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

+ **LPA 63/2020, CM APPL. 4147/2020 , CM APPL. 4146/2020, CM APPL. 4148/2020**

UNION OF INDIA

..... Appellant

Through: Mr. R. V. Sinha, Adv. with Mr. A. S. Singh, Mr. Amit Sinha, Ms. Sharanya Sinha and Mr. Vaibhav Pratap Singh, Adv.

versus

UMA KANT DUBEY & ORS

..... Respondents

Through: Mr. Amit Anand, Adv.
Mr. D. S. Raj Ganesh, Legal Advisor and Ms. Shaheen Purveen (Legal Assistant) for R-2 to 4.

+ **LPA 64/2020, CM APPL. 4150/2020, CM APPL. 4151/2020, CM APPL. 4149/2020**

UNION OF INDIA

..... Appellant

Through: Mr. R. V. Sinha, Adv. with Mr. A. S. Singh, Mr. Amit Sinha, Ms. Sharanya Sinha and Mr. Vaibhav Pratap Singh, Adv.

versus

AJAY KUMAR SINGH & ORS

..... Respondents

Through: Mr. A.K. Singh, Adv. for R-1.
Mr. D. S. Raj Ganesh, Legal Advisor and Ms. Shaheen Purveen (Legal Assistant) for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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03.02.2020

1. The Union of India has preferred the present two Letters Patent Appeals to assail the common order dated 30.04.2013 passed by learned Single Judge, disposing of the writ petitions preferred by Mr. Uma Kant Dubey [W.P.(C) 4239/2012] and Mr. Ajay Kumar Singh and Anr [W.P.(C) 4257/2012].

2. The respondents had preferred the aforesaid writ petitions to assail the Office Memo dated 15.06.2012 /18.06.2012 issued to them by respondent No.2. whereby the petitioners named above were asked to show cause as to why their services should not be terminated forthwith on the ground that the posts held by them, of Senior Scientific Officer and Deputy Registrar respectively, respondents are not included in the IVth Schedule of the Protection of Plant Varieties and Farmers' Right Act, 2001. It was thus contended that their recruitment and appointment by the respondent No.2/authority was in contravention of Protection of Plant Varieties and Farmers' Right Act, 2001 and the rules framed thereunder.

3. The respondent No.2 had issued an advertisement in employment news on 15.09.2007/21.09.2007 inviting applications for filling up the post of Deputy Registrar in the pay scale of Rs. 10,000-15,200/-. The advertisement prescribed the eligibility, qualifications and experience required for the said post. Mr. Uma Kant Dubey, being qualified for the said post, applied in response to said advertisement. On his selection, he was accordingly appointed to the post of Deputy Registrar. Subsequently, the impugned show cause notice/OM was issued claiming that the post of Deputy Registrar was not one of the posts, enumerated in the schedule to the aforesaid Act to which the authority could make appointments.

4. Similarly, in respect of Mr. Ajay Kumar Singh, the advertisement issued on 17.02.2007/23.02.2007 invited applications for the posts of Senior Technical Officer in the pay scale of Rs.6500-10,500/-. Mr. Ajay Kumar Singh being qualified in the terms of the advertisement applied and was called by the selection committee and was eventually appointed on the said post on 12.10.2007. He too was visited with a similar memorandum on the same premise as aforesaid.

5. The learned Single Judge, after notice to respondent No.2/authority, disposed of the two writ petitions by common impugned order. The operative part of the said impugned order reads as follows:

“5. In my opinion, unless there is a specific express bar to recruit officers and employees by the respondent-Authority by direct recruitment, Rule 20 cannot be read so as to prevent creation of sanctioned posts, provided the sanctioned, posts, are created by following the due process including obtaining approval of the Central Government who has control of the Authority functioning under the Act.

6. I may state that aforesaid are only prima facie observations inasmuch as writ petition can be presently disposed of in view of the decision taken by the Authority in its 17th Meeting dated 19.10.2012 and which read as under.

