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

Judgment reserved on : 28.11.2018

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Date of Decision: 07.01.2019

% **W.P.(C.) No. 3287/2013 and CM No.6229/2013**

NEW DELHI MUNICIPAL COUNCIL Petitioner

Through: Mr.Vaibhav Agnihotri, Adv.

versus

KRISHAN LAL & ORS.Respondents

Through: Ms.Rashmi Chopra,
Ms.Vriti Anand and
Ms.Asiya, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K.CHAWLA, J.

1. Aggrieved of the orders dated 20.05.2011 and 23.01.2012 passed by Central Administrative Tribunal in short 'CAT' in OA No.1583/2010 and RA No.432/2011 respectively, the petitioner-New Delhi Municipal Council in short 'NDMC', has preferred the instant writ petition seeking issuance of a writ of certiorari for quashing of the said orders.

2. Concisely, the relevant facts are that the respondents are the engineers of the Electrical Wing - Auto Workshop of NDMC, who joined it sometime around the year 1979/1980 on the pay-scales as provided for by NDMC

having accepted the Third Pay Commission Report. It is a matter of record that the Third Pay Commission Report was equally accepted to by Municipal Corporation of Delhi in short, 'MCD', constituted under the Delhi Municipal Corporation Act, 1957. The technical staff of Delhi Electric Supply Undertaking in short, 'DESU', which was one of the constituents of MCD, however, claimed higher scales of pay. It resulted into constitution of a committee called Shiv Shankar Committee in short, 'SSC'. SSC in its report recommended higher pay scales for the technical staff of DESU as compared to the recommendations made under the Third Pay Commission Report. It was accepted to by MCD. It resulted into demands being raised by the ministerial staff of MCD for the similar relief, which was equally accepted. Thus, the technical as well as non-technical ministerial staff of DESU came to be extended the benefits of SSC pay scales. It appears that in the pursuit thereof, NDMC passed a resolution on 19.10.1973 extending the benefits of SSC pay scales to the technical and ministerial staff working in its Electricity Wing and, by another resolution dated 07.01.1974, extended such benefits w.e.f. 01.04.1972 to bring them at par with the employees of DESU. Since the ministerial staff in all the three wings of the NDMC consisted of a unified cadre and gave rise to some dissatisfaction amongst the other staff of NDMC, on 27.06.1978, NDMC created a separate Electricity Wing w.e.f. 01.05.1978 comprising of 28 pump drivers, 2 welders, 3 carpenters, 1 mechanic and 496 ministerial staff. All these posts were ex-cadre and given SSC pay scales, with some conditions attached thereto. This also led to dissatisfaction amongst the other ministerial staff in the Electricity Wing of NDMC and resulted into litigation before this court. The entire litigation culminated in the decision of the Supreme Court in *R.D.*

Gupta & Ors. vs. Lt. Governor & Ors., (1987) 4 SCC 505. In *R.D. Gupta's* case (supra), the Supreme Court held that (a) the ministerial staff of NDMC forms a unified cadre; (b) the recruitment policy for the ministerial staff was common; (c) recruitment of the ministerial staff was by a common agency; (d) a common seniority list was maintained for the ministerial staff; and, (e) posts held by the ministerial staff are inter-changeable inasmuch as they could be transferred from one wing of NDMC to another. It was thus concluded by the Supreme Court that all the ministerial staff in NDMC should be treated alike, which implied that they were entitled to the same scales of pay irrespective of the fact as to which wing they were working in. In *R.D. Gupta's* case (supra), the Supreme Court also considered the case of Junior Engineers (Civil) and Asstt. Engineers (Civil) and took the view that Civil Engineers and Electrical Engineers did not belong to a unified cadre, nor did they satisfy the other test of inter-transferability and therefore, there could be different pay scales for Civil Engineers vis-a-vis Electrical Engineers. On this, eight categories of ministerial staff were extended the benefits of SSC scales following the ratio of the judgment in *R.D. Gupta's* case (supra). It transpires that discontentment however persisted amongst the various categories of the employees of NDMC inspite of a resolution dated 26.02.1988 that came to be passed and the consequent formation of a sub-committee and that culminated into the decision of the Supreme Court in *Narender Kumar & Ors. vs. Dharam Dutt & Ors.*, 1993 Supp. (3) SCC 205, which held that the Auto Workshop employees formed a part and parcel of the Electricity Wing of NDMC and were entitled to the pay scales recommended by the report of SSC. As a consequence, NDMC passed two resolutions, one dated 10.09.1993 and the other dated 04.11.1993. As far as

