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

+ W.P.(C) 6357/2018 & CM No.24466/2018

SH. J.P. GOEL AND ORS. Petitioners

Through: Mr.Yash Kumar & Mr.Prateek
Saxena, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms.Seerat Deep Singh, Advocate for
Mr.Akshay Makhija, CGSC for UOI

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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01.06.2018

1. Six petitioners have filed the present petition assailing an order dated 12.02.2016, passed by the Tribunal in O.A. No.4389/2014, filed by eight applicants for re-fixation of the new EDP pay scales w.e.f. 01.01.1986 instead of 11.09.1989 or from the date of their appointment, whichever is later, with all consequential benefits. The said O.A. was dismissed by the Tribunal on the grounds of *res judicata* as also on merits by observing that the issue raised by the petitioners herein had already been agitated by them before the Tribunal in a batch of petitions including O.A.1953/2005, wherein the petitioners were applicants and all the said petitions were dismissed by a common judgment rendered as long back as on 06.10.2010. It was thus held in the impugned order that the petitioners cannot be permitted to re-agitate the matter again as the doctrine of *res judicata* would come into play. Even on merits, the Tribunal has rejected the claim of the petitioners by observing that they were only handling calculators and could not equate themselves with the personnel of other departments, who were working on computers.

2. At the outset, we have enquired from learned counsel for the petitioners to clarify as to whether the petitioners had challenged the judgment dated 06.10.2010, passed by the Tribunal in O.A.1953/2005, by filing a writ petition. Learned counsel concedes that no such steps were taken.

3. That being the position, we are of the opinion that the said judgment has attained finality and the petitioners could not have maintained another O.A. based on the same cause of action. As for the pleas taken by the petitioner in the earlier round of litigation, subject matter of O.A.No.1953/2005, the Tribunal had clearly observed as follows:

“9.2 The basic distinguishing fact of this case remains that many of the applicants were not EDP personnel right from the dates of their initial appointments. Instead, they had had chequered careers and had been holding posts such as Junior Machine Operators, Machine Operators, Senior Machine Operators and some Computer and Key Punch Operators. As revealed from the Counter Reply, some of them had even been rendered surplus at different points of time in their service careers and re-adjusted in different posts. However, the respondents had undertaken a restructuring exercise in pursuance of the Ministry of AH, Dairying and Fisheries Department order dated 10.7.2001. Vide the DMS (respondent No.3) order dated 2.8.2001, these posts had been restructured and re-designated as EDP personnel. Further, the restructuring in different EDP grades had been given effect from 1.1.1996.

9.3 It is the stand of the respondents that the benefits of the OM 11.9.89 were to be given only to the EDP personnel as had been existing at that point of time. However, since several among the applicants had been re-designated as EDPs subsequently, they could be given the benefits logically only from the date of such re-designation. Hence, the claims of the applicants regarding antedating of the benefits, when they had not even been re-designated as EDP, are stated to be misconceived. It is also mentioned in the CA that despite these obvious reasons the respondents had still examined the matter

regarding extension of the benefit of the Department of Expenditure's OM dated 11.9.89 to the incumbents of the original posts of Machine Operators. It was, however, found that they did not fulfil the minimum educational qualifications prescribed in the said OM.

9.4 Under the circumstances, for the same effective reasons as mentioned in our paragraphs dealing with the OA 2230/2006, the claims for antedating the benefits of the revised EDP scales are not found to be acceptable.

10. In view of the foregoing, after having examined all the OAs in terms of the directions of the Hon'ble Delhi High Court vide remanding these cases for reconsideration, and applying the law laid by the Hon'ble Apex Court in Union of India & Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and Another etc. (supra); we do not find antedating of the claims for the revised EDP scales w.e.f. 1.1.86 as tenable. Consequently, the OAs are dismissed as devoid of merits with the parties bearing their respective costs."

4. It is apparent from the aforesaid judgment that the Tribunal had rejected outright the claim of the petitioners for re-fixation of their pay scale to the newly EDP pay scale w.e.f. 01.01.1986, and the petitioners have accepted the said judgment, having failed to seek legal recourse.
5. We, therefore, do not see any infirmity in the observations made by the Tribunal in the impugned order to the effect that the subsequent O.A. filed by the petitioners in the year 2014, was squarely hit by the doctrine of *res judicata*.
6. Accordingly, the present petition is dismissed as meritless, along with the pending application.

HIMA KOHLI, J.

PRATIBHA RANI, J.

JUNE 01, 2018/ 'hkaur'