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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30.04.2019

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W.P.(C) No.6661/2017

RAJNI MEENA AND ANR

..... Petitioners

Through

Mr.Naresh Kaushik, Adv.

versus

DELHI SUBORDINATE SERVICES SELECTION
BOARD AND ORS

..... Respondents

Through

Mr.Satyakam, Adv. for R- 1 & 2.

Mr.Ashutosh Ghade, Adv. with

Mr.Nikhil Goel, Adv. for SDMC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

CM No.50337/2018 (for early hearing)

1. Since the writ petition is being taken up for hearing, the application is dismissed.

W.P.(C) No.6661/2017

1. The petitioner assails the order dated 26.04.2017, passed by the Principal Bench, Central Administrative Tribunal, New Delhi in CP No.633/2016 arising out of OA No.3826/2013. The Tribunal has dismissed the said contempt petition preferred by the petitioner alleging non-compliance of the order passed by the Tribunal in OA No.3826/2013. The said original application had been preferred by the petitioner to seek a direction to the respondents to declare the

merit list for recruitment of the Scheduled Tribe category candidates to the post of “Primary Teachers”, which recruitment process was undertaken in pursuance of the Advertisement No.2 of 2008 pertaining to the post code No.16/08.

2. The petitioner is a Scheduled Tribe category candidate. The petitioner has been issued a Scheduled Tribe category certificate dated 11.01.1993, on the premise that she belongs to the “*Meena*” caste/tribe which is recognised as a Scheduled Caste/Tribe in the state of Rajasthan. The petitioner had applied against the aforesaid Advertisement for the post of Primary Teacher. The respondent/Delhi Subordinate Services Selection Board (DSSSB) had undertaken the said recruitment process. She applied as a Scheduled Tribe category candidate. However, her candidature was not entertained as a Scheduled Tribe category candidate on the premise that Meena tribe was not listed as a Scheduled Tribe in the NCT of Delhi. The petitioner’s result was not declared on the ground that she is not a Scheduled Tribe category candidate from Delhi.

3. The petitioners then approached the Tribunal by preferring the aforesaid Original Application. On 11.08.2016, the Original Application was allowed by the Tribunal by placing reliance on the decision in *Ms.Babita Kumari & Ors. Vs. DSSSB & Ors.*, WP(C) No.7997/2012 dated 14.03.2013, and the decision of a Full Bench of this Court in *Deepak Kumar & Ors. Vs. District & Sessions Judge & Ors.* WP(C) No.5390/2010, dated 13.02.2013. The Tribunal directed the respondents to extend the benefit of the judgments of this Court to the petitioner/applicant within sixty days. On account of non-

compliance of the said decision, the petitioner preferred the aforesaid Contempt Petition.

4. The respondent/DSSSB filed an affidavit on 14th/17th.02.2017, stating that in compliance of the order of the Tribunal in Original Application, the DSSSB considered the case of the petitioner/applicant and passed an order on 02.02.2017. In the impugned order, the said order dated 02.02.2017 has been reproduced. After taking note of the said order, the Tribunal rejected the contention of the petitioner on the premise that compelling the respondent to extend the benefit of the judgment of this Court in *Ms.Babita Kumari* (supra) to the petitioner, would tantamount to directing the respondents to act in contravention of the law laid down by the Supreme Court in *Subhash Chandra & Anr. Vs. DSSSB (2009) 15 SCC 458*. Since the decision in *Deepak Kumar* (supra) was rendered on 12.09.2012, the decision in *Ms.Babita Kumari* (supra) could not be implemented in the facts of the present case.

5. Mr.Kaushik, learned counsel for the petitioner submits that the entire controversy has been set to rest by the Supreme Court in *Bir Singh Vs. Delhi Jal Board & Ors. (2018) 10 SCC 312*. In fact, Mr.Kaushik further points out that the impugned order is completely contrary to the directions issued by the same Tribunal in *Mausam & Ors. Vs. D.M. Spolia* in CP No.100/172.217 arising out of OA No.100/4027/2013. In that order, the Tribunal had observed as follows:-

“Reply affidavit has been filed on behalf of respondents by one Shri Rajesh Bhatia, Deputy

Secretary in D.S.S.S. Board. This reply affidavit has been accompanied with an order dated 01.03.2017 also passed by the same officer refusing to implement the judgment of this Tribunal. From the order dated 01.03.2017, we find that the said officer has sat over the judgment as a court of appeal and attempted to find faults with the judgment. This is clearly an over reach to the directions of this Tribunal. There was a clear direction contained in para 11 which reads as under:-

“11. In the light of our above discussions, we direct the respondents to extend the benefit of the judgment of Hon’ble High Court of Delhi in the case of Ms.Babita Kumari (supra) to the applicants herein as well. This benefit shall be extended to them within a period of 90 days from today.”