the respondents are concerned, resolution dated 04.11.1993 concerns them. As per this resolution, the benefit of SSC pay scales came to be extended to *inter alia* Superintendent (Auto) and JE (Auto)/Foreman. Since the respondents at the relevant time were working as AE (Auto)/EE (Auto), the benefit came to be given to them only for the period they had worked as JE (Auto) or Superintendent (Auto). On this, two AE (Auto) employees approached this court by way of WP(C) 4805/1997 Sh. P.P. Garg & Devender Saroop vs. NDMC & Ors., [(2003) SCC Online Del. 751], which was disposed of on 21.08.2003, with a direction to NDMC to grant the benefits of SSC pay scales to the said petitioners from the date of their promotion. There-against, NDMC preferred LPA 34/2004, which came to be dismissed on 15.02.2005. SLP preferred there-against also came to be dismissed. Thus, the two petitioners namely, Mr. P.P. Garg & Devender Saroop came to be extended the benefits of SSC pay scales with effect from the date of their promotions i.e. w.e.f. 24.09.1987 and 10.02.1986 respectively, vide office order dated 15.11.2007. It appears that the respondents, who had also made their representations to NDMC for the similar relief as granted to Mr. P.P. Garg and Devender Saroop, now came forward to file WP(C) 5091/2008 seeking similar reliefs. This writ was transferred to CAT, which allowed it vide the impugned order in OA following the decision given in *P.P. Garg's* case (supra). RA No.432/2011 filed by NDMC to seek review thereof, came to be dismissed by CAT on 23.01.2012. Aggrieved of the orders so passed by CAT in OA and RA, NDMC has preferred the instant writ petition.

3. Pertinently, NDMC assails the impugned orders on the premise that in

terms of the dictum of this court in WP(C) 11841/2004 New Delhi Municipal Council vs. *Kaneya Lal & Ors.* decided on 17.09.2004, and the recommendations of the Anomaly Committee constituted by the Supreme Court in *R.L. Gautam's* case, the SSC pay scale benefits could not be granted from diverse dates but from a common date i.e. 01.04.1998 fixed by this court. The other significant plea raised by NDMC assailing the impugned orders is that the writ petition filed by the respondents in the year 2008 suffered from delay and laches inasmuch as the respondents were promoted on 02.08.1979, 05.11.1980 and 28.07.1986 respectively and therefore, the petition filed in the year 2008 was highly belated and that, the remedy of judicial review in terms of the ratio of the Supreme Court in *New Delhi Municipal Council vs. Pan Singh & Ors.* (2007) 9 SCC 278 was not available to them. According to NDMC, the respondents had conducted themselves as fence sitters, choosing to approach the court only on the petition of *P.P. Garg* and another being granted, and therefore also were not entitled to the reliefs prayed.

4. According to the respondents, there could be no discrimination or arbitrariness in application of the pay scales amongst the similarly placed persons, especially, when few others had come to be extended such benefits. For the purpose, the reference is drawn to the cases of *P.P. Garg and Rakesh Sharma*. Non-grant of the similar benefits, according to them, would be inequitable and not lawful.

5. Learned counsel for the petitioner strenuously contended that the respondents not only conducted themselves as the fence sitters and the petition filed by them suffered from delays and laches, the relief granted by

CAT, vide the impugned order, would have the cascading effect in upsetting the decision of this court in *Kaneya Lal's* case, which provided for a common date for extending the SSC pay scale benefits to all the employees of NDMC. Also, in his submissions, it would result into opening up a pandora box on an issue, which has come to be resolved with much difficulties and diverse litigations and would be taken as precedent for several others including those, who may not be even in service for decades and so on, to follow suit.

6. In the submissions of the learned counsel for the respondents, a legal right, which was well founded on the settled principles of parity, fair play and equity, cannot be allowed to be frustrated on technicalities, especially, when the respondents claim was founded on the recurring cause of action. It was thus contended that the impugned order did not suffer from any perversity. In support of such submissions, reliance is placed upon *M.R. Gupta vs. Union of India & Ors.*, AIR 1996 SC 669 and *Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.*, Civil Appeal no.9849/2014.

