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

+ **W.P.(C) 5556/2013**

SUJA PAUL & ORS

..... Petitioners

Represented by: **Mr.Sagar Saxena, Advocate**

versus

**THE CHIEF SECRETARY GOVERNMENT OF
NCT OF DELHI & ORS.**

..... Respondents

Represented by: **Ms.Zubeda Begum, Advocate with
Ms.Sana Ansari, Advocate**

+ **W.P.(C) 6940/2013**

Y.D. SHARMA & ANR.

..... Petitioners

Represented by: **Mr.Sagar Saxena, Advocate**

versus

**THE CHIEF SECRETARY GOVERNMENT OF NCT OF DELHI &
ANR**

..... Respondents

Represented by: **Ms.Zubeda Begum, Advocate with
Ms.Sana Ansari, Advocate**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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11.11.2013

1. Since common issue is involved in both the writ petitions the same are being decided by this common order.

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2. This writ petition is filed, by 5 persons who were appointed as Lab

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Technician in A&U Tibbia College (in short college) in the year 1994 and 1998 respectively. The Tibbia College Board was taken over by the Government of NCT by promulgating Delhi Tibbia College (Takeover Act, 1998). The takeover came into effect on May 01, 1998.

3. In the year 2006 an amendment was brought in whereby Section 7 of the existing act was substituted with retrospective effect from May 01, 1998. On October 12, 2007, pursuant to the recommendations of the 5th CPC the college on its own without the approval of the Finance Department of Government of NCT of Delhi decided to grant revised pay scales to its employees. The Lab Technicians were given the scale of ₹5000-8000 in place of ₹4000-6000 with effect from January 01, 1996.

4. On May 29, 2008 it was decided by the order of the Lt. Governor of GNCT of Delhi that past services of employees of the AE *Tibbia* College shall be counted as service in the Government for all purposes with effect from the date of their initial appointment.

5. Even though October 12, 2007 an order was issued but the same was not implemented in so far as Lab Technicians were concerned which resulted in petitioners filing an Original Application No.1110/2008 before the Tribunal. The Tribunal decided the Original Application on January 06, 2009 whereby it allowed the Original Application along with another Original Application No.1153/2008 filed by the three employees of the college. The directions of the Tribunal were to grant the revised pay scales to the petitioners as well as to the petitioners in Original Application No.1153/2008 with effect from January 01, 1996 with interest @ 8% per annum.

6. The review petition filed by the respondents herein was dismissed.

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Appeal was filed by the respondents before this Court by way of a writ petition being WP(C) No.11188/2009. This Court dismissed the writ petition. The respondents took the matter to the Supreme Court by way of an SLP. The Supreme Court dismissed the SLP with an observation that since the Tribunal and this Court has not made any specific order as to the date from which consequential benefits had to be given and if the respondents interpret the order to mean that the petitioners are entitled to the benefits of revision with effect from May 01, 1998 that is the date of takeover they may implement from that date. The Supreme Court also observed that if the petitioners are aggrieved they can challenge such an action. It is pursuant to the action of the respondents to grant the benefit of revision of pay scale in the grade of ₹5000-8000 with effect from May 01, 1998 and not January 01, 1996, the petitioners have filed the Original Application before the Tribunal which resulted in the impugned order.

WP(C) No.6940/2013

7. The facts are almost identical except, that the writ petition has been filed by two employees, working as X-ray Technician and Lab Assistant. The petitioners herein had filed Original Application No.1153/2008 which also was allowed by the Tribunal. Rest of the facts being same they are not being reproduced.

8. The question that arises for our consideration is whether the petitioners are entitled to the revision of pay scales with effect from January 01, 1996.

9. Mr.Sagar Saxena, learned counsel appearing for the petitioners would submit that the action of the respondents in not granting the benefits is illegal. The respondents cannot fix a date different than the one fixed by the

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Government of NCT of Delhi with respect to its own employees for grant of benefit of revised pay scales i.e. January 01, 1996. He would contend that even before the takeover, the college was fully funded by the Government of NCT of Delhi and as such petitioners are entitled to the benefits from January 01, 1996. On the other hand Ms.Zubeda Begum, learned counsel appearing for the respondents would submit that the petitioners would not be entitled to the benefits prior to May 01, 1998 the date when the college was taken over by the Government of NCT of Delhi.

10. Before we deal with the submissions of the learned counsel we would like to highlight Section 7 as substituted by way of an amendment in the year 2006. The same 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 in 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".

11. A perusal of Section 7 would reveal that an employee who was employed in the college would be appointed under the Government as part of the initial constitution. The pay of such employee shall be protected by granting the difference in pay under the Government and that drawn by individual while in service of the college. It is not the case of the petitioners that such protection has not been effected. Meaningfully read it would also mean the benefits which had not accrued to the employee would not be protected. The facts reveal that between 1996 and 1998 the college had not granted the revised pay scales to the petitioners. It appears that they were drawing the scales in the grade of ₹4000-6000. It is only in the year 2007, when the college on its own granted the higher pay scale of ₹5000-8000 without the approval of the Finance Department. The issue stood decided in the earlier round of litigation. Pursuant thereto the respondents implemented and granted higher pay scales to the petitioner with effect from May 01 1998.

12. The petitioners, so also other employees having attained status of Government employees only on May 01, 1998 it would be that date which

would govern the petitioners in so far as higher scale is concerned.

