

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

+ **W.P.(C) No.7418/2014**

% **9th January, 2015**

SMT. BALWANT KAURPetitioner

Through: Ms.Saahila Lamba, Advocate.

VERSUS

DIRECTOR OF EDUCATION & ORS. Respondents

Through: Ms.Purnima Maheshwari, Advocate
for R-1.

Mr.R.K.Kapoor with Ms.S.Rama,
Advocates for R-2.

Mr.Sudhanshu Tomar, Advocate for R-
3.

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 Article 226 of the Constitution of India, the petitioner, who is a Post Graduate Teacher (PGT) with the respondent no.2/school, seeks quashing of the recommendation dated 14.10.2014 made by the Departmental Promotion Committee (DPC) appointing the respondent no.3 as the principal of the respondent no.2/school. The petitioner claims that the respondent no.3 has been wrongly appointed and the petitioner ought to have

been appointed but has wrongly not been appointed by considering the bench mark for appointment as ‘good’ instead of ‘very good’.

2. The issue in the present case is very limited as to whether the bench mark for appointment to the post of the principal, which is a selection-cum-merit post, is ‘good’ or ‘very good’.

3. The representation of the petitioner for being appointed to the post of the principal that the bench mark should have been ‘very good’ and not ‘good’ was considered by the respondent no.2/school in the meetings of the Management Committee dated 01.11.2014 and the same was rejected. These minutes read as under:-

“

MINUTES

The meeting of the Management Committee of Sant Nirankari Sr. Sec. School, Pahar Ganj, New Delhi was held in the school premises on Saturday i.e. 01.11.2014 at 11:30 A.M.

The following members were present:-

- | | |
|-------------------------|--------------------------|
| 1. Sh. M.L. Handa | Chairman |
| 2. Sh. Baboo Arora | Manager |
| 3. Sh. D.P. Singh | Vice-Principal (HOS) |
| 4. Sh. Sukhbir Singh | Govt. Nominee |
| 5. Sh. K.S. Bora | Govt. Nominee |
| 6. Sh. Arun Arya | Govt. Nominee |
| 7. Smt Amrit Rani | Govt. Nominee |
| 8. Sh. O.P. Arora | Teachers’ Representative |
| 9. Smt Balwant Kaur | Teachers’ Representative |
| 10. Smt. Suraksha Bajaj | Member |
| 11. Sh. Abrar Ahmed | Secretary PTA |

The Managing Committee members discussed the following agenda items:

Agenda Item No. 1

Confirmation of the Minutes of the last meeting:-

The Minutes of the last meeting which was held on 20.09.2014 were read and confirmed.

Agenda Item No.2

Implementation of the decisions taken in the last meeting.

All the decisions taken in the last meeting were implemented.

Agenda Item No. 3

Appointment of Sh. D.P. Singh to the post of Principal on promotion as per the recommendations of minutes of the DPC held on 14.10.2014.

A DPC meeting was held on 14.10.2014 in the school premises for the promotion to the post of principal as per the orders of the Hon'ble High Court of Delhi on a petition (WP (c) No. 4220/2014) filed by Smt. Balwant Kaur, PGT (Comm.). The DPC found Sh. D.P. Singh, Vice-Principal Fit for promotion to the post of the Principal of the school and accordingly the DPC unanimously recommended Sh. D.P.Singh, Vice-Principal for the post of Principal.

Smt. Balwant Kaur, PGT (Comm.) has submitted her representation dated 22.10.2014, claiming her stake for the post of the principal on the plea that the bench mark for the post of principal is "Very Good" which the DPC has not followed the bench mark criteria correctly and as per rules. She was given the reply vide letter No 483 dated 27.10.2014 that the bench mark for the post of the principal is "Good" as per recruitment rules and on the basis of the Pay Scale of the principal which is Rs. 10000-15200 (per-revised) vide para 3.4 (ii) of D.O.P.T. Office Memorandum dated 08.02.2002 and therefore the DPC has followed the bench mark criteria correctly.

Smt. Balwant Kaur, PGT (Comm.) had again submitted her representation on 28.10.2014 claiming her right for the promotion to the post of Principal on the same ground sand on the basis that the present revised Pay Scale of the Principal is 15600-39100 and she had requested to reconsider the decision taken by the DPC. The case has therefore been sent to the Deptt. vide letter No. 486 dated 30.10.2014 for necessary guidance and instructions.

The Management Committee unanimously resolved 7 passed (except Smt. Balwant Kaur, Teachers Representative) the appointment by promotion of Sh. D.P. Singh to the post of Principal w.e.f. 14.10.2014 as recommended by the DPC held on 14.10.2014.

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The Meeting ended with the vote of thanks to the Chair.		
1. Sh. M.L. Handa	Chairman	sd/-
2. Sh. Baboo Arora	Manager	sd/-
3. Sh. D.P. Singh	Vice-Principal (HOS)	sd/-
4. Sh. Sukhbir Singh	Govt. Nominee	sd/-
5. Sh. K.S. Bora	Govt. Nominee	sd/-
6. Sh. Arun Arya	Govt. Nominee	sd/-
7. Smt Amrit Rani	Govt. Nominee	sd/-
8. Sh. O.P. Arora	Teacher's Representative	sd/-
9. Smt. Balwant kaur	Teacher's Representative	sd/-
10. Smt. Suraksha Bajaj	Member	sd/-
11. Sh. Abrar Ahmed	Secretary PTA	sd" (underlining added)

