

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

+ **W.P.(C) 1559/2015 & CM APPL. Nos. 2770 & 2771/2015**

DHARAM PAL DABAS Petitioner
Through **Mr. Ashok Agarwal & Ms. Nisha**
Tomar, Advocates
versus

NORTH DELHI MUNICIPAL CORPORATION
(NDMC) AND ANR. ... Respondents
Through **Mr. Parvinder Chauhan & Mr.**
Nishant Prateek, Advocates for R-
1/ NDMC

Mr. Arun Bhardwaj, CGSC with
Mr. Rishi Kapoor, Advocate for R-
2/ SDMC

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
% **09.03.2015**

KAILASH GAMBHIR, J. (ORAL)

CM APPL. No. 2770/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P.(C) 1559/2015 & CM APPL. No. 2771/2015 (Direction)

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the order dated 26.11.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) in Original Application (*in*

short 'OA') No.466/2012 preferred by the petitioner.

2. Mr. Ashok Agarwal, the learned counsel for the petitioner submits that before the learned CAT the prayer of the petitioner was for the grant of due increments to him w.e.f. 1991; fixation of pay in proper pay scale w.e.f. 01.01.1996 in terms of the recommendations of the 5th Central Pay Commission and w.e.f. 01.01.2006 in terms of the recommendation of the 6th Central Pay commission, however the learned CAT without giving any consideration to the said legitimate claim of the petitioner gave a limited direction for the release of the salary of the petitioner for the period he has worked, i.e. April, 1998 to 11.11.1998 and for treating his past service for the purpose of pension (unless the respondents have treated some period as break in service), and work out his pension but without counting this period service for any salary, payment, increment, promotion or other benefits. The learned counsel also submits that the learned CAT has failed to appreciate the fact that the petitioner was always ready and willing to join his duty but it was the respondents who kept the petitioner under enforced unemployment thereby depriving him of all the said benefits.

3. We have heard the learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them.

4. The case of the petitioner before the learned CAT was that he was not allowed to join duty w.e.f. 12.11.1998 by the respondents despite repeated requests made by him to resume back his duty. The petitioner had filed a Writ Petition being W.P.(C) No. 18370/2006 when for the first time he sought direction against the respondents to allow him to join his duty. During the pendency of the said writ petition, the respondents had issued an Office Order dated 31st July, 2007 thereby allowing the petitioner to join duty with immediate effect and accordingly he had joined his duty.

5. However, the petitioner claims that despite allowing him to join duty, the respondents failed to make payment of his salary w.e.f 31.07.2007. Thereafter, the petitioner preferred another Writ Petition being W.P. (C) No. 2864/2008 and the same was disposed of vide order dated 31.12.2008 with the following directions:

“During pendency of the present writ petition, the respondent has paid arrears of salary amounting to Rs.1,29,515/- to the petitioner on 12.07.2008 and this fact is admitted by the learned counsel appearing on behalf of the petitioner. Mr. Aggarwal, learned counsel appearing on behalf of the petitioner says that the respondent had not paid the salary of the petitioner after June, 2008. He further submits that the pay of the petitioner in the running scale of Rs.4500-7000/- has also not been correctly fixed by the respondent after he was allowed to resume his duties vide order dated 31.07.2007. The Director of Education present in Court has assured that the petitioner shall be paid his salary from July, 2008 onwards and would be paid arrears of salary to him up to end of November, 2008 within a period of four weeks from today and the petitioner will be paid his salary in future also in time as and

when salary is paid to the other teachers. The Director of Education has also assured that she will ensure that the pay of the petitioner is correctly fixed in the running scale of Rs.4500-7000/- after taking into account the order of penalty of forfeiture of four increments imposed upon the petitioner on 21.07.2003

In view of the above statement made by the Director of Education, the grievance made by the petitioner in this writ petition stands addressed and this writ petition does not survive for any further directions. However, it is hoped and expected that the respondents shall abide by the assurance given to the Court on its behalf by its Director of Education. The parties are left to bear their own costs."

6. The petitioner thereafter preferred an OA No. 466/2012, claiming the following reliefs:

"(i) issue an appropriate order or direction thereby directing the Respondent/ Management to grant the due increments to the applicant from 1991 and consequently fix his salary in proper pay scale w.e.f. 1.1.1996 in terms of the recommendations of the Vth Pay Commission and again w.e.f. 1.1.2006 in terms of the recommendations of the VIth Pay Commission;

(ii) issue an appropriate order or direction thereby directing the respondent to pay to the applicant his due salary for the period from 12.11.1998 to 30.07.2007 along with interest to be calculated @ 18% per annum thereupon;

(iii) issue an appropriate order or direction thereby directing the respondent to grant the benefits of 1st ACP to the applicant after completion of 12 years of service and the benefit of 2nd ACP after completion of 24 years of service and pay to the applicant all the consequential benefits thereof;

(iv) issue an appropriate order or direction thereby directing the respondent to pay to the applicant his due earned wages for the period from April, 1998 to November, 1998 along with interest thereupon to be calculated @ 18% per annum."

7. Explaining the background of the case, the stand taken by the respondents was that the petitioner remained absent from service w.e.f. 01.09.1992 to 31.05.2007 and resultantly, by order dated 21st July, 2003

passed by the respondents, the period from 29.08.1992 to 12.12.1993 and 28.05.1995 was considered as the period break in service. It was the case of the respondent that the total period of service was 26 years 2 months and 10 days as on 30.06.2012. He remained on leave for a total period of 13 years 7 months and 3 days, but looking into the said conduct of the petitioner, the learned CAT instead of taking strict action against him through a departmental proceeding, have just allowed the matter to drift allowing the petitioner to retire on 30.06.2012. The learned CAT also held that it is a case of a highly indisciplined government servant but the fault also lies on the respondents in allowing such an irresponsible government servant to get away with such gross indiscipline and it would be extremely improper for the public at large to pay for the salary of a such government servant due to absolutely callous approach of the respondents. Ultimately taking into consideration the fact that no departmental proceeding was initiated by the respondents against the petitioner, the learned CAT gave certain directions to the benefit of the petitioner. The same being directing release of payment of salary of the petitioner for the period he has worked, i.e. from April, 1998 to 11.11.1998 and treating his past service for the purpose of pension (unless the respondents have treated some period as break in service), and work out his pension but without counting this period service for any

salary, payment, increment, promotion or other benefits.

8. In the present case, had the respondents taken any timely action against the petitioner, particular the petitioner would not been been entitled to any relief. Taking into considering the fact that the respondents have failed to initiate any departmental proceeding against the petitioner for his unauthorized absenteeism from service and the fact that the respondents have already released the payment of salary for the period he has worked, we feel that the learned CAT has already shown enough of its benevolence in issuing the said directions.

There is no merit in the present writ petition and the same is hereby dismissed. All the pending applications are also dismissed.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

MARCH 09, 2015

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