

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

% *Judgment Reserved on: November 26, 2013*
Judgment Pronounced on: December 06, 2013

+ **W.P.(C) 2383/2013**

STATE COUNCIL OF EDUCATIONAL
RESEARCH AND TRAINING & ORS.

.....Petitioners

Represented by: Ms.Tania Ahlawat, Advocate for
Ms.Avnish Ahlawat, Advocate

versus

HARSH VARDHAN & ORS.

.....Respondents

Represented by: Mr.V.K.Bali, Sr.Advocate,
Ms.Jyoti Singh, Sr.Advocate with
Mr.Aditya Soni and
Mr.K.D.Gupta, Advocates

W.P.(C) 2506/2013

STATE COUNCIL OF EDUCATIONAL
RESEARCH AND TRAINING & ORS.

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Mr.Aditya Soni and
Mr.K.D.Gupta, Advocates
Mr.Roshanl Lal Goel, Advocate
for R-5

W.P.(C) 7349/2013

HARSH VARDHAN & ORS. Petitioners
Represented by: Mr.V.K.Bali, Sr.Advocate,
Ms.Jyoti Singh, Sr.Advocate with
Mr.Aditya Soni and
Mr.K.D.Gupta, Advocates

versus

STATE COUNCIL OF EDUCATIONAL
RESEARCH AND TRAINING & ORS. Respondents
Represented by: Ms.Tania Ahlawat, Advocate for
Ms.Avnish Ahlawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. State Council of Educational Research and Training, Delhi (hereinafter referred to as the 'SCERT') is an autonomous body established in the year 1988 as a society registered under the Societies Registration Act. It is a nodal agency recognized by the National Council of Teacher Education for admission, curriculum construction, course conduct, guidance, examination and certification of pre-service training programme in the area of pre-primary teacher education and elementary education. SCERT also oversees and provides necessary guidance towards effective functioning of nine District Institutes of Education and Training (hereinafter referred to as the 'DIET') of Delhi,

which amongst other activities conducts two-year pre-service Diploma Course in Elementary Teacher Education.

2. The relevant 'Rules and Regulations' having bearing on the issues raised in the above captioned writ petitions of SCERT, Delhi are as under:-

*"2. **Definition:** - In these Rules, unless the context otherwise required:*

i) The 'Council' shall mean the State Council of Educational Research and Training, Delhi.

iii) The 'Executive Committee' shall mean the body which is constituted as such under Rule 26 as the Executive Committee of the Council.

vi) The 'Administration' shall mean the State Government of Delhi Administration.

Executive Committee

25. The Executive Committee shall be the Governing Body of the Council as described in the Memorandum of Association.

26. The affairs of the Council shall be administered, subject to the Rules and regulations and orders of the Council, by an Executive Committee which shall consist of the following:-

<i>Sl. No.</i>	<i>Name</i>	<i>Designation the Executive Membership</i>	<i>Nature</i>
<i>1.</i>	<i>Secretary (Education) Delhi Administration, Delhi.</i>	<i>Chairman</i>	<i>Ex-Officio</i>
<i>2.</i>	<i>Secretary (Finance)</i>	<i>Member</i>	<i>-do-</i>

*or his Representative
Delhi Administration,
Delhi.*

- | | | |
|--|---------------|-------------|
| 3. <i>Director of Education
Delhi Administration,
Delhi.</i> | <i>Member</i> | <i>-do-</i> |
| 4. <i>Additional Director of
Education (Schools)
Delhi Administration
Delhi.</i> | <i>-do-</i> | <i>-do-</i> |
| 5. <i>Director, NCERT
or his nominee,
New Delhi.</i> | <i>-do-</i> | <i>-do-</i> |
| 6. <i>Director,
S.C.E.R.T.
Delhi Admn, Delhi.</i> | <i>-do-</i> | <i>-do-</i> |
| 7. <i>Director, NIEPA
or his nominee
New Delhi.</i> | <i>-do-</i> | <i>-do-</i> |
| 8. <i>Joint secretary
(Education)
Ministry of HRD
or his nominee.</i> | <i>-do-</i> | <i>-do-</i> |
| 9. <i>Education Officer
M.C.D., (Delhi)</i> | <i>-do-</i> | <i>-do-</i> |

42. The Executive Committee shall have under its control the management of all the affairs and funds of the Council and shall have the authority to exercise all the powers as delegated by the Council from time to time.

