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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WRIT PETITION (CIVIL) NO. 3827/2013

Date of decision: 15th January, 2015

VIKAS DHAWAN & ORS.

..... Petitioners

Through Mr. P.S. Bindra, Advocate.

versus

THE REGISTRAR GENERAL DELHI HIGH COURT

..... Respondent

Through Mr. Chetan Lokur, Advocate for Mr. V.R.
Datar, Advocate for the Delhi High Court.

Mr. Saurabh Tiwari, Advocate for respondent Nos.
2 to 4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL):

The petitioners herein are working as Senior Personal Assistants in the Delhi High Court. They have challenged, by way of the present writ petition under Article 226 of the Constitution of India, the Circular bearing No.788/Estt./E.2/DHC dated 20th May, 2013, the relevant portion of which reads as under:-

“Applications are invited from the eligible officials of this Court and of the Courts subordinate to this Court for filling up the existing 32 vacant posts of Private Secretary against 75% test quota, in the Pay Band of Rs.15600-39100 + Grade Pay Rs.6600. As per Item No. 6(b)(i) of Schedule II of Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972, the minimum qualification prescribed for appointment to the post of Private Secretary, for members of establishment of this Court and Courts subordinate to this

Court is Graduate with 5 years' service in the pay scale of Rs.6500-10500 (pre-revised) or 7 years service in the pay scale of Rs.5500-9000 (pre-revised) including the service rendered in the post(s) carrying higher pay scale and possessing a speed of not less than 120 words per minute in English Shorthand and 45 words per minute in English typing on Computer with proficiency in Computer.

In view of the pronouncement of judgment dated 02.05.2013 of this Court in W.P. (C) No. 6522/2012 titled "Manoj Kumar and Ors. Vs. High Court of Delhi and Ors." revising the Grade Pay of the Personal Assistants, Judicial Assistants, Judicial Translators and Assistant Librarian of this Court, from Rs.4200/- to Rs.4600/-, the Personal Assistants and officials holding equal status posts with 5 years' service in the said posts, may also apply. However, admission to the examination of those who have not rendered 7 years' service in the pre-revised pay scale of Rs.5500-9000, shall be purely provisional and, in case of selection, their appointment will be subject to implementation of the aforementioned judgment."

2. The second prayer made in the Writ Petition is for quashing Clause 6(b)(i) of Schedule-II of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 ("Establishment Rules", for short), on the ground that the aforesaid clause is not in accord with the common judgment dated 2nd May, 2013 passed in W.P.(C) No.6522/2012, ***Manoj Kumar & Others versus High Court of Delhi*** and W.P.(C) No.6751/2012, ***Sharvan Kumar Tanwar & Others versus High Court of Delhi & Others***.
3. For the sake of completeness, we are reproducing Clause 6 of the Establishment Rules, which reads as under:-

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6	Private Secretary (Promotion /Selection Post)	a. Graduate with 5 years' service in the post of category 13 (Senior Personal Assistant) mentioned in Schedule I. b (i) For members of establishment of this Court and Courts subordinate to this Court: 5 years service in the pay scale of Rs.6500-10500 or 7 years service in the pay scale of Rs.5500-9000 including the service rendered in the post(s)carrying higher pay scale and possessing a speed of not less than 120 words per minute in English Shorthand and 45 words per minute in English typing on Computer with proficiency in Computer. Provided that on the date of application the candidate should be a Graduate. b (ii) For direct recruits: Graduate with 5 years' service as Stenographer in the pay scale of Rs.6500-10500 or 7 years service as Stenographer in the pay scale of Rs.5500-9000 in	a. 25% of the vacant posts by promotion on the basis of seniority-cum-merit from seniority list of category 13 (Senior Personal Assistant) mentioned in Schedule-I. 75% of the vacant posts by selection on merit on the basis of written examination comprising of one paper in English language (Essay, Grammar and Translation) followed by a Shorthand dictation to be transcribed on Computer. The short-listed candidates would also undergo a viva-voce test. b(i) & b(ii) In case requisite number of candidates do not qualify for selection on
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		any Government Department/Public Undertaking & possessing a speed of not less than 120 words per minute in English Shorthand and typing speed of 45 words per minute in English typing on Computer with proficiency in Computer.		merit in terms of provisions of clause b(i), appointment will be made in terms of clause b(ii).
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4. By decision dated 2nd May, 2013 in the case of ***Manoj Kumar & Others*** (supra), a Division Bench of this Court had directed that the posts of Personal Assistants, Judicial Assistants, Junior Translators and Assistant Librarians, which fall in the Pay Band-II (i.e. PB-II of Rs.9300-34800) were entitled to Grade Pay of Rs.4600/- with effect from 1st January, 2006. The grievance of the petitioner Manoj Kumar and others that they were wrongly covered under Grade Pay of Rs.4200/-, was accepted. The Division Bench relied on an earlier decision dated 8th August, 1996 in W.P.(C) No.1174/1999, titled ***K.K. Sharma & Others versus UOI & Others***, in which on considering the nature, work and the duties performed by Personal Assistants and Junior Stenographers in the Delhi High Court vis-à-vis Assistants and Stenographers of the Central Secretariat Service and the Central Secretariat Stenographers Service, it was held that Personal Assistants and Junior Stenographers in the Delhi High Court should be given the same pay scales as applicable to their brethren in the Central Secretariat Service and the Central Secretariat Stenographers Service. Reference was