7. Impugned order in OA gives the reasons for the relief granted to the respondents in the following words :

"3. After a careful consideration, we find the basic claims in the OA as justified. This is for the following reasons :-

(a) In the first round, the TA 1053/2009 by the same Applicants, agitating virtually the same claims, had been decided vide the Tribunal's Order dated 6.8.2009. Holding the matter as covered by the decision of the Hon'ble Supreme Court in the matter *New Delhi Municipal Council vs. P.P. Garg* (supra), for parity of reasons given by the Supreme Court, the TA was allowed in the same terms.

(b) In pursuance of the aforesaid directions of the Tribunal, the Respondents had passed the Orders Nos. 117, 118 and 119 dated 15.1.2010, allowing the benefit of the SSC scale w.e.f. 1.4.1998 with a stipulation that no arrears prior to 31.10.2001 being admissible. The CP 654/2009 in this very TA had been closed vide the Tribunal's Order of 19.1.2010 taking note of certain payments being handed over in favour of the Applicants. However, in case of any mis-calculation, the Applicants were granted a right to file representations. Further, it was clarified that in case of the same not being allowed, it may give rise to fresh cause of action. The present orders have been impugned and the claims in the OA agitated as per the leave and liberty granted in this TA.

(c) The short affidavit filed by the Respondents refers to the observations in the Tribunal's Order while disposing the TA 1053/2009 regarding constitution of Bharat Bhushan Committee in pursuance of Supreme Court's directions and the assurance to give dues to the Applicants on assessment of benefits in *P.P. Garg's* case and other employees.

It is the contention of the Respondents that the matter had been referred by them to the Anomaly Committee and the present decision is as per their recommendations. Besides, on the point of grant of arrears, it is submitted that as per the NDMC Resolution dated 27.8.2002, no arrears prior to 31.10.2001 are to be granted.

(d) These contentions of the Respondents are not found to be acceptable. The operational directions of the Tribunal in the earlier TA 1053/2009, as adverted above, were clear and unambiguous i.e. grant of benefits at par with *P.P. Garg's* case.

Besides, it is found that in pursuance of the decisions of the Hon'ble High Court and further upheld by the HOn'ble Apex Court in the case of *P.P. Garg* (supra), the benefits of the Shiv Shinker Committee pay scales have been allowed from the dates of their appointment as Assistant Engineer. In support, the OA has enclosed an order no. 2921 dated 15.11.2007 in respect of Shri Devendra Saroop (the Applicant No.2 in *P.P. Garg's* case). While granting the requisite scale from the date of

promotion as AE i.e. 10.2.1986, it also does not prescribe any limitation regarding the payment of arrears (Annex.P/17 (colly)).

(e) Additionally, the learned counsel for the Applicants has produced before us a detailed chart showing the grant of SSC scales in cases of Shri P.P. Garg and Shri Devendra Saroop (the two Applicants in *P.P. Garg's* case), Shri Rakesh Sharma (the Applicant in the TA 1943/2009 titled "*Shri Rakesh Sharma & Ors. vs. Lt. Governor & Ors.*", also relied upon the instant OA) as well as the three Applicants of the present OA. These are supported by copies of relevant office orders. Whereas in the other cases, the benefits had been granted from their appointments as AE, in the case of the Applicants in the present OA, the same are from a subsequent date of 1.4.1998 and that also with the condition regarding payment of arrears, which had found no place in other cases."

A bare perusal of the foregoing reasons given by CAT granting the reliefs to the respondents reflects that it does not deal with the relevant factors to be taken note of in dealing with the subject of delays and laches in the light of the settled principles of law. The said reasons do not advert to the decision of this court in *Kaneya Lal's* case (supra) equally. There is thus an apparent fallacy in reaching the conclusions for grant of relief to the respondents. In RA, CAT though takes note of the decision in *Kaneya Lal's* case, but refuses to entertain RA simply on the premise that it was beyond its jurisdiction.

8. P.P. Garg and Devender Saroop preferred the writ petition in the year 1997 seeking grant of the pay benefits from the date of their promotion w.e.f. 24.09.1987 and 10.02.1986 respectively, having made representations earlier. In the case in hand, the respondents, though promoted on 02.08.1979, 05.11.1980 and 28.07.1986, approached this court only in the

year 2008 i.e. almost about 22-29 years later. On such facts and the principles of law laid down by the Supreme Court in dealing with the aspects of service jurisprudence, we observe, CAT has miserably failed to advert to it. In *Pan Singh's* case (supra), the Supreme Court dealing with somewhat similar matter relating to NDMC itself, observed that delay and laches are relevant factors for exercise of equitable jurisdiction. In the subject context, it was observed, as under :

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See *Govt. of W.B.v. Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] , *U.P. Jal Nigam v. Jaswant Singh* [(2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500 : (2006) 12 Scale 347] and *Karnataka Power Corpn. Ltd. v. K. Thangappan* [(2006) 4 SCC 322 : 2006 SCC (L&S) 791] .)