43. **REGULATIONS**

i) *With the previous approval of the Council, the Executive Committee shall have powers to frame and amend regulations; not inconsistent with these rules, for the administration and management of the affairs of the Council.*

d) *The terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of the service of the officers and staff of the Council.*

67. ***Terms and Tenure of Service of Academic Staff***

The terms and tenure of service of the academic staff at the Council shall remain the same as available for the academic staff of the National Council of Educational Research & Training.” (Emphasis Supplied)

3. In the month of November, 1989 the Department of Education, Ministry of Human Resource Development, Government of India issued guidelines regarding DIETs, the relevant portion whereof reads as under:-

“CHAPTER 6

OPERATIONALISING DIETs: PROJECT IMPLEMENTATION

6.2.4.2 Certain Guidelines regarding above matters

Various key posts in the DIETs are recommended to be created at the following levels and in corresponding pay scales:-

Name of post in the DIET

Recommended level

1. Principal

*Deputy Director of the state
Education Department.*

2. Vice-Principal	<i>An appropriate level between (1) and (3).</i>
3. <u>Sr. Lecturer</u>	<u><i>Principal of a higher Secondary School.</i></u>
4. Lecturer	<i>Lecturer/PG Teacher of a Higher Secondary School.</i>
5. Statistician/Technician, Work Experience Teachers/Office Supdt./ Librarian	<i>Levels at which these posts are created in other comparable institutions/ organizations in the State Government</i>

(Emphasis Supplied)

4. On December 07, 1999, SCERT, Delhi issued a notification amending Regulation 67 of Rules and Regulations of SCERT, Delhi as follows:-

“The terms and tenure of service of Academic and other staff of the Council should remain the same as are available for the Academic and other staff of the Directorate of Education, GNCT of Delhi with such modifications that may be specifically adopted by the Executive Committee from time to time.” (Emphasis Supplied)

5. The hierarchical structure of Directorate of Education is as follows: - Deputy Director of Education <- Education Officer/Assistant Director <- Principal.

6. The hierarchical structure of SCERT is as follows: - Reader <- Sr. Lecturer <- Lecturer.

7. In terms of afore-noted guidelines the post of Sr.Lecturer in DIET is treated as equivalent to the post of Principal of a Higher Secondary School. Furthermore, it is an undisputed fact that the post of Sr.Lecturer in SCERT is also treated as equivalent to the post of Principal of a Higher Secondary School. (The same is evident from a chart submitted by SCERT along with synopsis filed by it). It further needs to be noted that same pay-scales were prescribed for the two posts i.e. posts of Sr.Lecturer and Principal pursuant to the implementation of recommendations of Fourth and Fifth Central Pay Commissions.

8. After the acceptance of recommendations of Sixth Central Pay Commission, the Government of India notified Central Civil Services (Revised Pay) Rules, 2008. First Schedule appended to said Rules has two parts viz. Part-A and Part-B. Whereas Part-A prescribed revised pay scales for certain posts in Group ‘A’, ‘B’, ‘C’ and ‘D’; Part-B prescribed revised pay scales for certain common categories of staff. The relevant portion of Part-B of First Schedule needs to be noted. It reads as under:-

“REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

Section II

XVII TEACHERS

<i>S. No.</i>	<i>Post</i>	<i>Present Scale</i>	<i>Revised Pay Scale</i>	<i>Pay Band</i>	<i>Grade Pay</i>	<i>Para No. of the Report</i>
<i>1.</i>	<i>Primary School Teacher</i>	<i>Grade III 4500-7000</i>	<i>Grade III 6500-10500</i>	<i>PB-2</i>	<i>4200</i>	<i>3.8.22</i>

