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

Date of decision: 03rd OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 12458/2023**

SUBHASHINI RATAN & ORS. Petitioners

Through: Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Harshit Goel and Mr. Siddhant Singh, Advocates.

versus

LEGISLATIVE ASSEMBLY SECRETARIAT NCT OF DELHI & ORS Respondents

Through: Mr. Santosh Kumar Tripathi, Mr. Pradyumn Rao, Mr. Arun Panwar, Mr. Utkarsh Singh, Ms. Prashansa Sharma and Mr. Kartik Sharma, Advocates for R-1.

Mrs. Avnish Ahlawat, Standing Counsel with Ms. Laavanya Kaushik, Mrs. Taniya Ahlawat, Ms. Aliza Alam, Mr. Mohnish Sehrawat and Mr. Nitesh Kumar Singh, Advocates for R-2 and 3.

Mr. Anupam Srivastava, ASC for GNCTD with Mr. Vasuh Misra, Advocate for R-2 and 3.

Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Vanshay Kaul, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

JUDGMENT(ORAL)

CM APPL. 50524/2023

1. This application has been filed by Respondents No.1, 2 & 3 for



vacation of interim order dated 21.09.2023 by which this Court had restrained the Respondents from discontinuing the services of the Petitioners herein and had also directed the Respondents to give stipends to the Petitioners.

2. Facts, in brief, leading to the present Writ Petition are that the Delhi Legislative Assembly issued an advertisement for engagement of Fellows, Associate Fellows and Associate Fellows (Media) under the Delhi Assembly Research Centre (DARC) Fellowship Programme. Engagements under the said Programme were initially for a period of one year which could be extended by another year based on the performance of the candidates. The advertisements were issued on 12.02.2019 & 13.02.2019 and they were published in a number of newspapers. It is stated that a proper selection process was undertaken and a total of 50 Fellows and 90 Associate Fellows (including Associate Fellows (Media)) were engaged by the DARC on contractual basis for a period of one year subject to extension by another year based on performance of the Fellows.

3. It is stated that the Fellows were entitled to a fixed stipend and no other benefits or allowances. It is stated that on 11.05.2023 a Constitution Bench of the Apex Court *vide* its judgement dated 11.05.2023 in C.A. No.2357 of 2017, titled as Government of NCT of Delhi v Union of India, held that the State Government of the NCT has legislative and executive power over “services” under Entry 41, List II of the Seventh Schedule of the Constitution of India.

4. It is stated that on 19.05.2023, the President in exercise of powers under Article 123 of the Constitution promulgated the Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023



(hereinafter referred to as “the 2023 Ordinance”). The 2023 Ordinance has excluded Entry 41, List II from the subjects over which the Legislative Assembly of the NCT of Delhi can exercise legislative powers by insertion of Section 3A in the Government of National Capital Territory of Delhi Act, 1991 (hereinafter referred to as “the GNCTD Act”). It is stated that the Government of NCT of Delhi challenged the 2023 Ordinance before the Apex Court by filing a Writ Petition, being W.P.(C) 678/2023. It is stated that on 05.07.2023 a letter was issued by the Services Department, GNCTD directing the dis-engagement of the Fellows and Associate Fellows on the following two grounds:

- a. that the provisions of reservations for SC/ST/OBC which has been prescribed by the DoPT *vide* Office Memorandum No. 27/4/67(II)-Estt.(SCT) dated 24.09.1968 and reiterated *vide* OM No. 36036/3/2018-Estt.(Res.) dated 15.05.2018 for reservation in temporary appointments lasting for 45 days or more have not been followed in the engagement of Fellows and Associate Fellows.
- b. that as per Government of India Notification dated 21.05.2015, 'services' is a reserved subject and the Lt. Governor, Delhi is the Competent Authority in service matters related to GNCTD and this position has been reinforced through section 3A, amended section 41(1) and other provisions contained in Part IV-A of the GNCTD Act, 1991, as introduced through the Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 and that Delhi Legislative Assembly is not Competent to appoint/engage such manpower without the approval of the Lt.



Governor.

