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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10.05.2024

+ W.P.(C) 6703/2024
KENDRIYA VIDYALAYA SANGATHAN & ANR. Petitioner
Through: Mr. N.K.Bhatnagar alongwith Ms.
Pratishtha Majumdar, Ms. Rupali, Advs.

versus

MAHIPAL SINGH Respondent
Through: Ms. Sonika Gill & Mr. Yogesh
Sharma, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

CM APPL. 27934/2024 -Ex

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

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3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 26.05.2023 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 260/2018. Vide the impugned order, the learned Tribunal has allowed the Original Application (O.A.) filed by the respondent by directing the petitioner to grant him notional seniority on the post of Principal w.e.f., October, 2012 and, accordingly, re-fix his pay



without granting him any actual back wages.

4. At the outset, the brief factual matrix as emerging from the record maybe noted.
5. Upon the petitioners issuing a notification in February, 2012, inviting applications from eligible candidates for direct recruitment to the post of Principal in Kendriya Vidyalaya Sangathan, the respondent applied under the OBC category. However, when the result of the said selection process was declared in October, 2012, the respondent did not find his name in the select list, which he realised was on account of the petitioners erroneously including the names of those OBC candidates who had been selected under the unreserved category as occupying vacancies under the OBC category. The respondent, therefore, approached the Tribunal seeking a direction to the petitioners to re-work the seniority list by excluding the names of those OBC candidates who were selected as per their merit under the unreserved category. The said OA was, on 07.10.2015, allowed by the Jaipur Bench of the learned Tribunal.
6. In compliance with the Tribunal's order, the petitioners issued a fresh select list on 31.03.2016, in which list, the name of the respondent was included. The respondent was, accordingly, issued an offer of appointment and he joined service as a Principal under the OBC category on 05.04.2016. After joining service, the respondent made representations to the petitioners seeking seniority and notional fixation of pay from the date candidates placed in the original select list had joined service. The said representation was rejected on 14.11.2017, compelling the respondent to approach the learned



Tribunal by way of O.A. No. 260/2018, which as noted hereinabove, has been allowed under the impugned order.

7. Learned counsel for the petitioners submits that the impugned order is perverse as the learned Tribunal has failed to appreciate that the respondent could not be granted service benefits from a date prior to his joining service. He submits that while directing the petitioners to grant notional benefits to the respondent w.e.f., October, 2012, the learned Tribunal has lost sight of the fact that the petitioners had, after the order passed by the Jaipur Bench in O.A. No. 857/2012, taken prompt steps to redraw the seniority list and, therefore, there was no delay on the part of the petitioners in appointing the respondent. He, therefore, prays that the impugned order be set aside.
8. On the other hand, Ms. Sonika Gill, learned counsel for the respondent, who appears on advance notice, supports the impugned order and submits that once it was evident that the petitioners were themselves responsible for initially preparing an erroneous select list, the respondent, whose name was included in the select list after the same was corrected could not be deprived of his due seniority at par with others selected in the same selection process. She, therefore, prays that the writ petition be dismissed.
9. Having considered the submissions of the parties and perused the record, we find that the learned Tribunal has allowed the OA by relying on its decision dated 10.01.2019 in O.A. No. 520/2019 titled as *G.Prince Denness Christy Vs. Kendriya Vidyalaya Sangathan and others..* This decision has, admittedly, not been assailed till date. It would, therefore, be apposite to note hereinbelow the relevant



extracts of the impugned order:

13. *The applicant got 55.50 marks whereas, the persons who scored lesser marks were given appointment in the year October 2012 and therefore, the applicant is also entitled to seek his notional appointment from the date of appointment of junior persons for the purpose of fixation of pay, seniority etc.. The names of the some of the junior persons who scored lesser marks and appointment in October 2012 are as under:*

