

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

+ **W.P.(C) No. 5518/2013**

% **25th March, 2015**

DR. D.S. NAGESH & ANR. Petitioners
Through: Mr. Kamlesh Kumar, Advocate.

Versus

DIRECTORATE OF TRAINING & TECHNICAL EDUCATION
GOVERNMENT OF NCT OF DELHI AND ORS. Respondents

Through: Mrs. Avnish Ahlawat, Advocate for
respondent Nos.1 and 2.
Mr. Anil Soni, Advocate for
respondent No.3.
Mr. Ripu Daman Bhardwaj, CGSC
for respondent No.4.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, two petitioners seek the relief against the respondent no.2/Delhi Technological University, that the respondent no.2/University should recall its letter dated 16.8.2013/17.7.2013 by which three non compounded increments granted to the petitioners for acquiring Ph.D degrees during the period of service have been withdrawn.

2. The facts of the case are that petitioners were appointed as Assistant Professors in the departments of Mechanical Engineering and Production and Industrial Engineering with the respondent no.2/University on 14.8.2000 and 26.5.2000 respectively. Petitioners plead that as per the gazette notification dated 13.3.2010, a provision was made for payment of three non compounded increments to such teachers/Assistant Professors (re-designated as Associate Professor by the 6th Central Pay Commission report) who complete Ph.D degrees while in service. Petitioners plead that they received their Ph.D degrees on 25.7.2008 and 23.2.2008 and therefore were granted the increments in terms of the office orders dated 18.7.2012 and 17.10.2012. Respondent no.2/University however seeks to withdraw the incentives of non compounded increments by the impugned orders dated 16.8.2013 qua petitioner no.1 and 17.7.2013 qua petitioner no.2 and which is illegal and hence be quashed.

3. On behalf of respondent no.2/University it is stated that petitioners were promoted from the posts of Assistant Professor/Associate Professor to the post of Professor on 25.7.2008 and 23.2.2008. On the same dates on which petitioners have obtained their Ph.D degrees, and also well before the issuance of the notification dated 13.3.2010, on the basis of Ph.D degrees which is an eligibility criteria for being appointed as a Professor,

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petitioners were promoted as Professors, hence the petitioners cannot be granted double benefits of promotion and incentive increments inasmuch as incentives are granted for a person to achieve higher qualifications if that qualification is not already used as an eligibility criteria for promotion. Putting it differently a notification which came into effect subsequently in the year 2010 cannot be used as a basis to claim incentives once the degree specified for incentives is an existing eligibility criteria for promotion and promotions on such basis have been obtained by the petitioners earlier in the year 2008.

4. In my opinion, the stand of the respondent nos.2 and 3 is correct inasmuch as the object of the incentive was to grant incentive of three non compounded increments to a person continuing in the same post in which he/she was working. If the higher qualification is an eligibility criteria for promotion, and on the basis of which eligibility criteria petitioners have duly got promotions much earlier in the year 2008 and from the same dates in the year 2008 on which both the petitioners acquired Ph.D degrees, then the petitioners cannot claim that in addition to promotions they should also be given a second benefit of incentive of three non compounded increments. Once a particular higher qualification is taken during service as an eligibility criteria for promotion, it is not open to persons such as the

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petitioners to claim that they should also be granted incentive of three non compounded increments in terms of a subsequent circular issued.

5. The writ petition for claim of incentives is thus misconceived and dismissed.

6. So far as relief (d) of claim of professional development in terms of para 16 of the writ petition and Clause 10 of the office order dated 29.7.2010 of the Government of NCT of Delhi as claimed to be applicable to the respondent no.2/University is concerned, the writ petition is allowed to be withdrawn as prayed with liberty to the petitioner to file a comprehensive representation to the respondent no.2/University stating as to how the petitioners are entitled to the benefit of Clause 10 of the office order of the Government of NCT of Delhi dated 29.7.2010, and how petitioners satisfy the criteria given in the said Clause 10, so that the petitioners are entitled to the benefit of Clause 10 of the office order dated 29.7.2010.

7. The writ petition is accordingly dismissed except with respect to prayer (d) for which liberty is granted to file appropriate representation to the respondent no.2/University.

MARCH 25, 2015
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VALMIKI J. MEHTA, J.