16	<i>Consideration of request of incumbents to the posts of Joint Registrar, [Deputy Registrar and Senior Technical Officers for substantive</i>	<i>Considering the circumstances of the case and also in view of the fact that Sh. Dipal Roy Choudhury, Joint Registrar, Sh. Umakant .dubey, Deputy Registrar, Dr. A.K. Singh and</i>
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	appointments	Dr. Susheel Kumar, Senior Technical Officers have been working resigning their previous posts in response to the advertisement given by the Authority and have been selected in a proper manner, <u>the Authority resolved to allow them to continue on their respective posts and status quo may be maintained.</u> The member secretary informed one of the employee (Dr.Susheel Kumar, STO) has already resigned on being selected for the post of Assistant Professor in the University. <u>It was also recommended that the case for inclusion of these posts in the fourth schedule should be done with retrospective dates.</u> Further the Authority desired that the Recruitment Rules framed in accordance with FPV&FR Rules 2003 already approved by the Authority should be expedited by the Authority with the Govt., in order to avoid such complications in future.
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7. In my opinion, in view of the peculiar facts and circumstances of the case it would be advisable for the concerned Authority to examine the impact of sub rule 3 of Rule 20 and also as to whether the same can in any manner constrict the operation of Section 6 of the impugned parent Act inasmuch as the said provision of Section 6 does not bar appointments by direct recruitment on and after

creation of posts, in terms of the necessary approval from the Central Government.

8. This writ petition is, therefore, disposed of in view of item 16 of the 17th Meeting of the Authority dated 19.10.2010 and the petitioners will not be removed from their services and will be regularized from the date of their original appointments as stated in item 16 of the IVth Meeting of the Authority dated 19.10.2012. The Authority under the Act may follow whenever procedure is required in accordance with law for acting upon item 16 of the 17th Meeting of the Authority-dated 19.10.2012. It is clarified that in case the petitioners are aggrieved as in future, of any action seeking to remove them from services or not regularizing their services from the original date of appointment or their confirmations, then petitioners are at liberty to approach the Court at that stage.

9. It is clarified that petitioner No.2 in W.P.(C) 4257/2012 has already left the services of respondent-Authority and, therefore, the writ petitions stand allowed and disposed; of with respect to the remaining petitioners in terms of the observations made above.”

6. The submission of Mr. Sinha, learned counsel for the appellant is that the Union of India was not made a party to the writ proceedings and that the impugned order has been passed behind its back. The appellant has disclosed that it learnt about the impugned order in May 2016. On perusal of the averments made in their application for seeking condonation of delay, it is revealed that even after allegedly learning of the impugned order in May 2016, it was only on 08.05.2019, that the appellant ultimately decided to direct respondent No.2/Authority to fix the responsibility for the alleged lapse in making appointment of the respondents, contrary to the Act and the rules, and directed the authority to take disciplinary action.

7. Pertinently, this decision was taken only after three years of learning of the impugned order. It is also evident that the respondent No.2/authority had been seeking the ex post facto approval of the appellant i.e. the Ministry of Agriculture and Farmers Welfare, Department of Agriculture, Co-operation and Farmers Welfare for regularization of the appointment of the respondents ever since they were appointed. Therefore, for the appellant to claim that it was not aware of the appointments of the respondents since 2007 does not appear to be correct. It is pertinent to note that, even in May 2016, the appellant did not choose to take any action against the appointment of the respondents and all that it did was to decide to take disciplinary action against the concerned officers of respondent No.2/authority. It is equally pertinent to note that in the year 2015, the IVth Schedule to the Protection of Plant Varieties and Farmers' Right Rules, 2003 was amended and several other posts were included therein, for which the authority was authorized to make appointment on its own which included to the post of Senior Technical Officer as well.

8. It was also significant to note that under the amended Schedule, though the nomenclature of Deputy Registrar has not been used, one post of Senior Technical Officer has been created in the same pay band III (Rs. 15600-39100) with grade pay of Rs. 6600. Thus, the respondent No.2/authority has been empowered to make appointment of qualified personnel in the said pay band and the said grade pay.

9. The counsel for the respondents who appear on advance notice points out that the appointments of respondents were made only after the concerned

ministry had approved the rules for such appointments.

10. In these circumstances, looking at the conduct of the appellant and the immense delay under which the present appeal has been preferred, we are not inclined to interfere with the impugned order.

11. Accordingly, for the foregoing reasons, the present appeals are dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 03, 2020

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