



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 28.03.2024***

+

W.P.(C) 4640/2021**GOVT OF NCT OF DELHI & ORS.****..... Petitioners****Through: Mr.Nitesh Kumar Singh, Adv. for
Mrs.Avnish Ahlawat, SC, GNCTD.****versus****JAY PRAKASH SOJA****..... Respondent****Through: Mr.Sourabh Ahuja & Mr.Deepak
Mastir, Advs.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAVINDER DUDEJA****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 20.11.2020 passed by the learned Central Administrative Tribunal (Tribunal) in O.A.No.255/2016. Vide the impugned order, the learned Tribunal has allowed the original application (OA) filed by the respondent/applicant by holding that the changed criteria for grant of senior scale, as notified on 05.03.2010, could not be made applicable to the respondent as he had joined service much prior i.e., on 18.10.2004 and, would therefore, be governed by the notification dated 30.12.1999.

2. We may at this stage itself note, that as per the notification dated 30.12.1999, six years of service was required for consideration for grant of



senior scale, which period was as per notification dated 05.03.2010, enhanced to nine years qua those candidates who are holding neither Masters degree nor Ph.D.

3. Learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has erred in holding that despite the amended criteria having come into force on 05.03.2010, the respondent would be governed by the earlier criteria prescribed vide notification dated 30.12.1999. The Tribunal has failed to appreciate that promotion criteria can be changed at any point by the employer and no employee has a vested right to claim that he/she should be considered for promotion on the basis of criteria which was applicable when he joined service. He, therefore, prays that the impugned order be set aside.

4. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal was correct in holding that the amended criteria introduced after the respondent had joined service could not be made applicable him after he had joined service on 18.10.2004. Furthermore, he contends that even though the respondent was ready and willing to join service much earlier i.e., in March/April 2004 itself, his joining was for no fault of his, delayed by the petitioner by which time the new criteria had been introduced. Finally, he submits that even otherwise, the respondent had been discriminated against *vis-à-vis* three of his batch mates who were between April 2010 to June 2010, granted benefit of the said senior scale on the basis of the notification dated 30.12.1999 itself. He, therefore, prays that the writ petition be dismissed.

5. Having considered the rival submissions of learned counsel for the parties, we may begin by noting the relevant extracts of the impugned order,



which read as under:-

“10. The applicant cannot be denied his right, which has accrued to him on the strength of the notification dated 30.12.1999, which existed at the time when he was appointed. The notification dated 05.03.2010 was prospective in operation and it cannot affect the rights, which accrued to the employees in service, by that date.

11. The objection that the applicant did not challenge the Office Order dated 02.05.2011 is not tenable. The reason is that the applicant is seeking a declaratory relief and he cannot be non-suited, simply because an order, which denied him the benefit of senior scale, is not specifically challenged. Similarly, the Office Order dated 06.07.2017 issued during the pendency of the O.A. need not be challenged when the major issue is under consideration. The record discloses that many Lecturers, who were appointed in pursuance of the same advertisement, through which the applicant was also selected and appointed, were extended the benefit of senior scale, on completion of six years of service. The distinction sought to be made vis-à-vis the applicant, is that the notification dated 05.03.2010 came to be adopted by the Govt. of NCT of Delhi on 29.07.2010. In view of the discussion undertaken by us in the preceding paragraphs, these factors hardly matters.

12. We, therefore, allow the O.A. and direct the respondents to extend the benefit of senior scale to the applicant w.e.f. 18.10.2010. The Office Order dated 06.07.2017 issued by the respondents shall stand modified accordingly. His pay structure shall be modified suitably within a period of two months from the date of receipt of a copy of this order. The case of the applicant shall be considered for selection grade strictly in accordance with the norms under the notification dated 30.12.1999 issued by AICTE. The Screening Committee shall review the case of the applicant with effect from the relevant date and extend the benefit of senior scale



on completion of six years of service, subject to his fulfillment of other conditions. We deny the arrears to the applicant on whatever count, due to the delayed filing of the OA.”

6. From a perusal of the aforesaid extracts of the impugned order, we find that the learned Tribunal has allowed the OA by simply holding that amended criteria for grant of senior scale could not be made applicable to the respondent and he was required to be considered as per the same criteria which was in vogue when he joined service on 18.10.2004. We are, however, unable to accept this view. It is trite law that it is always open for the employer to change the promotion criteria as and when deemed necessary. The only requirement is that the said change should not be arbitrary and should be applied uniformly to all similarly situated employees. We, therefore, have no hesitation in setting aside the impugned order, which proceeds only on the basis of the premise that the respondent's case for grant of senior time scale was required to be considered under the notification dated 30.12.1999 and not as per notification dated 05.03.2010.

7. Having said so, we find that the respondent's plea that he was discriminated and his appointment was wrongfully delayed cannot be simply brushed aside. We, however, find that these aspects were not considered by the learned Tribunal. Mr. Ahuja, learned counsel for the respondent fairly concedes that though some averments in this regard were made in the OA, no specific prayer on this aspect was made before the learned Tribunal. In the light of the aforesaid, we are of the considered view that even though the impugned order is not sustainable and is required to be set aside, taking into account the respondent's specific plea that he was discriminated against, he



ought to be granted an opportunity to establish his plea of discrimination before the learned Tribunal. We, therefore, remand the OA back to the learned Tribunal for fresh adjudication of the same on merits. We also permit the respondent to file an amended OA within a period of four weeks from today. Counter affidavit to the amended OA be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

8. List before the learned Registrar of the Tribunal on 09.07.2024 for further proceedings.

9. The writ petition is, accordingly disposed off in the aforesaid terms by making it clear that while deciding the OA afresh, the learned Tribunal will take into account the present order passed by this Court. Further, taking into account that the matter has remained pending before the learned Tribunal as also before this Court for a considerable period of time, the learned Tribunal is requested to make an endeavour to decide the OA within a period of six months from 09.07.2024, by which time the parties will complete their pleadings.

(REKHA PALLI)
JUDGE

(RAVINDER DUDEJA)
JUDGE

MARCH 28, 2024

kk