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

Date of Decision: 08.03.2018

+ W.P.(C) 1482/2014 & CM APPL. 29195/2017

O.K. YADAV AND ANR Petitioners

Through: Mr. Nitin Meshram, Adv.

versus

UNIVERSITY OF DELHI AND ORS Respondents

**Through: Mr. Santosh Kumar with
Mr. Manav Gill & Mr. Abhinav Sharma,
Advs. for R-1.**

**Mr. Anil Soni with Mr. Nivesh Sharma,
Advs. for UGC.**

**Ms. Binashaw Soni, Adv. for R-5, 6,7, 10 &
15.**

Mr. Rajesh Gogna, CGSC for R-8.

**Mr. Amit Khemka with Ms. Aditi Kharpate,
Advs. for R-11.**

**Mr. Mohinder J.S. Rupal with Mr. Prang
Newmai & Ms. Slomita Rai, Advs. for R-12
& 20.**

**Mr. Ankur Chhibber with Ms. Shruti
Munjhal, Advs. for R-15.**

Mr. J.H. Jafri, Adv. for R-18.

Mr. Amit Bansal, Adv. for R-23.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J. (ORAL)

1. The question which this Public Interest Litigation poses is whether the Roster Point System adopted by the University of Delhi, through its policies and guidelines (which in turn are

premised upon the notification and guidelines of the Central Government and the University Grants Commission) are arbitrary and deprive members of the SC, ST and OBC categories, fair representation in the various cadres of the colleges of the Delhi University as well as in the various levels of posts for which recruitment and promotion is resorted to within the University.

2. The University which has been impleaded along with other bodies objects to the maintainability of these proceedings contending that in an identical petition i.e. *Delhi University SC/ST/OBC Teachers Forum & Anr. v. University of Delhi & Ors.* this Court was approached contemporaneously along with the present petitioner (in W.P.(C) No.803/2014). That writ petition, according to the University, was dismissed on the ground that the writ petitioners in those proceedings lacked standing. The University's counsel points out that in holding that the proceedings under Article 226 of the Constitution were not maintainable, the Division Bench had previously relied upon and followed three decisions of the Supreme Court in *Dr. Duryodhan Sahu v. Jitender Kumar Mishra* (1998) 7 SCC 273; *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.* (2006) 11 SCC 731 and *Dattaraj Nathuji Thaware v. State of Maharashtra* (2005) 1 SCC 590.

3. The Division Bench after citing the judgments noticed above, as well as others, stated as follows:

“In the present case also, we are of the view that it has the trappings of a service matter. The persons directly affected or likely to be affected have not approached this Court. Furthermore, the persons, who would be affected, if any orders are passed by this Court and, who ought to have been impleaded as respondents, have also not been impleaded. We are informed by the learned counsel for the respondents that after the filing of the writ petition, approximately 800 appointments have been made by the Delhi University and its Colleges and all these appointments, because of the order passed initially on 05.02.2014, are subject to the final outcome of this writ petition. Those persons have not been made parties to the present proceeding and their appointments are also placed in a precarious position.

The learned counsel for the respondents states that the Delhi University is following the guidelines of the Central Government and the University Grants Commission. They further state that the roster has been prepared as per the guidelines. But we are not getting into the merits of the matter inasmuch as we are of the view that the petition is not maintainable being a service matter.

Considering the totality of circumstances and, particularly, that this is a service matter, we are not entertaining this Public Interest Litigation. If there are any individuals, who are aggrieved by

the Roster Point System, that is being followed by the Delhi University and its Colleges, it would be open to them to seek appropriate remedies from the appropriate forum in accordance with law in the individual cases.”

4. It is contended by the petitioners that the Division Bench ruling ought not to unduly restrict this Court from exercising its jurisdiction. In this regard, counsel for the petitioner highlighted that none of the Supreme Court rulings – from *Dr. Duryodhan Sahu (supra)* onwards, noticed that the statutory definition of “service matters” occurring under Section 2(q) read with Section 14 and 15, is only for the purpose of delineating the powers and jurisdiction of administrative tribunals, set up under the Administrative Tribunals Act, 1985. It was submitted that the power of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 of the Constitution to entertain proceedings and adjudge the constitutional validity of enactments and policies, especially in regard to fundamental rights is in no way affected with the enactment of Section 2(q). Continuing in this manner, it was urged that the Court’s power to decide whether a particular policy or the manner of its implementation was arbitrary or unreasonable, cannot in any manner be undermined and that in these circumstances petitions by third parties who may have sufficient standing, to initiate Public Interest Litigation can always be entertained. In this regard, learned counsel also

relied upon the judgment of the Supreme Court in *S.P. Gupta v. Union of India* AIR 1982 SC 149.

5. The enactment of the Administrative Tribunals Act and especially the interpretation given by the Supreme Court, which decided that certain provisions of the amended Constitution were contrary to its basic or essential features (in *L. Chandra Kumar v. Union of India* AIR 1997 SC 1125) is now well settled. It is now matter of law that all service matters are to be initiated first before the Administrative Tribunal, by parties competent to do so. The ruling in *L. Chandra Kumar (supra)* is also decisive in that the Administrative Tribunals set up under the Act of 1985 are empowered to adjudge on the validity of policies and statutes, as far as they pertain to service matters. As far as the petitioner's reliance upon *S.P. Gupta (supra)* which is broad as far as standing goes, the Court is of the opinion that the ruling in *Dr. Duryodhan Sahu (supra)*, *B. Srinivasa Reddy (supra)* and *Dattaraj Nathuji Thaware (supra)* are conclusive that Public Interest Litigation in service matters could not be confined only to service under the State or the Union, and therefore should not be entertained by the High Courts. This is evident from the ruling in *B. Srinivasa Reddy (supra)*, which was in the context of a statutory corporation set up by a State Government.

6. In view of the foregoing discussion, it is held that the Division Bench ruling in *Delhi University SC/ST/OBC Teachers*

Forum (supra), binds this Court. The writ petition is accordingly dismissed as not maintainable.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 08, 2018

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