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

\+ **W.P.(C) 4360/2023, CM APPL. 16818/2023 (stay) & CAV 179/2023**

NATIONAL HIGHWAYS AUTHORITY OF INDIA ..... Petitioner

Through: Mr. Manoj Ranjan Sinha, Mr. Deepak Sain and Ms. Nisha, Advocates.

versus

MS. NANDA YADWAD ..... Respondent

Through: Mr. S.K. Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

O R D E R

% **10.04.2023**

CM APPL. 16819/2023

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CAV 179/2023

Mr. S.K. Gupta, Advocate appears for the respondent and accepts notice for her and as such the Caveat stands discharged.

W.P.(C) 4360/2023 & CM APPL. 16818/2023 (stay)

1. The challenge in this petition is to an order dated December 30, 2022 of the Central Administrative Tribunal (in short 'Tribunal') in Original Application 760/2021, whereby the Tribunal by allowing the Original Application filed by the respondent herein, has directed the petitioner herein the following:

> *"In the peculiar facts and circumstances of the present case, applicant is entitled to continuation with pay protection as on 31.03.2021 and the same ought to be extended from time to*

time in terms of Clause 13 (C) of the Second Amendment Regulation, 2016. There is no merit in so far as plea of regularization is concerned, as the applicant does have vested right to same as on date except in accordance with law. However, till such time the sanctioned vacancies are not filled through regular mode, the services of the applicant shall not be terminated without following the due process of law. At this stage, in the event in future, any process of regularization initiated against any sanctioned post including that of the Accountant, the applicant shall be considered for regularization. Needless, to say that regularization shall have prospective effect from the date of orders of regularization and shall be made strictly on the basis of seniority, subject to fitness and fulfillment of eligibility prescribed in the Regulation.

(a) The impugned office communication dated 31.03.2021 for engaging the applicant through authorized contractor is unsustainable and is hereby quashed and set aside qua applicant. Since Clause 13 (C) of Regulation 2016 also contemplate "appointment on contract", the respondents ought to consider the case of the applicant for appointment on contractual basis directly without outsourcing, more so, in the light of the fact that the Second Amendment Regulation 2016 still in force, wherein Clause 13 (C) for appointment on contract was incorporated. The said clause has neither been rescinded nor substituted/amended in so far as the appointment on contract is concerned. The same is also apparent from the explanatory memorandum to the Second Amendment Regulation 2016 wherein it is stipulated that anything done or omitted to have been done prior to notification of the said amendment shall not be affected by promulgation of this amendment. The Regulation, as notified on 04.03.2021, is also silent on the said issue. Clause 18 of the new Regulation 2021, which is in addition and not in derogation to the Second Amendment Regulation 2016 itself, provides for a saving clause in so far as relaxation of age limit and other concessions are concerned.

(b) In the event, there is any proposal or scheme of

regularization or advertisement for direct recruitment by the respondents on the post of Accountant, the applicant shall be considered for the same by giving the applicant preference, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age as per Rules."

2. The submission of Mr. Sinha, learned counsel for the petitioner is, the Tribunal though has agreed with the action of the petitioners not to regularize the services of the respondent, but had still directed the petitioners herein to continue the services of the respondent till such time sanctioned, vacancies are not filled through regular mode. He submits, such a direction could not have been given by the Tribunal as it is not known when actually the need for filling of the sanctioned vacancies would arise and the same shall be filled. That apart, it is the submission that even otherwise the direction for regularization could not have been given by the Tribunal as there is no scheme for regularization which is in vogue in the NHAI. Even the earlier scheme for regularization was a one-time scheme. He do concede to the fact that though order dated March 31, 2021 was issued to the respondent seeking her consent for her engagement through an outsource agency, she continued to be engaged by the NHAI on contract basis even thereafter. He also states, as of today she is working as an Accountant.

3. At this stage, Mr. Gupta submits that though the respondent is working as an Accountant, she is not being paid, the same emoluments as were being paid on long term contract basis. In other words, she is being paid much less than what she was being paid earlier.

4. Noting the above submissions made by the counsel for the parties, the fact that the respondent is continuing to be engaged in the NHAI, she shall be continued to be engaged till the next date of hearing.

5. It is made clear the issue of payment of emoluments shall be considered at the time of final hearing.

6. Mr. Gupta assures the Court that he shall not initiate contempt proceedings on the alleged ground of non compliance of the impugned order, till the next date of hearing. The statement is taken on record.

7. Counsel for the parties to file their written submissions alongwith the judgments they want to rely upon within eight weeks.

8. List on September 25, 2023.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

APRIL 10, 2023/akc