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

% *Judgment Reserved on : February 22, 2013*  
*Judgment Pronounced on : March 06, 2013*

+ **WP(C) 6959/2011**

GNCT OF DELHI & ORS. ....Petitioners  
Represented by: Ms.Avnish Ahlawat, Advocate.

versus

RATI RAM & ORS. .... Respondents  
Represented by: Mr.T.N.Tripathi, Advocate.

AND

**WP(C) 3650/2012**

GNCT OF DELHI & ANR. ....Petitioners  
Represented by: Ms.Avnish Ahlawat, Advocate.

versus

JAG MOHAN LAL VARSHNEY ..... Respondent  
Represented by: Dr.R.P.Gupta, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

**PRADEEP NANDRAJOG, J.**

1. Nine faculty members i.e. Teachers, impleaded as respondents in WP(C) No.6959/2011 and one non-teaching staff (Head Clerk) impleaded as respondent in WP(C) No.3650/2012 joined service in 'Jan Kalyan

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Madhyamik Vidyalaya', later on upgraded as a Senior Secondary School, and name changed to 'Jan Kalyan, Co-Education, Senior Secondary School', established by the 'Jan Kalyan Madhyamik Vidyalaya Society'. The school was recognised by the Delhi Administration and was receiving grant-in-aid from the Directorate of Education from May 01, 1972.

2. Alleging mismanagement and malfunctioning against the Management of the School, exercising power under Section 20 of the Delhi School Education Act 1973, the Administrator of Delhi took over the Management of the School on June 04, 1976 followed by a complete takeover of the school as per an agreement dated September 12, 1996 executed between the Manager of the School as also the society and the Delhi Administration.

3. Inter alia the written agreement dated September 12, 1996, vide Clause No.3, obliged Delhi Administration to bear all liabilities accruing in future relating to the service conditions of the employees of the school. Vide sub-para (b) of clause-4 of the agreement it was mandated:-

“The service rendered by the employee shall be taken into account for the purposes of pay, pension, gratuity, provident fund etc.”

4. Clause No.6 of the agreement stipulated as under:-

“The school shall be named as ‘Raghubar Dayal Jan Kalyan Govt. Sr.Secondary School’ and shall be referred so in all future correspondences. The School after the execution of this deed shall run as any other Govt School and shall be entitled for various facilities provided by the Govt to other Govt Schools.”

5. To overcome stagnation, either due to a promotional post not being available or due to inadequate number of promotional posts, the

Government of India introduced an Assured Career Progression Scheme (ACP Scheme) for Central Government employees which was adopted by the Delhi Government and as regards the Directorate of Education vide Circular dated August 25, 2003 the scheme was made applicable to the teaching and non-teaching staff in Government Schools with retrospective effect from August 09, 1999 inasmuch as this was the date from which the Central Government had introduced the ACP Scheme. On July 18, 2001 the Department of Personnel & Training clarified that the ACP Scheme notified with effect from August 09, 1999 would apply to only those employees who were in regular service and service rendered with autonomous bodies other than of the Central Government would be ignored.

6. Thus, in conformity with the decision of the Central Government, Condition No.12 of the Scheme as per the Circular dated August 25, 2003 clarified that service rendered by any employee in any autonomous body except under the Government of NCT Delhi would not be taken into account for purposes of granting benefit under the ACP Scheme and likewise any promotion earned while in service in any autonomous body would be ignored for purposes of the ACP Scheme. The reason for the same being, to remove stagnation, ACP Scheme envisaged an in situ promotion in the next above grade in the hierarchical post after 12 years service and another in situ promotion after 24 years service provided that no promotion was earned within the first 12 years service and no second promotion earned within 24 years service. For non hierarchical posts the next above pay-scale being applicable.

7. The Government of India modified the 'Assured Career Progression Scheme' as per the 'Modified Assured Career Progression Scheme' (MACP) on September 01, 2008, and retaining past conditions

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of the ACP Scheme, provided for three in situ promotions after 10 years, 20 years and 30 years service upon promotions not being otherwise granted. The said Modified Assured Career Progression Scheme was adopted by the Government of Delhi and as regards the Directorate of Education a circular was issued on August 19, 2009.

