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

% *Date of Judgment: 16th September, 2019*

+ W.P.(C) 9478/2017

ROHIT GUPTA AND ANR.

..... Petitioners

Through Mr. Sunil K. Mittal with Mr. Divgosh
Arora and Mr. Harshit Vashisht,
Advocates

versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondents

Through Mr. Ramesh Singh, Standing Counsel
GNCTD with Mr. Chirayg Jain and
Mr. Ishan Agarwal, Advocates.
Ms. Amrit Kaur Oberoi with Ms.
Sonali S.S, Advocates for respondent
no.4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present writ petition is filed under Article 226 of the Constitution of India by the petitioners *inter alia* seeking the following prayers:

- “a) Issue a writ of Certiorari or any other writ, order or direction thereby striking down the Notifications No.30(405)/ Amendment of Rules-MAWPSC2007/DD(SS)/DSW/ 2015-16/24836-865 dated 19.12.2016 as well as subsequent Notification No.30(405)/ Amendment of Rules-MAWPSC2007/DD(SS)/DSW/ 2015-16/11684-11712 dated 28.07.2017 issued by the Respondent No.1, i.e. Government of NCT of Delhi in purported exercise of powers conferred under Section 32 of the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 as being *ultra-vires*, and that those Rules cannot be used as a subterfuge to introduce a new substantive provision under the Act;

- b) Issue appropriate writ, order or direction thereby setting-aside the order dated 24.10.2017 passed by the Ld. Appellate Authority(Respondent Nop.2) whereby the order dated 09.10.2017 passed by Sh. B.S. Jaglan, Ld. Deputy Commissioner/ District Magistrate (South-East District), New Delhi (respondent No.3) in Case No.110/2017 titled as “Smt. Omwati Gupta vs. Sh. Rohit Gupta & Ors.” has been upheld and incidentally also quash the order dated 09.10.2017.
2. Both the prayers made in the writ petition stand answered. As far as prayer (a) is concerned, it is decided against the petitioners by a decision dated 30.05.2019 passed in W.P.(C).347/2018 in the case of ***Aarshya Gulati (Through: Next Friend Mrs. Divya Gulati) and Ors. v. Government of NCT of Delhi and Ors.*** Prayer (b) stands decided in favour of the petitioners in terms of a judgment dated 13.11.2018 of a learned Single Judge of this Court in the case of W.P.(C). 11703/2018 in the case of ***Sudesh Chhikara v. State(Govt. of NCT of Delhi) & Ors.*** The relevant paragraphs 12 to 14 of the judgment in the case of ***Sudesh Chhikara*** (supra), are reproduced below:

“12. Clause (ii) of Rule 22(3)(4) of the said Rules only incorporates the provisions regarding disposal of an appeal as provided under Section 16 of the Act. The provisions regarding disposal of an appeal by the Appellate Tribunal are set out in sub-sections (2) to (7) of Section 16 of the Act. Sub- section (2) of Section 16 of the Act pertains to service of notice on the respondent; sub-section (3) of Section 16 of the Act enables the Appellate Tribunal to call for records of the proceedings from the Tribunal against whose order the appeal is preferred; sub-section (4) of Section 16 of the Act provides that the Appellate Tribunal may after examining the appeal and records either allow or reject an appeal; sub-section (5) of Section 16 of the Act

provides that the order of the Appellate Tribunal would be final and further provides that an appeal would not be rejected unless an opportunity has been provided to both the parties of being heard in person or through a duly authorised representative; sub-section (6) of Section 16 of the Act provides that the Appellate Tribunal would endeavour to pronounce its order in writing within a period of one months of receipt of the appeal; and, sub- section (7) of Section 16 of the Act provides that a copy of the order shall be sent to both the parties free of cost. By virtue of Clause (ii) of Rule 22(3)(4) of the said Rules, the aforesaid provision also apply to appeals before a Divisional Commissioner. However, the provisions of Section 16 (1) of the Act, which pertains to the institution of an appeal - and not its disposal - cannot be readily inferred as incorporated by reference in Rule 22(3)(4) of the said Rules.

13. Before concluding, it would also be relevant to refer to the decision of a Division Bench of Punjab and Haryana High Court in ***Paramjit Kumar Saroya v. Union of India and Another***: AIR 2014 P&H 121, wherein the Court had interpreted Section 16 (1) of the Act to also provide the right of appeal to any of the affected parties. In terms of the said decision, the provisions of Section 16 (1) of the Act cannot be read to limit the appeal only to one party (Senior Citizens or Parents as the case may be), as the same would render the provisions invalid. The Court had reasoned that to sustain the validity of Section 16 (1) of the Act, the same must be interpreted by applying the principles of purposive interpretation and casus omissus. The Court rejected the challenge to the validity of Section 16 (1) of the Act but held that "it must be read to provide for the right of appeal to any of the affected parties."

14. This Court is not called upon to examine the validity of Section 16 (1) of the Act or even to decide whether an appeal under Section 16 (1) of the Act is available to either of the parties (and not to senior citizens or parents alone). It is not necessary to consider the aforesaid question in this petition as on a plain reading of Rule 22(3)(4) of the said

Rules, the appeal to a Divisional Commissioner is not restricted only to senior citizens or parents, as the case may be.”

3. Mr. Ramesh Singh, learned counsel for the Government of NCT of Delhi submits that the judgment passed by the learned Single Judge of this Court has been accepted by the Government.
4. Mr. Mittal, learned counsel for the petitioners points out that in view of this interpretation of Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rule 23(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, he would approach the competent court of jurisdiction by filing a fresh appeal against the order dated 09.10.2017, to which the counsels for the respondents have no objection.
5. In case such an appeal is filed within 15 days of passing of this order, the plea of limitation will not be raised by respondent no.4, as agreed by the counsel appearing.
6. With these directions, the writ petition stands disposed of.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 16, 2019

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