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See *Lipton India Ltd. v. Union of India* [(1994) 6 SCC 524] and *M.R. Gupta v. Union of India* [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] .)

18. In *Shiv Dass v. Union of India* [(2007) 9 SCC 274 : (2007) 2 Scale 325 : (2007) 1 Supreme 455] this Court held: (SCC p. 277, paras 9-10)

"9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiiah Setty v. State of Mysore* [AIR 1967 SC 993] . There is a limit to the time which can be considered reasonable for making representations and if the Government

had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Pyarimohan Samantaray* [(1977) 3 SCC 396 : 1977 SCC (L&S) 424 : AIR 1976 SC 2617] making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa v. Arun Kumar Patnaik* [(1976) 3 SCC 579 : 1976 SCC (L&S) 468 : AIR 1976 SC 1639] .)

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

19. We, therefore, are of the opinion that it was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein."

9. In *Tarsem Singh's* case (supra), dealing with the aspects of the principles of law to be kept in mind while dealing with the aspects of delays and laches and the continuing wrong or the recurring successive wrong, the Supreme Court while dealing with the ratio of its judgment in *M.R. Gupta's* case, relied upon by the learned counsel for the respondents, has then observed, as under:

"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan* [AIR 1959 SC 798] explained the concept of

continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

“31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.”

5. In *M.R. Gupta v. Union of India* [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held: (SCC pp. 629-30, para 5)

“5. ... The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him,

such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time-barred....”

6. In *Shiv Dass v. Union of India* [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] this Court held: (SCC p. 277, paras 8 & 10)

“8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. **But there is an exception to the exception. If the grievance is in respect of any order or administrative decision**

which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." (emphasis supplied)

10. In *State of Uttar Pradesh's* case (supra), the Supreme Court elaborating on the principles to be considered to deal with the aspects of delays and laches and acquiescence or waiver has then also observed, as under :

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

11. In the light of the foregoing settled position of law on the aspects of delay and laches or acquiescence, we have no hesitation in concluding that the writ petition that came to be filed by the respondents in the year 2008 to agitate any of their claims on promotion, which were 22-29 years old, were highly belated and deserved rejection on this ground itself.

12. CAT, we observe, when it granted the relief to P.P. Garg and Devender Saroop, did not have the advantage of the decision of this court in *Kaneya Lal's* case. It is a matter of record that *Kaneya Lal's* case came to be decided after the decision given by CAT in *P.P. Garg's* case. *Rakesh Sharma's* case, though came to be decided by CAT after the decision of this court in *Kaneya Lal's* case, we observe, it did not advert to it. Apparently, none of the parties brought it to the notice of CAT. CAT's refusal to exercise its jurisdiction in entertaining the RA, when *Kaneya Lal's* case was brought

to its notice, in our considered view, was just erroneous. We note that *Kaneya Lal's* case had attained finality and there is no reason as to why the decision given thereunder, was not required to be followed. In view thereof, the reliefs granted to the respondents in the impugned orders on the mere drawl of parity with the cases of *P.P. Garg* and *Rakesh Sharma*, in our considered view, cannot be sustained being perverse and not tenable in law.

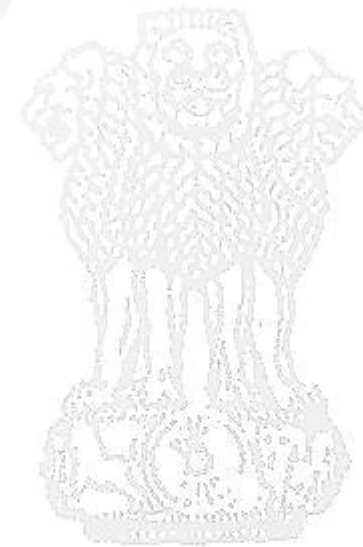
13. For the foregoing reasons, we allow the writ petition and quash the impugned orders. No order as to costs.

A.K.CHAWLA, J.

VIPIN SANGHI, J.

JANUARY 07, 2019

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