		<i>Grade II</i> 5500-9000	<i>Grade II</i> 7450-11500	<i>PB-2</i>	4600	
		<i>Grade I</i> 6500-10500	<i>Grade I</i> 7500-12000	<i>PB-2</i>	4800	
2.	<i>Trained Graduate Teacher</i>	<i>Grade III</i> 5500-9000	<i>Grade III</i> 7450-11500	<i>PB-2</i>	4600	3.8.22
		<i>Grade II</i> 6500-10500	<i>Grade II</i> 7500-12000	<i>PB-2</i>	4800	
		<i>Grade I</i> 7500-12000	<i>Grade I</i> 8000-13500	<i>PB-2</i>	5400	
3.	<i>Post Graduate Teacher</i>	<i>Grade III</i> 6500-10500	<i>Grade III</i> 7500-12000	<i>PB-2</i>	4800	3.8.22
		<i>Grade II</i> 7500-12000	<i>Grade II</i> 8000-13500	<i>PB-3</i>	5400	
		<i>Grade I</i> 8000-13500	<i>Grade I</i> 10000-15200	<i>PB-3</i>	6600	
4.	<i>Vice Principal</i>	<i>Grade II</i> 7500-12000	<i>Grade II</i> 8000-13500	<i>PB-3</i>	5400	3.8.22
		<i>Grade I</i> 8000-13500	<i>Grade I</i> 10000-15200	<i>PB-3</i>	6600	
5.	<i>Principal</i>	10000-15200	12000-16500	<i>PB-3</i>	7600	3.8.22
6.	<i>Education Officer/ Assistant Director of Education</i>	10000-15200	12000-16500	<i>PB-3</i>	7600	3.8.24

9. The Executive Committee of SCERT granted pay-scales specified in Part-A of First Schedule to CCS (Revised Pay) Rules, 2008 i.e. PB-3 (15600-39100) with grade pay ₹6600/- to Sr.Lecturers working in SCERT. Not satisfied, Sr.Lecturers made representations to Executive Committee of SCERT contending therein that they should be granted pay-scales specified in Part-B of the First Schedule as granted to the post of Principal i.e. PB-3 with grade pay ₹7600/- on the ground that post of Sr.Lecturer is equivalent to the post of Principal in a Higher Secondary School.

10. On November 11, 2009, Directorate of Education, Government of NCT of Delhi issued an order constituting a Committee to look into the issue of revision of pay-scales of staff of SCERT including the post of Sr. Lecturer. The relevant portion of order dated November 11, 2009 reads as under:-

“A Committee is hereby constituted under the chairpersonship of Director, SCERT for detailed examination of the request of the staff of the SCERT for implementation of the Part B of First Schedule of CCS (RP) Rules, 2008 on the basis of following factors as contained in Para 2 of the Government of India, Ministry of Finance O.M. No.7/23/2008-E.III(A) dated 07.10.08 (copy enclosed for ready reference):-

- 1. Whether the duties/functions performed by the staff working in the Autonomous Body are in align with the posts mentioned in Part B of the First Schedule.*
- 2. Whether the Autonomous Body in question is in position to bear the additional expenditure burden on account of upgradations; and*

3. *Whether the categories under consideration for upgradation possess the pre-revised scales as those mentioned in Part B of the First Schedule to CCS (RP) Rules, 2008.*

In addition, the Committee may even examine any other issues related to the implementation of Part-B of First Schedule.

The Committee will consist of the following members:-

1. *Joint Director (SB), Department of Education*
2. *DCA, Department of Education.*
3. *DDE (Plg.), Department of Education.*
4. *Secretary, SCERT, Delhi.”*

11. Upon receipt of the report of the Committee, on December 29, 2009 Director, SCERT forwarded the report for approval of the competent authority. The relevant portion of the noting relating to forwarding of report of Committee to the competent authority read as under:-

“In accordance with the recommendations of the Committee, it is proposed that the applicable scales should now be:

