

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

% *Judgment Reserved on: August 21, 2013*
Judgment Pronounced on: December 09, 2013

+ **WP(C) NO. 3534/2012**

SMT. KRISHNA KUMARI Petitioner
Represented by: Mr.K.P.Gupta, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Mr.K.A.Sorte, Deputy Education Officer

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. A nepotistic administrative decision taken in the year 1984 by the then Director of Education, Delhi Administration became a fertile ground of litigation and hundreds of teachers had to fight over five hundred times, on various facets of the consequence of the nepotistic decision. Instant writ petition is one humble contribution to the over five hundred litigations we have just referred to.

2. Pursuant to the vacancy year 1983-84, having notified 1492 posts of Trained Graduate Teachers (TGT) in various disciplines, for nepotistic reasons the then Director of Education appointed only 654 persons from out of the merit list prepared resulting in the remainder 838 candidates filing, either individually or collectively, over a hundred Original Applications before the newly constituted Central Administrative Tribunal alleging that it was settled law that unless good reasons are given not to fill up notified

vacant posts the rule recognized by law is that the notified vacancies have to be filled up from amongst the panel of successful candidates drawn up.

3. The Director of Education took a false plea before the Tribunal that only 654 posts were available to be filled up, but failed to give a justification as to why 1492 vacancies were notified to be filled up and a select list drawn up including names of persons who had successfully cleared the selection process up to serial No.1492. But the Tribunal chose to look into the primary record and not decide the issue based on presumptive logical reasoning. Looking into the records produced by the Department, the Tribunal returned a finding of fact that 1492 vacancies of Trained Graduate Teachers in different disciplines existed for the select year 1983-84 and thus issued a direction to the Director of Education to fill up the notified vacant posts from out of the select panel in order of merit. The decision of the Tribunal was challenged before the Supreme Court by way of Special Leave to Appeal which was granted and pending decision of the Civil Appeal the decision of the Tribunal was stayed. The appeal was ultimately dismissed in the year 1993 as per the decision reported as (1993) 2 SCALE 730 UOI Vs. Ishwar Singh Khatri & Ors. Realizing that an issue of seniority may come up as a result of the nepotistic decision taken by the Director of Education who not only restricted employment to 654 persons but even went about issuing letters offering appointment ignoring the merit position (the Department issued letters offering appointment at random from amongst the empanelled candidates), the Supreme Court categorically directed that the seniority of the candidates would be as per their ranking in the select panel over the persons appointed in the interregnum. The aforesaid direction was additionally issued because till when the Supreme Court decided the issue appointments were made to the post of Trained Graduate Teacher in various

disciplines by conducting fresh selection in the years 1986 onwards till the year 1993.

4. Thus, two issues attained finality when the Supreme Court pronounced its verdict aforementioned. The first was that 1492 notified vacancies for the select year 1983-84 were required to be filled up. The second was that the seniority had to be as per the merit position in the select list. Thus, the left over candidates from the panel prepared who got actual employment after the year 1993 got seniority above those who were appointed between the years 1986 till the year 1993.

5. A second round of litigation ensued. Hundreds of Original Applications came to be filed on the subject of pay. The teachers who had litigated with reference to the select panel pertaining to the year 1983-84 started claiming back wages with notional increments pleading that their deemed date of appointment must relate back to the year 1984. Everybody succeeded when the direction issued by the Tribunal was to give notional pay fixation benefit without arrears. These decisions by the Tribunal were upheld by this Court and challenge before the Supreme Court failed.

6. The writ petitioner, Krishna Kumari also had to litigate on numerous occasions because she was a candidate for being appointed as a TGT (Science-B). In spite of her name being at serial No.16 of the select panel and out of 1492 notified vacant posts 64 were assigned to the discipline of TGT (Science-B), she was overlooked for appointment. She questioned, along with others, not being offered a letter offering appointment. The Original Applications were pending before the Central Administrative Tribunal (and we note that the Tribunal allowed the same on February 08, 1988) when the Department commenced fresh recruitment in the year 1986. Being uncertain of the fate of the litigation before the Tribunal, the petitioner

was rightly advised to try her luck at the fresh recruitment and happily for her she was successful resulting in letter offering appointment being issued to her on April 17, 1986. She joined service and earned her salary. She earned her increments in the year 1987 and onwards.

