

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

% Judgment delivered on 27.03.2012

+ **W.P.(C) 1704/2012**

GOVT OF NCT OF DELHI & ORS

..... Petitioners

versus

NEZ BEGUM KHAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Avnish Ahlawat

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

This writ petition is directed against the order dated 01.03.2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2154/2010. The sole question which arises for consideration in this writ petition is whether the respondent is to be given notional pay fixation from 1984 or from 1994 when she was actually appointed.

It is not in dispute at all that the respondent had been given seniority with effect from 1984. This was pursuant to the decision of the Supreme Court in the case of **Union of India v. Ishwar Singh Khatri & Ors.** 1993 (2) SCALE 730.

The respondent had been selected along with several others for the post of Trained Graduate Teacher (Urdu) in 1984. However, that appointment was not given to her.

There is a history behind this and the same is apparent from the Supreme Court decision in the said case of *Ishwar Singh Khatri* (*supra*). It had been contended on behalf of the petitioners herein that the number of vacancies were only 654 and it is for that reason that only 654 persons were appointed in 1984. However, the Supreme Court, repelling this contention, held that the Selection Board prepared the panels containing 1492 names as against the then available vacancies. The Supreme Court observed that “it goes without saying that the selected candidates had a right to get appointment”. Therefore, the Supreme Court did not see any reason to disturb the decision of the Tribunal in directing that those candidates who had been selected and had found place in the panel ought to have been given appointment. The Supreme Court also made it clear that the administration should fill up all the existing vacancies within one month from the date of the judgment of the Supreme Court till the panels in question were exhausted.

It is, therefore, clear that the Supreme Court in the case of *Ishwar Singh Khatri* (*supra*) had categorically held that the number of vacancies in 1984 for the post of Trained Graduate Teacher was 1492 and not 654 as contended by the

petitioners herein. Thus, it is to be taken as granted that the number of vacancies were 1492 and consequently, the respondent being one of the persons empanelled in 1984 was definitely entitled to get appointment in 1984 itself. Unfortunately, because of the stand adopted by the petitioner, the respondent and similar situated persons did not get appointments till the matter travelled to the Supreme Court and was ultimately conclusively decided by the Supreme Court in the case of ***Ishwar Singh Khatri*** (*supra*). As a result of the said decision of the Supreme Court, the petitioner has been granted appointment, but only in 1994. It is pertinent to note that as regards seniority also, the Supreme Court observed as under:-

“Needless, however, to state that the candidates in the panels when appointed pursuant to our order must get their seniority as per their rankings in the select panels over the persons appointed in the interregnum.”

The respondent, therefore, was granted seniority w.e.f. 1984, but was not granted any notional pay fixation with effect from 1984. Being aggrieved by this, the respondent had moved a representation before the petitioner, who had rejected the same by a letter dated 24.05.2010, wherein it was stated as under:-

“As per Supreme Court decision (copy enclosed), she was given seniority from back date i.e. 1984 instead of 1994. But she was not entitled to notional pay fixation, as nothing was mentioned in that order.

As per order No. DE 3 (144)/E-III/95/6584-89

dated 07.05.2004 (copy enclosed) issued by Additional DE (Admn.), the incumbent will not be entitled for notional pay fixation from the back date.”

Being aggrieved thereby, the respondent moved the said original application before the Tribunal, wherein the impugned order dated 01.03.2011 has been passed, allowing the respondent’s said application. The Tribunal had placed reliance on a Full Bench decision of the Tribunal in the case of ***Deepti Arora***, whereby notional pay fixation had been allowed to teachers who were similarly placed to the respondent. The Tribunal also placed reliance on the decision of this Court in the case of **Director of Education & Anr. v. Smt. Krishna Kumari** decided on 21.12.2009 in **WP(C) No. 13987/2009**. We must point out that the matter before the Division Bench of this Court in the case of ***Smt. Krishna Kumari*** (*supra*) is identical to the matter which is before us. This Court, while considering the case of ***Smt. Krishna Kumari*** (*supra*) observed as under:-

“The respondent was granted notional appointment and seniority as TGT with effect from 1984 on the basis of the judgment of the Supreme Court in ***Union of India v. Ishwar Singh Khatri & Ors.*** 1993 (2) SCALE 730. The petitioners, however, sought to deny notional pay fixation to the respondent, on the ground that the Supreme Court had only talked about assigning proper seniority but had not granted the relief of notional pay fixation. This led to the filing of the aforesaid Original Application by the respondent. As aforesaid, the Original Application of the

respondent has been allowed by the Learned Tribunal.

The submission of the learned counsel for the petitioners before us is that the respondent could not be given notional pay fixation of pay. We see no justification in the stand of the petitioners.

Once the respondent had been granted notional seniority from 1984, i.e. she is being treated as being in service from 1984 onwards, the said fiction has to be given its full effect, including for purposes of pay fixation. Therefore, the pay of the respondent ought to have been fixed as if she had joined in the year 1984 and on the basis that she had earned the increments, and benefitted from wage revision, which may have taken place in the meantime. She would also be entitled to benefits under the Assured Progression Scheme.”

A review application had also been filed on behalf of the Director of Education in the said case of **Smt. Krishna Kumari** (*supra*), which also came to be dismissed by a detailed order dated 07.01.2011.

The matter was carried further to the Supreme Court by way of SLP(C) No. CC 16284-16285/2011 which was disposed of by the Supreme Court by an order dated 14.10.2011. The Supreme Court noted the statement of the learned senior counsel appearing on behalf of the Director of Education that the Special Leave Petition had become infructuous because the order passed by the Central Administrative Tribunal had been complied with. Accordingly, the Special Leave Petitions were disposed of as having become infructuous. This clearly showed that

the petitioner had accepted the order of the Tribunal as confirmed by this Court in *Smt. Krishna Kumari (supra)*.

In view of the foregoing, we do not see how the petitioner could have filed this petition when the Tribunal was merely following the decision of this Court in *Smt. Krishna Kumari (supra)* as also the directions given by the Supreme Court in the case of *Ishwar Singh Khatri (supra)*.

As a consequence, the writ petition deserves dismissal. It is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V. K. JAIN, J

MARCH 27, 2012
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