<i>Name of the post</i>	<i>Scale of pay</i>
<i>Principal, DIET</i>	<i>15600-39100 GP 7600</i>
<i><u>Sr.Lecturer, DIET/SCERT</u></i>	<i><u>15600-39100 GP 7600</u></i>
<i>Lecturer I, DIET/SCERT</i>	<i>9300—34800 GP 5400</i>
<i>Lecturer II, DIET/SCERT</i>	<i>9300—34800 GP 4800</i>

Financial implications have been spelt out on page 8 of the REPORT and may be seen at page 96/C of this file.”
(Emphasis Supplied)

12. Thereafter the file relating to revision of pay-scales of staff of SCERT, Delhi started doing the rounds of the different departments of Government of NCT of Delhi. The file was first examined by the Planning Department, Government of NCT of Delhi as evident from the noting dated March 23, 2010 prepared by Deputy Director (Planning) Division, the relevant portion whereof reads as under:-

“The issue of revision of scale of pay of SCERT/DIET employee has already been examined by a Committee set-up by Government of Delhi, whose report is available at P.9-16/C.

Finance Department may be requested to accord approval to the Scale of Pay to SCERT and DIET employees as recommended by the Committee so that parity could be established between teaching staff of schools and DIET/SCERT.” *(Emphasis Supplied)*

13. Thereafter the file was sent to the Finance Department, Government of NCT of Delhi. What transpired in the Finance Department is evident from the noting dated April 07, 2010 prepared by the Deputy Secretary (Finance), which reads as under:-

“Approval of FD has been sought to the scale of pay to SCERT and DIET employees as recommended by the Committee, set up by the department so as to have parity with the teaching staff of schools. (9/C-16/C).

May like to refer dated 15/12/09 (19/C) from the Under Secretary to Government of India which states that since pay

scale of the 6th Pay Commission were extended to DIETs of Delhi, based on the order issued by the Government of Delhi, accordingly, the matter pertaining to the applicability of Pt. B of the first Schedule of the 6th Pay Commission to the academic staff of DIETs of Delhi may be taken up with the Government of Delhi, thereby, the issue in its entirety have been vested with the Government of Delhi, although DIETs are fully funded by the Government of India. Also, since no reference/commitment has been made regarding additional funds required for the enhancement based on the recommendations of the 6th Pay Commission.

FD has all along been raising the issue that prior to the implementation of the recommendations of the 6th Pay Commission, a commitment is required from Government of India towards providing additional funds.

Perusal of the records reveal that adoption of CCS (Revised Pay) Rules – 08 was carried with the approval of Chairperson (SCERT)/Secy. (Education), however, the approval does not speak of DIET. Also, as per pattern of assistance of SCERT, all financial concurrences is required to be vetted by FD which has not been complied with (3/N, link file-I), and the decision of the Chairperson, Governing Body, “that decisions taken by G.B. should be final and there is no need to send to Finance Deptt/MHRD” is unilateral (9/C, link file-I).

As per DO dated 27/11/09 (94/C, link file-II) addressed to MHRD, GoI, no reference has been made regarding additional funds required on account of the implementation of CCS (Revised Pay) Rules – 08.

In view of above, the deptt. may take up with GoI the issue of and commitment on account of additional funds required for implementation of CCS (Revised Pay) Rules – 08 on account of DIETs.

As regards SCERT, the decision to implement Pt.A of (Revised Pay) Rules was not taken with FD's concurrence; it is not understood why the matter is being referred to FD for implementation of Pt.B.

The department may reexamine."

14. Thereafter we find that the file was sent back to SCERT, Delhi. On April 22, 2010 following noting was made by an official of SCERT in the file:-

"This file was recalled from D.D. (Plng) under direction of Pr. Secretary. The faculty being extremely agitated is likely to go on strike. We need to take decision. Pl. seek time from Hon'ble MOE."

15. On April 30, 2010 a meeting was held between the Minister of Education, Government of NCT of Delhi, Principal Secretary (Education), Government of NCT of Delhi and Director, SCERT regarding issue of revision of revision of pay-scales of staff of SCERT, the minutes whereof reads as under:-

"The Hon'ble Minister of Education met the Pr. Secretary (Education) and Director SCERT on 30.04.2010 at 11.30 a.m. to discuss the outstanding demands of the academic faculty of SCERT and DIETs and the issue of their salaries to be fixed in accordance with Part B of the Sixth Pay Commission recommendations.

