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- Coram:-

ORDER

OA No.1870/89 - H.K. Anand Vs. Delhi Administration and Another, OA No.1873/89 - Gurdev Singh Vs. Delhi Administration and Another, OA No.1875/89 - P.C. Bhatia Vs. Delhi Administration and Another and OA No.1879/89 - Bhim Singh Chauhan Vs. Delhi Administration and Another were disposed of by a common judgement dated 30.4.92 of the Tribunal. Directions were issued that the applicants shall be deemed to be continuous from the date of their original appointment as Skilled Workman (Painter); ignoring the termination of their services in 1976 on the ground of being surplus, that they shall be given notional pay fixation in the grade of Rs.440-750 with effect from the date on which the applicants in Transferred Application No.T-71/86 and a batch of cases were given such benefit on the basis of the judgement dated 31.5.88 in those cases and the applicants shall be entitled for payment of arrears of emoluments after such fixation from the date of filing of their respective applications in the Tribunal but they are not entitled to any arrears for periods prior to those dates.

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2. The Directorate of Education, Delhi Administration has filed two Review Applications for a review of the aforesaid judgement (a copy of which has been furnished with the R.A.) in so far as it applies to OA-1873/89 and OA-1875/89 filed by Gurdev Singh and P.C. Bhatia respondents in the R.As.

3. Notice was issued to the respondents who have filed a reply opposing the review applications.

4. With the consent of the parties, the Review Applications, which are in respect of the same judgement of the Tribunal, were heard together and are being disposed of by this common order.

5. It is stated in the R.A. that the respondents were working in the Directorate of Education when they filed OA-1873/89 and OA-1875/89. The reliefs claimed by them are to place them as Skilled Workman/Craft Instructor in the pay scale of Rs.440-750 from the date of the so called fresh appointment on 3.11.1976 or from January, 1978 when a similar benefit was given to Shri H.K. Anand by the judgement dated 31.5.1988 and to pay arrears from 3.4.1976/January, 1978 on account of fixation of pay in the pay scale of Rs.440-750. It is stated that the respondents were given fresh appointment as Lab Assistant in the Directorate of Education in the scale of Rs.290-500, which, it is alleged, they were drawing at the time of termination of their services ^{from} ~~in~~ the Directorate of Technical Education on the ground of their being surplus.

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They joined on 9.12.1976. The reliefs sought could have been implemented in respect of the service under the review applicant, which is still continuing, only by the review applicant. In the circumstances, these two respondents ought to have impleaded the review applicant in the OAs filed by them, which was not done. The other important ground raised in the Review Applications is that the judgement sought to be reviewed assumes erroneously that the respondents in the R.A. and the applicants in the two other cases disposed of by that common judgement, are similarly situated. This is not correct. The applicant in OA-1870/89, which case was discussed in the judgement, claimed that, before termination of his service in 1976, he was on the pay scale of Rs.440-750. The respondents were given fresh appointment in the scale of Rs.290-500, which, it is alleged that they were drawing at the time of the termination of their service from the Directorate of Technical Education in 1976 and, therefore, even if continuity of service is to be granted, it should have been on the basis of this pay scale and not the pay scale of Rs.440-750, mentioned in the judgement. Apparently, this was due to the fact that the present respondents did not furnish full information in their OAs.

6. The R.A. is resisted on the ground that it is not maintainable as the Directorate of Education was not a party to the earlier OAs. It is also urged that it is barred by limitation and this Tribunal has no jurisdiction to condone the delay.

7. Relying on a judgement of the Supreme Court in Union of India Vs. Visvswara I.S. Ltd. reported in 1987 Rajdhani Law Reporter SC 101 - Shri R.K. Mehta,

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learned counsel for the respondents in RA-119/93, contended that the delay cannot be condoned. He also contended that the Review Application has been filed when contempt proceedings have been initiated against the original respondents for non-implementation of the order. It is further contended that as the Delhi Administration was the first respondent in all the O.As, it was not at all necessary to implead the Directorate of Education.

