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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 24th February, 2025

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CM APPL. Nos. 41036-41037/2023 in CONT.CAS(C) 975/2019

KEWAL KISHORE & ORS

.....Petitioner

Through: Mr. Arvind Kr. Sharma, Senior
Advocate with Mr. Setu Niket and
Ms. Aniteja Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ORS

.....Respondent

Through: Mrs. Avnish Ahlawat, SC, GNCTD
with Mr. N K Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam, Mr.
Mohnish Sehrawat and Mr. Amitoj
Chadha, Advocates.
Ms. Puja S Kalra, SC for MCD.
Mr. R P Luthra with Mr. Himanshu
Luthra, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners moved an application seeking direction to respondents to place relevant record regarding the decision taken by Hon'ble Lieutenant Governor of Delhi. Such application was moved by them in W.P.(C) No. 3968/2013.
2. However, when the above said application was taken up by learned Division Bench, on 18.10.2019, it was directed to be registered as contempt petition and to be placed before the Roster Bench, dealing with contempt



petitions.

3. Let me, in a very brief, give the factual matrix, germane for disposal of the present petition.

4. The matter relates to the appointment of the petitioners who were promoted to the posts of Junior Engineer (Civil/Electrical/Mechanical) on *ad-hoc* basis. These appointments were made way back in the year 2006, by the Municipal Corporation of Delhi (MCD).

5. It needs to be highlighted that MCD had a provision for promotion to the post of Junior Engineer, by holding a “*Limited Departmental Competitive (LDC) Examination*” and such quota was 5%.

6. However, MCD on 20.11.2006, took a decision and resolved to relax the above said mandate of holding such LDC examination and also referred the matter to Government of NCT of Delhi for consultation and necessary approval.

7. Since the relaxation was already resolved to be given, all such petitioners were also given offer letter on 21.11.2006, offering them appointment to the post of Junior Engineer. The appointment was on *ad-hoc* basis which could have been revoked, extended or altered, depending upon the consultation to be received from GNCTD in the matter of relaxation of the condition of holding a *LDC Examination*.

8. All such 14 petitioners, who were given appointment as Junior Engineers on *ad-hoc* basis, were, however, aggrieved by a subsequent order dated 29.06.2012 of MCD whereby they were reverted to their respective substantive posts, which they were holding prior to their appointment to the post of Junior Engineer on *ad-hoc* basis.

9. The challenge was made before learned Central Administrative



Tribunal, and such Original Applications (OAs) were disposed of by learned Tribunal *vide* common order dated 02.05.2013, by giving following directions:-

“22. In these peculiar circumstances of the case, the OAs are disposed of with the following directions:-

“i) The respondents shall reckon the number of vacancies to be earmarked against the 5% departmental quota, subsequent to Notification of RRs on 27th March 2006; based on the vacancy roster in proportion to the posts filled up under 95% Direct Recruitment Quota, as observed by the respondents’ themselves.

ii) The respondents shall conduct the Limited Department Competitive Examination for promotion to the post of Junior Engineers (Civil/Electrical/Mechanical) under the 5% LDCE quota, as per the Recruitment Regulations, by allowing all the eligible candidates, including the applicants.

iii) The respondents shall, then make appointments against the available vacancies from the successful candidates, and who fulfill the essential eligibility criteria, on regular basis as per the notified Recruitment Regulations.

iv) The respondents shall complete the aforesaid exercise within a period of six months from the date of receipt of a copy, of this order, and shall not give effect to the impugned orders or reversion till then, as directed above.”

10. Feeling aggrieved, all the above said 14 petitioners filed a writ petition before this Court, which was registered as W.P.(C) No. 3968/2013 and when the above said writ petition was taken up for consideration on 08.10.2013, the matter was disposed of by directing as under:-

“11. As consented to by learned counsel for the parties, the Lt. Governor shall take a decision afresh only with respect to the 14 appointments made in the year 2006 and for which a reference was made to the Government of NCT of Delhi in the year 2006 in the context of the consultation required as envisaged by clause 5 of the aforementioned rules.

12. Till the Lt. Governor/Government of NCT of Delhi takes a decision status quo shall be maintained as of today.

13. Needless to state if writ petitioners are accorded the necessary benefits that would be the end of the matter. Should they be aggrieved by a decision taken by the Lt. Governor of Delhi and any administrative order passed thereon the writ petitioners shall be entitled to remedies as per law.

14. It is further clarified that the reasoning of the Tribunal in the impugned



order shall not be treated as a binding precedent at the second stage of litigation should the need arise.

15. It is expected that the Lt. Governor shall take the necessary decision as early as possible and preferably within a period of four months from today.

16. No costs.

17. Dasti."

11. Though the Court had expected that the Hon'ble Lieutenant Governor, would take necessary decision, preferably, within the period of four months, it seems that such decision got delayed and it was in the above said backdrop that the petitioners were compelled to file the above said application seeking direction, which was directed to be treated as *contempt petition*.

