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

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Date of Decision: 25.01.2019

% **W.P.(C) 10279/2017 and CM APPL. 41921/2017**

MEWA LAL PAL AND ANR.

..... Petitioners

Through: Mr. A.K. Trivedi & Mr. Naveen
Kumar, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms. Shipra Shukla, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the present writ petition to assail the order dated 02.11.2017 passed by the Tribunal in a batch of Original Applications, including their O.A. No.4417/2013. The Tribunal, by the impugned order, has dismissed all the Original Applications, wherein, inter alia, the petitioners assailed the notice dated 27.11.2013 issued by the DRM Railways. By the said notice, it was communicated to the petitioners that the appointment of petitioner No.2/ Janardan Pal as Electric Khalasi under SSE/OHE/ PTNR under the LARSGESS Scheme on 20.08.2013 was

improper inasmuch, as, the said scheme did not cover the Electric Department where petitioner No.1/ Mewa Lal Pal, the father of petitioner No.2 Janardan Pal was serving, and wherefrom he took VRS under the said scheme so that the petitioner No.2 could get employment. This communication also intimated that Mewa Lal Pal, i.e. petitioner No.1 could not be granted VRS under the LARSGESS Scheme and his VRS stood cancelled with immediate effect. He was informed that he was taken back in duty.

2. The Tribunal has dismissed the Original Applications taking into consideration the fact that the said scheme was found by the Punjab & Haryana High Court in ***Kala Singh & Others Vs. Union of India & Others***, CWP No.7714/2016 decided on 27.04.2016, to be unconstitutional. The Court ruled that the said scheme provided for back-door entry into the Railways and, thus, it offended public policy and was opposed to Articles 14 and 16 of the Constitution of India. The Special Leave Petition preferred before the Supreme Court, i.e. S.L.P.(Civil) No.4482/2017 was dismissed by the Supreme Court on 06.03.2017.

3. Similarly, another scheme – similar to the LARSGESS Scheme, formulated in respect of the employees of Singareni Collieries Company Limited was struck down by the High Court of Judicature at Hyderabad for the States of Telangana & Andhra Pradesh and that decision was upheld by the Supreme Court vide order dated 17.04.2017 in S.L.P.(Civil) No.11566/2017 titled ***Telangana Boggu Gani Karmika Sangam Vs. K. Satish Kumar & Others***.

4. The submission of learned counsel for the petitioners is that the respondents had implemented the said LARSGESS Scheme qua petitioner No.1, and consequently, granted appointment to petitioner No.2 on 20.08.2013. Since then, petitioner No.2 has been serving with the respondents. When the impugned communication dated 27.11.2013 was issued, the petitioners approached the Tribunal and the Tribunal stayed the operation of the said order. Consequently, the petitioner No.2 has been serving with the Railways since 2013.

5. Considering the aforesaid circumstances, even though the LARSGESS Scheme has been declared to be unconstitutional, we are inclined to preserve the appointment of the petitioner No.2. It was not the fault of either of the petitioners when petitioner No.2 was granted appointment under the then prevailing LARSGESS Scheme upon petitioner No.1 seeking VRS under the said Scheme. Since the appointment had already been granted to petitioner No.2 and he has been serving since then, to discontinue his services at this stage would be highly inequitable.

6. The stand taken by the respondents that the said LARSGESS Scheme is not applicable qua Electric Department also cannot be appreciated. The petitioners cannot be made to suffer for the said lapse on the part of the respondents. Had petitioner No.2 not been granted appointment on 20.08.2013, he would have pursued other avenues and may have got other similar or even better employment. At this stage, it would be unjust to discontinue his services.

7. Consequently, while dismissing the present petition, we direct that the

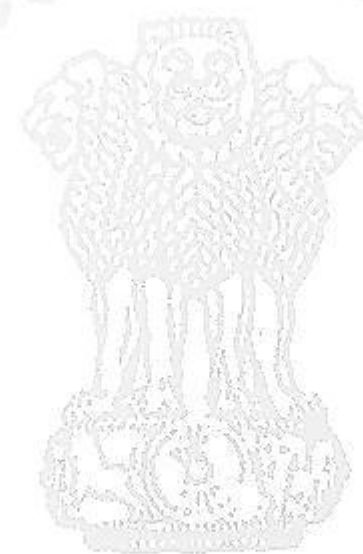
services of petitioner No.2 should not be discontinued only on account of the LARSGESS Scheme being declared *ultra vires*, or on account of the fact that the said scheme was not applicable to the Electric Department when appointment was granted to petitioner No.2.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

JANUARY 25, 2019

B.S. Rohella



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