13. In this regard we would like to refer to a judgment of this Court decided on February 15, 2003 in WP(C) No.5636/2011 Government of NCT of Delhi & Ors. v. Dr.Yousuf Jamal (and other connected writ petitions) wherein this Court interpreting the provisions of Section 7 of the Takeover Act, 1998 by holding as under:-

“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".

14. We are unable to agree with the submission of Mr.Sagar Saxena, learned counsel appearing for the petitioners, that since the respondents have granted revised pay scales to the employees working in the Government of NCT of Delhi, the employees of the college must also be given from the same date i.e. January 01, 1996. Mr.Saxena cannot seek a parity between the employees of the college and the employees working in Government of NCT of Delhi. The facts are entirely different. The petitioners have become Government employees only with effect from May 01, 1998 unlike the employees of Government of NCT of Delhi who were appointed as Government employees. Even otherwise it is a settled law that a different date can be prescribed for grant of revised pay scales for a particular set of employees. In this case the justifiable reason for prescribing the date from May 01, 1998 has been adverted above. We do not see the date being irrational for grant of pay scales to the petitioners. If the contention of the petitioners is to be accepted then the benefit would relate back to January 01, 1996, the date on which they were not Government employees. We repeat that the liability of the Government would only be from May 01, 1998. We quote for benefit the opinion of the Supreme Court reported as (2007) 7 SCC 472 Union of India v. Arun Jyoti Kindu & Ors. which reads as under:-

"20. When a concession was being extended as distinct from implementing a specific recommendation of the Pay Commission with reference to a particular point of time, it is open to the Government to provide that the benefit

it proposes to give, would be available only from a notified date. As this Court has observed, neither the Central Administrative Tribunal nor the High Court, can direct the merger of any cadre. That is a policy decision for the Government to take. So long as it is not done, it is not open to the tribunal or the court to issue directions in that regard and to follow it up with what are thought to be consequential directions.

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22. Once we find that it was open to the Government to extend a benefit to a set of its employees with effect from a particular day on the basis of some anomaly found in the report of the Fifth Pay Commission, there would arise no discrimination because the very implementation of the Fifth Pay Commission Report would not entitle the respondents to any benefit. The very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the Fifth Pay Commission Report. It is, therefore, not possible to postulate that the decision of the Government must be given retrospective effect and if no such effect is given, the tribunal or court can interfere and direct the giving of such retrospective effect. Once it is found that paragraph 83.296 is attracted to the case, it has to be found that the applicants before the Tribunal were not entitled to any relief”.

15. In the impugned order while dismissing the Original Application the Tribunal has concluded as under:-

6. Admittedly, the College was a privately managed Institution prior to its take over. Even if its status was that of a 100% grant-in-aid receiving Institution, the employees of the Institution could not have been characterized as government servants. They were entitled to receive salary as per the terms and conditions which are applicable to the employees of a privately managed grant-in-aid receiving

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education Institution. Therefore, the responsibility of giving whatever salary which such employees were entitled to receive was that of the Management of the Institution. Of course, it was subject to the conditions which Government might have stipulated in releasing 100% grant-in-aid to the college.

7. *It is also a fact that the respondents had issued the Office Order of October, 2007 revising the pay of the employees including the applicants w.e.f. 01.01.1996. The plea of the respondents that this order was issued without concurrence of the Finance Department was not accepted by the Tribunal and subsequently by the Hon'ble High Court of Delhi. However, the contention of the respondents that the entitlement of the employees of this Institution to receive the benefits of revised pay scale w.e.f. 01.05.1998 has not been rejected by the Hon'ble Supreme Court of India.*

8. *Section-2 (2) of the Act says that the pay of an employee of Takeover College 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 further increments. Section-2(3) of the Amendment Act of 04.12.2006 says that the pay and the terms and conditions of an employee appointed as a government servant under sub-section(1) shall be dealt with in accordance with the provisions of Fundamental Rules.*

8.1 *It cognizance is given to this fact, there could be a difference in the emolument of an employee of the College when it is taken over by the Government between what he was receiving under the private management and what he is entitled under the government Institution. This difference will be paid to him as personal pay w.e.f. the appointed date which happens to be 01.05.1998.*

9. *Although the employee will get the benefit of his past service provided he surrenders the employer's share to the contributory fund of the Government, the fact remains that he becomes a government servant eligible to get the benefits of the revised pay only from the date the College is taken over.*

10. *It is explained by counsel for the respondents that the Office Order dated 14.08.2002 was issued granting the applicants the benefits w.e.f. 01.01.1996 as no stay order had been obtained against implementation of the direction of this Tribunal. The order had to be issued in view of the Contempt Petitions filed by the applicants in this and other related cases. But, the benefit was given with a categorical stipulation that it was subject to the final outcome of the SLP pending before the Hon'ble Supreme Court.*

11. *Now that their status as government employees is established only from 01.05.1998, their claim for monetary benefits under revised pay rules can be sustained from that appointed date when the Institution was taken over. In view of this, we do not find any infirmity in the Office Memorandum dated 09.07.2010 by which the respondents have asked the applicants to deposit the over payment which was made to them for 01.01.1996 to 30.04.1998. In the result, both the OAs are dismissed. No costs".*

16. In view of our conclusion above we do not find any merit in the writ petitions and the same are dismissed.

17. No costs.


PRADEEP NANDRAJOG, J.


V. KAMESWAR RAO, J.

NOVEMBER 11, 2013/mm