After deliberations, the following decisions were taken:

a) Consequent upon the Governing Body decision earlier, that the Sixth Pay Commission Recommendations are to be applied to SCERT and DIETs as approved and adopted by the Government, the pay fixation be done in accordance with Part B, which covers certain common categories of staff.

b) *Part B should be made applicable to all academic and non academic categories, of eligible staff.*

c) *MHRD be approached immediately for release of funds to cover the additional expenditure, on the salaries of DIETs' staff.*

d) *Pending receipt of grant salaries be disbursed in accordance with Part B, from the funds available.*

e) *Minister of Education will finalize the release of funds by GNCTD for SCERT on this account with Pr. Secretary (Finance), Pr. Secretary (Education) and Director (SCERT) next week."*

16. The afore-noted minutes were placed before the Minister of Education, Government of India and on May 04, 2010 he i.e. Minister of Education decided that *'Parity of SCERT/DIETs should be maintained as per report of Committee and note of Director.'*

17. Based upon the aforesaid decision of Minister of Education, SCERT, Delhi issued an order regarding revision of pay-scales of staff of SCERT, Delhi. The same reads as under:-

"A Committee was constituted by the competent authority for implementation of VI CPC (Part B). The following scales have been recommended for necessary action at SCERT/DIET level:

<i>Name of post</i>	<i>Pay Scale (Pre-revised)</i>	<i>Scale of Pay (Revised)</i>
<i>Principal, DIET</i>	<i>10000-325-15200</i>	<i>15600-39100 GP</i>

		7600/-
<u>Sr. Lecturer, DIET/SCERT</u>	<u>10000- 325- 15200</u>	<u>15600- 39100 GP 7600/-</u>
<u>Lecturer, DIET/SCERT</u>	<u>8000-200- 13500</u>	<u>9300- 34800, GP 5400/-</u>

The same is applicable to all Non Teaching categories of eligible staff such as Publication Officer, Asstt. Controller of Exam., Statistician, Technician, Librarian and Lab Asstts to be fixed in corresponding pay scale as per Part-B of VI CPC.

The payment of arrear and other dues will be paid w.e.f. 01/01/2006, subject to production of undertaking to this effect by the individual concerned.

This issues with the prior approval of the competent authority.” (Emphasis Supplied)

18. It be noted here that in essence the grade pay granted to Sr. Lecturers in SCERT, Delhi got revised from ₹6,600/- to ₹7,600/- with the issuance of order dated May 04, 2010.

19. On May 07, 2010, another meeting was held in the chamber of Minister of Education, Government of NCT of Delhi regarding issue of revision of pay-scales of staff of SCERT, Delhi. It would be apposite to note the following portion of the minutes of meeting held on May 07, 2010:-

“In the light of the decision taken in the meeting held today in the chamber of Hon’ble MOE, in which Pr. Secretary (Finance) was present, we may request F.D. for release of

additional funds to cover the deficit in the grant in aid for SCERT.” (Emphasis Supplied)

20. Thereafter file regarding revision of pay-scales of staff working in SCERT was again sent to the Finance Department. What transpired in the Finance Department is evident from the following portion of a noting prepared by Deputy Secretary (Finance) on May 13, 2010:-

“Based on the decision, the matter has been referred to FD for release of additional funds to cover the deficit in the GIA to SCERT but financial concurrence required to be vetted by FD as per Pattern of Assistance of SCERT has not been called for.

The financial implication has been calculated at ₹7 lakhs for arrears and ₹2 lakhs for recurring expenditure per annum with respect to SCERT and ₹46 lakhs for arrears and ₹10 lakhs for recurring expenditure per annum for DIETs, which is supposed to be fully funded by MHRD, GOI.