5. On 06.07.2023 the Finance Department of GNCTD issued an order restraining Pay and Accounts Officers from releasing the salary of persons engaged as Fellows and Associate Fellows.
6. Material on record discloses that on 07.07.2023 the Speaker of the Legislative Assembly has written a letter to the Lt. Governor explaining the terms of engagement of the Fellows by the DARC. In the said letter the Speaker has mentioned that the post of Fellow and Associate Fellow is not a 'civil post' nor is it an 'office' which has been created under Article 309 of the Constitution of India. The Speaker has further stated that the Fellowship Programme does not fall under employment/appointment and, therefore, the question of violating the constitutional provisions of reservations does not arise.
7. By an Order dated 09.08.2023, issued by the Legislative Assembly Secretariat, the engagement of Fellows and Associate Fellows in the DARC was discontinued.
8. The Orders dated 05.07.2023, 06.07.2023 & 09.08.2023, are subject matter of challenge in the present Writ Petition.
9. This Court on 21.09.2023, after noticing the differences in the stand between the Speaker of the Legislative Assembly and the Lt. Governor of Delhi, issued notice in the Writ Petition. Relevant portions of the said Order reads as under:

" 4. Learned Counsel for the Petitioners states that both the reasons given by the Respondents are untenable in law. He places reliance on a letter given by the Hon'ble Speaker on 07.07.2023 where the Hon'ble Speaker has stated that both the reasons given



for terminating the Petitioners are not applicable to the posts held by the Petitioners herein.

5. *In view of the fact that the Hon'ble Speaker had himself raised his objections for termination of the services of the Petitioners and those who are similarly situated, notice is being issued to the Respondents to show cause as to why there is a sudden change in the attitude of Respondent No.1 in agreeing for the termination of the posts of Fellows mid-way during the tenure.*

6. *Issue notice."*

10. This Court had also restrained the Respondents from discontinuing the services of the Petitioners and had also directed that the Petitioners be given their stipends as they have not been paid since 06.07.2023.

11. The instant application has been filed by Respondents No.1, 2 & 3 for vacation of the said order. In the application it is mentioned that the 2023 Ordinance has been challenged in the Apex Court by the Government of NCT of Delhi by filing W.P.(C) 678/2023. It is stated that in the said Writ Petition an application, being I.A. No.13505/2023, was also filed seeking stay of the letter dated 05.07.2023, discontinuing the engagement of Fellows and Associate Fellows in the DARC. It is stated that the Apex Court in its Order dated 20.07.2023 in W.P.(C) 678/2023 has framed two questions, namely,

- (i) What are the contours of the power of Parliament to enact a law under Article 239-AA(7); and
- (ii) Whether Parliament in the exercise of its power under Article 239- AA(7) can abrogate the constitutional principles of governance for NCTD.

and has referred the matter to the Constitution Bench. The Apex Court vide



the said Order has dismissed the I.A. No.13505/2023, which was filed seeking stay of the letter dated 05.07.2023 by which the engagement of Fellows and Associate Fellows in the DARC has been discontinued.

12. In the present application it is contended that since the issue is pending before the Apex Court, this Court ought not to have restrained the Respondents from discontinuing the services of the Petitioners herein as Fellows in the DRC as it would amount to stay of the letter dated 05.07.2023, which the Apex Court chose not to interfere with.

13. It is stated by the learned Counsel for the Petitioner that the Order dated 20.07.2023, passed by the Apex Court in W.P.(C) 678/2023 would not be applicable to the Petitioners herein as they are not a party to the proceedings before the Apex Court. He further states that the Petitioners have been engaged as Fellows, Associate Fellows and Associate Fellows (Media) under the Delhi Assembly Research Centre Fellowship Programme and have been deputed in the Legislative Assembly and the Legislative Assembly being an independent organ was not a party to the proceedings before the Apex Court and, therefore, the Order dated 20.07.2023, passed by the Apex Court in W.P.(C) 678/2023 would not be applicable to the Petitioners herein.

14. It is stated by the learned Counsel appearing for the Legislative Assembly that even though a prayer for staying the letter dated 05.07.2023 has been made in I.A. No.13505/2023 in W.P.(C) 678/2023 before the Apex Court, the Apex Court has only referred the matter to the Constitutional Bench and has not adjudicated on the correctness or otherwise of the letter dated 05.07.2023 and, therefore, technically, letter dated 05.07.2023 has not been considered by the Apex Court in its Order dated 20.07.2023 and,



therefore, this Court cannot be prohibited from passing an order restraining the Respondents from discontinuing the services of the Petitioners herein as Fellows in the DRC. Learned Counsel for the Legislative Assembly has taken this Court through the counter affidavit filed by the Union of India before the Apex Court in W.P.(C) 678/2023 and more particularly to paragraphs No.3, 4 & 5 of the counter affidavit to contend that it was the specific stand of the Union of India that the application for stay of the Order letter 05.07.2023 is not connected to the Writ Petition filed before the Apex Court or even to the 2023 Ordinance which is under challenge before the Apex Court. He further states that it was specifically stated that the correctness or otherwise of the letter dated 05.07.2023 do not relate to the 2023 Ordinance and, therefore, the Order dated 21.09.2023, passed by this Court does not warrant any modification. He also contends that the present application is not maintainable as the same has not been filed by the competent authority. He states that the application has been signed by the Deputy Secretary who has not been authorised by the Speaker to file such an application.

