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

+ W.P.(C) 12291/2018 and CM No. 47642/2018

V. RANI

..... Petitioner

Through: Mr. Mrinal Madhav, Mr. Tarunesh Kumar, Mr. Kaushikesh Kumar and Mr. Vishal Rai, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. N.K. Singh and Ms. Aarushi, Advocates for GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

29.01.2019

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1. The petitioner has preferred the present writ petition to assail the order dated 23.10.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in OA No.1836/2014.

2. The petitioner had preferred the original application to assail the recruitment process undertaken vide advertisement dated 27.01.2014 for filling up the post of Senior Scientific Assistant (Chemistry). It was also sought that the petitioner be appointed as Senior Scientific Assistant on regular basis. The petitioner had placed reliance on the decision of the Supreme Court in *Secretary, State of Karnataka V. Umadevi & Ors.* (2006) 4 SCC 1 and *Ashish Chanana and Ors. V. Govt. of NCT of Delhi & Ors.*,

W.P. (C.) No. 1045/2013 decided on 03.05.2013. In the alternative, she sought the direction to Delhi Subordinate Staff Selection Board (DSSSB) for holding special qualifying examination for treating her as a separate class, giving due weightage for her 12 years' service on the said post. The petitioner also sought the direction to the respondents to regularise her service.

3. Since the tribunal has rejected the said original application, the petitioner is before us.

4. The respondents have filed the counter affidavit from which it appears that on two earlier occasions the petitioner had approached the Tribunal and then this Court, to seek the relief of regularisation. On both the occasions, decisions have been rendered against the petitioner which have attained finality.

5. In the first round, the petitioner along with others preferred OA No.1818/2004 wherein the petitioner sought 'equal pay for equal work' and regularisation of her service. The Tribunal granted part relief by directing the respondents to consider the case of the applicant on the principal of equal pay for equal work. However, the second relief of regularisation sought by the petitioner and others was declined and, consequentially, W.P. (C.) No. 10098/2004 was preferred before this Court. This Court dismissed the writ petition on 30.07.2004 while observing as follows :

“Petitioners are working as Senior Scientific Assistants in Drug Control Department. They were appointed on contract basis. They filed OA 1818/2004 before CAT, Delhi seeking equal pay for equal work and regularisation of their services. Tribunal

has granted them part relief by directing respondent to consider their case on the principle of equal pay for equal work. Tribunal has also directed that their case be considered in accordance with the recruitment rules. They feel dissatisfied with this and want that they should be treated as a separate class for filling up posts of Senior Scientific Assistants in accordance with the recruitment rules. We have examined the tribunal judgment and we find nothing wrong in it because petitioners would have to enforce rights in accordance with the recruitment rules.

At this stage counsel submitted that respondent has started a fresh recruitment process in which they had applied but they could not take the examination because of some unavoidable circumstances. He prays that respondent be directed to allow them to participate in the selection process.

This request of the Petitioners' cannot be entertained by us at this stage as they will have to approach the tribunal again.

Writ petition is dismissed with liberty to petitioners to seek appropriate remedy under law for their fresh grievance. Dasti."

6. After the dismissal of the said writ petition, the petitioner along with others preferred OA No.2035/2004 and sought a direction to the DSSSB to hold qualifying examination by treating them as separate class and to regularise service with all consequential benefits. The Tribunal observed that the respondents had advertised for the post of Senior Scientific Assistant in December, 2003. Though, the applicants had applied for the post, they had not participated in the examination. Instead, they had preferred Writ Petition (Civil) No.10098/2004 as noticed above. The Tribunal dismissed the original application while observing as follows :

“13. Earlier the grievances of the applicants as reflected in OA-181/2004 was as under:-

“ The precise grievance of the applicants is that though they were appointed on contract basis, should be treated as a separate class and their claim for regularization should be considered. They also claim that they are entitled to the same privilege in matters of pay, etc, as regular employees.”

