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

% **Date of Decision: 22.07.2024**

+ **W.P.(C) 9863/2024**

MUNICIPAL CORPORATION OF DELHI

.....Petitioner

Through: Dr. Divya Swami, Standing Counsel

versus

RAJENDER SWAROOP SHARMA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

CM APPL. 40466/2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 9863/2024 & CM APPL.40465/2024 (stay)

3. The present petition has been filed under Article 226 of the Constitution of India seeking the following prayer:

*“Issue appropriate writ and set aside ‘impugned order dated 22.03.2024 passed by the Ld. Central Administrative Tribunal in T.A. No. 0002 of 2015 titled as **Rajender Swaroop Singh vs Municipal Corporation Of Delhi & Ors**”.*



4. The present petition has been filed on the ground that the Learned Tribunal failed to consider that the respondent is junior to his colleagues as per the seniority list published in 1979 and the final seniority list published in 1994 and hence, he is not entitled for promotion or financial benefits at par with the others on the basis of tentative seniority list.

5. The respondent was appointed as Physical Education Teacher (PET) in the education department of the Petitioner Corporation on 02.08.1974. The present petitioner, being respondent No.1 before the Learned Tribunal, on 05.08.1991 prepared a tentative seniority list of the PETs employed upto the year 1990 and the name of the present respondent appeared at Serial No.3, while the names of the other respondents No.2 to 8 therein were shown at Serial No.12, 14, 16, 17, 20 and 22 respectively. By virtue of the said list, the present respondent being senior to respondent No. 2 to 8 therein, and his name appearing at Serial No.3 in the seniority list prepared for the purpose of promotion and selection grade, as claimed he was entitled to be promoted earlier to respondents No.2 to 8 therein, however, they were given higher grade and promotion by superseding the present respondent.

6. Learned counsel appearing on behalf of the petitioner submitted that on 02.06.1979, a list of PETs was prepared and the name of the respondent appeared at Serial No. 22. Thereafter, a tentative list was published in 1991 which showed the respondent at Serial No. 3, upon which the entire claim of the respondent lies. However, such seniority list was merely a tentative list which was open to objections. In pursuance of the objections received, certain amendments were made and the final seniority list was published



wherein the respondent came at Serial No. 20, which ought to be considered by the learned Tribunal.

7. The case of the present respondent before the learned Tribunal was that respondent being senior to respondents No.2 to 8 therein is entitled to higher grade and financial benefits granted to them. On 01.11.1990, the present petitioner prepared a seniority list of male and female teachers which was filed before this Court in WP(C) No.870/1987 titled **Puran Mal & Ors. vs MCD & Ors.** The present respondent preferred a representation on 23.04.2003 seeking promotion in the higher grade as given to his juniors followed by a legal notice upon the present petitioner seeking the same relief on 30.05.2005, but to no avail.

8. The present petitioner filed a reply as well as written submissions. The petitioner submitted that on 02.06.1979, a list of PETs was prepared and the name of the respondent appeared at Serial No. 22. Further on 05.08.1991, a tentative seniority list of PETs was prepared, wherein the name of the respondent appeared at Serial No.3 and respondents No.2 to 8 therein appeared at Serial Nos.12,14,16,17,20 and 22. On the basis of Education Department's order dated 25.02.1994, after removing the objections, a final seniority list was prepared on 03.03.1994, in which the name of the respondent appeared at Serial No.20 whereas respondents No.2 to 8 therein were placed at Serial Nos.3,5,9,2,11, 4 and 1 respectively.

9. In support of her arguments, it is submitted by the learned counsel for petitioner that the respondent himself admitted that he had challenged only the tentative list and not the final list. She submitted that the present TA



which was filed before the learned Tribunal was also allowed on 08.05.2019 in favour of the petitioner holding that the respondent is junior to the respondents No.2 to 8 therein. It was for the first time in the year 2022 before this Court in WP(C) No. 5535/2022 that the respondent stated that he filed a representation dated 12.04.1994 against the final seniority list dated 03.03.1994 and that the order/judgment of the learned Tribunal was incorrect, holding that the respondent did not challenge the final seniority list. The contention of the present respondent, having filed representation dated 12.04.1994, was clearly an afterthought as neither any such averment was made by the respondent in his legal notice dated 30.05.2005 nor are there any pleadings with respect to the same before the Civil Court in his suit.

10. The learned Tribunal after considering the rival contentions of the parties and the material on record, observed that none of the findings of the Learned Civil Judge, as recorded in para 8 of the order of the learned Tribunal, have been controverted by the MCD. The petitioner MCD has confined its case to the fact that the respondent has not placed challenge to the final seniority list of 1994, and no representation was filed thereto by the respondent.

11. The learned Tribunal observed that the tentative seniority list clearly shows that the respondent and the private respondents therein have been appointed on the same date, and by virtue of the date of birth of the respondent being earlier, he was placed at serial no 3. The said fact has not been disputed. In spite of several opportunities extended to the MCD, they



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did not lead any evidence in the Suit, and therefore, the evidence led by the respondent remained un-rebutted.

12. It is not in dispute that no evidence has been placed on record by the present petitioner that the respondent herein was not similarly placed to the private respondents No.2 to 8 or that he was junior to the said private respondents. Moreover, no questions have been put to the PWs to this effect.

13. In view of the above, we find no infirmity in the impugned order passed by learned Tribunal and accordingly find no merit in the present petition. The same is, accordingly, dismissed *in limine*.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 22, 2024/as

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