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

+ CONT.CAS(C) 292/2016, CM No. 11096/2016

MAMTA GAUR

..... Petitioner

Through: None

versus

P.K.GUPTA, COMMISSIONER, NORTH DELHI MUNICIPAL
CORPORATION & ANR

..... Respondents

Through: Ms.Prabsahay Kaur, Adv. for NDMC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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08.03.2018

CM No. 11096/2016

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CONT.CAS(C) 292/2016

The present petition has been filed by the petitioner with the following prayers:

“In the light of the above facts and submissions, it is humbly prayed that this Hon’ble Court may be pleased:

- (i) To hold the respondents in contempt of the judgment dated November 03, 2014 in W.P.(C) 587/2011;*
- (ii) To direct the respondent No.1 to implement within a period of four week the directions passed by this Hon’ble Court in its judgment dated November 03, 2014 in Writ*

Petition (Civil) No. 587 of 2011 qua the petitioner as well as the directions of CAT in T.A. No. 845/2009 by regularizing respectively the petitioner's promotion as ALWO with retrospective effect from October 1999 and as Assistant Commissioner with retrospective effect from October 2004 along with attendant benefits;

- (iii) Direct the respondent No.1 to implement within a period of four weeks the directions passed by this Hon'ble Court in its judgment dated November 03, 2014 in Writ Petition (Civil) No. 587 of 2011 by promoting the petitioner to the post of Additional Deputy Commissioner on a regular basis with retrospective effect from October 2009 along with attendant benefits;*
- (iv) Direct the respondent No.1 to implement within a period of four weeks the directions passed by this Hon'ble Court in its judgment dated November 03, 2014 in Writ Petition (Civil) No. 587 of 2011 by promoting the petitioner to the post of Deputy Commissioner on a regular basis with retrospective effect from October 2015 along with attendant benefits;*
- (v) And pass any other Order that this Hon'ble Court might deem fit in the facts and circumstances of the case. It is prayed accordingly."*

It is contended by the learned for the respondent-North D.M.C. that the petitioner was not a party in the original writ petition. The operative portion of the order of this Court, of which non-compliance is alleged reads as under:

*"8. The following directions are, therefore, issued to the MCD:-
(i) The MCD is hereby directed to treat promotions from the post of ALWO to further higher grades made by it on ad hoc basis as regular, provided such promotions are made on the basis of evaluation in accordance with the rules, and so long as*

the individuals or incumbents holding such higher posts do so in accordance with their seniority. The resultant vacancies - free of liens, shall be taken into account for implementation of the CAT's order.

(ii) The MCD is also directed to treat all officers promoted as ALWO to further higher promotional posts on ad hoc basis, and who have retired (against whom no disciplinary proceedings are pending post retirement), as regular incumbents at the time when they superannuated from the service. W.P.(C)587/11 Page 6 This shall also ensure that the posts so held and eventually vacated by such incumbents are treated as lien free.

(iii) Keeping the above directions in para Nos.(i) and (ii) in mind, a Review DPC shall be conducted for the cadre of ALWO post, in order to implement all orders of the CAT as affirmed by this Court. The result of such Review DPC would be to assign the concerned dates of promotion to those entitled to it in accordance with the rules and other terms and conditions of the service. It is made clear that, in the event any employee or any officer (including Sh. K.K. Awasthi) is deemed not entitled to promotion from a particular date but from a later date, and/or such officer has since retired from service, no consequential orders giving effect to reversion shall be made. Any such consequent orders will be made on purely notional basis. Such orders shall not adversely affect the pension or terminal benefits of such superannuated employees, or officers nor shall MCD seek to recover any excess amount paid to the officer on that account.

9. The writ petition is disposed of in the above terms.”

The learned counsel for the respondent-North D.M.C. has drawn my attention to paras 5 and 8 of the preliminary objections/submissions of the status report (page 73 and 74), which read as under:

“5. That in pursuance of the above stated directions of this Hon'ble Court, the respondents conducted a Review DPC on

03.02.2016 under the chairmanship of Addl. Commissioner (Engg/Estt.), NDMC in his chamber to consider regular promotion to the post of Assistant Labour Welfare Officer in the pay scale of Rs.6500-10500/- revised to Pay Band-2, Rs. 9300-34800+Grade Pay Rs.4800/-. The Hon'ble Court's order dated 03.11.2014 had not in any way imposed on the respondents a specific result o the Review DPC and it was made clear that promotions would be made in accordance with rules and other terms and conditions of service. The respondents have held a Review DPC in compliance of the judgment and order dated 03.11.2014 and have made promotions in accordance with law. In consideration of the matter with regard to rules and service conditions, the petitioner has not been promoted due to lack of more vacancies. It is respectfully submitted that the petitioner, at best, had a right to be considered for promotion and not a vested right to be promoted. A copy of the minutes of the meeting of the review DPC as held on 03.02.2016 is marked and attached herewith as **ANNEXURE A1**.

8. That after having examined the RDA / Police Case Report, Currency of Punishment Reports, ACR's, the prescribed bench mark of 'Good', seniority position along with the adherence to the Guidelines of the Govt. of India and after complying with the directions of this Hon'ble Court, the DPC recommended two names for the post of ALWO in accordance with the rules and other terms and conditions of service in the pay scale of Rs. 6500-10,500/- revised to Pay Band-2, Rs.9300-34800+Grade Pay Rs.4800/-. The two names so recommended were of Sh. V.M. John, whom the Ld. CAT had, in the order dated 09.11.2009 in the petitioners OA 845/2009 titled Mamta Gaur vs. Municipal Corporation of Delhi, held to be senior to the petitioner and Sh. R.B. Tomar, who was recommended against the reserved vacancy (SC). A copy of the Officer Order No. LWD/HW/NDMC/2016/134 dated 30.03.2016 notifying the regular promotion of the two eligible candidates to the post of ALWO as named above is marked and attached wherewith as **ANNEXURE A2**."

As there is no appearance for the petitioner even on the second call nor there was any appearance for the petitioner on the last date of hearing, the contempt petition is closed, giving liberty to the petitioner to revive the same if the petitioner is of the view that the order of this Court should have been complied with qua her also.

V. KAMESWAR RAO, J

MARCH 08, 2018*/akb*