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

% **Decision delivered on:19.09.2024**

+ **W.P.(C)13154/2024 & CM APPL. 54960/2024**

GOVT OF NCT OF DELHI & ANR.

....Petitioners

Through: Ms. Jyoti Tyagi, Advocate

versus

SOHAN RAM @ SOHAN POONIA.

.....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 (O R A L)

CM APPL. 54961/2024 (exemption)

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

W.P.(C)13154/2024

3. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:

“aa) set-aside the impugned judgment dated 6.10.2023 passed by the Ld. CAT in OA No. 3381/201.

ab) pass any other or further order which the Hon’ble Court deem fit and proper to secure the interest of justice.”



4. Though the present petition has been filed on 6 grounds, however, learned counsel for the petitioners has confined her submissions to the following ground only:

“e) Because the Ld. CAT has failed to appreciate that the relief of consequential benefits is barred by Order II Rule II CPC1908 because the relief of consequential seniority was to be prayed in the writ petition, which if not prayed, is hit by the above provision of law. Even otherwise, if the same was prayed and not granted by the Hon’ble Court, it means the same was denied and hit by the provisions of res-judicata. Thus in no manner, the respondent is consequentially entitled for fixation of seniority at par with his batch mates.”

5. The respondent herein filed an O.A. before the learned Central Administrative Tribunal (hereinafter referred to as “the Tribunal”) seeking directions to the petitioners herein to fix the pay of the respondent at par with his batch mates and juniors w.e.f 10.12.2007 and also grant him the benefits of MACP scheme w.e.f 20.05.2018 on the principle of parity along-with arrears as a consequential benefit of the correct pay fixation.

6. To buttress his submissions, learned counsel for the respondent, before the learned Tribunal, relied upon the decision dated 07.07.2008 in W.P.(C) 7263/2007 titled as ***Nirmala and Ors. vs. Govt. of NCT of Delhi and Ors.***, and fairly conceded to the fact that the respondent was not a party in the matter. However, relying on the ratio of the said decision, the respondent preferred a Writ Petition (C) No.383/2009, which was disposed of by virtue of order dated 22.09.2009, which reads as under:



“In the result, I direct the Respondents to consider the appointment of Petitioner as an Art Teacher without insisting upon the Institute from which the Petitioner has qualified being duly recognized. The writ petitioner is disposed of accordingly.”

7. The learned Tribunal observed that on the basis of the aforesaid decision, an offer of appointment was issued and the respondent joined on 20.05.2010.

8. The sum and substance of the arguments and grounds urged by the respondent before the learned Tribunal was that even though the respondent had been appointed but he was getting lesser pay scale as that of the last selected candidate. The respondent had drawn reference to Office Order dated 26.09.2015 in the case of Gunjal Singhal, who was also working as a Drawing Teacher, wherein the following was recorded:-

“Consequent upon the order of honorable High Court Delhi in writ petition (c) Nos., 7263/2007, 8822/2007, 1311/2007 and 7690/2007 decided on 07.07.2008 and further decision on by CAT O.A. NO.1250/2009 dated 22.05.2009, the pay of Smt. Gunjan Singhal Singh (Drawing Teacher) EID-20093184 is fixed at par with other Drawing teachers appointed on dated 23/11/2007 w.e.f. 10.12.2007 but the payment would be w.e.f. the date of joining 29.12.2009 and no arrear of the pay of o the past period before 29.12.2009 would be paid.”

9. In view of the above, counsel for the respondent, before the learned Tribunal, prayed for similar relief to be granted to the respondent. He also submitted that aggrieved by the inaction on the part of the petitioners, the respondent preferred a representation dated



26.03.2018, which was pending consideration before the petitioners till the O.A. filed by the respondent was decided on 06.10.2023.

10. Counsel for the petitioners, before the learned Tribunal, relied upon the counter affidavit filed by them and stated that there was no order for grant of consequential benefits and therefore, the respondent was not entitled to relief sought in the O.A. filed by him.

11. Learned counsel appearing on behalf of the petitioners submits that the learned Tribunal had ignored the fact that as to why if case of the respondent was pending before the petitioners, he had not taken any steps at that stage and belatedly approached the learned Tribunal by filing the O.A. therefore, the learned Tribunal ought not to have granted the relief as impugned in the present petition.

12. It is not in dispute that respondent was getting less salary than his juniors. Accordingly, the learned Tribunal observed that there could not be discriminatory treatment qua the respondent and others who were duly appointed in the same advertisement in similarly situated circumstances, therefore, same pay scale ought to have been granted.

13. Though at that stage, the learned Tribunal would have remanded the case back to the petitioners for disposal of the representation as there was ambiguity to the effect that the respondent was discriminated. Therefore, the learned Tribunal rightly took up the matter and accordingly, directed the petitioners to re-fix the pay scale of the respondent with all consequential benefits on notional basis from the date



of last candidate selected in the respective category on analogy of Gunjan Singhal.

14. Learned Tribunal also directed that the payment of actual benefits as per the revised pay scale be accorded to the respondent from the date of joining and also directed the salary and other benefits to be re-fixed. However, the learned Tribunal had not granted arrears for the period prior to said date that would be payable to the respondent.

15. In view of the above, we find no illegality and perversity in the order passed by the learned Tribunal. Finding no merit in the present petition, the same is accordingly, dismissed along with pending application.

16. The petitioners are directed to comply the directions passed by the Tribunal within four weeks from today.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 19, 2024/riya