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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9269/2024**

UNION OF INDIA & ANR.

.....Petitioners

Through: Mr. Vijay Joshi and Mr. Kuldeep
Singh, Advocates.

versus

VEDPAL SINGH YADAV

.....Respondent

Through: Mr. Mohd. Hussain, Advocate with
Mr. Tanveer, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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10.07.2024

CAV 308/2024

1. Respondent has entered appearance through counsel. Caveat stands discharged accordingly.

W.P.(C) 9269/2024 and CM APPLs. 38025/2024 & 38026/2024

2. The present writ petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India seeking quashing and setting aside of impugned order dated 12.01.2024 passed by the learned Central Administrative Tribunal ('Tribunal'), New Delhi in O.A. 432/2023 titled "*Vedpal Singh Yadav Vs. Union of India*".

3. Notice issued.

4. Mr. Mohd. Hussain, learned counsel accepts notice on behalf of the respondent.



5. The brief background of this case, as spelt out in the present petition, is that the respondent had joined Department of CPWD as Beldar. He was subsequently granted temporary status in the year 1993 and regularised in service on 11.12.2006. The benefit of Old Pension Scheme has been extended to the respondent since the year 1991. Relevantly, the impugned order passed in O.A. No.432/2023 is premised upon first round of litigation initiated by the respondent before the learned Tribunal in O.A. No.2854/2022.

6. The respondent in O.A.2854/2022 had approached the learned Tribunal regarding filling up of the vacant post of Work Assistant under direct recruitment. The learned Tribunal vide order dated 15.11.2022 disposed of the said O.A., with a direction to the respondent to consider his representation by passing a speaking order.

7. Being dissatisfied with the response of the petitioners, the respondent preferred O.A. No. 432/2023 before the learned Tribunal claiming that he was eligible to be considered for the post of Work Assistant as a direct recruit and the petitioners shall take Trade Test (TT) in accordance with the provision of recruitment rules. However, the petitioners were not conducting TT thereby denying the opportunity to the eligible candidates, including the respondent in the present case.

8. The petitioners, in their counter-affidavit, pleaded before the learned Tribunal that pursuant to order dated 15.11.2022 passed in O.A.2854/2022 a reasoned order has been passed after due consideration of provisions of recruitment rules and that there was no Muster Roll Employee on the strength of the Department as was claimed by the respondent. Since there



was proposal for review of the recruitment rules, the respondent to the post of Work Assistant was put on hold.

9. Learned Tribunal considered the fact that as per the existing recruitment rules for the post of Work Assistant, 25% vacancies were to be filled up through direct recruitment which is made through TT. However, the petitioners while passing order dated 15.11.2022 did not inform what policy decision has been taken in this regard. Learned Tribunal having observed above held as under:

“9. We note with concern that this communication is more than eight years old and it amounts to creating a situation wherein vacuum has been created since existing Recruitment Rules are not being followed and new rules are yet to be notified. Nobody would dispute that until and unless amended rules are notified, the rules which have been notified would remain operational as on date. Further we curiously note that recruitment/appointment being made to the post of Work Assistant in terms of Recruitment Rules is only in promotion quota. This implies that rules are being implemented selectively. Such an implementation can only be termed as discriminatory to the ones aspiring for the post.

10. In view of what has been discussed and detailed above, the action of the respondents in not filling up direct recruitment post of Work Assistant on the basis of a (C-IV, item 41) communication of the year 2015 and on specious plea that there is a proposal to amend the Recruitment Rules is not



sustainable. This cannot be an endless exercise spreading over a number of years. Moreover, Recruitment Rules prescribes promotion quota as 75% and direct recruitment quota as 25%. By continuing to make appointment only by way of promotion, the principle set forth in the notified rules is being compromised with.”

10. Being aggrieved, the present petition has been filed by petitioners seeking setting aside of order dated 12.01.2024 on the ground that the respondent has already exhausted his remedies by approaching the learned Tribunal and in light of the fact that there is no Muster Roll employee, the relief sought cannot be granted.

11. During the course of hearing, learned counsel for petitioners submitted that the learned Tribunal did not appreciate that order dated 15.11.2022 in O.A. No.2854/2022 is a reasoned and speaking order which was modified vide order dated 08.12.2023, wherein the petitioners have decided that the provisions of existing recruitment rules for the post of Work Assistant were under review, which shall be applicable after the amendment was finalised.

12. The petitioners have pleaded that the respondent has not completed the required 08 years regular service in feeder cadre of plumber for filling up vacancy as desired as per rules for filling up vacancy under the promotion quota.

13. It is pleaded that new recruitment rules are awaited and for filling up vacancy under 25% direct recruitment quota, it has unanimously been agreed in the Minutes of Meeting issued vide No. 170 dated 01.02.2023 that 100% vacancy in the post of Work Assistant should be filled up through



promotion only. Therefore, the respondent is not eligible for promotion to the post of Work Assistant neither under promotional quota nor under direct recruitment quota.

14. Relevantly, when the respondent preferred O.A.2854/2022 before the learned Tribunal seeking appointment to the post of Work Assistant, the recruitment rules provided that 25% appointment were to be made through direct recruitment and 75% through promotion.

15. The impugned order dated 12.01.2024 passed by the learned Tribunal notes that as per Directorate General's letter No.10/01/89/E.C.5 dated 16/19.04.1993 to fill the posts of Work Assistant under 25% direct recruitment quota by the Ministry of Housing and Urban Development for all muster roll and work charged employees who have the qualification of Work Assistant post to appear in the examination, exemption was given for one time as long as the posts of muster rolls were in the department. However, there was no employee working on muster roll.

16. It is not in dispute that the petitioners in their counter-affidavit filed before the learned Tribunal admitted that the vacancies mentioned under the promotion quota are being filled from feeder cadre from amongst the employees, who had completed 08 years of regular service.

17. Reliance placed upon office note letter dated 16/19.04.1993 was turned down by the learned Tribunal while observing that the same was 08 years old and recruitment rules were notified. Even in the present petition, it has nowhere been averred on behalf of the petitioners that fresh recruitment rules have been notified. It is the settled position of law that appointments and promotion to a designated post have to be made in terms of prevalent recruitment rules existing on the said date.



18. In our considered opinion, the Tribunal has rightly directed the petitioners to commence recruitment process to the post of Work Assistant in accordance with the rules and instructions governing such rules, including the TT.

19. In view of the above, we find no error in the impugned order passed by the learned Tribunal.

20. Accordingly, the petition is dismissed.

21. Pending applications, if any, also stand disposed of.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

JULY 10, 2024/uk