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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5871/2021 & CM No.18432/2021 (for directions)
WG CDR NIDHI BADHANI Petitioner

Through: Mr. S.S. Pandey, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Satya Rajan Swain, Mr. Sahaj
Garg & Mr. Kautilya, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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04.06.2021

CM Nos.18433/2021, 18434/2021, 18435/2021 & 18436/2021 (all for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The applications are disposed of.

W.P.(C) 5871/2021 and CM No. 18432 (for directions)

3. The petitioner, a Short Service Commission (SSC) Officer in the respondents Indian Air Force (IAF) and whose maximum period of SSC of 15 years is lapsing on 17th June, 2021, aggrieved from denial of Permanent Commission, has filed OA No.185/2020 before the Principal Bench, New Delhi of Armed Forces Tribunal (AFT) and which OA No.185/2020 is pending consideration and listed next on 20th July, 2021.
4. The petitioner filed MA No.959/2021 in the aforesaid OA, seeking stay of her discharge from the respondents IAF, scheduled for 17th June, 2021.

5. AFT, vide impugned order dated 28th May, 2021, though has issued notice of the aforesaid application/ MA No.959/2021 to the respondents but has kept the MA also for consideration on 20th July, 2021, observing “In the meanwhile, even if the applicant is discharged from service, her right to claim the benefits in the original application and further right for consideration for grant of Permanent Commission shall not be adversely affected and the discharge will be subject to any order that may be passed by this Tribunal in the pending original application”.

6. We have drawn the attention of the counsel for the petitioner to our recent judgment in **Rohit Sharma Vs. Union of India** 2021, SCC OnLine Del 2444, holding as under:

*“8. As far as the other contentions of the counsel for the petitioner are concerned, though our sympathies are with the petitioner but we, in law are not empowered to pass an interim order, the effect whereof cannot be undone at the final stage. The Court, whenever passes an interim order, at the time of final adjudication is required to and ought to balance the equities flowing from the said interim order. Reference in this regard may be made to **Abhimanyoo Ram Vs. State of U.P.** (2008) 17 SCC 73, **Ramesh Chandra Sankla Vs. Vikram Cement** (2018) 14 SCC 58 and **Ruchika Cables Pvt. Ltd. Vs. The Secretary (Labour)** MANU/DE/1033/2010.*

*9. No answer is forthcoming to, how in the event of the OA being ultimately dismissed, the presence of the petitioner on the rolls of the respondents Indian Navy, after the date of the service of the order of discharge will be explained. Supreme Court, in **State of Haryana Vs. Suman Dutta** (2000) 10 SCC 311, has observed that by an interim order, if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same. Similarly, in*

State of U.P. Vs. Sandeep Kumar Balmiki (2009) 17 SCC 755, it was held that by an interim order, termination of employment could not be stayed as giving such a relief amounted to allowing the writ petition itself. In *Bhankra Byas Managing Board Vs. Suresh* (2009) 7 SCC 515 also, while setting aside an interim order of the High Court granting compassionate employment, the Supreme Court observed that the High Court was not justified in granting such interim order at the admission stage and although a decree had been passed against the appellant directing the appellant to make compassionate appointment, but at the interim stage of the second appeal, the appellant could not be directed to appoint the respondent, on the statement of the respondent that he was ready to forego the past benefit if he was taken in service. Reference may also be made to the dicta of this Court in, *Air India Ltd. Vs. Aditya Beri* 2012 SCC OnLine Del 3014 and *The Co-operative Store Ltd., Superbazar Vs. Superbazar Karamchari Hitesh Sangathan* 2012 SCC OnLine Del 5431.

10. Notice may also be taken of the observations of the Supreme Court in *U.P. Junior Doctors' Action Committee Vs. B. Sheetal Nandwani* 1992 Supp (1) SCC 680, though in different facts. It was held to be a well-known rule of practice and procedure, that at interlocutory stage, a relief which was asked for and was available at the disposal of the matter, is not granted. The writ petitioners in the said case wanted admission into postgraduate course as the main relief in the writ petition. Supreme Court observed, that unless there was any special reason to be indicated in clear terms in an interlocutory order, as a rule no provisional admission should be granted and more so into technical courses. It was further held that grant of such a relief at the threshold creates a lot of difficulties and in a case where the petitioner ultimately loses in a case of this type, a very embarrassing situation crops up if he has by then read for two to three years, there is a claim of equity, on the plea that one cannot reverse the course of time."

7. The counsel for the petitioner has contended that the petitioner has been wrongly denied the Permanent Commission and the case of the petitioner is fully covered by other cases decided by the AFT.

8. Once the position in law is as aforesaid, i.e. that by interim order none can be permitted to occupy a public office and once the balance of convenience is in favour of the respondents and not in favour of the petitioner, inasmuch as the petitioner if ultimately succeeds can always be reinstated to the same position, no perversity is found in the impugned order of AFT.

9. The counsel for the petitioner contends that reinstatement in service would cause difficulties to the petitioner. However neither are the said difficulties described nor is the counsel for the petitioner, on our asking, also able to enumerate the same.

10. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 4, 2021

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