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

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Date of Decision: 14.03.2019

% **W.P.(C) 8573/2016 & CM APPL. 35301/2016**

ANITA JAIN & ORS

..... Petitioner

Through: Mr.A.K. Behera, Mr.Harpreet Singh
and Mr.A.P. Singh, Advocates

versus

THE HIGH COURT OF DELHI & ORS

..... Respondent

Through: Mr.Rajshekhar Rao and Mr.Anandh
Venkataramani, Adv, for respondent no.1
Ms.Palak Rohmetra and Ms.Sakshi
Shairwal, for Ms.Avnish Ahalawat,
Standing counsel for GNCTD (Services)
respondents No.2
Mr.Devesh Singh, ASC (Civil), GNCTD
and Ms.Sukriti Ghai, Advocate for
respondent no.3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. At the outset, it is pointed out by counsel for the petitioner that prayer (i) made in the present writ petition is incorrectly typed, inasmuch, as, the petitioners seek quashing and setting aside the impugned letter dated

6.3.2009 by which the Registrar General of the Delhi High Court conveyed to the District & Sessions Judge - I, Delhi, Central District, Tis Hazari Courts, (D & SJ-I) the decision taken by the Full Court in relation to the Scheme for merger of cadre of employees of Judge, Small Causes Court (including the non-clerical staff) with the cadre of employees of the District & Sessions Judge, Delhi. Counsel for the petitioner submits that, in fact, the petitioners are relying upon the communication dated 6.3.2009 and the same forms a cornerstone to the petition of the petitioner. However, he seeks quashing of the seniority list issued by the respondent no.2 i.e. the learned D&SJ-I.

2. The background facts are that the petitioners were recruited as LDC in Small Causes Court from 1.9.1983 onwards. At that point of time, the cadre of the employees of Small Causes Court and the Cadre of the employees of the District & Sessions Court were separately maintained. On account of there being very few promotional avenues /posts of UDC and Assistant (which are the next higher promotional posts in the hierarchy) in the cadre of the Small Causes Court, the association of the petitioners sought merger of the two cadres. In this regard, after submitting their representations, they preferred a petition [WP(C)No.19174/2004]. In the said writ petition the Delhi High Court filed its counter affidavit *inter alia* contending that the proposal for merger of the cadre of employees of Small Causes Court with that of the District & Sessions Judge, Delhi has been under active consideration of the High Court on its administrative side. It was informed that a Committee of three Hon'ble Judges has examined the matter and made certain recommendations, which have been placed before the Full

Court. However, the Full Court had not deliberated upon the matter till then, and final decision was yet to be taken. Consequently, the writ petition was disposed of, observing that it would be in the fitness of things that a decision on this aspect be taken at an early date, considering the fact that the writ petition has been pending for five years.

3. Consequent upon disposal of the writ petition, the respondent no.1 i.e. the High Court of Delhi issued a communication dated 6.3.2009. Material portion whereof reads as under:

“I am directed to forward herewith a copy of order dated 28.01.09 passed by the Division Bench of this Court in Writ petition (Civil) No.19174/2004 titled Judge Small Cause Courts Employees Welfare Association Vs. Govt. of NCT of Delhi & Ors.

I am also to inform you that Hon’ble Full Court considered the matter of merger and have been pleased to approve the following scheme for merger of cadre of employees of Judge Small Cause Courts including the non-clerical staff with the cadre of employees of District & Sessions Judge, Delhi.

“Recommended for lateral merger of cadre on the principle that seniority in the grade would be reckoned with effect from the date of entry / promotion to the grade. In case of date being the same inter se seniority be determined with reference to the date of birth.”

I am therefore, to request you to take appropriate steps for fixing inter se seniority of the employees of the Judge Small Causes Court with the cadre of employees of the District & Sessions Judge, Delhi, by adopting the above said scheme of merger.” (emphasis supplied)

4. In the meantime, the ACP Scheme was introduced in August, 1999 under the 5th Central Pay Commission Report. Under the said Scheme, the petitioners were granted up-gradation of pay to the promotional post of UDC and / or Assistant. For instance, petitioner no.1 was granted the 1st ACP benefit w.e.f. 1.8.1999, UDC, and the 2nd ACP benefit in the grade of Assistant w.e.f. 1.8.2007. The petitioner no.1 was also fortunate to get the substantive promotion to the post of UDC on 31.3.2009.

5. While implementing the decision of the Full Court as communicated vide communication dated 6.3.2009, the respondent no.2 i.e. the Ld. D&SJ issued the final seniority list on 31.2.2014. The manner of implementation of the decision of this court dated 6.3.2009 was that the merger was done on lateral basis in the substantive posts held by the employees of the Small Causes Court, without regard to the grade that they were drawing on account of implementation of the ACP Scheme. Thus, though petitioner No.1 was in the grade of Assistant w.e.f 01.08.2007 upon grant of 2nd ACP benefit, she was laterally merged with the UDC, since she was holding the post of UDC on substantive basis w.e.f. 31.03.2009. This mechanism adopted by respondent no.2 for drawing up of the seniority list is what the petitioners

are aggrieved of.