The respondents, if aggrieved, were entitled to seek appropriate remedy before the higher forum but they cannot be permitted to sit over the judgment and defy the same by any logic. This seems to be a wilful defiance of the directions of this Tribunal and is contemptuous in nature.

Be that as it may, the Tribunal is only concerned with the implementation of the judgment which is for up-holding the majesty of law. The respondents cannot be permitted to wriggle out of the directions by interpreting the judgment in their own manner.

In view of the above, we direct the personal appearance of Shri Rajesh Bhatia, to appear before this Tribunal. Shri K.M. Singh, learned counsel appearing for the respondents undertakes to cause his appearance. At this stage, Shri Singh submitted that the respondents may be allowed further opportunity to comply the judgment.

In view of this statement, we direct that the alleged contemnors need not appear on the next date of hearing if the judgment of this Tribunal is complied with, in the meantime.”

6. Only after the passing of the said order, the respondent/DSSSB implemented the order passed by the Tribunal in the Original Application preferred by ***Mausam & Ors.*** Upon a perusal of the record, we find that the only stand taken by the respondents before the Tribunal—to justify non-compliance of the order passed in OA No.2838/13, was that “*as per the standard principle of Jurisprudence, no law or judgment can be applied retrospectively for the obvious reason that retrospective application of any law or court ruling can unsettle and render as topsy-turvy matters/issues, which have already been settled and closed*”.

7. The aforesaid so called standard principle of jurisprudence is, in fact, completely contrary to the well established principle of law that when the law is declared by the Court, it is a mere declaration of the law as it has existed, and such declaration would not be only prospective unless it is so specifically stated. Thus, Mr.Satyakam, learned counsel for respondent nos.1 & 2 very fairly does not contest the fact that the petitioner is entitled to reservation as a Scheduled Caste category in the National Capital Territory of Delhi in the light of the decisions in ***Ms.Babita Kumari's*** (supra); ***Deepak Kumar*** (supra) & ***Bir Singh*** (supra).

8. We are amazed at the stand taken by the respondents before the Tribunal in its order dated 02.02.2017, and we are equally dismayed that the Tribunal has disregarded the decisions of this Court in ***Ms.Babita Kumari*** (supra) and ***Deepak Kumar*** (supra). The Tribunal was dealing with the contempt petition of the petitioner. The Original Application of the petitioner had already been allowed by following

the decision in *Ms.Babita Kumari (supra)* and *Deepak Kumar (supra)* with a direction to extend the benefit of reservation to the petitioner within sixty days. The respondents have themselves extended the same benefit to similarly placed persons in *Mausam & Ors.* (supra), of course, at the pain of contempt. Despite that being the position, the respondents had acted in the most unfair manner when it came to the petitioner's case. The result is that even though the petitioner is entitled to consideration of her candidature for the post, she has been denied due consideration and she has been languishing in Court for the past about six years. We may note that the selection process relates to posts advertised in the year 2008 and other similarly situated persons have already been recruited in 2010.

9. In view of the aforesaid position, we allow the present petition and set aside the impugned order passed by the Tribunal. We direct the respondents to declare the result of the petitioner within a week. In case the petitioner has secured higher merit than the last selected candidate in the Scheduled Tribe category, she shall be granted appointment. The same shall be notionally granted from the date when the same was granted to the candidate who would rank immediately below her in the ST category. She would be entitled to all notional benefits of seniority and increments/promotions. However, since she has not actually served on the post, she would not be entitled to any backwages.

10. We direct the respondents to ensure compliance of the order within the next four weeks.

11. The respondents are also directed to pay costs quantified at

Rs.75,000/- to the petitioner, on account of the undue harassment to which she has been put by the respondents. Costs be paid within four weeks.

Dasti.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 30, 2019/aa