8. We have heard the learned counsel for both the parties.

9. On the basis of the averments made in the R.As, it is clear that the Directorate of Education was a necessary party, for, the judgement of the Tribunal in respect of the two respondents in the R.A. in respect of the period after their absorption in the Review Applicants' establishment can be impleaded only by the Review Applicant. Therefore, he was a necessary party.

10. The plea that when the Delhi Administration had already been impleaded, it was not necessary to implead the Directorate of Education, which was only a subordinate functionary, is fallacious. In that case, there was no need even to implead the Directorate of Technical Education in the O.As. On the facts mentioned above, the Directorate of Education was a necessary party and in fact the respondent in RA-118/93 Gurdev Singh sent, on 9.7.92 (Annexure-1 to the reply), a copy of the judgement to the review applicant for fixation of pay and payment of arrears, as directed by the Tribunal. It is thus abundantly clear that the Directorate of Education was a necessary party.

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11. The stand taken by the present review applicants is also supported by the decision of the Supreme Court in the case of Udit Narain Singh v. Board of Revenue reported in AIR 1963 SC 786 wherein it was held:-

"The law as to who are the necessary or proper parties to a proceeding is well settled. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

12. A third party may feel aggrieved by a decision rendered in an O.A., to which it was not made a party. In such a situation, the proper remedy is to seek a review of the decision in the O.A. as held by the Full Bench of the Tribunal in John Lucas & Another vs. Additional Chief Mechanical Engineer reported in Full Bench Judgements of C.A.T. (Bangalore) 135. The Constitution Bench of the Supreme Court in another decision, Shivdeo Singh v. State of Punjab reported in AIR 1963 SC 1909 has held that:-

"it is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."

"Here, the previous orders of Khosla J affected the interests of persons who were not made parties in the proceeding before him. It was at their instance and for giving them a hearing Judge entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do."

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13. The contention of Sh. R.K. Mehta that we have no power to condone the delay is without any basis. The judgement relied on by him does not also support his case. The tenor of the judgement is that if the S.L.P. had been filed, explaining the delay at three stages, perhaps, a different order might have passed. In the present RA. the review applicant has filed two MPs, explaining the delay.

14. To condone the delay in filing the Review Application, the review applicant has filed MP No.1090 and 1091 of 1993 in the two Review Applications. The reason for the delay is stated to be that the judgement of the Tribunal was received in the Directorate in December, 1992 when it was sent by the Directorate of Technical Education. Further time was taken in verifying the contents of the original applications, filed by the respondents, which resulted in the above discovery. Hence, the MPs have been filed in March, 1993 for condonation of delay. We are satisfied that the review applicant has explained the delay. The MPs are allowed and the delay condoned.

15. The respondents have not denied the averments made that they were employed in the Directorate of Education and that too on the pay scale of Rs.200-500. They have merely stated that these facts were neither necessary nor important for the disposal of their O.As.

16. We are of the view that had these facts been mentioned, perhaps, the Tribunal might not have passed a common judgement or at any rate, it would have held

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that they should be given notional pay fixation in the pay scale of Rs.290-500 and not in the pay scale of Rs.440-750.

17. In the circumstances, we are satisfied that the common judgement dated 30.4.92 rendered in the four Original Applications, including OA No.1873/89 and OA No.1875/89 filed respectively by the respondents in these two Review Applications, suffers from errors apparent on the face of record. Accordingly, it is necessary to review that judgement.

18. Therefore, while allowing these Review Applications, we modify the judgement dated 30.4.92 by directing that it shall not be deemed to have disposed of OA-1873/89 filed by Gurdev Singh, respondent in RA-118/93 and OA 1875/89 filed by P.C. Bhatia, respondent in RA-119/93. That judgement, in so far as it concerns these two OAs, is recalled and OA-1873/89 and OA-1875/89 are restored back to file for rehearing. A copy of this direction shall be placed by the Registry in the remaining two OAs viz. OA-1870/89 and OA-1879/89. Further, a copy of this order shall also be served on the parties to those two OAs.

19. The two Review Applications are allowed, as above and the OA-1873/89 and OA-1875/89 are directed to be placed before us for further direction on 10.11.93.

(B.S. HEGDE)
MEMBER(J)

5/11/93

(N.V. KRISHNAN)
VICE-CHAIRMAN

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