14. The decision cited now by the learned counsel of the applicants in Dr. G.P. Sarabhai and etc. were taken into consideration and was distinguished. Relying upon a catena of decisions, the following observations have been made:-

“ Reverting back to the facts of the present case, as is apparent from what we have reproduced above, the applicants had applied in pursuance of an advertisement which wanted persons to be appointed on contract basis. The appointment letter of the applicants also indicate that they have been appointed on contract basis. Once they have been so appointed do hors the recruitment rules, they cannot contend that they should be appointed on regular basis.

During the course of the submissions, we were informed that even advertisement has been issued for regular appointment on these posts. In that event, the applicants should be well advised to apply and their all the facts and circumstances.”

15. High Court of Delhi when approached in WPC 10098/2004 observed as under:

“Petitioners are working as Senior Scientific Assistants in Drug Control Department. They were appointed on contract basis. They filed OA-1818/2004 before CAT, Delhi seeking equal pay for

equal work and regularization of their services. Tribunal has granted them part relief by directing respondent to consider their case on the principle of equal pay for equal work. Tribunal has also directed that their case be considered in accordance with the recruitment rules. They feel dissatisfied with this and want that they should be treated as a separate class for filling up posts of Senior Scientific Assistants in accordance with the recruitment rules. We have examined the tribunal judgment and we find nothing wrong in it because petitioners would have to enforce rights in accordance with the recruitment rules.”

16. If one has regard to the above, the earlier plea of the applicants to treat them as a separate class for regularization has been turned down by the Tribunal and is affirmed by the High Court. This has attained finality and there is no indication as to either stay or reversal of the decision of the High Court in SLP and accordingly once the issue has been substantially concluded between the same parties in earlier proceedings, the present grievance is certainly barred by the doctrine of res judicata.

17. Moreover, we find that the only scope of liberty accorded to the applicants was that they could not participate in selection process due to unavoidable circumstances. We do not find even a whisper about these unavoidable circumstances. The only circumstances as reflected is that they had to compete with the fresh entrants and their experience gained earlier would be a futility and this would amount to treating unequals equally as already had been considered and rejected the scope of liberty granted by the High Court is misconceived.”

7. The Tribunal further observed as follows :

“19. If one has regard to the above, in the light of decision of High Court of Delhi in Sandeep & Ors. case (supra) the applicants having been appointed on contract basis, for their

regularization they had to compete in an open competition and as the mode of selection is through DSSSB, their non participation in the examination having been conducted, they are estopped from challenging the same for want of any mala fide or process not being in violation of any rules. They had lost their right to apply and to participate in the selection. As contractual appointees, they have no right to be regularized except in concurrence with the recruitment rules. However, this shall not preclude the applicants to participate in the recruitment/selection process in accordance with statutory rules.”

8. Against this decision of the Tribunal, the petitioner and others again approached this Court vide Writ Petition (C) No.6613-18/2005 which too, was dismissed on 15.04.2005.

9. The submission of learned counsel for the petitioner that since the petitioner has been working for about 17 years, the petitioner should be regularised in terms of the decision of the Supreme Court in ***Umadevi*** (supra), has no merit. The petitioner was required, as per the recruitment rules to participate in the open selection process. The petitioner, however, did not chose to participate in the said selection process and only when the fresh selection process was undertaken in the year 2014, the petitioner had participated.

10. Learned counsel for the petitioner states that the final result has not been declared. The submission of learned counsel for the petitioner is that the petitioner should be accorded weightage for the long service rendered with the respondent for the same post for which the recruitment has been undertaken.

11. We think the respondents should seriously examine this request of the petitioner considering the fact that the petitioner has been servicing on the very post for which recruitment is underway. Obviously, the petitioner's services have not been found to be unsatisfactory, and that is why, she has been continuing on the post for the last 17 years, though, on contract basis. The respondent should pass a considered and reasonable order in this regard within four weeks from today, which may be communicated to the petitioner.

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

VIPIN SANGHI, J

YOGESH KHANNA, J

JANUARY 29, 2019
VLD