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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1483/2024 AND CM APPL. 6133/2024 (STAY)**
MITHLESH KUMAR TIWARI

..... Petitioner
Through: Mr. Jawahar Raja and Ms. Meghna
De, Advocates.

versus

**NATIONAL INSTITUTE OF TUBERCULOSIS AND
RESPIRATORY DISEASES AND ANR** Respondents
Through: Mr. Manish Kumar, SPC with Mr.
Rahul Kumar Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER
01.02.2024

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1. The present writ petition under Articles 226 of the Constitution of India seeks to assail the order dated 29.11.2023 passed by the learned Central Administrative Tribunal in O.A. No. 487/2021. Vide the impugned order, the learned Tribunal has rejected the petitioner's original application with costs of Rs. 50,000/-.
2. Learned counsel for the petitioner submits that impugned order is wholly perverse as the learned Tribunal has failed to appreciate that once the proceedings under the Industrial Disputes Act, initiated at the behest of the petitioner were pending consideration before learned Central Government Industrial Tribunal (CGIT), the respondents were enjoined to ensure his service conditions were not altered during



the pendency of those proceedings. He contends that even though the learned Tribunal was informed that similar orders protecting service conditions of employees during pendency of proceedings before the Labour Court had been passed by this Court in a number of writ petitions, the learned Tribunal has, without taking such orders into account, rejected the O.A. with costs by observing that it did not have the jurisdiction to issue protective orders as sought by the petitioner.

3. Issue notice. Learned counsel for the respondents accepts notice and submits that now that the advertisement issued by the respondents in January 2021 inviting applications for the post of Lower Division Clerk (LDC) has already been withdrawn, the petitioner ought to approach the CGIT itself where his ID No. 196/2022 is pending consideration for seeking any interim relief. He, fairly submits that he has no objection if this Court were to set aside the impugned order insofar as it imposes costs of Rs. 50,000/- on the petitioner.

4. Having considered the aforesaid submissions of the parties and perused the record, we find that on account of the advertisement issued by the respondent inviting applications for the post of LDC, the petitioner had in fact approached this Court for seeking interim protection during the pendency of his pending I.D. before the learned CGIT. It is only on account of jurisdiction that the said O.A. was transferred to the learned Tribunal and has been now dismissed vide the impugned order. The petitioner has brought to our notice that interim protection from termination during the pendency of the ID, as sought by him, has been granted by this Court in a number of writ petitions. We are, therefore of the view that the filing of the writ



petition by the petitioner for similar relief could not, therefore, be said to be a misuse of process of Court. Merely because his writ petition was not entertained by this Court, but was instead transferred to the learned Tribunal, could not be a ground to impose costs on him.

5. For the aforesaid reasons and in the light of the stand taken by the respondents, we have no hesitation in setting aside the impugned order insofar as it imposes costs on the petitioner. However, taking into account that the advertisement issued by the respondents, which had led to the writ petition being filed by the petitioner stands withdrawn, we are of the view that the petitioner should approach the learned CGIT for grant of any interim relief. While disposing of the petition, the petitioner ought to be granted liberty to approach the CGIT in his pending ID No. 196/2022.

6. The writ petition is, accordingly, disposed of by setting aside the impugned order to the aforesaid extent, i.e., by setting aside the direction for impositions of exemplary cost for a sum of Rs. 50,000/- and by granting the petitioner liberty to move an application before the learned CGIT for interim relief within two weeks. The said application will be taken up expeditiously for consideration by learned CGIT. Further, taking into account that the petitioner has been working as an Lower Division Clerk with the respondent since 14.05.1997, *albeit* on daily wages, it is directed that till the petitioner's application in terms of this order is taken up for consideration, status quo will be maintained qua the services of the petitioner.

7. It is, however, made clear that in case the petitioner does not



move any application within time so granted, this order of interim protection will stand automatically vacated.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

FEBRUARY 1, 2024

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