7. But, when the Supreme Court concluded the controversy pertaining to the select panel of the year 1983-84 and she being entitled to be appointed as a TGT (Science-B) from out of the said panel, the Department had to per force accord seniority to Krishna Kumari with reference to her merit position in the select list as of the year 1983-84 and additionally when the second round of litigation concluded, to fix her pay notionally from a retrospective date. This the Department did when OA No.1790/2008 filed by Krishna Kumari was allowed on May 15, 2009. W.P.(C) No.13987/2009 Director of Education & Anr. Vs. Smt.Krishna Kumari filed by the Department was dismissed by this Court on December 21, 2009. The Department challenged the decision of this Court by way of SLP (C) No.CC16284-16285/2011 which was dismissed by the Supreme Court on October 14, 2011.

8. Then commenced the third round of litigation. As is known, pursuant to the recommendations of the 5th Central Pay Commission, an Assured Career Progression Scheme (ACP) was introduced in the year 1999 as per which, to overcome stagnation, all those who did not earn a promotion after rendering 12 years service were entitled to an in situ promotion and receive salary in the next above pay scale in the hierarchy of posts and if upon rendering 24 years service a second promotion was not earned to receive benefit of another in situ promotion.

9. Krishna Kumari prayed to the Department that her date of joining being required to be treated as what it would have been had, she not being denied appointment, which was found to be a wrong act, she would be

entitled to the ACP benefit computing 12 and 24 years' service with reference to said date. The Department denied the relief. She filed OA No.1986/2011 which has been dismissed by the Tribunal vide impugned decision dated May 09, 2012 imposing cost in sum of ₹25,000/- upon her. The reason given by the Tribunal is that the ACP scheme used the expression '*after 12 years of regular service*'. For record we may note that after the 6th Central Pay Commission's recommendations were accepted the Modified Assured Career Progression Scheme (MACPS) having pari-materia provisions have been introduced the expression used therein is '*completed 12 years continuous service*'. The conclusion drawn by the Tribunal is that the benefit of earlier directions pertaining to notional service benefits would not extend to the benefit under the ACP and the MACP Scheme.

10. In our opinion the issue is squarely covered by the decision of the Supreme Court in CA No.3250/2006 Commissioner & Secretary to Government of Haryana & Ors. Vs. Ram Swaroop Ganda & Ors. wherein it was categorically held that if as per ACP scales seniors receive salary less than the junior the salary of the senior has to be stepped up.

11. Indeed, FR-22(I)(a)(1) requires pay of a senior to be stepped up if his junior receives salary more than him requiring the salary of the senior to be brought at par with that of the junior. The instruction No.18 under the FR reads as under:-

“(18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior –

(a) As a result of application of FR22-C. [Now FR22(I)(a)(1)] – 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 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 directed 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 FR27. 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.”

12. Thus, Krishna Kumari would be entitled to her pay being stepped up when applying the ACP Scheme the person immediately junior to her got the benefit.

13. We accordingly allow the writ petition and set aside the impugned order dated May 09, 2012 and dispose of the writ petition as also OA No.1986/2011 directing the respondents to step up Krishna Kumari's pay when person immediately junior to her got benefit firstly of the ACP and then of the MACP Scheme and bring the same at par with the said

immediately junior person. Arrears be calculated and paid to Krishna Kumari within 12 weeks from today.

14. Cost imposed under the impugned order in sum of ₹25,000/- which Krishna Kumari has paid to the Central Administrative Tribunal Bar Association New Delhi shall be refunded to her by the Bar Association within 2 weeks of an application filed enclosing therewith a certified copy of the present decision.

15. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

DECEMBER 09, 2013

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