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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 04.01.2018

LPA 398/2017

USHA TALWAR

..... Appellant

versus

**THE CHAIRPERSON NAVYUG SCHOOL
EDUCATIONAL SOCIETY**

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Mukul Talwar, Sr. Advocate with Mr. Piyush Sharma and Ms. Chhaya Sharma, Advocates
For the Respondent : Mr. Tarunvir Singh Kheaar, Advocate with Ms. Guneet Khehar, Advocate with Mr. Vikas Mathur, A.O. for R-1 & R-4
Mr. Anil Grover, Advocate with Mr. Shivam Kumar, Advocate for R-2 & R-3

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Letter Patents Appeal under Section 10 of the Letters Patent Act, 1865, read with Section 10 of the Delhi High Court Act, 1966,

instituted on behalf of the appellant assails the judgment and order dated 23.03.2017, passed by a learned Single Judge of this Court in Writ Petition (Civil) No.1623/2010 titled as “*Usha Talwar v. Chairperson, NDMC and Ors.*” (hereinafter referred to as the ‘subject petition), whereby, the relief prayed for by the appellant of being granted higher pay scale on achieving the second stage of the Assured Career Promotion Scheme (ACP Scheme); upon completion of 24 years of service, along with compound interest thereupon, came to be rejected.

2. Mr. Mukul Talwar, learned Senior Counsel appearing on behalf of the appellant invites our attention to the time line that obtains in the present proceedings to urge that the conclusion arrived at in the impugned judgment to the effect that the subject petition was barred by limitation has no merit. In this behalf, we may reproduce the relevant dates leading up to the institution of the subject petition by the appellant.

3. The appellant joined respondent No.1 as an Assistant Teacher on 16.03.1985, having purportedly worked with an NDMC school as an Assistant Teacher since 15.09.1973. It was the case of the appellant that having completed 24 years of service from the date of her initial appointment with the NDMC school, she was entitled to the benefits of ACP-II and was

aggrieved by the circumstance that she has been granted only the benefit of ACP-I and that too belatedly, on 09.08.1999. In other words, it has been urged that as on the date on which she was granted the benefits of ACP-I, she was entitled to the benefits of ACP-II.

4. It has been pointed out on behalf of the appellant that the ACP in respect of respondent No.1 was adopted vide notification dated 06.10.2004, although it was directed to be operational retrospectively from the date when it came to be introduced i.e. 09.08.1999. It has further been brought to our notice that in fact, the appellant had been granted the benefits of ACP-II by way of office order No.NS/SN/07/1453/B dated 27.04.2007, which were subsequently withdrawn by way of office order No.374/NSES./SECY./07 dated 22.08.2007, which withdrawal was itself reconsidered by way of a communication dated 19.09.2007; reinstating the effect of the said prior office order dated 27.04.2007. However, it is the grievance of the appellant that she was never actually given the monetary benefits of ACP-II.

5. Mr. Mukul Talwar, learned Senior Counsel appearing on behalf of the appellant has drawn our attention to paragraph 7 of the impugned judgment, which has been reproduced hereinunder:

“7. Therefore the claim of the petitioner for second ACP benefit, arising to the petitioner from 9.8.1999 when the

scheme came into force for the first time, this claim is a claim which is hopelessly time barred and is therefore hit by the doctrine of delay and laches, hence the claim of the petitioner for second ACP benefit is liable to be and is accordingly dismissed by applying the doctrine of delay and laches.”

6. It is in view of the aforestated facts that it is urged that the finding arrived at by the learned Single Judge in paragraph 7 of the impugned judgment is erroneous and cannot be sustained.

7. The substantive issue which was raised by the appellant in the subject petition, as to whether she was entitled to the benefit of addition of tenure of service with the said NDMC school; where she claims to have been previously employed, has not been determined by the learned Single Judge in the impugned judgment, although it has been observed as follows:-

“9.and I need not pronounce on the same, inasmuch as, I am assuming for the sake of the present judgment that petitioner’s earlier service with NDMC school had to be added with the respondent no. 4/school, but even if that is done since petitioner has failed to plead and substantiate as to how petitioner can get ACP-II benefit of the post of PGT, hence the petitioner cannot get the ACP-II benefit being the pay-scale of a PGT.”

8. A perusal of the same would reflect that the said substantive issue which was raised by the appellant in the subject petition is still at large.

9. Per contra, learned counsel appearing on behalf of respondent No.1

whilst refuting the entitlement of the appellant to the benefit of addition of her prior employment with the said NDMC school towards the grant of ACP benefits to her; does not fairly refute the procedural facts, as afore-stated, leading up to the filing of the subject petition by the appellant.

10. In this view of the matter, the conclusion of the learned Single Judge, insofar as, it holds that the claim of the appellant is hopelessly barred by limitation and hit by the doctrine of delay and laches, being untenable in view of the admitted fact of the case as elaborated, is hereby set aside. Insofar as the said substantive issue elaborated in relation to the addition of the time served by the appellant in her prior employment with NDMC school is concerned, the same is remitted back to the learned Single Judge for further proceedings and adjudication in accordance with law.

11. The appeal is, therefore, partly allowed, as aforesaid. The said Writ Petition (Civil) No.1623/2010, titled as '*Usha Talwar vs. The Chairperson, Navyug School Educational Society & Ors.*', is restored to its original number and remitted back to the learned Single Judge for further proceedings in accordance with law.

12. The appeal is disposed of accordingly.

13. List before the learned Single Judge for directions on 01.02.2018.

14. Needless to state that we have expressed no opinion on the merits of the substantive claim made on behalf of the appellant in the present appeal.

**SIDDHARTH MRIDUL
(JUDGE)**

JANUARY 04, 2018
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**DEEPA SHARMA
(JUDGE)**

