012/18/95-Estt. (Res.) Pt.II dt. 13.8.1997 and its consequential clarificatory O.Ms. in the following years. The respondents are directed to prepare fresh promotional panels and decide promotions strictly on the basis of seniority and merit in accordance with rules and then to implement any preferences in the reservation categories

in conformity with the Constitution, the orders of the Hon'ble Supreme Court in India Sawhney and M. Nagraj cases (supra) and the recent orders of the Delhi High Court in All India Equality Forum and Ors. W.P. No.3490/2010. There shall be no order as to costs. M.A. 543 of 2017 stands disposed of.”

2 The challenge to the impugned order apart from the contentions on merits is firstly on the ground that when the matter was fixed before the Tribunal on 11th October 2017, it was fixed for hearing of Miscellaneous Application No.543 of 2017 taken out by the petitioner for vacating the order of interim relief and the Original Application was not fixed for hearing. The second and main contention is that considering the drastic nature of impugned order by which promotional panels and orders of promotion were quashed and set aside and fresh promotional panels were ordered to be made, the persons who were promoted were necessary and proper parties to the Original Application. The submission is that apart from the fact that none of the persons who were promoted were made parties, even a procedure analogous to one under Rule 8 of Order I of the Code of Civil Procedure, 1908 was not followed. On merits, apart from other submissions, reliance was placed on a decision dated 26th September 2018 of the Apex Court in the case of Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta & Ors. in Special Leave to Appeal (Civil) No.30621 of 2011.

3 We may note here that Notice of Motion No.392 of 2018 has been taken out by the third party applicants for intervention. The contention raised in the affidavit in support is that none of the candidates

belonging to Other Backward Categories, Scheduled Caste and Scheduled Tribes categories who were included on promotional panels and the applicants were not heard by the Tribunal.

4 The submission of the learned counsel appearing for the respondents in the writ petition is that it was not necessary to make affected persons as parties inasmuch as as per the settled law, the promotional panel was completely illegal and therefore, orders passed granting promotion were also illegal. He accepted that on 11th October 2017 what was fixed before the Tribunal for hearing was the application for vacating interim relief made by the petitioner and not the main Original Application. He further submits that the impugned order will show that all contentions raised by the petitioner on merits have been taken into consideration by the Tribunal.

5 We have carefully considered the submissions. Even the learned counsel appearing for the respondents is not disputing that several persons who were on promotional panels and who were promoted will be affected by the impugned judgment and order. His submission is that as the promotional panel was completely illegal, it was not necessary to implead them as parties. We find that not only promotional panels have been set aside but even consequential orders of promotion have been set aside. Therefore, in our view, those who were promoted were necessary parties to the Original Application and therefore, the Tribunal ought to have called upon the respondents to implead the affected persons as parties. If there are large number of affected persons or if their names and

addresses were not available, few of them could have been impleaded as party respondents to the Original Application and the procedure analogous to the one under Rule 8 of Order I of the said Code ought to have been followed. According to us, the Tribunal has committed an error by deciding the Original Application finally without noticing that necessary parties were not before the Tribunal as they were not impleaded and without noticing that the Original Application was not fixed for hearing. Only on this ground, the impugned order deserves to be quashed and set aside. The learned counsel appearing for the respondents submits that interim order dated 8th August 2017 be restored. The said request is reasonable which deserves to be accepted. However, application made by the petitioner for vacating interim relief will have to be also restored.

6 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 9th November 2017 is hereby quashed and set aside and the Original Application No.482 of 2017 is restored to the file of the Central Administrative Tribunal, Mumbai. Consequently, Miscellaneous Application No.543 of 2017 as well as the interim order dated 8th August 2017 are also restored;
- (ii) On a formal application being made by the respondents (petitioners in the original application), the Central Administrative Tribunal will either permit impleadment of all the necessary parties or will allow the applicants to

follow the procedure analogous to the one under Rule 8 of Order I of the Civil Procedure Code, 1908;

- (iii) It will be always open for the petitioner to move the Tribunal for immediately hearing Miscellaneous Application No.543 of 2017. We are sure that the Tribunal will take up the said application at the earliest;
- (iv) We have made no adjudication on the merits of the controversy and all questions are left open to be decided by the Tribunal;
- (v) Rule is made partly absolute on the above terms;
- (vi) Notice of Motion does not survive and the same is disposed of;
- (vii) It will be always open for the applicants in the Notice of Motion to make an application for impleadment before the Tribunal.

(M.S. SONAK, J.)

(A.S.OKA, J.)