<i>Roll No.</i>	<i>Name</i>	<i>Total Marks Weightage</i>
<i>1901131812</i>	<i>Uma Shankar Vijay</i>	<i>53.90</i>
<i>1901133033</i>	<i>Akanksha Sharma</i>	<i>53.90</i>
<i>1901133050</i>	<i>Barrister Pandey</i>	<i>53.20</i>
<i>1901131610</i>	<i>Bhushan Kumar</i>	<i>53.10</i>
<i>1901131727</i>	<i>Kanhaiya Jha Diwana</i>	<i>52.20</i>
<i>19011311432</i>	<i>Dilip Kumar Triphathi</i>	<i>52.10</i>
<i>1901131362</i>	<i>Amit Srivastava</i>	<i>51.60</i>
<i>1901131344</i>	<i>Anand Prakash Rai</i>	<i>51.00</i>

14. *Having heard the learned counsel for the parties and pleadings available on record, we find that the present matter is squarely covered by decision of a Coordinate Bench of this Tribunal m OA No.520/2019 dated 10.01.2019 titled G.Prince Denness Christy Vs. Kendriya Vidyalaya Sangathan and others.*

15. *In view of the aforesaid observations made by the Tribunal and findings arrived in paras 11, 12, 13 & 14 of the said decision rendered by a Coordinate Bench, no adverse view can be taken. Paras 11, 12, 13 & 14 of the aforesaid decision read as under :*

“11. In the instant matter, once the Tribunal had directed the re-examination of the issue and thereafter preparation of select list for the post of



Principal, it was quite obvious that pursuant to such a re-examination, all the other consequential decision should have been taken. In the present case, such a re-examination led to appointment of the applicant as a Principal. Therefore, a logical corollary was that all other consequential benefits including but not restricted to, re-fixation of the applicant's pay, seniority and promotion be accorded to him, if the applicant is entitled to the same, so as to remove the anomaly with respect to juniors.

12. Therefore, we have hesitation in allowing the O.A. and quashing the communication dated 20.07.2018 vide which the applicant's claim for re-fixation of salary has been rejected. While allowing the O.A., a further direction is given to competent authority amongst the respondents to pass an appropriate order within a period of eight weeks' from the date of receipt of a copy of this order, re-fixing the salary of the applicant so that it is brought at par with his juniors who are said to have been promoted as Principal from Oct.2012. The benefit of such a re-fixation shall be on notional basis w.e.f. Oct. 2012 and actual basis w.e.f. the date the applicant assumed the position of Principal.

13. Pursuant to this re-fixation, all other consequential benefits shall be awarded in favour of the applicant within a further period of eight weeks' from the date of receipt of a certified copy of this order.

14. In case the applicant is held to be entitled for payment of any financial arrears, the same shall be released in his favour expeditiously. However, the applicant shall not claim any interest on such a payment."



16. In view of the aforesaid, we allow this QA quashing the impugned Order dated 14.11.2017 in terms of the aforesaid directions and the respondents are directed to pass an appropriate order within a period of eight weeks from the date of receipt of a copy of this order, re-fixing the salary of the applicant so that it is brought at par with his juniors who are said to have been promoted as Principal from Oct.2012. The benefit of such a re-fixation shall be on notional basis w.e.f. Oct. 2012 and actual basis with effect from the date the applicant assumed the position of Principal.

10. From a perusal of the aforesaid, what emerges is that the Tribunal has issued directions to grant seniority and notional pay fixation to the respondent at par with his juniors by holding that once the select list was re-drawn, the candidates whose names are included in the re-drawn seniority list ought to be granted all benefits at par with the persons who were placed with the original select list. Since this decision passed on 10.01.2019 has not been assailed for over five years, we fail to appreciate as to why the impugned order which is based on this decision dated 10.01.2019 has been assailed by the petitioner which is a renowned educational institution. The present petition is, therefore, liable to be dismissed on this ground alone.
11. Even otherwise, once it is the petitioner's own case that the select list drawn in October, 2012, was found faulty by the Tribunal on 07.10.2015 and a fresh list had to be drawn only because of the error in the initial select list, it is not open for the petitioners to urge that candidates whose names were included in the corrected select list should not be granted their due seniority and pay fixation from the date when candidates in the original select list were granted. We,



therefore, absolutely no merit in this misconceived petition.

12. For the aforesaid reasons, finding no infirmity with the impugned order, the writ petition is dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 10, 2024
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