6. The submission of counsel for the petitioners is that the decision of this Court contained in the communication dated 6.3.2009, clearly recommends lateral merger of cadre on the principle that *seniority in the grade would be reckoned w.e.f. date of entry / promotion to the grade*. Thus what was relevant to be considered was the grade in which the petitioners were serving at the time of lateral merger, and not the substantive posts held by them. The purpose of the merger of the two cadres was precisely to redress the grievance of the employees in the cadre of Small Causes Court that they had hardly any promotional avenues available for their promotion. But by resorting to the manner in which the seniority list was drawn up by respondent no.2, that grievances continue to subsist, even though, this court had consciously resolved that the merger would take place laterally on the principle that seniority in the grade would be reckoned w.e.f. the date of entry / promotion to the grade. The date of promotion to the grade qua the petitioners were the dates on which they were granted the grades of UDC and/ or Assistant upon the implementation of the ACP Schemes.

7. Mr.Rao, counsel for the respondent no.1 submits that the impugned action has been taken by the respondent no.2. He submits that the only aspect that would require consideration is the impact that the said merger would have on the serving employees in the cadre of the District and Sessions Judge. Implementation of the decision of the Full Court, as suggested by the petitioners, may adversely affect the seniority of some of the existing members of the cadre of the District and Sessions Court.

8. Ms.Avnish Ahlawat, Ld. counsel for the respondent no.2 is not available. However, counter affidavit has been filed on behalf of respondent no.2. The stand taken by respondent no.2 in its counter affidavit is that the seniority of the petitioners could not be fixed in the promotional grade, since they were not actually promoted to the promotional posts.

9. Having heard the submissions of counsel for the parties, we find merit in the submission of the petitioner. Grant of higher grades to the petitioners upon implementation of the ACP Scheme was by application of the Recruitment Rules for the promotional posts of UDC and Assistant. They could not be given substantive promotions as UDC and / or Assistant on account of lack of promotional avenues. The Recruitment Rules for both the cadres are, admittedly, the same. It is precisely for this reason that this court, on the administrative side, decided to merge the two cadres and consciously observed that the lateral merger of the cadre would take place on the principles *that the seniority in the grade would be reckoned w.e.f. the date of entry / promotion to the grade*. The Full Court did not resolve that the lateral merger of the cadre would be on the principles that seniority would be reckoned on the basis of the substantive post held by the employees of the Small Causes Court. If the Full Court had intended to effect the lateral merger on the substantive posts held by the employees in the Cadre of Small Cause Courts, nothing prevented it from using the said clear expression.

10. The submission that due to the merger, the existing employees in the Cadre of the District and Sessions Courts would suffer prejudice, if the Full Court Decision is implemented as contended by the petitioners, in our view,

has no merit. Firstly, it is well settled that the merger of different cadres could result in some amount of heartburning somewhere or the other. Lateral merger of grades is a policy decision which is taken by the Court. That decision has not been assailed by anyone. Reference in this regard may be made to the ***Indian Airlines Officers' Ass. Vs. Indian Airlines Ltd. & Ors.*** (2007) 10 SCC 684, and more particularly paragraphs 31, which reads as under:

“31. For the similar reasons we do not think that merely because some of the employees of Indian Airlines would suffer in terms of seniority and ultimately in terms of their further chances of promotion, the whole scheme can be rejected as discriminatory or arbitrary. In T.N. Education Deptt. Ministerial and General Subordinate Services Assn. v. State of T.N. [(1980) 3 SCC 97 : 1980 SCC (L&S) 294] this Court was considering the question regarding the principle underlying the fixation of ratio between the two wings of a service in different levels like primary, middle and higher schools which were run by public sector consisting of Panchayats, District Boards and Governments. Eventually Panchayat schools were absorbed by the District Boards and ultimately the schools managed by the District Boards were taken over by the Government. While this fusion took place, the cut-off date was the date of entry into the District Board service and not the service under Panchayat which was regarded as relevant for the purpose of reckoning the seniority. This was challenged as it resulted in wiping out the earlier services of the teachers who had served with the Panchayat. The whole scheme of equalisation and absorption was challenged. This Court also noted that the staff i.e. teaching and the non-teaching staff absorbed as such was to be treated as if they were in the separate service in Education Department. In that, the promotional prospects which were

available to the erstwhile government employees were not open to the members of this new service who were erstwhile District Board's servants.” (emphasis supplied)

11. Secondly, the existing employees in the Cadre of the District and Sessions Court cannot have a valid grievance since the lateral merger of the Cadres can, possibly not result in a senior employee in the pre-existing cadre of District and Sessions Court being ranked junior to any employee in the pre-existing Cadre of Small Causes Court on the basis of length of service and grade. We are of the view that the fixation of seniority by the learned D&SJ –I, was clearly contrary to the policy decision taken by the Full Court, as contained in the communication dated 06.03.2009.

12. For the reasons, we allow the present writ petition and quash the impugned seniority list. We further direct respondent no.2 to re-fix the seniority of the petitioners in terms of orders issued. The revised seniority list shall be published within four weeks from today. Upon re-fixing of the seniority, the petitioners would be entitled to all consequential benefits.

13. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

MARCH 14, 2019

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