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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 435/2018 & CM APPL.31979-31980/2018
SHIVANI Appellant
Through: Mr. Sanjay Sharma, Adv.

versus

EMPLOYEE STATE INSURANCE CORPORATION... Respondent
Through: Mr. V.K. Singh, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER
% **14.08.2018**

CM APPL. 31980/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

LPA 435/2018

1. The challenge in this appeal is to the order dated July 03, 2018 passed by the learned Single Judge in W.P.(C) No. 6657/2018 as well as to the order dated July 25, 2018 passed by the learned Single Judge in Review Petition No. 282/2018 in W.P.(C) No. 6657/2018 whereby, by the earlier order dated July 03, 2018, the appellant after lengthy arguments, has withdrawn the writ petition, whereas in the order dated July 25, 2018, the learned Single Judge by noting the submission of the learned counsel for the

appellant that subsequent to the dismissal of the second petition, the appellant became aware of the notification dated July 19, 2017, has held that there are no pleadings in the review petition as to when and how the appellant became aware of the notification dated July 19, 2017, dismissed the review petition on the ground, the jurisdiction exercised by the Court is within a narrow compass and is sparingly exercised, strictly in consonance with the mandate of provisions of Order XLVII of the Code of Civil Procedure, 1908 and seeking a recall of an order, wherein the petitioner was granted leave to withdraw the petition, after having made lengthy submissions, not once but twice, would be an abuse to the process of Court.

2. It may be stated here that after withdrawal of writ petition being W.P.(C) No. 6657/2018 on July 03, 2018 the appellant had filed a second Writ Petition (Civil) No. 7177/2018. The said writ petition was withdrawn with liberty to institute appropriate proceedings in accordance with law.

3. It is contended by the learned counsel for the appellant that the same was withdrawn to enable the appellant to file a review petition in W.P.(C) No. 6657/2018. He further contended that the appellant withdrew W.P.(C) No. 6657/2018 as the respondent intentionally and deliberately did not disclose the notification dated July 19, 2017 before the learned Single Judge,

though it was in their knowledge. According to him, the notification dated July 19, 2017 was brought to his notice in the hearing of the second writ petition and accordingly the writ petition being W.P.(C) No. 7177/2018 was also withdrawn. He submits, the Kerala High Court has decided the issue raised, in favour of the petitioner therein, which shall also help the appellant.

4. According to him, despite filing two petitions, the issue with regard to eligibility for award of I.P. certificate could not be considered / decided. He further submits, at least the issue raised by the appellant needs to be considered on merit. He states that the appellant would be satisfied, if the matter is remanded back for a decision on merit.

5. On the other hand, learned counsel for the respondent opposes the submissions made by the learned counsel for the appellant and states that the appellant having withdrawn the writ petitions, cannot seek a review of the same. He seeks the dismissal of the appeal.

6. Having heard the learned counsel for the parties, no doubt that the first writ petition filed by the appellant was dismissed as withdrawn, but it is the case of the appellant that pursuant thereto notification dated July 19, 2017, which was not in her knowledge was referred to during the hearing of the second writ petition being W.P.(C) 7177/2018. The said writ petition

was also withdrawn to enable the appellant file appropriate proceedings, which according to the learned counsel for the appellant was a review petition in the earlier petition being W.P.(C) 6657/2018.

7. The reliance placed by the appellant in the review petition was on notification dated July 19, 2017, which was not in the knowledge of the appellant at the time of hearing of the first petition being W.P.(C) 6657/2018. It is also not the case of the respondent that the notification was referred to in the first writ petition. Further, the learned counsel for the appellant relies on the judgment of the Kerala High Court, details of which are mentioned in the notification dated July 19, 2017 at Annexure P-3 (page 43 of the paper book). As the effect of the said notification and the applicability of the judgment of the Kerala High Court, which according to the appellant favours her, has not been considered, we allow the appeal and set aside the orders dated July 25, 2018 and July 03, 2018 and restore W.P.(C) 6657/2018 to its original number and remand the matter to the learned Single Judge to hear the writ petition on merit by considering the notification dated July 19, 2017 and the judgment of the Kerala High Court as referred to by the appellant, as noted above.

8. During the course of his submissions, learned counsel for the

appellant submitted that counselling is due on August 16, 2018 and she be allowed to participate in the counselling. Such an order cannot be passed, till such time the issue is decided by the learned Single Judge. Suffice to state that the counselling shall be subject to the outcome of the writ petition, to be decided by the learned Single Judge. The last candidate to be granted admission shall be notified in this respect.

9. List the Writ Petition No. 6657/2018 before the learned Single Judge on 17th August, 2018.

Appeal is disposed of on the above terms. No costs.

Dasti under the Signatures of the Court Master.

CM APPL.31979/2018 (for direction)

Dismissed as infructuous.

THE CHIEF JUSTICE, J

V. KAMESWAR RAO, J

AUGUST 14, 2018/ak