8. Issue arose as to how the period of 12 years and 24 years under the ACP Scheme would be reckoned for the employees of the 'Jan Kalyan Madhyamik Vidyalaya' renamed as 'Jan Kalyan Co-Education Sr. Secondary School'.

9. Whereas the Directorate of Education took the stand that the employees of the school would acquire the status of a Delhi Government employee with effect from September 12, 1996, the employees took the stand that since the Management of the School was taken over on June 04, 1976, computation of length of service for purposes of ACP Scheme had to be with effect from June 04, 1976 or when they joined after June 04, 1976.

10. The employees pitched their stand on sub-rule (2) of Rule 47 of the Delhi School Education Rules 1973 which reads as under:-

“(2) Where any surplus employee is absorbed under sub-rule (1):—

(a) The salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with the rules and regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.”

11. The Government of Delhi took the stand that the status of employees of a Government School was accorded to the staff of the school only on September 12, 1996.

12. Vide judgment and order dated April 21, 2011 allowing OA No.1761/2010 filed by the nine respondents of WP(C) No.6959/2011 the Tribunal held that the staff would be entitled to the benefit of sub-rule (2) of Rule 47 of the Delhi School Education Rules 1973 and as regards the reliance by the Government of Delhi upon the office memorandums issued by it, the Tribunal held that executive instructions could not override a statutory rule. Allowing OA No.4359/2010 filed by the respondent of WP(C) No.3650/2012, similar view was taken by another bench of the Tribunal.

13. The first fault committed by the Tribunal is to try and reconcile the ACP Scheme which was introduced by an executive policy with Rule 47 of the Delhi School Education Rules 1973.

14. The reason is that the grant of Assured Career Progression is not governed by any Rules and thus the policy under which the Assured Career Progression Scheme was notified could have stipulated any condition for its applicability including the date wherefrom length of service would be reckoned.

15. Further, sub-rule (2) of Rule 47 of the Delhi School Education Rules 1973 simply protects the salary and allowances last drawn by an

employee of a private recognized aided school which faces closure and the employee is absorbed in Government service as also the service rendered, but limited to purpose of computing pension and other retirement benefits. In other words, the service protected by sub-rule (2) is limited for purposes of computing pension and other retirement benefits and no more. The Tribunal has overlooked the self limiting span of sub-rule (2).

16. In the decisions reported as AIR 1995 SC 85 State of Punjab & Ors. vs. Dev Dutt Kaushal and 1996 (8) SCC 448 State of Punjab & Ors. v. Tara Singh Shahi the Supreme Court had declared that when the Management of an institution established by a private body is taken over by the Government, the service of the employees would be subject to the terms and conditions of the takeover.

17. We have already highlighted herein above para (b) of Condition No.4 of the Takeover Agreement dated September 12, 1996 as also Condition No.6 thereof. The former gives effect to sub-rule (2) of Rule 47 of the Delhi School Education Rules 1973 and the latter clearly records that the school acquires the status of a Government School only on September 12, 1996.

18. Thus, looked at from any angle, the employees of the school cannot claim the benefit of service rendered prior to September 12, 1996 in the school, for the reason they acquired the status of employees of a Government School only on September 12, 1996. The ACP as well as the MACP Scheme clearly stipulate that for Government employees past service rendered in private and other autonomous bodies other than those established by the Government would be excluded and so would a promotion earned be excluded.

19. The writ petitions are allowed. The impugned orders dated November 02, 2011 allowing OA No.4359/2010 and April 21, 2011 allowing OA No.1761/2010 are set aside. It is declared that the respondents would be entitled to the benefit under the ACP and the MACP Schemes having their service reckoned under the Government of Delhi with effect from September 12, 1996.

20. No costs.

  
(PRADEEP NANDRAJOG)  
JUDGE

  
(VEENA BIRBAL)  
JUDGE

MARCH 06, 2013  
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