There is a budget provision of ₹9 crores (CSS) in the current financial year towards GIA to SCERT under Plan and ₹8 crores towards GIA to SCERT.

Since plan funds are involved, we may seek the advise of Planning department.” (Emphasis Supplied)

21. It appears that Finance Department, Government of Delhi raised an objection regarding the correctness of the order dated May 04, 2010 issued by SCERT, Delhi and did not release funds required for implementation of said order pursuant to which on July 12, 2011 SCERT, Delhi issued another order regarding revision of pay-scales of staff working in SCERT, Delhi. The same reads as under:-

“All concerned are hereby informed that consequent upon decision taken by the Finance Department, GNCT of Delhi, the following scales will be applicable to academic personnel w.e.f. 01/01/2006.

<i>Name of post</i>	<i>Pre-revised pay scale of the post</i>	<i>Corresponding revised pay structure as per CCS (Revised Pay Rules, 2008</i>
<i>Reader, SCERT</i>	<i>₹12000-18000</i>	<i>PB-3: 15600-39100 + GP 7600/-</i>
<i>Principal, DIET/SCERT</i>	<i>₹10000-15200</i>	<i>PB-3: 15600-39100 + GP 6600/-</i>
<i><u>Sr. Lecturer</u> <u>DIET/SCERT</u></i>	<i><u>₹10000-15200</u></i>	<i><u>PB-3:</u> <u>15600-</u> <u>39100 + GP</u> <u>6600/-</u></i>

Further, in pursuance of the directions of Finance Department recovery will be made in respect of overpayment, if any.

*This issues with the prior approval of Director, SCERT.”
(Emphasis Supplied)*

22. It is apparent that the order dated May 04, 2010 revising Grade Pay of Sr.Lecturers working in SCERT, Delhi from ₹6,600/- to ₹7,600/- stood withdrawn by virtue of the order dated July 12, 2011.

23. Aggrieved by aforesaid, some Sr.Lecturers working in SCERT, Delhi filed an application under Section 19, Administrative Tribunals Act, 1985 before the Principal Bench, New Delhi contending therein that:-

(i) Finance Department, Government of NCT of Delhi was not empowered to take any decision regarding revision of pay-scales of staff working in SCERT, Delhi for the reason SCERT, Delhi is an autonomous body and it is only the Executive Committee of SCERT which is empowered to take decisions relating to funds of SCERT and service conditions of staff working in SCERT, Delhi including pay and emoluments of staff. Such being the position, the order dated July 12, 2011 granting Grade Pay of ₹6,600/- to Sr.Lecturers in SCERT, Delhi which is based upon a decision of Finance Department deserves to be set aside, particularly when the Executive Committee of SCERT, Delhi had decided to revise Grade Pay of Sr. Lecturers from ₹6,600/- to ₹7,600/-.

(ii) A conscious decision was taken by SCERT, Delhi and Government of NCT of Delhi to accept the recommendations of Committee constituted by SCERT, Delhi to revise the Grade Pay of Sr.Lecturers in SCERT, Delhi from ₹6,600/- to ₹7,600/- after recommendations of Committee were examined in different departments of Government of NCT of Delhi including Finance Department. In that view of the matter, it was not open for the Finance Department to have changed the aforesaid 'conscious decision', particularly when it examined the recommendations of Committee which formed basis of said decision.

(iii) In view of the facts that the post of Sr. Lecturer in SCERT, Delhi is equivalent to the post of Principal in a Higher Secondary School and there has always been parity in pay-scales granted to said two posts pursuant to implementation of Fourth and Fifth Pay Commissions, the post of Sr. Lecturer in SCERT, Delhi ought to have been granted same pay-band/grade pay as granted to the post of Principal under Part-B of the First Schedule i.e. PB-3 with grade pay ₹7600/-.

24. In the reply filed, SCERT, Delhi and Government of NCT of Delhi contended that:-

(i) Finance Department, Government of NCT of Delhi was empowered to take a decision regarding revision of Grade Pay of Sr.Lecturers in SCERT, Delhi in view of the fact that SCERT, Delhi receives 100% grant in aid from Government of NCT of Delhi.