15. *Per contra*, learned Counsel for Respondents No.2 & 3 contends that the correctness or otherwise of the letter dated 05.07.2023 was specifically pleaded in I.A. No.13505/2023 and a prayer to stay the said letter has also been made in the said Application but the Apex Court has dismissed the same and has referred the matter to a Constitution Bench.

16. Heard the Counsels and perused the material on record.

17. Material on record indicates that I.A. No.13505/2023 was filed by the Government of NCT of Delhi in W.P.(C) 678/2023 before the Apex Court. paragraph No.22 of the said application reads as under:



"22. First, the Impugned Ordinance removes all control of the GNCTD from appointing/terminating/disciplining those who work for it. Instead, these powers are now being exercised solely at the LG's/Union of India's discretion, without any consideration of the needs of the elected Government. For example:

i.) Recent orders dated 31.05.2023 and 1.06.2023 regarding, respectively, disciplinary proceedings and promotions in GNCTD's schools, were issued without so much as consulting the elected Government or even the National Capital Civil Service Authority.

ii.) On 5.07.2023, the LG fired 437 independent consultants engaged with statutory bodies under the GNCTD or with the Delhi Legislative Assembly in one single stroke - again, not so much as a whisper was made to the elected Government before taking a largescale step such as this that upsets governance across many departments."

18. The prayer of the I.A. No.13505/2023 reads as under:

"a. Stay the impugned Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023, pending adjudication of the captioned Petition; and/or

b. Stay the letter dated 5.07.2023 bearing No. F.IO (25)/S-IV/ENGAGEMENT OF FELLOWS/SPECIALISTS / 2022 / 1038 issued by the office of the Lieutenant-Governor of Delhi, pending adjudication of the captioned Petition; and/or

c. Stay any other consequential orders passed or decisions taken by the Respondents pursuant to the powers conferred by the Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023;



d. Pass any other order or direction that this Hon'ble Court may deem fit and appropriate in the interest of justice."

19. It was specifically argued before the Apex Court that the Lt. Governor has terminated the contract of 437 consultants engaged with statutory bodies under the GNCTD or with the Delhi Legislative Assembly. Paragraph No.6 of the Order dated 20.07.2023, passed by the Apex Court in W.P.(C) 678/2023 reads as under:

"6. The Government of NCT has also sought a stay of the NCT Ordinance² on the ground that it prevents the Government of NCTD from meeting its popular mandate. Mr. Abhishek Manu Singhvi, learned senior counsel highlighted instances where senior bureaucrats have ignored the orders of the concerned Minister to call the National Disaster Relief Force for aiding with the flood situation in Delhi, the Directorate of Vigilance has issued work allocation order in direct contravention to prior orders of the Minister-in-charge, and the Lieutenant Governor has terminated the contract of 437 consultants working with various departments of the government of NCTD without any consultation with the elected government. Additionally, the letter issued by the Lieutenant Governor on 5 July 2023 terminating the engagement of specialists/fellow/consultants is also sought to be stayed."

20. The genesis of the whole controversy lies in the letter dated 05.07.2023 by which the Lt. Governor has disengaged the Fellows/Associate Fellows of the DCRA. Relevant portion of the letter dated 05.07.2023 reads as under:

"3.3 Cases for which information is available with



Services Department, however, the information is not provided by the concerned Department and therefore it is not clear that whether the approval of Hon'ble Lt. Governor, Delhi has been obtained or not:

