

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

% *Judgment Reserved on : February 05, 2013*
Judgment Pronounced on : February 15, 2013

+ **W.P.(C) 5636/2011**

GOVT OF NCT OF DELHI & ORS Petitioners

Represented by:Ms.Avnish Ahlawat with
Ms.Latika Chaudhary, Advs.

versus

DR. YOUSUF JAMAL Respondent

Represented by:Mr.K.K.Sharma, Adv.

+ **W.P.(C) 5646/2011**

GNCT OF DELHI AND ORS Petitioners

Represented by:Ms.Avnish Ahlawat with
Ms.Latika Chaudhary, Advs.

versus

RAIS-UR-REHMAN Respondent

Represented by:Mr.K.K.Sharma, Adv.

+ **W.P.(C) 5666/2011**

GNCT DELHI AND ORS Petitioners

Represented by:Ms.Avnish Ahlawat with
Ms.Latika Chaudhary, Advs.

versus

RAJNI SUSHMA Respondent

Represented by:Mr.K.K.Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. Ayurvedic and Unani Tibbia College Delhi, founded by late Hakim Ajmal Khan was governed by the Tibbia College Act, 1952 and for the purpose of management of the College, a Board called ‘Tibbia College Board’ was constituted as per the Act. The Board framed Rules for appointment of the faculty members and other employees of the college and prescribed the service conditions which were published in the Official Gazette for the first time on September 19, 1961 after they were approved by the then Chief Commissioner of Delhi and subsequently as and when amended by the Lt.Governor of Delhi as per Clause-C of Section 16 of the Tibbia College Act 1952.
2. The Board, with the sanction of the Lt.Governor of Delhi, made applicable pay scales as notified by University Grant Commission for teaching and non-teaching staff of the Central Universities with effect from January 01, 1986 and also adopted the various Merit Promotion Schemes notified by University Grant Commission.
3. Due to malfunctioning by the Board, on May 01, 1998, the Government of NCT of Delhi superseded the Board and took over the Management of the College. The Delhi Tibbia College (Takeover) Act, 1998 was simultaneously promulgated and with respect to the staff of the College, Section 7 of the Delhi Tibbia College (Takeover) Act, 1998 stipulated as under:-

“Section-7. Appointment of Employees of the College as employees of the Government as a part of the initial constitution:

Where the service of a person, who has been immediately

before the appointed date employed in the college, are, in the opinion of the government necessary having regard to the requirement of the college, he shall become from the date of his appointment by the government an employee of the government and shall hold office or service in the government with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such college had not been transferred to and vested in the government and continued to do so unless and until his employment in the college is duly terminated or until his remuneration and the terms and conditions of the employment are duly altered by the government.

Provided that such employees shall, in themselves, constitute a separate class and group of employees of the government and shall not be equated to or merged with the other employees of the government.”

4. Various employees of the College had a grievance pertaining to the implementation of the revised pay scales as recommended by the 5th Central Pay Commission and they approached the Central Administrative Tribunal vide O.A.No.2688/2003 praying :-

“(A) That the respondents be directed to declare that the petitioners have been appointed in the Government.

(B) The respondents be directed to release all the arrears of the petitioners based on the revision of pay scales of petitioners in line of Vth Central Pay Commission recommendations from 01.01.1996 onwards along with interest at the rate of 10 percent per annum.

(C) The respondents be directed to count the past service of the petitioners in A&U Tibbia College as service in the Government for pensionary benefits.

(D) The respondents be directed that no approval of the

UPSC is required in the case of petitioners who were appointed under the regulations framed under law.

(E) To treat the promotion of the petitioners made under Merit Promotion Scheme notified in 1996 in Situ and Personal to the individual teachers promoted and without linkage to the vacancies or to create posts retrospectively from 01.12.1996 i.e. the date on which they were promoted necessary to accommodate the petitioners.

(F) To direct that the petitioners are entitled to pension as per UGC norms i.e. the college under UGC are entitled to pensionary benefits as per CCS Pension Rules and that the same rules shall apply to the petitioners.

(G) All the teachers may be allowed to be paid monthly pay and allowances in the existing scales pending their formal appointment in the Government.

(H) From that date of the take-over of the college, the staff of A&U Tibbia College may be given pay & allowances and all other benefits as per Rules & Regulations applicable to Government employees.”