(ii) A decision was taken by the Finance Department to withdraw order dated May 04, 2010 and issue order dated July 12, 2011 for the reason an objection was raised by the Audit Department regarding grant of higher pay scales to Readers in SCERT, Delhi.

25. Vide judgment dated April 17, 2012 the Tribunal quashed order dated July 12, 2011 issued by SCERT, Delhi. In so concluding, it was held by the Tribunal that a conscious decision was taken by SCERT and Government of Delhi to grant same pay-scale/Grade Pay as granted to post of Principal under Part-B of First Schedule to CCS (Revised Pay) Rules, 2008 i.e. PB-3 (15600-39100) with grade pay ₹7600/- after the matter was examined in various departments of Government of NCT of

Delhi and approved by Minister of Education and SCERT/Government of NCT of Delhi were not justified in changing said conscious decision, particularly when no reason whatsoever emerges on record which led to change of said conscious decision. However, the Tribunal granted liberty to SCERT to issue show cause notice to Sr.Lecturers in SCERT, Delhi regarding revision of their grade pay, if there are valid reasons for the same and thereafter decide the matter afresh by passing a reasoned order from a prospective date, after consider the reply, if any, submitted by Sr. Lecturers to the show-cause notice.

26. Aggrieved by the judgment dated April 17, 2012 passed by the Tribunal, SCERT and Government of NCT of Delhi have filed W.P. (C) Nos.2383/2013 and 2506/2013 contending that liberty granted to SCERT to issue a show cause notice was an idle formality and that too from a prospective date was violative of the legally valid decision already taken. The Sr.Lecturers have challenged the decision vide W.P.(C) No.7349/2013 with the grievance that once all facts were in the knowledge of the Tribunal, it ought to have decided the matter on merits.

27. Before dealing with the contentions, we would be failing in our duty to not once again highlight, a fact which we have highlighted in various decisions, that where justification for a stand taken by a Government authority is pleaded before the Tribunal it is the duty of the Tribunal to deal with the issue on merits and not earn brownie points as in the instant case by directing the authority to re-decide the matter.

28. Rather than remand the matter to the Tribunal for adjudication on merits, since learned counsel for the parties had addressed arguments on merits, we choose to decide the matter on merits as was desired by learned counsel.

29. Stand of SCERT is three-fold as under:-

(i) SCERT/Government of NCT of Delhi were justified in withdrawing order dated May 04, 2010 revising Grade Pay of Sr. Lecturers in SCERT, Delhi from ₹6,600/- to ₹7,600/- for the reason said order was passed without taking approval from the Finance Department of Government of NCT of Delhi.

(ii) A decision was taken by the Finance Department to withdraw order dated May 04, 2010 and issue order dated July 12, 2011 for the reason an objection was raised by the Audit Department with respect to order dated May 4, 2010.

(iii) Higher Grade Pay of ₹7,600/- could have been granted to Sr. Lecturers in Government of NCT of Delhi only after taking approval for same from the Government of India.

30. On behalf of Sr.Lecturers, same submissions were advanced before us as were advanced before the Tribunal. Additionally, it was argued that once the Tribunal came to a conclusion that a conscious decision was taken by SCERT and Government of Delhi and Department of Education that Sr.Lecturers in SCERT should be granted PB-3 (15600-39100) with Grade Pay ₹7600/- to Sr.Lecturers it was not open to the Tribunal to have granted liberty to SCERT and Government

of Delhi to issue show cause notice to Sr. Lecturers in order to change said 'conscious' decision from a prospective date.

31. The post of Sr.Lecturer in SCERT is treated as equivalent to the post of Principal in a Senior Secondary School under Government of NCT of Delhi. The pay-scales of the two posts were same pursuant to the implementation of recommendations of Fourth and Fifth Pay Commissions. Thus, we have before us an instance of historical parity.

32. Under the Central Civil Services (Revised Pay) Rules, 2008, whereas Sr.Lecturers in SCERT were granted pay-scales prescribed in Part-A of First Schedule to CCS (Revised Pay) Rules, 2008 Principals in a Senior Secondary School were granted pay-scales prescribed in Part-B of First Schedule to said Rules.

