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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5230/2022

NIHAL SINGH

..... Petitioner

Through: Mr. Mukul Gupta, Sr. Adv. alongwith
Mr. Sudhir Gupta, Adv.

versus

THE DIRECTOR DIRECTORATE OF EDUCATION & ORS.

..... Respondent

Through: Mr. S.K.Mishra, Mr. Pankaj Balwan,
Mr. Utkarsh, Adv. for R-1 & 2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

10.04.2024

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1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 07.01.2022 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 10/2022. Vide the impugned order, the learned Tribunal has rejected the petitioner/applicant's prayer for being extended the benefit of the pension scheme promulgated under the CCS (Pension) Rules (commonly known as the "Old Pension Scheme").
2. Learned senior counsel for the petitioner submits that during the pendency of the present petition, the Central Government has issued a fresh office memorandum (OM) dated 03.03.2023 whereunder, an option to be covered by the Old Pension Scheme has been given to all Central Government Employees, who were appointed against vacancies advertised/notified for recruitment/appointment prior to the notification of the National Pension Scheme i.e. 22.12.2003. This OM



has been duly adopted by the respondent and therefore, the petitioner who was appointed against a vacancy which was notified much prior to 22.12.2003, submitted his option for consideration in terms of this OM. Despite his eligibility under the OM dated 03.03.2023, the petitioner's option is not being considered by the respondents only due to the pendency of the present case. In support of his plea, he draws our attention to Annexure P-17, a communication dated 27.05.2023 received from the respondents informing him that his request could not be considered due to the pendency of the present case.

3. Mr.Gupta, learned counsel for the petitioner, therefore, submits that the petitioner would be satisfied in case the present petition was disposed of by directing the respondents to consider the option submitted by him under the OM dated 03.03.2023 in a time bound manner.
4. Learned counsel for the respondents vehemently opposes this request. He submits that since the present petition pertains only to the petitioner's eligibility under the earlier OMs and not under the OM dated 03.03.2023, no such direction as prayed for by the petitioner ought to be issued.
5. Having considered the submissions of learned counsel for the parties, we are of the view that even though the learned counsel for the respondents is correct in urging that the impugned order does not pertain to the petitioner's claim under the OM dated 03.03.2023, now that a fresh OM has been issued by the respondents giving another opportunity to employees who were appointed against vacancies



advertised/notified prior to 22.12.2003, to submit their option to be covered under the Old Pension Scheme, it would be highly unfair to deprive the petitioner of this opportunity only due to the pendency of the writ petition. In our considered opinion, irrespective of his claim having been rejected by the learned Tribunal, the petitioner is like other similarly situated employees, entitled for consideration of his case under the OM dated 03.03.2023. The respondents cannot be permitted to urge that they will not consider the petitioner's request for examining his case under the OM dated 03.03.2023.

6. In the light of the aforesaid, we dispose of the present petition with directions to the respondents to consider the petitioner's pending option submitted for being covered under the Old Pension Scheme in terms of OM dated 03.03.2023. A decision in this regard will be taken by the respondents with a period of six weeks as per law.
7. Needless to state, in case the petitioner is aggrieved by any order passed by the respondents on his representation, it will be open for him to seek legal recourse as permissible in law. However, in case, the petitioner's representation for being covered under the Old Pension Scheme as per the OM dated 03.03.2023 is accepted, all consequential benefits will be released to him within three months from the said date.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

APRIL 10, 2024/al