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

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Date of Decision: July 30, 2013

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W.P.(C) 7516/2001

MRS.NIRMAL GUPTA Petitioner

Represented by: Mr.K.P.Gupta, Advocate

versus

THE LT.GOVERNOR/ADMINISTRATOR

GOVT.OF NCT OF DELHI & ORS.

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. The issue at hand is short. A select panel for appointment to the post of Post Graduate Teacher (PGT) was prepared in the year 1984 and some appointments were made. Without exhausting the panel another advertisement was issued inviting applications from eligible candidates and at that stage the empanelled candidates who had not been offered appointment approached the Tribunal vide OA No.842/1991 which was disposed of with a direction that all empanelled candidates be offered appointments, with a determinative finding that vacancies existed in the year 1984 for the post of PGT and that the vacancies could not be carry forward. The decision of the Tribunal was challenged before the Supreme Court with no success by the department. The result was that the empanelled candidates were given appointment, but in batches; and in the interregnum large number of persons were appointed as PGT.

2. Similar was the position with respect to the panel for the post of TGT. Challenge by the department to a likewise decision of the Tribunal pertaining to TGT failed before the Supreme Court.
3. Whereas decision pertaining to PGTs rendered by the Supreme Court is not available with us today, that of the Supreme Court pertaining to TGTs is available and the same is CA No.1900/1987 UOI & Ors. Vs. Ishwar Singh Khatri & Ors.
4. Thus, the department gave appointment to all empanelled PGTs and TGTs. Another round of litigation ensued pertaining to seniority. Directions were issued by the Tribunal, which were upheld that seniority would be as per the merit position in the panel.
5. This was done. Another litigation round commenced pertaining to salary. The persons who were given late appointment started claiming back wages. These were denied by the Tribunal noting that benefit of notional pay fixation was granted. This was in terms of an order dated May 07, 2004 passed by the Directorate of Education which reads as under:-

“In supersession of order No.F.DE-3(12A) Estt.III/Spl.Cell/97/17385-17445 dated 30.04.1998 based on the departments letter No.F.DE-3(31)/Estt.III/Spl.Cell/96/7766-7801 dated 22.04.1997, followed by letter No.F.DE-3(144)/E-III/95/2424951-25031 dated 10.11.1997 and subsequent corrigendum No.DE-3(31)/Spl.Cell/96/E-III/25753-813 dated 27.11.1997 and in compliance with the directions passed by Hon’ble Supreme Court on Civil Appeal No.1900 of 1997 titled Union of India & Ors. vs. Ishwar Singh Khatri & Ors. It is hereby ordered that the Directorate of Education will assign the proper seniority to the candidate as per their ranking in the select panel over the person appointed. In the interregnum, the incumbent will not be entitled for the notional pay fixation, since there was no mention of the pay fixation/notional fixation in the order passed in Hon’ble Supreme Court. Hence, the

seniority of the applicant in OA No.1691/94 titled Shri Sohanbir Singh and Ors., OA No.569/1996, titled Ms.Nirmala Gupta Vs. DE OA No.208/1998 titled Alam Chand Sharma Vs. DE and OA No.2098/1998 titled Satpal Singh Saini Vs. DE and other petitioners shall be determined in term of the directions passed by the Apex Court as per the select panel. The earlier order dated 30.04.1998 hereby cancelled.

These (sic) issue with the approval of competent authority.

*Sd/-
(Gitanjali Kundra)
Addl. Director of Education (Admn.)”*

6. This then is the past history which we need to note and while so doing would simply highlight one fact: the principle of ‘*stepping up*’ of pay was ignored at all stages.

7. We may pithily state the law. On an adjudication of a claim by a person to be entitled to promotion in his favour from a retrospective date, the person becomes entitled to seniority with effect from the date he ought to be promoted as per the law declared by the Supreme Court in the decision reported as 1977 (3) SCC 399 S.B.Patwardhan v. State of Maharashtra subsequently relied upon and followed by the Supreme Court in the decision reported as 1990 (2) SCC 715 Direct Recruit Engineers’ Asscn. V. State of Maharashtra. But simultaneously applying the principle of ‘*No work no pay*’ as held by the Supreme Court in the decisions reported as 2007 (11) SCC 632 Union of India v. B.M.Jha and 2007 (15) SCC 777 State of Haryana & Anr. v. S.K.Khosla back-wages may be denied. But, acting as an exception to the principle of ‘*No work no pay*’, as held by the Supreme Court in the decision reported as 2007 (7) SCC 689 Commissioner,

Karnataka Board v. C.Muddaiah where a Court holds that whereas the person was willing to work but was illegally and unlawfully not allowed to do so as an exceptional case benefits as if he had worked can be granted.

8. But the principle of ‘stepping up’ of pay has to be applied across the board in all cases where a person who is senior gets less salary than his junior; requiring the salary of the senior to be stepped up and brought at least at par with the junior as was held by the Supreme Court in the decisions reported as 2009 (3) SCC 94 Gurcharan Singh Grewal & Anr. v. Punjab State Electricity Board & Ors., 2008 (7) SCC 245 Punjab State Electricity Board & Ors. v. Gurmail Singh and 2006 (12) SCALE 440 Commissioner and Secretary to Govt. Of Haryana v. Ram Sarup Ganda.

9. The aforesaid opinions are in fact the logical culmination which flow from OM No.F.2(78)-EIII(A)/66 dated February 04, 1966 which reads:-

“In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.”

(Emphasis underlined)

10. And we only highlight sub-para (a), as per which, even in case of appointment in the same cadre, both the junior and senior officers have to be given equal pay; requiring the pay of the senior officer to be stepped up to bring it at par with the junior officer.

11. Whether we may call it notional fixation of pay from a back date i.e. the date when the junior person was appointed or we may call it stepping up of pay, the end is the same. The incumbent starts receiving a higher pay when he joins service.

12. This we find has already been granted to the petitioners who want arrears also to be paid, which relief cannot be granted.

13. The writ petition is dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

V. KAMESWAR RAO
JUDGE

JULY 30, 2013

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