



2024:DHC:6702-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 02nd September, 2024***+ **W.P.(C) 12168/2024 and CM APPL. 50637-50639/2024****MUNICIPAL CORPORATION OF DELHI & ANR.Petitioners****Through: Mr. Sanjeev Sagar, Standing Counsel
for MCD with Ms. Nazia Parveen,
Mr. Sanjeev Verma, Ms. Lakshita
Arora, Mr. Nakul Khanna, Mr. Ronak
Gupta, Mr. Robin Sharma,
Mr. Shubham and Ms. Sandhya
Gupta, Advocates.****Versus****ATUL VERMARespondent****Through: Ms. Neelima Rathore, Advocate *via*
video-conferencing.****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (oral)**

1. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioners seeking setting aside of order dated 29.11.2023 passed by the learned Central Administrative Tribunal ('Tribunal'), Delhi in O.A. No.3689/2019 in case titled as ***Shri Atul Verma Vs. Municipal Corporation of Delhi.***

2. Notice issued.

3. Learned counsel appearing on behalf of the respondent accepts notice.



4. With consent of learned counsel for the parties, the present petition is taken for final disposal.

5. The respondent preferred O.A. No.3689/2023 before the learned Tribunal seeking the following reliefs:-

“(a) Directing the respondents to grant/consider Non-Functional upgradation to the applicant in the next higher grade of Rs.4200/- in the Pay Band-II (Entry Grade) after completion of his two years’ service w.e.f. 26.09.2010 in terms of Ministry of Finance, GOI, OM dt. 18.11.2009 in letter and spirit and as per their own office order dated 13.08.2022 (Annexure A/I) with arrear and interest @12% per annum within some stipulated period.

(b) Allowing the OA with all other consequential benefits including arrear and interest with cost.

(c) Any other fit and proper relief may also be granted.”

6. The backforth to seek above relief before the learned Tribunal by the respondent was that in the first round of litigation preferred by him by filing in O.A.941/2021, pursuant to directions of the learned Tribunal, the petitioners passed the order dated 13.08.2022 observing as under:-

“However, pursuant to unification of three Corporations viz. North, South and East DMC, the Department of Hospital Administration of unified Municipal Corporation of Delhi is in process as per communication of Hospital Administration vide communication No AO(H)/MCD/HQ/2022/202 dated 08/08/2022 of implementation of recommendations of fast track committee issued by Ministry of Finance, Govt. of India vide OM no.1/1/2008-PC dated



18.11.2009 and case of Sh. Atul Verma, Pharmacist will be considered accordingly, for grant of non-functional upgradation in the next higher grade of Rs. 4200/- in the pay band PB-II after completion of two years of service.”

7. Subsequently, the respondent filed representation and reminder dated 16.09.2022 and 28.03.2023 respectively to the petitioners for early settlement of his claims. However, finding no reply, he preferred O.A. No.3689/2023, whereof order dated 29.11.2023 passed by the Tribunal is impugned before us.

8. Pertinently, in Para - 4 of the impugned order, it is observed by the learned Tribunal that since none had appeared on behalf of the petitioners, Ms.Sangeeta Rai, learned Standing Counsel for Municipal Corporation of Delhi, was called upon to accept notice and appear in the matter and the said O.A. was disposed of, with a direction to the competent authority to take the contents of the office order dated 13.08.2022 to a logical conclusion by settling the claim of the respondent for grant of non-functional upgradation.

9. The challenge to the aforesaid order passed by the learned Tribunal is on the ground that the learned Tribunal did not consider that the claim of the respondent was pre-mature and that the issue of financial upgradation and its approval, is pending before the Standing Committee of the Corporation and due to ongoing litigation of Standing Committees, petitioners could not have been compelled to take a decision by the learned Tribunal. The learned Tribunal did not appreciate that no Pharmacist has been given benefit of Scheme of ACP/MACP and the procedure directing to pass an order his



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illegal and bad in law.

10. Having gone through the impugned order, this Court finds that when the O.A. was taken up for hearing, none was present on behalf of the petitioners and Standing Counsel present before the Tribunal, though accepted notice, but no opportunity was given to file the response. The learned Tribunal without giving an opportunity to petitioners herein to file reply, wrapped up the O.A. without considering the merits of the case.

11. We, hereby, set aside the impugned order dated 29.11.2023 passed by the learned Tribunal, with a request to hear and decide the OA afresh giving an opportunity to petitioners to file its reply and decide it on merits after hearing rival contentions raised by the parties.

12. In view of the above, parties shall appear before the learned Tribunal on 12.09.2024 for further proceedings.

13. With aforesaid directions, the present petition is disposed of.

14. Pending applications also stand disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 02, 2024
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