5. The Tribunal took note of the law declared by the Supreme Court in the decision reported as (1996) 8 SCC 448 State of Punjab & Ors. v. Tara Singh Shahi, that when a takeover of an Institution takes place and the Management from a private body shifts to the State Government the condition of service of the employees would be subject to the terms and conditions of the takeover. For reasons unknown to us, ignoring that the takeover had taken place under the Delhi Tibbia College (Takeover) Act, 1998, and pertaining to the staff, Section 7 of the Takeover Act notified the terms of the service of the employees whose services were taken over, vide opinion dated June 01, 2005 the Tribunal disposed of O.A.No.2688/2003

passing the directions in paragraph 16 of the opinion as under:-

“16. In the light of the above discussion, we direct the respondents as under:-

(a) In the absence of any terms and conditions in the document prepared at the time of taking over of the Tibbia College by the Delhi Government, old Rules prior to such taking over would be made applicable in the case of the applicant in respect of their promotions as Reader.

(b) the representations already submitted by the applicants from time to time before the competent authority, i.e., before the Government of Delhi, would be considered by them in the light of (a) above within a period of four months from the date of receipt of the copy of this order; and

(c) liberty is granted to the applicants to approach appropriate forum, if they still feel aggrieved after their representations are decided by the competent authority.

6. On December 04, 2006, ‘The Delhi Tibbia College (Takeover) (Amendment) Act, 2006’ was promulgated and as per sub-Section (3) of Section 1 thereof, it was deemed to come into force with effect from May 01, 1998 i.e. from the date when the Delhi Tibbia College (Takeover) Act, 1998 was promulgated. Section 7 of the existing Act was substituted and the substituted Section, having retrospective operation, reads as under:-

“7. Appointment of Employees of the College as employees of the Government as a part of the initial constitution.

(1) The Government may, having regard to the requirements of the College, appoint an employee who has been immediately before the appointed day employed in the College, as an employee of the Government as a part of the initial constitution.

(2) The pay of an employee of the College appointed as an

employee of the Government, as on the appointed day, shall be protected by granting the difference in pay under the Government and that drawn by the individual while in service of the College, as personal to individual to be absorbed against future increments.

(3) The pay and the terms and conditions of an employee appointed as an employee of the Government under sub-section (1) shall be dealt in accordance with the provisions of the Fundamental Rules, the Supplementary Rules and other rules as applicable to other employees of the Government.

(4) The pension of an employee appointed as an employee of the Government shall be on the same terms as are given to other equivalent employees of the Government.

Provided that the benefit of previous service under the erstwhile Board shall be given only after the employee concerned has surrendered the employer's share of the contributory fund to the Government".

7. It was in the aforesaid backdrop that the respondents of the three captioned writ petitions had approached the Central Administrative Tribunal raising a grievance that as Readers their salary was wrongly fixed in the pay scale ₹12000-375-18000/- and claimed entitlement to be placed in the pay scale ₹12000-420-18300/- as per UGC's pay scales.

8. The writ petitioners opposed the prayer pointing out that as per the 5th Central Pay Commission, pay scale of Readers in Government Colleges was ₹12000-16500/- and as against that the respondents were placed in the pay scale ₹1200-375-18000/- which was higher, due to they being existing employees of Tibbia College when it was taken over and their pays required to be protected.

9. In a nut shell the point of dispute was the claim by the respondents to be paid salary in the same pay scale as was paid to Readers as per UGC

scales and for which they relied upon the fact that when they joined Tibbia College, in terms of Clause-C of Section 16 of the Tibbia College Act, 1952 and as sanctioned by the Lt.Governor of Delhi, UGC pay scales were made applicable to the College. They claimed entitlement of the benefit of their rights and privileges being retained as per Section 7 of the Takeover Act as was promulgated in the year 1998 with effect from May 01, 1998 and as amendment by the Amendment Act, 2006. As against that, the writ petitioners claimed that the status of the employees was that of a Government servant and thus the entitlement of the employees of the College to receive salaries as were paid to similarly appointed Government employees; subject to the pay protection.