also made to the order dated 6th July, 2010 passed by the Department of Personnel and Training (DoPT), Government of India in compliance with the decision of the Tribunal in OA No.164/2009, titled ***S.R. Dheer & Others versus UOI & Others***, decided on 19th February, 2009, which was followed in another decision dated 9th April, 2010 allowing OA No.1165/2010, titled ***Sunita Devi versus The Secretary, DOPT***. Thus, it was held that the grade pay was wrongly and erroneously fixed.

5. Learned counsel for the petitioners does not dispute and accepts the said position. As a result of the said decision, Personal Assistants, Judicial Assistants, Junior Translators and Assistant Librarians became entitled to the pay scale of Rs.6500-10500 (pre-revised). This would mean that all of them would qualify and would be eligible under clause 6(b)(i) of the Establishment Rules.

6. As noticed above, by the same decision dated 2nd May, 2013, Senior Personal Assistants, Senior Judicial Assistants, Senior Judicial Translators, Senior Assistant Librarians and Readers in the Delhi High Court, who were in the Pay Band of Rs.9300-34800, it was held were entitled to Grade Pay of Rs.4800/- (instead of Rs.4600/-), with effect from 1st January, 2006. This was done on the principle of parity as Grade Pay of Rs.4800/- was being paid for identical work in the Central Secretariat Service. The judgment had placed reliance on the recommendations of the Fourth and the Fifth Central Pay Commissions, which recommended parity with those working in the

Central Secretariat Service. The effect of the judgment was that the Grade Pay was enhanced from Rs.4600/- to Rs.4800/-

7. We are informed that the aforesaid decision dated 2nd May, 2013 has been accepted and implemented.

8. However, before any final decision could be taken on whether or not to accept the decision dated 2nd May, 2013, the Delhi High Court had initiated process for filling up 32 vacant posts of Private Secretary against 75% test quota by way of the Circular dated 20th May, 2013. Thus, the said Circular recorded that the admission to candidates, who had not rendered seven years' service in the pre-revised scale of Rs.5500-9000 shall be purely provisional and in case of selection, their appointment would be subject to implementation of the aforesaid judgment.

9. The contention of the petitioners is that after pronouncement of the judgment dated 2nd May, 2013 in the case of ***Manoj Kumar & Others and Sharvan Kumar Tanwar & Others*** (supra), clause 6(b)(i) of the Establishment Rules which prescribed the qualification in the form of pay scale should be and are required to be amended and altered. It is submitted that the upgradation granted in terms of decision dated 2nd May, 2013 mandates and requires upgradation or higher pay scales should be substituted in the clause 6(b)(i) of the Establishment Rules.

10. We have considered the said contention, but are not inclined to agree with the submissions made by the petitioners. We do not think that the

effect of the judgment dated 2nd May, 2013, titled *Manoj Kumar & Others and Sharvan Kumar Tanwar & Others* (supra) would justify a judicial decision amending clause 6(b)(i) of the Establishment Rules. The said submission in fact would be stretching the decision dated 2nd May, 2013, of which the petitioners were also the beneficiaries and have taken advantage.