33. Thereafter representations were made by the Sr.Lecturers in SCERT that they should also be granted pay-scales as prescribed in Part-B of First Schedule to CCS (Revised Pay) Rules, 2008 on the ground that post of Sr.Lecturer is equivalent to the post of Principal in a Senior Secondary School.

34. SCERT, Delhi constituted a Committee to look into the issue of revision of pay-scales of staff of SCERT, Delhi. The Committee recommended revision of pay-scales of staff of SCERT, Delhi including revision of Grade Pay prescribed for the post of Sr.Lecturer from ₹6,600/- to ₹7,600/-. The recommendations of the Committee were forwarded to the Government of NCT of Delhi.

35. On April 30, 2010 a meeting was held between the Minister of Education, Principal Secretary (Education) and Director, SCERT wherein it was decided that Part-B of First Schedule to CCS (Revised Pay) Rules, 2008 shall be made applicable to all categories of staff of SCERT, Delhi. On May 04, 2010 Minister of Education approved the decision taken in the aforesaid meeting and decided that '*Parity of SCERT/DIETs should be maintained as per report of Committee and note of Director.*' On the same day i.e. May 04, 2010 an order was issued by SCERT, Delhi revising pay-scales of staff of SCERT, Delhi in terms of Part-B of First Schedule to CCS (Revised Pay) Rules, 2008 including revision of Grade Pay prescribed for the post of Sr. Lecturer from ₹6,600/- to ₹7,600/-.

36. Vide order dated July 12, 2011 which was challenged before the Tribunal whereunder order dated May 04, 2010 revising pay-scales of staff of SCERT, Delhi stood withdrawn no reasons whatsoever for withdrawing order dated May 04, 2010 are mentioned except that financial concurrence was not given by the Finance Department.

37. Now, facts noted hereinabove would show a conscious decision taken by application of mind and giving good reasons to place Sr.Lecturers in PB-3 with grade pay ₹7600/- and not grade pay ₹6600/-. The same being the equivalence accorded in the month of November, 1989 by the Department of Education, Government of India regarding DIETs: the post of Sr.Lecturer to be equivalent to that of a Principal of a Higher Secondary School (with 10+2 system of education the same now being a Senior Secondary School).

38. If the Finance Department disagreed, it had to give a reason and not simply to state that it did not agree. No reasons for disagreement are forthcoming on record.

39. Though not argued before us, but apparently the reason which possibly could be advanced to not place Sr.Lecturers in the grade pay ₹7600/- is that the Principal DIET to whom Sr.Lecturers report is placed in the grade pay ₹7600/- i.e. that a junior post and a senior post cannot be placed in the same grade pay. But this would overlook the fact that in schools the post of a Principal is in the grade pay ₹7600/- and the next senior post, that of Education Officer/Assistant Director is also in the grade pay ₹7600/-.

40. Suffice it to state that there is historical parity in the pay scales of Principals of Higher Secondary Schools and Sr.Lecturers. The decision of the Department of Education, Government of India noted in paragraph 3 above accords equivalence to a Sr.Lecturer in DIET with Principal of a Higher Secondary School. Thus, Sr.Lecturers in DIET would be entitled to the same grade pay as is given to a Principal of a Higher Secondary School. The argument that Principal DIET is a post above that of a Sr.Lecturer and being placed in the grade pay ₹7600/- is a justification to place Sr.Lecturers in the next below grade pay overlooks that in the schools, Principals and the next above post holders i.e. Education Officers/Assistant Director are placed in the same grade pay of ₹7600/-.

41. Accordingly, we dismiss W.P.(C) No.2383/2013 and W.P.(C) No.2506/2013. We allow W.P.(C) No.7349/2013 and quash the

impugned decision dated July 12, 2011 and direct Sr.Lecturers in DIET to be placed in PB-3 with grade pay ₹7600/-.

42. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

DECEMBER 06, 2013

mamta