<i>Sr. No.</i>	<i>Department/ Organisation</i>	<i>Number of persons engaged</i>	<i>Monthly Emoluments/ Remuneration per persons</i>
1.	Delhi Legislative Assembly	140 (Fellows – 50, Associate Fellows (Media) –90]	Fellows – 1,00,000/- per Month ----- Associate fellows – 60,000/- per month
2.	<i>DDCD, Planning Department DDCD vide its letter 25.4.2023 has provided a 'NIL' report, however as per draft cabinet note received at Services Department, total 47 engagements were proposed.</i>	<i>47 (Advisor – 06, Deputy Advisor -08, Senior Research Officer – 12, Consultants –21)</i>	<i>Advisor – 2,65,000/- per month.</i> ----- <i>Deputy Advisor 1,45,000/- per month.</i> ----- <i>SRO – 1,25,000/- per month</i> ----- <i>Consultant – 1,25,000/- per month.</i>
3.	<i>Chief Minister Urban Leader Fellowship Programme (CMULFP), AR Deptt. As per draft Cabinet note received at Services Department, total 50 engagements were proposed.</i>	<i>50 (Fellows – 36, Associate Fellows – 14)</i>	<i>Fellows – 1,25,000/- per month.</i> <i>Associate Fellows – Rs.75,000/- per month</i>
	Total	237	
	Total Grand total of engagements as mentioned above in para 3.1 to 3.3		437

4. It is observed that the extant provisions of reservations for SC/ST/OBC has been prescribed by DoPT vide Office Memorandum No. 27/4/67(II)-



Estt.(SCT) dated 24.09.1968 and reiterated vide OM No. 36036/3/2018-Estt.(Res.) dated 15.05.2018 for reservation in temporary appointments lasting for 45 days or more have also not been followed in these engagements. It is also observed that the above mentioned engagements have been made in gross violations of the Constitutional Provisions on Reservation, thus, void ab initio.

5. As per GoI's Notification dated 21.05.2015 'services' is a reserved subject and Hon'ble Lt. Governor, Delhi is the Competent Authority in service matters related to GNCTD. Further, this position has been reinforced through section 3A, amended section 41(1) and other provisions contained in Part IV-A of the GNCTD Act, 1991, as introduced through the Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023.

6. Further, Hon'ble Delhi Legislative Assembly is also not Competent to appoint/engage such manpower without the approval of Hon'ble Lt. Governor, in view of the Hon'ble High Court judgment dated 22.05.2014 in WP (C) 3522/2014 in the matter of Siddharth Rao Vs GNCTD & Ors.

7. In view of the above, all the departments / organizations / boards, etc. under Govt. of NCT of Delhi are therefore directed as under:-

(i) All the departments shall immediately stop engagements of all the Fellows/ Associate Fellows/ Advisors/ Dy. Advisors/ Specialists/ Senior Research Officers/ Consultants, by whatever name, wherein approval of the Hon'ble Lt. Governor, Delhi has not been obtained till date.

(ii) All the departments shall further ensure the above



i.e. 7(i) w.r.t. similar engagements in respect of Corporations/ Boards/ Societies/ other autonomous bodies under their administrative control.

(iii) Finance Department, GNCTD shall direct all the PAOS not to release salary henceforth in respect of persons engaged as Fellows/ Associate Fellows/ Advisors/ Dy. Advisors/ Specialists/ Senior Research Officers/ Consultants, by whatever name, where the approval of Hon'ble Lt. Governor, Delhi have not been obtained till date.

(iv) If any administrative department finds it appropriate to continue such engagements, the Idetailed case with all records and proper justification shall be forwarded by the concerned Departments to the Services Department, GNCTD for onward submission to Hon'ble Lt. Governor for consideration and approval immediately."

(emphasis supplied)

21. The letter dated 05.07.2023 was specifically challenged by the Government of NCT of Delhi in I.A. No.13505/2023 wherein it was specifically argued before the Apex Court that the said letter must be stayed. In the Order dated 20.07.2023 the Apex Court chose not to stay the letter dated 05.07.2023. The contention of the learned Counsel for the Petitioner that since the Apex Court has not passed any order in the I.A. No.13505/2023, it is open for this Court to consider the same, cannot be sustained.

22. The Apex Court has declined to stay the Order dated 05.07.2023 by dismissing I.A. No.13505/2023. Propriety demands that this Court ought not have passed any interim order which had the effect of staying the Order dated 05.07.2023 and other consequential orders.



23. In view of the above, this Court is inclined to vacate the stay granted by it in its Order dated 21.09.2023.

24. However, it is always open for the Petitioner to approach the Apex Court to get appropriate clarifications.

25. The applications is disposed of.

SUBRAMONIUM PRASAD, J

OCTOBER 03, 2023

Rahul