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

Date of Decision :- 11.07.2018

+ W.P.(C) No.4813/2018 & C.M.No.18518/2018

SH. DARYAO SINGH SAINI

..... Petitioner

Through: Mr.Kartar Singh & Mr.Amit Kumar,
Advs with petitioner in person.

versus

THE CHIEF SECRETARY GOVT. OF NCT & ORS.

..... Respondents

Through: Ms.Rashmi Chopra, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner, a Vice-Principal in a school under the respondents/Government of NCT, Delhi, has impugned an order dated 31.01.2018 passed by the Central Administrative Tribunal in OA 1554/2014 whereby his Original Application seeking release of his service benefits for the period starting from 01.05.2013 to 02.12.2013, has been dismissed.

2. The brief facts as emerge from the record are that the petitioner had superannuated from service on 30.04.2012 upon attaining the age of 60 years. However, based on a Cabinet decision taken by the respondents, a Resolution was passed allowing automatic re-employment of all retired teachers upto PGT level, subject to fitness and vigilance clearance, till they attain the age of 62 years. In view of the aforesaid Resolution, the

petitioner submitted an application for re-employment to the post of Vice-Principal and, therefore, vide order dated 10.05.2012 the respondents re-employed the petitioner to the said post for a period of one year. Upon completion of his tenure of one year to the said post, the petitioner applied for a further tenure of re-employment on 20.04.2013. However, instead of being immediately re-employed, he was re-employed to the said post only on 02.12.2013 and, thus, remained out of employment from 01.05.2013 to 02.12.2013. The petitioner, therefore, submitted representations to the respondents requesting them to grant him re-employment to the said post w.e.f. 01.05.2013. Upon not receiving any reply to his representations, the petitioner sent a legal notice dated 29.01.2014 to the respondents requesting them to release the service benefits w.e.f. 01.05.2013 to 02.12.2013. However, the respondent rejected the petitioner's representations vide their order dated 01.03.2014.

3. Aggrieved by the respondents' rejection of his representations, the petitioner, after his superannuation on 30.04.2014, approached the Central Administrative Tribunal by way of OA no. 1554/2014 on 06.05.2014 seeking issuance of a direction to the respondents to release his service benefits for the period between 01.05.2013 and 02.12.2013. Before the Tribunal, the petitioner alleged that as per the respondents' own Resolution, he was fully qualified and eligible for re-employment after the expiry of the first year, i.e., from 01.05.2013 but the respondents malafidely delayed his re-employment, as a result of which he could only be re-employed on 02.12.2013. Therefore, the petitioner contends, he was entitled to receive his salary for the aforesaid period during which he was unemployed. On the other hand, the respondents refuted the aforesaid allegation of the

petitioner and contended that they had received a complaint against the petitioner from the students, on account of which his case was pending for vigilance clearance and, therefore, he could not be re-employed for the second time immediately on the expiry of his first term. The respondents further submitted that it was only after they had received a clearance from the vigilance department that they had re-employed the petitioner for the second time on 02.12.2013.

4. Vide its impugned order the Tribunal, after observing that any re-employment under the respondent's aforementioned Resolution was not a right of any retired teacher and the same was subject to the terms and conditions of the said Resolution, dismissed the petitioner's Original Application. It is in these circumstances that the petitioner has preferred the present petition.

5. Before us, learned counsel for the petitioner reiterates the grounds urged before the Tribunal. He submits that the Tribunal has failed to appreciate the fact that once the petitioner was entitled to be re-employed w.e.f. 01.05.2013 itself, the respondents, having delayed his re-employment, could not deprive him of the wages for the period between 01.05.2013 and 02.12.2013, during which he remained unemployed only because of the respondents' baseless plea that there was a complaint pending against him, which in any event was subsequently found to be false. In the alternative, the learned counsel for the petitioner submits that since the petitioner was re-employed only on 02.12.2013, he should have been granted re-employment for a further period of 1 year w.e.f. 02.12.2013 and ought not to have been superannuated on 30.04.2014.

6. On the other hand, Ms. Rashmi Chopra, who appears on advance notice for the respondents, submits that the petitioner was granted extension upto 30.04.2014 vide the respondent's order dated 02.12.2013. She submits that the aforesaid order was never challenged by the petitioner, who had filed the Original Application before the Tribunal in May, 2014 only after availing the benefits of the said order. She, thus, contends that the petitioner, having failed to challenge the said order, cannot even claim any benefit which is contrary to the said order.

7. We have carefully considered the submissions of the learned counsel for the petitioner and find absolutely no merit in the same. In our view, the Tribunal has correctly observed that the re-employment of the petitioner was not a matter of right and in fact the Resolution approving the re-employment for a period of 2 years in itself makes it clear that the same was subject to vigilance clearance and, therefore, once there was a complaint pending against the petitioner, the respondent cannot be faulted for not re-employing him on 01.05.2013. It is apparent that once the vigilance department found the complaint against the petitioner to be unfounded, he was promptly re-employed and, therefore, there was no illegality in the decision of the respondents to re-employ the petitioner on 02.12.2013 instead of 01.05.2013.

8. In these circumstances, the prayer of petitioner for grant of financial benefits for the said period starting from 01.05.2013 to 02.12.2013, when he was admittedly not re-employed, was wholly unjustified and was rightly rejected by the Tribunal.

9. We have also considered the alternate submission of the learned counsel for the petitioner that in view of the second re-employment being

granted to him only from 02.12.2013, he ought to have been re-employed for a period of one year w.e.f. 02.12.2013. However, in view of the specific bar of 62 years prescribed in the respondents' Resolution providing for re-employment, we find no merit in this submission since it is an admitted case that petitioner had attained the age of 62 years on 01.05.2014.

10. We also find merit in the contention of Ms. Rashmi Chopra, learned counsel for the respondent, that the petitioner had never challenged the order dated 02.12.2013, which clearly stated that he was being re-employed only upto 30.04.2014 and had in fact accepted re-employment granted to him vide the aforesaid order.

11. There is yet another factor which persuades us to dismiss the present petition, the same being that the petitioner had approached the Tribunal only after he had superannuated on 30.04.2014 in accordance with the order dated 02.12.2013 and, therefore, it is evident that the petitioner had sought to seek undue financial benefits only after having enjoyed the extension granted to him vide order dated 02.12.2013

12. For all the aforesaid reasons, we find no infirmity in the impugned order and the writ petition being meritless, is dismissed alongwith the pending application.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

JULY 11, 2018/sr