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

+ LPA 307/2020 & CM No.26341/2020 (for stay)

MAHENDRA SINGH & ORS

..... Appellants

Through: Mr. Prashant Bhushan, Mr. Biraja Mahapatra, Ms. Alice Raj and Mr. Rahul Gupta, Advs.

Versus

ENERGY EFFICIENCY SERVICES LTD. & ANR Respondents

Through: Mr. Raman Kapur, Sr. Adv. with Mr. Samdarshi Sanjay and Mr. Varun Kapur, Advs. for R-1.
Mr. Anil Soni, Adv. for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **08.01.2021**

[VIA VIDEO CONFERENCING]

1. The appeal impugns the order dated 12th October, 2020 of the Single Judge, of dismissal of W.P.(C) No.7797/2020 filed by the appellants along with several others, impugning the advertisement dated 15th October, 2019 issued by the respondent No.1 Energy Efficiency Services Ltd. (EESL) and seeking mandamus, directing the respondent No.1 EESL to absorb the appellants and other petitioners in regular positions, after declaring the result of the interviews held between 24th June and 26th June, 2019 and the non-executive petitioners, on the basis of Annual Confidential Reports.

2. The Single Judge, finding that the impugned advertisement was issued on 15th October, 2019 and the writ petition impugning the same had been

filed on 28th September, 2020 i.e. after the recruitment process in pursuance to the impugned advertisement had begun and was at an advanced stage, vide the impugned order/judgment has dismissed the writ petition as barred by delay and laches.

3. It was *inter alia* the case of the appellants and the other petitioners in the writ petition, (i) that they were employed with the respondent EESL as fixed tenure employees; (ii) that they, at the time of filing of the writ petition, had been working with the respondent EESL for about 3 to 4 years and that there was a policy for regularising them, but they had not been regularised; (iii) that without regularising the appellants and the other petitioners, the respondent EESL had vide the impugned advertisement commenced the process of recruiting fresh employees and which the respondent EESL was not entitled to, without considering the appellants and other petitioners for recruitment; and, (iv) that additionally, as aforesaid, mandamus for regularisation of the appellants and the other petitioners was sought.

4. The appeal came up before this Court first on 16th October, 2020, when notice thereof was ordered to be issued and the examination in pursuance to the impugned advertisement was permitted to be held subject to the outcome of this appeal.

5. From a reading of the impugned order, it appears that the only relief claimed in the writ petition was of impugning the recruitment advertisement. We have thus asked the counsel for the appellants and other petitioners, the locus of the appellants and other petitioners to impugn the recruitment advertisement and process and further enquired, whether not the remedy of the appellants and the other petitioners was to seek the relief of

regularisation.

6. The counsel for the appellants states that the appellants are not just impugning the advertisement but are also seeking the relief of regularisation of the appellants and the other petitioners and has drawn our attention to the second relief claimed in the writ petition.

7. We have next enquired from the counsel from the appellants, whether the appellants and other petitioners are 'workmen', inasmuch as, if they are covered by the Industrial Disputes Act, 1947, their remedy would be before the Labour Court / Central Government Industrial Tribunal (CGIT).

8. The counsel for the appellants states that neither the appellants nor the other petitioners fall in the definition of 'workmen'.

9. We have in the circumstances, enquired the stand of the respondent EESL.

10. The senior counsel for the respondent EESL has drawn our attention to the recruitment policy of the respondent EESL and on a reading whereof, it transpires that in the modes of recruitment provided therein, the mode of recruitment for fixed tenure does not exist. The senior counsel for the respondent EESL has however drawn our attention to the EESL Service Rules for Fixed Tenure Employees, which provides for recruitment for fixed tenure for four and a half years. Attention has also been invited to the Recruitment Policy of the respondent EESL where a provision is made for absorption of the fixed tenure employees.

11. We have next asked the senior counsel for the respondent EESL, why the mode of appointment admittedly contained in the recruitment policy, of absorption of fixed tenure employees, has not been undertaken and whether the appellants and the other petitioners have been considered for absorption.

12. The senior counsel for the respondent EESL states that the respondent EESL was in the process of such consideration but was instructed by the Chief Vigilance Officer, to conduct the recruitment on all-India basis and in pursuance where to the respondent EESL scheduled the examination, impugning which the writ petition was filed. He also states that save for one, all the other petitioners in the writ petition have participated in the recruitment process.

13. We may in this context notice that the petitioners, in the writ petition, though have also claimed the relief of regularisation but interestingly, not independently, but "after declaring the results of the interviews held between June, 24 and 26, 2019". We have enquired from the counsel for the appellants, whether the said interviews undertaken by the writ petitioners were pursuant to the impugned advertisement.

14. The counsel for the appellants states that the said interviews were not held as part of the recruitment under the impugned advertisement but in pursuance to the proposal for absorption of the fixed tenure employees, earlier undertaken by the respondent EESL vis-a-vis the writ petitioners.

15. We also find that the Single Judge, in paragraph 3 of the judgment, has also referred to the interviews for regularisation but not dealt with the same. We are of the view that only the first relief claimed in the writ petition, of impugning the advertisement, could have been held to be barred by delay and laches and not the relief of regularisation, since the writ petitioners continued to be in the employment, though fixed tenure, of the respondent EESL and remained entitled to seek regularisation.

16. The said aspect having not been dealt with by the Single Judge, we have enquired from the counsels, whether they consent to our considering

the said aspect for the first time in appeal.

17. While the counsel for the appellants and the other petitioners consents, the senior counsel for the respondent EESL, under instructions, states that since the writ petition was dismissed on the very first date, no counter affidavit was filed and opportunity to file counter affidavit be given and the matter be remanded to the Single Judge for consideration of the second relief.

18. The appeal, to that extent is accordingly allowed, without disturbing the judgment of the Single Judge to the extent dismissing the writ petition as barred by delay and laches qua the first relief of impugning the recruitment advertisement dated 15th October, 2019. The writ petition is remanded to the Single Judge, for adjudication in accordance with law, of the second relief claimed in the writ petition.

19. The appeal is disposed of.

20. The writ petition being W.P.(C) No.7797/2020 be listed before the Single Judge on 11th February, 2021.

21. The respondent EESL to have the counter affidavit to the writ petition placed on record before that date.

22. It is clarified that the interim order dated 16th October, 2020 in this appeal also lapses on the decision of this appeal.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

JANUARY 8, 2021/'bs'