



2024:DHC:1705-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 01.03.2024.

+ W.P.(C) 11691/2022, CM APPL. 34789/2022 –Stay & CM APPL.
34790/2022 -Addl. doc.
DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Ms. Sriparna Chatterjee and Ms.
Soumitra Chatterjee and Mr. Manish,
Advs.

versus

SURINDER SINGH

..... Respondent

Through: Ms. Madhumita Bhattacharjee and
Ms. Srija Choudhary, Advs.

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

REKHA PALLI, J (ORAL)

1. The present petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 29.07.2021 passed by the learned Central Administrative Tribunal (Tribunal) in Original Application (O.A.) No. 1271/2021. Vide the impugned order, the learned Tribunal has allowed the O.A. preferred by the respondent and has consequently, directed the petitioner to extend the benefits of promotion to the respondent at par with his junior by treating him as having been qualified the examination for promotion to the post of



2024:DHC:1705-DB



Assistant Director (Ministerial) held in 2005 and notionally fix his last drawn pay so that his pension can be suitably revised and grant him arrears of revised pension accordingly.

2. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has, without any basis, interfered with the administrative decision taken by the petitioner to not grant any benefit to the respondent of passing the departmental examination conducted in 2005 for promotion to the post of Assistant Director (Ministerial) after such an inordinate delay. She contends that even though the respondent has been declared as having passed the said examination, the same was only after the third re-evaluation of his language paper conducted on 11.10.2013. However, once it was realised that there were basic infirmities in the examination process itself, the petitioner was justified in not granting any benefit to the respondent of having qualified the said examination, which aspect the learned Tribunal had failed to appreciate. She, therefore, prays that the impugned order be set aside.
3. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal, after consideration of the entire material brought on record by the parties, has rightly arrived at a conclusion that the respondent has been discriminated against as he was denied the benefit of his promotion despite his having cleared the departmental exam held in 2005. Furthermore, when all other employees who had qualified the said examination, which the petitioner now claims was riddled with



2024:DHC:1705-DB



infirmities, were granted promotion based on the result of the very same examination, the respondent could not be discriminated against and denied his due promotion to the post of Assistant Director (Ministerial) from 2006, when all other candidates who had qualified the said examination were promoted. She, therefore, prays that the writ petition be dismissed.

4. Having considered the submissions of learned counsel for the parties and perused the record, we find that on the one hand the petitioner is urging that there were infirmities in the conduct of the examination itself and on the other hand, they have themselves granted promotion based on the very said examination to all candidates who had qualified the said examination including many persons junior to the respondent. Even if the petitioner's plea that the examination was riddled with infirmities were to be accepted, the fact remains that promotion to the post of Assistant Director was granted in 2006 to all candidates who had qualified in the said examination.
5. We are, therefore, of the considered view that the respondent having cleared the limited departmental exam held in 2005, albeit after the third re-evaluation, cannot be denied the benefits of promotion to the post of Assistant Director (Ministerial) from 2006. In fact, it emerges that most of the candidates who were beneficiaries of the said examination have superannuated after having been promoted not only as Assistant Director but also as Deputy Director. During the course of arguments, we are informed that the respondent was later promoted as Assistant Director based on the limited departmental examination held in 2011 and was thereafter promoted as Deputy Director, from



2024:DHC:1705-DB



which post he superannuated on 31.01.2020.

6. In the light of the aforesaid, we are of the considered view that the learned Tribunal was justified in holding that the respondent could not be discriminated against and, therefore, ought to be granted the benefit of promotion to the post of Assistant Director (Ministerial) on notional basis w.e.f. 16.01.2006. We, therefore, find no reason to interfere with the impugned order and, therefore, dismiss the writ petition by clarifying that under the impugned order, the respondent will be granted only notional promotion as Assistant Director w.e.f., 16.01.2006 and will not be entitled to any arrears of wages on account of this ante dated promotion. However, as directed by the learned Tribunal, the respondent's pension will be appropriately re-fixed by taking into account his ante dated promotion as Assistant Director w.e.f. 16.01.2006. Arrears of the differential amount payable on account of the revised pension will be paid to the respondent within eight weeks.
7. The writ petition, along with all pending applications, stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

MARCH 1, 2024
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