11. A close scrutiny of clause 6 of the Establishment Rules would indicate that it consists of three clauses. We would now refer to Clause (a) and Clause (b)(i) of the Establishment Rules. Under clause (a), a graduate with five years' service in the post of category 13, i.e. Senior Personal Assistants are promoted to the post of Private Secretary. Such promotional posts are restricted to 25% of the vacant posts and have to be filled on the basis of seniority-cum-merit; under clause (b)(i), the balance 75% of the vacant posts are to be filled by selection on merit on the basis of a written examination comprising of one paper in English language followed by shorthand dictation to be transcribed on computer. The shortlisted candidates, then, undergo a viva voce test. Sub-clause b(i) states that members of establishment of this Court and subordinate courts with five years' service in the pay scale of Rs.6500-10500 or seven years' service in the pay scale of Rs.5500-9000, including services rendered in the post(s) of higher pay scale, are eligible. The said category is wide and is not restricted to Senior Personal Assistant. The purpose and object of having the said broader category is to expand and widen the pool of officers, who would be eligible to sit and appear in the

selection tests under sub-clause b(i). Noticeably, the promotion is by way of selection on merits by way of a written examination followed by a shorthand dictation and a viva voce test. Thus, the aforesaid clause ensures that candidates/officers in the pay scale of Rs.6500-10500 with five years' experience and those in the pay scale of Rs.5500-9000 with seven years' experience are eligible. Not only the officers working in the Delhi High Court in the said pay scales but also those working in the subordinate courts in the said pay scales, are eligible. Judgment in the case of ***Manoj Kumar & Others and Sharvan Kumar Tanwar & Others*** (supra) are only in the case of the High Court employees and did not apply to the employees working in the subordinate courts. The aforesaid direction in the case of ***Manoj Kumar & Others*** (supra) was given relying upon and referring to an earlier decision in ***K.K. Sharma & Others*** (supra) to hold that the grade pay was erroneously fixed. The error was corrected. Any such direction which the petitioners seek would adversely affect and reflect on the eligibility criteria of the employees working in the subordinate courts. Noticeably, the pay scales prescribed in Clause b(i), are the minimum and the employees drawing a higher pay scale are equally eligible.

12. Private respondents have submitted that the petitioners herein were recently recruited and did not have five years' experience in the pay scale of Rs.6500-10500 (pre-revised) and, therefore, they were not eligible to appear in the said examination. This factual position is admitted/accepted. Thus,

the petitioners were ineligible and could not and did not appear in the selection. They are protesting because some others might get selected and possibly the number of vacant posts would be reduced in future, consequent to the said selection. In *State of Maharashtra versus Chandarkant Anant Kulkarni* (1981) 4 SCC 130, the Supreme Court observed that mere chances of promotion are not conditions of service and the fact that there is a reduction in such chances would not tantamount to change in the conditions of service. Thus, the settled principle is that a right to be considered for promotion is a term of service, but mere reduction in chances of promotion is not. Therefore, the grievance made by the petitioners, who are not eligible, that there would be and has been reduction in chances of promotion may not be a ground to invoke writ jurisdiction. Same principle stands reiterated in *Shyama Charan Dash & Others versus State of Orissa & Another* (2003) 4 SCC 218.

13. It is stated by the counsel appearing for the Delhi High Court that out of the 79 sanctioned posts of Private Secretary, 35 posts were vacant when the present selection process was initiated. Pursuant to the interim order passed in this writ petition, results of the skill test have not been disclosed and are kept in a sealed cover. The said sealed cover has been produced and opened in the Court. Out of the 66 candidates who had appeared, only 10 have qualified in the skill test. Their eligibility norms are not known. Thus, the petitioners would have suffice and adequate opportunity to appear in the

selection tests, when they fulfil the eligibility criteria.

14. In *Shyama Charan Dash* (supra), clubbing of posts for the purpose of feeder cadre was upheld observing that this was not due to intrinsic or basic differences of essential qualifications or the nature of duties and obligation. No such allegation has been brought to our notice in the present case.

15. It is pointed out that service conditions and pay scales of subordinate court employees are being rationalized and the matter is now pending consideration. In case, there is any amendment in the pay-scales/grade-pay of the concerned employees in subordinate courts, etc., it will be open to the petitioners or others to make a representation. If any representation is made, the same can be considered.

16. In view the aforesaid reasoning, we do not find any merit in the present writ petition and the same is dismissed. Interim order is vacated.

(SANJIV KHANNA)
Judge

(ASHUTOSH KUMAR)
Judge

JANUARY 15, 2015
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