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

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+ **W.P.(C) 2763/2003 & CMs 19919/2018 and 6147/2019**

GOVT. OF N.C.T. OF DELHI

..... Petitioner

Through: Ms Avnish Ahlawat, Standing
Counsel for GNCTD with Mr N.K.
Singh, Ms Palak and Ms Laveena
Arora, Advocates.

versus

SUNIL BIST & ORS.

..... Respondents

Through: Mr S.D. Singh and Mr Rahul Kr.
Singh, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

25.09.2019

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CM 6147/2019(stay)

1. This is an application by the Respondent No. 6 Shri Manish Kumar, praying for stay of an order dated 5th February, 2019 whereby his services as a contractual Lecturer in Automobile Engineering in the Pusa Institute of Technology were terminated.

2. In the said application, the main contention is that in view of the directions issued by the Central Administrative Tribunal ('CAT') in its judgment dated 17th January, 2003 in OA No.32 of 2002 (which is the

subject matter of the main writ petition), the Petitioner i.e. the Government of NCT Delhi (GNCTD) could not have terminated the services of the Applicant/ Respondent No.6.

3. It must be noticed at this stage that the aforementioned OA No.32 of 2002 was filed by seven Applicants of which the present Applicant / Respondent No.6 was one. They were seeking two distinct reliefs. One was that they should be granted the same pay scale and allowances and same benefit of leave and other service conditions applicable to Lecturers appointed on regular basis. The second one was that they should be continued in service without any break till regular appointments are made; and as and when regular recruits become available, the Applicant should be first posted in the vacant post and only after the vacant posts are filled up, the Applicant should be replaced.

4. In the operative portion of the impugned order of the CAT, the following directions were issued:

“(a) The applicants would be entitled to the pay scale of the regularly appointed Lecturers. However, they would be paid the minimum of the scale of the post of Lecturer. The arrears would only be confined to the date of filing of this application.

(b) The application in respect of Shri Sunil Bist, applicant No.1 and Shri Chander Kumar Senapati applicant No. 3 is dismissed.

(c) Other applicants would continue till such time regularly appointed Lecturers in accordance with the recruitment rules join the posts against the discipline with which they were working.”

5. In the present petition filed by the GNCTD challenging the above order, an interim order was passed by this Court on 15th July 2003, staying the directions given at (a) above. In other words, there was no stay of the directions in (c) above.

6. In the present application, the following order was passed by this Court on 15th February, 2019:

“After hearing counsel for the parties, we are of the opinion that the petitioner i.e. the Government of NCT of Delhi should file a reply indicating when and under what circumstances the post of Lecturers, for which the respondents were granted limited relief by the Central Administrative Tribunal (CAT), were filled through a regular recruitment process. The Government of NCT of Delhi contends that the vacancies that were the subject matter of the proceedings before the CAT were filled in November, 2011. The details of the requisition to the UPSC; advertisement; the final selection list; appointment list etc. shall be filed along with the reply before the next date of hearing.
List on 28.03.2019.”

7. Pursuant to the above order on 27th March, 2019, an affidavit has been filed by the GNCTD that on 9th July, 2009 itself, a requisition was sent to the UPSC to fill up the seven vacant posts of the Lecturers in Automobile Engineering. There were 18 sanctioned posts, against which 11 persons were regularly working. It is stated that in response to the above requisition, UPSC by a letter dated 10th March, 2011 recommended seven candidates and appointment orders were issued to all the seven. Five of the said candidates joined at the DTTE Headquarters and were posted in various technical colleges.

8. It is stated in paragraph 10 of the affidavit that against the sanctioned strength of 15 Lecturers in Automobile Engineering, 16 are working on regular basis since 2011-12. The present Applicant and one Shri Sanjay Kumar were additionally working on contractual basis. It is stated that since all the sanctioned posts were filled up on regular basis, no approval of the competent authority was taken to extend the contractual employment of the present Applicant.

9. Learned counsel for the Applicant has in the rejoinder sought to contend that there are three vacant posts still available.

10. In the considered view of this Court, the Applicant should agitate this issue in a substantive petition in the first instance before the CAT, if so advised. This is particularly since even according to the learned counsel for the Petitioner, the main writ petition itself has been rendered infructuous in view of the judgment of the Supreme Court in *State of Punjab v. Jagjit Singh (2017) 1 SCC 184* which the Petitioner has been complying with by paying the minimum pay scale to all the contractual employees.

11. In that view of the matter, the application is disposed of permitting the Applicant to seek appropriate remedies before the CAT. The Court makes it clear that it has not expressed any view on merits on the contention of either of the parties and leaves it open to the CAT, if so approached by the Applicant, to decide the issue in accordance with law.

W.P.(C) 2763/2003 & CM 19919/2018(directions)

12. In view of the statement made, as recorded hereinbefore, by learned

counsel for the Petitioner, the writ petition itself has been rendered infructuous, and is disposed of as such. The pending application is also disposed of. The interim order passed by this Court stands vacated. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 25, 2019

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