12. It will be important to mention that when the contempt petition was taken up by this Court on 15.02.2022, Ms. Avnish Ahlawat, learned Standing Counsel for GNCTD, assured the Court that the action in terms of above said order dated 08.10.2013, shall be taken within four weeks as an outer limit and a compliance affidavit shall also be filed before this Court. Accordingly, the matter was directed to be taken up on 22.03.2022.

13. This Court though wanted to know the reasons as to why such order could not be implemented within the abovesaid period given by the Court, fact remains that when the contempt petition was, eventually, taken up by this Court on 22.03.2022, noticing that the requisite action had already been taken, *the contempt petition was disposed of observing that nothing further survived in the matter.*

14. Thereafter, an application was moved by the petitioners seeking recall of order dated 22.03.2022. It is contended that contempt petition needs to be restored and respondent No.2 (Director- Local Bodies, GNCTD) needs to be



punished for contempt. Such application is presently under consideration.

15. According to petitioners, though the relaxation had been granted by Hon'ble Lieutenant Governor, there was no further progress as no notification had been issued by MCD for regularisation of all such petitioners. It was submitted that MCD was, deliberately and wilfully, lingering on the matter and had failed to implement the order of this Court. It is contended that there is already inordinate delay in the matter, putting all the petitioners to great disadvantage, for no fault of theirs.

16. It needs to be highlighted that MCD, later on, has come up with *Office Order dated 06.10.2023* which seems to be real cause of concern for the petitioners.

17. As per the above said Office Order, the Competent Authority of MCD had granted approval to regularise the service of all such Junior Engineers from the date of approval of the Hon'ble Lieutenant Governor, as conveyed *vide* Office Order dated 31.03.2022. Thus, the petitioners were regularised to the above said post of Junior Engineers from the said date i.e. 31.03.2022.

18. The question, however, remains as to whether it can be said to be a case of contempt or not.

19. This Court has already made elaborate reference to the orders passed by learned Tribunal and order dated 08.10.2013 passed by learned Division Bench of this Court.

20. The specific direction contained in the above said order dated 08.10.2013 clearly indicates that the Court had expected that Hon'ble Lieutenant Governor shall take necessary decision, as early as possible, and, preferably, within a period of four months from the date of the order and, simultaneously, till the time, such decision was taken a *status quo* shall be



maintained with respect to all such petitioners.

21. There is no dispute that the *status quo* has not been disturbed.

22. There is also no qualm that the decision has also been taken up by Hon'ble Lieutenant Governor, *albeit*, belatedly.

23. However, the petitioners cannot raise grievance in this regard.

24. Reason is obvious.

25. The above said writ petition was disposed of by the learned Division Bench of this Court on 08.10.2013 and for the reasons best known to the petitioners, they filed application before this Court, as late as, in the year 2019. Said application was directed to be registered as contempt petition.

26. However, as far as directions contained in the abovesaid order are concerned, same have been taken care of as a decision has already been given by Hon'ble Lieutenant Governor of NCT of Delhi.

27. Admittedly, there is delay in taking decision but fact remains that even the petitioners remained dormant for all these six years and moved the abovesaid application only in the year 2019.

28. Moreover, as noticed above, the grievance of the petitioners is totally different in nature.

29. They contend that MCD should not have regularised their posting as Junior Engineer w.e.f. 31.03.2022. They assert that it should relate back to their initial posting, which they got in the year 2006.

30. MCD, indeed, should have appreciated the concern of their own employees. It was MCD itself which had given them posting, *albeit*, on *ad-hoc* basis, in the year 2006 while relaxing the mandate of holding LDC Examination. They must have issued posting order in anticipation that the approval would come their way. Be that as it may, DDA, after taking



holistic view of the entire matter, should have related such promotion to the year 2006.

31. Though this Court does appreciate the concern and grievance of the petitioners, fact remains that such issue cannot be resolved in the present contempt petition, which, evidently, has a very limited scope. This Court would not mince any word in observing that contempt jurisdiction has to be exercised in a very careful and circumspect manner. Such discretionary jurisdiction should be exercised where alleged disobedience is wilful and deliberate.

32. As noted already, the specific directions given by the learned Division Bench of this Court have already been duly complied with.

33. The only surviving question is as to from which date the appointment of petitioners as Junior Engineers need to be considered as regularised - whether from the year 2006 or from the year 2022 and, to have appropriate decision with respect to abovesaid controversy and issue, the petitioners are better advised to file substantive petition before competent jurisdiction.

34. The manner in which subsequent order has been issued by MCD is altogether different subject matter, giving rise to a fresh cause of action. It has, however, nothing to do with the directions contained in order dated 08.08.2013. Not even, remotely.

35. As noted, Hon'ble Lieutenant Governor of NCT of Delhi has already taken a decision. The question- whether a subsequent order passed by MCD is in synchronization with said decision or not- cannot be answered in the present proceedings.

36. The present applications stand disposed of in aforesaid terms.

37. It is, however, clarified that this Court has not made any observation



on the merits of the abovesaid controversy.

38. As and when, any such remedy is availed, the petitioner would be at liberty to file appropriate application under Section 14 of Limitation Act seeking exclusion of the time taken by them in pursuing the present proceedings.

(MANOJ JAIN)
JUDGE

FEBRUARY 24, 2025/sw/SS