

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

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Judgment reserved on: February 5, 2013

Judgment pronounced on: February 7, 2013

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W.P.(C) 6061/2008

NARAIN DUTT SHARMA & ORS.

..... Petitioners

Represented by: Mr. L.R. Khatana, Adv.

versus

GOVT. OF N.C.T. OF DELHI & ORS.

..... Respondents

Represented by: Mr. Kanwar, Adv. for Mr. Salwan,
Adv. for R-1 & R-2

Mr. A.K. Trivedi, Adv. for R-3 to R-16

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J

1. By way of this petition, petitioners have challenged the order dated February 14, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') in the OA 2158/2006 whereby the application of the petitioners for the grant of benefit of ACP Scheme has been rejected.

2. Petitioners were initially recruited and appointed as Assistant Teachers in Municipal Corporation of Delhi (in short referred to as MCD). Subsequently they were appointed as Trained Graduate Teachers (TGTs) in various Government Schools under the administrative control of the Directorate of Education, Government of NCT of Delhi.

3. In the year 1970, all the middle and higher secondary schools run by the MCD were taken over by the Directorate of Education, Delhi Administration. In the process of takeover, recruitment rules for the post of TGTs and other

equivalent categories were suitably amended to provide due weightage to the experience of teaching in primary schools and allow relaxation of age commensurate with experience. The recruitment rules for the posts of TGTs and Language Teachers were notified on July 13, 1972 wherein following method of recruitment was provided:-

“By Direct Recruitment- 75% (under direct recruitment 25% of posts will remain reserved for teachers of Delhi Municipal Corporation who were in service at the time of taking over of middle schools from D.M.C. , i.e., 1.7.1970).

By promotion-25%

That on 25th January, 1973 the amended recruitment rules were notified wherein the method of recruitment was stipulated as follows:-

- (1) By promotion failing which by direct recruitment- 30%.
- (2) Direct recruitment 70% subject-wise:out of which 60% will be reserved for teachers of Municipal Corporation of Delhi subject-wise on the basis of seniority-cum-merit failing which by direct recruitment.

That on 26.5.1980, the recruitment rules were purportedly further amended to provide the method of recruitment as follows:-

- (1) By promotion from Assistant Teachers of the Directorate of Education having a minimum 5 years regular service as Assistant teacher failing which by direct recruitment- 25%
- (2) By promotion from Laboratory Assistants of the Directorate of Education having a minimum of 5 years regular service as Laboratory Assistant failing which by direct recruitment-5%
- (3) By promotion from Assistant Teachers of MCD and having a minimum of 5 years regular service as Assistant Teacher, subject-wise on the basis of seniority-cum-merit failing which by direct recruitment-42%
- (4) By Direct Recruitment-28%”

4. Prior to May 26, 1980, the Assistant Teachers of MCD were taken into schools run by Government of NCT of Delhi as “direct recruits”. Because of amendment on May 26, 1980 in the relevant Recruitment Rules, the mode was changed to “promotion”. The petitioners before us had joined under the recruitment rules dated May 26, 1980.

5. On August 9, 1999, Government of India, Department of Personnel issued OM No.35034/1/97-Estt.(D) whereby the Assured Career Progression (in short ‘ACP’) scheme was implemented. On August 25, 2003, the Directorate of Education, Government of NCT of Delhi issued letter no.F.30-(28)/99/AR/3254-3354 implementing the ACP Scheme for the Delhi Government School with retrospective effect i.e., from August 9, 1999. The guidelines were also issued by the Directorate of Education, Government of NCT of Delhi for the implementation of ACP Scheme vide letter dated August 25, 2003.

6. In the year 2004-2005, Directorate of Education, Government of NCT of Delhi rejected the claims of the petitioners for the grant of first financial up gradation under the ACP Scheme on the ground that their mode of entry in the Government schools was by way of promotion. Aggrieved with the same, petitioners challenged the non grant of first ACP scheme to them by the Directorate of Education, Government of NCT of Delhi by filing the aforesaid OA which was rejected vide impugned order dated February 14, 2008.

7. Learned counsel for the petitioners has contended that Assistant Teachers coming from MCD to Government Schools of NCT before May 26, 1980 have been given the benefit of ACP scheme whereas those who had joined on or after May 26, 1980 after the amendment of recruitment rules, have been denied the benefit by the respondents. It is contended that same is causing discrimination. It is further contended that ACP scheme is applicable to the Government employees who are holders of civil posts. Therefore service

rendered by the petitioners in the Directorate of Education is to be counted for the purpose of ACP scheme, as such after completion of 12 years of service in the Directorate of Education, the Assistant Teachers are entitled for the benefit of ACP scheme.

8. Learned counsel appearing for the respondent has argued to the contrary.

9. It is admitted position that petitioners were appointed as per recruitment rules dated 26.5.1980 which have been reproduced above. As per aforesaid recruitment rules, the Assistant Teachers were considered to have come into service of Government schools by way of promotion. The rules have been in operation for a long period i.e., more than 32 years.

10. The ACP scheme was introduced by the Government of India, Department of Personnel and Training by its OM no.35034/1/97-Estt(D0 dated August 9, 1999. This scheme provided for up gradation to higher scale in the hierarchy after 12 and 24 years of service, if the person concerned did not get any promotion during this period.

11. On August 25, 2003, the Directorate of Education, Government of NCT of Delhi issued letter implementing the ACP scheme for Delhi Government school teachers with retrospective effect from August 9, 1999. The guidelines were also issued by it for the implementation of ACP scheme vide its letter dated August 25, 2003.

12. Para 12 of the said guidelines reads as under:-

“ACP Scheme is applicable to Government civilian employee. Only the regular service rendered after regular appointment in a Government civilian post is to be counted. Service rendered in an Autonomous Body (M.C.D./N.D.M.C.)/Statutory Body/State Government other than Govt. Of NCT of Delhi is not to be counted for the purpose. Similarly, promotion earned in these bodies prior to appointment in the Government of NCT of Delhi also to be ignored.”

13. Referring to the aforesaid paragraph, learned counsel for the petitioners

has contended that previous service rendered in the MCD has not to be counted and the 12 years should be counted for the TGTs who had joined the schools of Government of NCT of Delhi on or after May 26, 1980. The contention raised has no force. One of the conditions for the grant of ACP scheme is that Government servant should not have got any promotion for the past 12 years/24 years. In the present case, Assistant Teachers of MCD have joined the schools run by Government of NCT of Delhi by way of promotion as per Recruitment Rules dated May 26, 1980. Since they have already earned one promotion, they are not eligible for the grant of upgradation under the ACP scheme after 12 years. Their claims have rightly been rejected by the Government of NCT of Delhi as well as by the Tribunal. Their mode of entry into the schools run by the Government of NCT of Delhi is by way of promotion.

14. There is no discrimination among the teachers who have joined in terms of the recruitment rules of May 26, 1980. The petitioners cannot compare themselves with the TGTs who had joined Government schools before May 26, 1980 as these teachers had joined under different recruitment rules whereby the mode of recruitment was by way of direct recruitment.

15. No illegality is seen in the impugned order. Writ petition is dismissed. There is no order as to costs.

CM Appl.No.11638/2008

Dismissed as not pressed.

VEENA BIRBAL, J

PRADEEP NANDRAJOG, J

FEBRUARY 7, 2013
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