10. Vide impugned decision dated March 10, 2011 the Central Administrative Tribunal has held that the rights of the parties stood determined by the opinion dated June 01, 2005 passed by the Tribunal disposing of OA No.2688/2003. It has been held that the writ petitioners cannot go beyond that and secondly that sub-Section 2 of Section 7 of the Takeover Act, as retrospectively amended, clearly provides that the pay of the employees as on the appointed date shall be protected. With respect to sub-Section 3 of Section 7 of the Amended Act where a reference is made to Fundamental Rules and Supplementary Rules applicable to Government employees the Tribunal has held that said sub-Section would only refer to increments etc. The result is a direction issued to pay salary to the respondents in the scale of Readers as per UGC recommendations.

11. The impugned decision passed by the Tribunal overlooks the fact that in OA No.2688/2003 the employees of Tibbia College were themselves claiming salary as per pay-scales recommended by the 5th Central Pay

Commission as also to be granted the benefit of the Merit Promotion Scheme popularly called as the Assured Career Progression Scheme made applicable to Government servants in the year 1998. In fact, prayer 'H' made in the earlier Original Application was specific that the staff of Tibbia College should be directed to be paid pay and allowances as per Rules and Regulations applicable to Government employees.

12. When OA No.2688/2003 was disposed of by the Tribunal on June 01, 2005 it was Section 7 as it originally stood enacted in the Takeover Act of 1998 which was governing the field, and as per the same, the existing employees of the College on the appointed date i.e. May 01, 1998 became the employees of the Government and were entitled to receive the same remuneration and benefit of service conditions which they were receiving before the College was taken over until the remuneration and terms and conditions of the appointment were duly altered by the Government. It was in this context probably that the Tribunal directed promotions to be made as per UGC prescribed norms for the reason the existing Board of the College, with the prior approval of the Lt.Governor of Delhi, had resolved and implemented the Resolution to adopt UGC pay pattern and promotional policies.

13. The Takeover Act of the year 1998 does not contain any provisions regarding promotion and thus looked at from said angle, the view taken by the Tribunal could be justified. But in that event the same would have limited application and cannot extend to the issue of pay and allowances after 'The Delhi Tibbia College (Takeover) (Amendment) Act 2006 was promulgated on December 04, 2006 with retrospective effect i.e. May 01, 1998; the appointed date. The reason is that Section 7 of the Takeover Act

as amended would be the legislative enactment pertaining to payment of wages and salaries. This provision would be the terms on which the College was taken over. Unfortunately, at the second stage litigation, the Tribunal has overlooked this distinction. Thus, the first of the two reasons given by the Tribunal that the issue stands squarely covered by the earlier decision of the Tribunal is incorrect. It overlooks the amendment incorporated by amending Section 7 retrospectively.

14. As regards the second reason given by the Tribunal that sub-Section 2 of Section 7 of the Act protects the pay of the employees of the College and that sub-Section 3 while making a reference to the Fundamental Rules and Supplementary Rules deals only with increments etc., we find the reasoning to be ex-facie erroneous for the reason placement in a pay-scale and pay protection are two totally different concepts. Pay protection would mean that when a person is placed in a different pay-scale, he cannot be prejudiced by his pay being fixed lower than what he was receiving; entitling the person concerned to be placed at an appropriate stage of the pay-scale where his last drawn pay is protected. Placement of a person in a pay-scale has no connection with the last pay drawn. The language of sub-Section 2 of Section 7 of the Amended Act is clear. The pay of an employee of the College as on the appointed date is to be protected and the expression '*by granting the difference in pay under the Government and that drawn by the individual while in service of the College as personal to the individual absorbed*' in the Section makes it expressly clear that it was the pay which was protected and not the pay-scale.

15. The Tribunal has overlooked the fact that with the takeover of the College such employees of the College who were working in the College as

of the appointed date became Government servants and hence entitled to be paid salary as per sub-Section 3 of Section 7 of the Act as was payable to the employees of the Government in accordance with the Fundamental Rules and Supplementary Rules. This became the contract of takeover or the terms of the takeover. We find that the respondents have not challenged Section 7 of the Takeover Act as amended.

16. Fundamental Principles of Jurisprudence applicable to Service Law have been overlooked by the Tribunal warranting corrective action to be taken, which we do, by allowing the writ petitions and quashing the impugned order dated May 10, 2011 passed by the Tribunal and as a consequence we dismiss OA No.932/2010, OA No.1078/2010 and OA No.1080/2010 but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 15, 2013
Skb/dkb