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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 29.01.2024***

+ W.P.(C) 1190/2024, CM APPL. 4985/2024 (stay) & CM APPL. 4986/2024 (Ex. (record))

THE COMMISSIONER KENDRIYA VIDYALAYA SANGATHAN
& ORS. Petitioners

Through: Mr. Anil Nag, Adv.

versus

DR NEEHARIKA Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

29.01.2024

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1. The present writ petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 15.12.2022 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No. 2729/2019. Vide the impugned order, the learned Tribunal by relying on the order dated 03.08.2018 in O.A. No.2943/2017, titled ***J D Gupta vs The Chief Secretary, Govt. Of NCT of Delhi & Ors.*** has allowed the original application preferred by the respondent wherein she had sought re-fixation of her pension at par with the pension granted to the applicants in the aforesaid OA.

2. At the outset, it may be noted that though the order passed in ***J D Gupta (supra)***, was assailed before this Court by way of W.P.(C)



2255/2019, the said challenge was subsequently rejected. Consequently, upon dismissal of the aforesaid writ petition on 23.04.2019, the Tribunal's order passed in ***J.D Gupta (supra)*** wherein the OM issued by the DoPT on 11.02.2009 was quashed, has attained finality.

3. Learned counsel for the petitioner, while not denying that the pay scales in the petitioner organisation are based on the pay scales applicable to Central Government employees, submits that the learned Tribunal failed to appreciate that the decision in ***J D Gupta (supra)*** pertained to an employee of the Delhi Government and was, therefore, not automatically applicable to the petitioner organisation. He further submits that the respondent having approached the Tribunal after an inordinate delay to assail the DoPT'S OM dated 11.02.2009, her OA ought to have been rejected on the ground of delay itself.

4. Having considered the submissions of the learned counsel for the petitioner and perused the record, we are unable to agree with the plea of the petitioner that the decision in ***J.D.Gupta (Supra)*** was not applicable to the petitioner organisation. Once it is an admitted position that the pension rules of the Central Government apply *mutatis mutandis* to the petitioner organisation, the petitioner would necessarily be governed by all clarifications and decisions including the decision in ***J.D.Gupta (Supra)*** in respect of the rules of the Central Government. We may also note that the petitioner is in itself relying on the DoPT's OM dated 11.02.2009 to contend that benefits of the upgradation of their posts directed w.e.f. 01.01.2006 would not be admissible to pre- 2006 pensioners. Now that this very OM stands quashed, the petitioner cannot be permitted to rely on the same to deprive the pre-2006 pensioners of the benefits of the earlier OM dated



01.09.2008.

5. We have also considered the petitioner's plea that the OA, was barred by delay and laches. Though this plea appears to be attractive on the first blush, on a closer scrutiny of the factual matrix, the same has to be necessarily rejected. What needs to be noted is that the respondent had approached the learned Tribunal with a grievance that since the OM dated 11.02.2009, which was the basis for denying her pensionary benefits on the upgraded pay scale, stood quashed, she was entitled to receive pension as per the earlier OM dated 01.09.2008. No doubt there was some delay on the part of the respondent in approaching the learned Tribunal. However, we are of the considered view that once the OM dated 11.02.2009, denying pension as per the upgraded pay scale to pre-2006 pensioners was quashed by the Court in the case of *J D Gupta (supra)*, which judgment was unsuccessfully assailed till the Apex Court, it was incumbent upon the petitioner to suitably revise the pension of all the pre-2006 pensioners including the respondent. The petitioner as an organisation was expected to implement the orders passed by the Court in its true letter and spirit and ought to have extended the benefit of the quashing of OM dated 11.02.2009 without compelling every pensioner to approach the Court for seeking the same relief of quashing the OM which already stood quashed.

6. Furthermore, we may also note that the matter regarding the validity of the OM dated 11.02.2009, had remained pending before various forums from 2011 to 2019 and therefore the respondent who was already aged about 70 years when she approached the Tribunal was justified in waiting till the issue of the validity of the OM dated 11.02.2009, attained finality. Even otherwise, it is not as if the grant of revised pension to the respondent in



terms of the impugned order would unsettle the settled position or affect the rights of any third party.

7. We are, therefore, of the view that there is no reason as to why the respondent, who is already about 75 years of age, should be deprived her rightful pension which was required to be revised as per OM dated 01.09.2008. The writ petition being meritless is, accordingly, dismissed along with all pending applications.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

JANUARY 29, 2024
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