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

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Date of Judgment: 11th July, 2018

+ LPA 262/2018
NTPC LIMITED

..... Appellant

Through Mr. I.S. Alag, Sr. Advocate & Mr.
Puneet Taneja, Advocates.

versus

G.L SHARMA & ANR

..... Respondents

Through Ms. Padma Priya & Mr. Rishabh
Sachdeva, Advocates for R-1
alongwith respondent no.1 in person.
Mr. Rakesh Kumar, CGSC for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 16.03.2018 passed by the learned Single Judge in W.P. (C) 2512/2018 filed by the respondent herein. The respondent had approached this Court by filing aforesaid writ petition seeking the following reliefs :

“(i) Pass a Writ of certiorari or any other writ, Order or Direction quashing the Order dated 04.07.2007 passed by the Respondent No.2;

(ii) Declare the Petitioner to be eligible to avail Voluntary Retirement under the Voluntary Retirement Scheme, 2004;”

2. Respondent no.1 joined the NTPC in the year 1981. He last worked as a Manager (Legal). The appellant in the year 2000 introduced a Voluntary Retirement Scheme (VRS), which was known as NTPC

Voluntary Retirement Scheme, 2000, with the objective to achieve the optimum manpower utilization, to improve the overall skill level and to provide terminal benefits to employees as an inducement to retire before the actual date of superannuation. The scheme was to apply to all the regular employees i.e. in the category of workmen, supervisory and executives. On 21.05.2003, the VRS was introduced vide a circular, which was known as NTPC Voluntary Retirement Scheme, 2003, and was to remain in operation for three months commencing from 01.06.2003. Respondent no.1 made an application on 30.09.2003 under the said scheme. The application of respondent no.1 was rejected by the competent authority on the ground that he did not satisfy the criteria of having 6 years of service in the existing grade.

3. Being aggrieved by the aforesaid order passed by the appellant herein, respondent no.1 approached the High Court of Gujarat at Ahmedabad by filing a writ petition, which was dismissed on 18.06.2004. Subsequently, respondent no.1 was transferred to Himachal Pradesh. Another Scheme of VRS was circulated on 01.12.2004, which was valid for a period between 01.12.2004 to 31.01.2005. Again an application made by respondent no.1 was rejected on the ground that respondent no.1 was not eligible being an executive employee, he should have completed 10 years of service in the NTPC and must be of 50 years of age on the date of the application. Respondent no.1 also did not clarify as he had not completed the prescribed length of service in the existing grade, which was 6 years for E-5 Grade in which respondent no.1 was serving. Aggrieved by rejection of his request for VRS, respondent no.1 by a communication dated 25.01.2005 sought

relaxation of conditions as per 2004 Scheme. However, the request was rejected. A writ petition filed before Himachal Pradesh High Court was also dismissed. The inter court appeal was also dismissed on 27.09.2013, which led to filing of a Special Leave Petition being SLP(C) 24093/2014, which was further converted into a Civil Appeal no.5628/2017 which was disposed of vide order dated 25.04.2017. The Supreme Court called upon Chairman and Managing Director of NTPC to reconsider the matter of relaxation afresh, after giving an opportunity of hearing to respondent no.1 within two months. A representation was then filed on 17.05.2017 by respondent no.1 requesting the CMD, NTPC to reconsider his case afresh. Reliance was placed on the relaxation granted to another officer being Ms. O. Savithri under the 2003 Scheme. In compliance with the directions of Supreme Court, a personal hearing was granted by the appellant to respondent no.1 on 27.06.2017 and his plea was rejected vide order 04.07.2017. An application being MA 792/2007 filed in Civil Appeal 5628/2017 before the Supreme Court was dismissed as withdrawn. Respondent no.1 thereafter filed W.P. (C) 2512/2018 before this Court and an order dated 16.03.2018 was passed, which is the subject matter of the present appeal.

4. Mr. Alag, learned senior counsel appearing for the appellant submits that by impugned order dated 16.03.2018, the learned Single Judge has again directed NTPC to reconsider the order of rejection dated 04.07.2017 taking into account the allegation of discrimination vis.-a-vis. the case of Ms. O. Savithri. The main grievance of the appellant is that the aforesaid order was passed on the first date of hearing without

issuing a notice and granting opportunity to file the counter affidavit. Mr. Alag submits that in case such an opportunity had been granted, the appellant would have been able to convince the Court that NTPC had considered the representation of respondent no.1 and for a valid and cogent reasons had declined the same after having duly considered all grounds including the ground of discrimination. Mr. Alag further submits that in the absence of a proper hearing having been granted, serious prejudice has been caused to the rights of the appellant and an impression has been created that the representation of respondent no.1 stands rejected, without any application of mind.

5. Ms. Priya, learned counsel for respondent no.1, submits that the appellant was well represented in Court when the matter was listed on 16.03.2018 and it is only after hearing, the impugned order was passed. She submits that the order dated 04.07.2017 of NTPC in fact smacks of arbitrariness, is discriminatory in nature and NTPC has failed to consider the valid ground raised by respondent no.1 seeking voluntary retirement. She submits that the aim, objective and purpose of the Scheme is to allow employees to seek VRS in appropriate cases. She also contends that it was well within the power of NTPC to grant relaxation of the rule.
6. We have heard learned counsel for the parties and have given our thoughtful consideration to the matter. It is not in dispute that the impugned order was passed on the first date of hearing, no opportunity was granted to the respondents (appellant herein) to file the counter affidavit. We are of the view that although the aim and objective of supplying an advance copy is to ensure that the respondents specially

the Government Departments are represented in Court and are prepared with the matter. Such representation has dual benefits. Firstly, time and effort for serving the Government Department is cut short and matters are not adjourned only for the purpose of service of notice. Secondly, in some cases, urgent reliefs are prayed for and to avoid an ex-parte order, being granted in some cases on account of a complete picture not being portrayed before the Court, leads to multiplicity of proceedings.

7. In our view, in the present case, there was no urgency in the matter and an opportunity to file the counter affidavit should have been granted especially for the reason that respondent no.1 had filed his first petition in Gujarat High Court under the 2003 Scheme. He thereafter, filed a writ petition in Himachal Pradesh High Court. Post dismissal of writ petition, he filed an intra court appeal and thereafter, approached the Supreme Court. Even otherwise, in case, there is merit in the matter, ordinarily, Courts grant time to file the counter affidavits and in case of urgency, a shorter time can always be granted so that the complete facts are placed before the Court. For the reasons aforestated, we set aside the impugned order dated 16.03.2018 remand the matter back to the learned Single Judge. NTPC will file counter affidavit within six weeks. Rejoinder thereto, if any, would be filed within four weeks thereafter. The matter would be listed before the learned Single Judge on 10.10.2018 for directions and hearing.
8. We make it clear that we have not expressed any opinion on the merits of this writ petition.

CM APPL 18913/2018 (stay)

9. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 11, 2018/ck

