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

+ W.P.(C) 9555/2018 & C.M. No.37182-37183/2018 (for exemption)

MEHFOOZ MOHAMMAD

..... Petitioner

Through: Mr.M.Sufian Siddiqui, Mr.Rakesh
Bhugra & Mr.M. Tabish Zia, Advs.

versus

DELHI WAQF BOARD & ANR

..... Respondents

Through: Mr.Wajeeh Shafiq, Standing Counsel
for R-1.
Ms.Avnish Ahlawat, Standing
Counsel with Ms.Palak Rohmetra,
Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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12.09.2018

1. The petitioner is aggrieved by an order dated 06.08.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi dismissing OA No.3100/2017 filed by him inter alia for issuing directions to the respondents to grant him the pay grade of a Head Clerk in the respondent No.1/Delhi Waqf Board. In the impugned order, the Tribunal has recorded that aggrieved by the reduction in his grade pay, the petitioner had earlier filed OA No.4219/2016. The said Original Application was disposed of by the Tribunal vide order dated 22.12.2016 by permitting the petitioner to submit a representation to

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the respondents with further directions to the respondents to consider and dispose of the said representation within two months from the date of receipt thereof. In terms of the aforesaid order, the petitioner had submitted a representation dated 30.12.2016, but the respondents failed to decide the said representation though several reminders were issued by the petitioner even thereafter.

2. Aggrieved by the inaction on the part of the respondents, the petitioner filed the instant OA seeking a direction to the respondents to grant him the grade pay of Head Clerk. The petitioner also sought quashing of an order dated 13.02.2017, which, as a matter of fact, is a part of the noting file of the learned SDM (Headquarters), and of an intimation dated 06.06.2017, issued by the Office of the Divisional Commissioner, Revenue Department, GNCTD, addressed to the respondent no.1/Delhi Waqf Board relating to the petitioner's representation.

3. The Tribunal rejected the OA insofar as the prayers for quashing of order/noting dated 13.02.2017 and intimation dated 06.06.2017 are concerned, by holding that both the aforesaid documents could not be treated as formal orders being only a part of a noting file/communication. The Tribunal also rejected the petitioner's claim for grant of grade pay of Head Clerk by observing that instead of availing the legal remedy available to him of filing a contempt petition against the respondents for non-compliance of the order dated 22.12.2016, passed in OA No.4219/2016, he had elected to file a fresh Original Application, which would not be maintainable.

4. At the outset, we have inquired from learned counsel for the respondents as to whether the petitioner's pending representation dated 30.12.2016 submitted in terms of the order dated 22.12.2016 issued by the Tribunal has been decided so far.

5. Learned counsel for the respondent no.1/Delhi Waqf Board states that the management of the Delhi Waqf Board had been taken over by the Government of NCT of Delhi in terms of an order passed by the Lieutenant Governor, GNCTD. Thereafter, fresh elections have been conducted and the Managing Committee of the Waqf Board has taken over the affairs of the respondent no.1, as recently as on 04.09.2018. He assures the Court that if granted a reasonable time, the petitioner's representation shall be considered and a speaking order passed expeditiously.

6. Having considered the submissions of learned counsel for the respondents and on perusing the impugned order as also the record, we find that there is no infirmity in the holding of the Tribunal that the OA questioning the communication dated 13.02.2017/noting dated 06.06.2017 is not maintainable. The said communication and noting were certainly not formal orders affecting any rights of the petitioner and, thus, the aforesaid prayers in the OA were not maintainable.

7. However, we are unable to persuade ourselves to concur with the findings of the Tribunal viz-a-viz the petitioner's prayer for grant of grade pay of Head Clerk. In our considered view, the Tribunal has overlooked the fact that despite earlier directions issued in the earlier

OA, the respondents had admittedly failed to decide the petitioner's representation seeking grant of grade pay of a Head Clerk. The present OA qua the said relief, could not have been held to be not maintainable. The dismissal of the said OA merely by observing that the petitioner ought to avail a proper legal remedy, such as filing of a contempt case, is wholly erroneous. The petitioner could not be expected to wait endlessly for a decision on his representation.

8. In view of the above, the present petition along with the pending applications is disposed of with a direction to the respondents to consider and decide the petitioner's pending representation within eight weeks from today under written intimation to him. If the petitioner is still aggrieved by the decision taken by the respondents, he shall be entitled to seek legal recourse, as may be advised.

9. The petition is disposed of.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 12, 2018

gm

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