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

Date of Decision :- 20.11.2019

+ W.P.(C) 11903/2006
DIRECTOR GENERAL WORKS CPWD Petitioner
Through: Mr.Shashank Tiwari, Adv.

versus

KASHINATH & ORS Respondents
Through: Mr.Ashok Kumar, Adv. for R-1 to 3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

C.M. Nos.493/2018 (for recall of order dt. 31.07.2013), 494/2018
(for delay of 76 days)

1. The present applications have been filed by one Shri Raj Kumar who is not a party to the present petition. He had sought impleadment vide C.M. No.13586/2010, which impleadment application already stands disposed of vide order dated 31.07.2013.

2. In these circumstances, the present applications are also not maintainable and are accordingly dismissed.

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3. The present writ petition filed by the CPWD assails the award dated 08.04.2004 passed by the learned Central Government Industrial Tribunal cum Labour Court-II, Rajendra Place, New Delhi in ID No.28/96. Under the impugned award, the petitioner has been directed to regularise the respondents as 'Senior Mechanic' from their

initial date of joining service with full backwages along with all consequential benefits.

4. Learned counsel for the petitioner, on instructions from the petitioner, submits that though the respondents had served the petitioner as 'Senior Mechanic', the petitioner has regularised them as 'Khalasi' w.e.f. 11.12.2006 and paid them all consequential benefits during the pendency of the present petition after obtaining their consent in this regard. He, therefore, submits that in view of this subsequent development, the award directing the respondent's regularisation as 'Senior Mechanic' from their initial date of joining service is not sustainable and prays that the same be set aside.

5. On the other hand, learned counsel for the respondents while supporting the impugned award submits that once the respondents had discharged their duty as 'Senior Mechanic' for over 30 years, there was no reason to regularise them on the lower post of 'Khalasi'. He further submits that even if the respondents had consented to being regularised as 'Khalasi' instead of 'Senior Mechanic', at which post they had worked for over 30 years, there was no justification for regularising them only w.e.f. 11.12.2006 instead of the date of initial joining. He therefore, prays that the writ petition be dismissed.

6. Having considered the submissions of the learned counsel for the parties and perused the record, I am of the view that in light of the admitted position that the petitioner had regularised the respondents as 'Khalasi' based on their written consent, the direction in the impugned award to regularise them as 'Senior Mechanic' cannot be sustained. However, there is merit in the respondents' plea that in view of their

unblemished service of over 30 years in the post of 'Senior Mechanic' with the petitioner department, the decision to regularize them only w.e.f. 11.12.2006 is wholly arbitrary. I am, therefore, of the view that the respondents should be granted regularization from the date of their initial joining, as directed under the impugned award.

7. The impugned award is accordingly modified only to the extent that the direction to regularise the respondents as 'Senior Mechanic' from the date of joining service would be read as direction to regularise them as 'Khalasi' from their initial date of joining service. All consequential benefits arising out of the order would be released to the respondents within twelve weeks. In case the petitioner has deprived the respondents of the benefits of the old pension scheme under the CCS(Pension) Rules by treating them to be in regular service only w.e.f. 11.12.2006, all corrective steps in this regard will be taken by the petitioner within the same period of 12 weeks by treating the respondents in regular service as 'Khalasi' from their initial date of joining service.

8. The writ petition is accordingly disposed of in the above terms.

REKHA PALLI, J.

NOVEMBER 20, 2019/gm