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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6277/2018 & CM No.24214/2018

DHARAM SINGH Petitioner
Through: Mr.Kartar Singh, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr.Zoheb Hossain, ASC for
R-1 and 5.
Mr.Ripu Daman Bhardwaj,
Advocate for R-2, 3 and 4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE PRATIBHA RANI

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ORDER
31.05.2018

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India praying *inter alia* for quashing the order dated 03.11.2017, passed in Original Application No.357/2015 and the order dated 19.02.2018, passed in Review Application No.20/2018 for direction to the respondents to release his salary/back wages w.e.f. 27.01.2014 or from 17.07.2014, the date of passing of the order in Original Application No.2132/2014 wherein the Tribunal had directed the respondents to take a decision on his representation.

2. The case of the petitioner is that on attaining the age of superannuation, he had retired on 31.07.2011 from the post of Vice Principal in Government Sarvodaya Co-ed Secondary School, Auchandi, Delhi-110039. Thereafter, pursuant to the Notification dated 29.01.2017, the petitioner was re-employed on 01.08.2011, for a period of two years (upto the age of 62 years). On completion of the extended service period of two years and on attaining the age of 62 years, he had retired on 17.07.2013.

3. After about two months from the date of his retirement, at the age of 62 years, the Government of NCT of Delhi passed a Cabinet Decision No.2068 dated 02.09.2013, for re-employment of teachers upto the age 65 years, pursuant to which a Notification dated 24.09.2013 was issued by the Government of NCT of Delhi.

4. On 27.01.2014, the petitioner sent a representation to the respondents for considering his case for re-employment upto the age of 65 years under the above scheme but the same was not responded to by the respondents. Thereafter, the petitioner served a legal notice dated 22.02.2014 on the respondents claiming re-employment. On not getting any relief from the respondents, the petitioner filed O.A.No.2132/2014 before the Central Administrative Tribunal. This O.A. was disposed of by the Tribunal on 17.07.2014, directing the respondents to consider the petitioner's representation and pass a reasoned speaking order within one month therefrom.

5. The representation of the petitioner was disposed of by the Government of NCT of Delhi on 19.09.2014, by passing a speaking order wherein his request for reemployment till attaining the age of 65 years was not acceded to by explaining that the Cabinet Decision of the Government of NCT of Delhi required approval of the Government of India before the same could be implemented in Government Schools/Aided Schools of the Delhi Government.

6. The petitioner does not dispute that on 19.09.2014, when his representation was disposed of, approval from the Government of India was awaited. Though the petitioner was on the verge of attaining the age of 65 years, he approached the Tribunal again by filing O.A. No.357/2015, seeking re-employment upto the age of 65 years. This time, the O.A. was dismissed by the Tribunal for the reason that the petitioner had already attained the age of 65 years by that date. It was noted that the decision of the Government of NCT of Delhi was approved by the Government of India vide its communication dated 26.02.2015. By the time, the O.A. was disposed of, the petitioner had already crossed 65 years. Thus, no benefit of enhancement of age for re-employment could be granted to him.

7. In the present petition, the relief claimed by the petitioner is for directing the respondents to release his salary/back wages w.e.f. 27.01.2014, or from the date of passing of the order dated 17.07.2014 in Original Application No.2132/2014 whereby the Tribunal had directed the respondents to take a decision on his representation.

8. The order passed by the Tribunal in O.A. No.2132/2014 had been duly complied with. The representation submitted by the petitioner has been disposed of by the respondents in September, 2014 itself. While disposing of O.A. No.2132/2014, no direction was issued to the respondents to re-employ the petitioner upto the age of 65 years, without awaiting the approval of the Government of India. Under the then existing scheme, the petitioner could not have been given re-employment after he had attained the age of 62 years. The subsequent scheme to grant re-employment upto the age of 65 years being not in vogue on the date the petitioner had completed 62 years of age, he could not have been re-employed beyond the said age.

9. The prayer made in O.A. No.357/2015 was for issuing direction to the respondents to implement the Cabinet Decision of the Delhi Government dated 02.09.2013, followed by the respondent No.1 and 5 through Notification dated 24.09.2013 for granting re-employment to the petitioner upto the age of 65 years, with effect from 27.01.2014, which has been declined by the Tribunal noting that he had already attained the age of 65 years and it is now a *fait accompli*.

10. The other order dated 19.02.2018, impugned herein is on the Review Application No.20/2018 filed by the petitioner, which has been dismissed by the Tribunal noting that there was no error apparent on the face of record or any other ground warranting interference in review jurisdiction.

11. Surprisingly, the prayer made in this writ petition is entirely different from the prayer made in O.A. No.357/2015 as the petitioner is seeking salary/back wages w.e.f. 17.07.2014, knowing very well that the earlier Original Application filed by him (O.A. No.2132/2014) was disposed of with direction issued to the respondent No.5 to take a decision on his representation. The said issue cannot be raised before this court as if it is the court of first instance. Even otherwise, having not worked on the subject post upto the age of 65 years, the petitioner cannot stake any claim on salary/back wages till he attained the age of 65 years.

12. We are of the opinion that the instant writ petition is meritless and the same is hereby dismissed, *in limine*, along with the pending application.

PRATIBHA RANI, J.

HIMA KOHLI, J.

MAY 31, 2018

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प्रस्तुति द्वारा