4. It is not an issue that there is a circular/Office Memorandum (OM) dated 08.2.2002 which prescribes the pay scale of the principal and which also states that what is the bench mark for being appointed as the principal. As per the OM dated 08.2.2002, the pay scale of the principal is Rs.10,000-15,200/-. With respect to the appointment in the pay scale of Rs.10,000-15,200/-, the bench mark is 'good' and only for the higher pay scale of Rs.12,000-16,500/-, the bench mark becomes 'very good'. The relevant portion of this OM dated 08.2.2002 reads as under:-

“ F.No.35034/7/97-Estt(D)
Government of India
Ministry of Personnel, Public Grievance and Pensions
Department of Personnel and Training

New Delhi-110 001
February 8, 2002

OFFICE MEMORANDUM

Subject:- Procedure to be observed by Departmental Promotion Committee (DPCs) – No supersession in 'selection' promotion – Revised Guidelines regarding.

The undersigned is directed to invite reference to the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No.22011/5/86-Estt(D) dated March 10, 1989 and O.M. of even number dated April 10, 1989 (as amended by O.M.No.22011/5/91-Estt(D) dated March 27, 1997) which contain the instructions on the Departmental Promotion Committees (DPCs) and related matters. In regard to the 'selection' made of promotion ('selection-cum-seniority' and 'selection by merit'), the aforesaid instructions prescribe the guidelines (as briefly discussed in paragraph 2 below) for overall 'grading' to be given by the DPC, 'bench-mark' for assessment of performance and the manner in

which the 'select panel' has to be arranged for promotion to various levels of post/grade.

2. Existing Guidelines

2.1 As per the existing (aforementioned) instructions, in promotion up to and excluding the level in the pay-scale of Rs.12,000-16,500/- (excepting promotions to Group 'A' posts/services from the lower group), if the mode happens to be 'selection-cum-seniority', then the bench-mark prescribed is 'good' and officers obtaining the said bench-mark are arranged in the select panel in the order of their seniority in the lower (feeder) grade. Thus, there is no supersession among those who meet the said bench-mark. Officers getting a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.2 In the case of promotion from lower Groups to Group 'A', while the mode of promotion happens to be 'selection by merit', the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supercedes those graded as 'very good' and an officer graded as 'very good' supercedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. These who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.3 In promotions to the level in the pay-scale of Rs.12,000-16,500/- and above, while the mode of promotion is 'selection by merit', the bench-mark prescribed is 'very good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per the grading obtained, officers getting superior grading supersede those getting lower grading as explained in paragraph 2.2 above. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower-grade. Those who get a grading lower than the prescribed bench-mark ('very good') are not empanelled for promotion."

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3.4 Promotion to grades below the revised pay-scale (grad) of Rs.12,000-16,500 (including promotions from lower Group to Group 'A' posts/grades/services)

(i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.

(ii) The bench-mark for promotion, as it is now, shall continue to be 'good'.

(ii) The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraphs 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'good'.

XXXXX

XXXXX

5. The instructions contained in this Office Memorandum shall come into force from the date of its issue.”

5. In my opinion, the arguments which are urged on behalf of the petitioner is a case of mixing oranges with apples. If we go by the 2002 circular then we have to go by the pay scale also of the 2002 circular. It cannot be that the pay scale which will be taken for applicability of the 2002 circular will be a higher pay scale coming into force after the 2002 circular by virtue of the 6th Central Pay Commission, and that higher pay scale will get engrafted in the 2002 circular with respect to those posts of the higher pay scale. The post-revised pay scale cannot be merged into the pre-revised pay scale guidelines for appointment to a post viz a post-revised pay scale of the 6th Central Pay Commission cannot be substituted in a category having that pay scale in a 2002

circular inasmuch as it is only pre-revised pay scale which will have to be considered. In the 2002 circular, so far as appointment to the post of the principal is concerned, the same carries the pay scale of Rs.10,000-15,200/-. It is clear from the following paras of the guidelines filed by the petitioner herself from the revised pay bands and new grade pay as per the 6th Central Pay Commission implementation notification, and which read as under:-

“ REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

Section I

Revised pay structure mentioned in Column (5) and (6) of this part of the Notification for the posts mentioned in Column (2) have been approved by the Government. The initial fixation as on 1.1.2006 will be done in accordance with Note 2 below Rule 7 of this Notification.

On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists the scale of Rs.7450-11500, the post being upgraded from the scale of 6500-10500 should be merged with the post in the scale of Rs.7450-11500.

Posts in the scale of Rs.6500-10500 carrying minimum qualification of either Degree in Engineering or a Degree in Law should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600.

Posts of scientific staff in the scale of Rs.6500-10500 carrying minimum qualification of engineering or a post-graduate degree should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600.

Upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. Regarding (iii) and (iv) above, upgradation may be done by the Ministries concerned in consultation with their Integrated Finance.

Section II

(In Rupees)

Sl. No.	Post	Present scale	Revised Pay Scale	Corresponding Pay Band & Grade Pay		Para No. of the Report
				Pay Band	Grade Pay	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

X X X X X

X X X X X

5	Principal	100 00- 152 00	1200 0- 1650 0	PB -3	7600	
6.	Education Officer/Assistant Director of Education #	100 00- 152 00	1200 0- 1650 0	PB -3	7600	3.8. 24

”

6. The petitioner therefore is unnecessarily mixing up the issues because the new pay scale given pursuant to the 6th Central Pay Commission of

Rs.12,000-16,500/- cannot be taken as the pay scale engrafted in the 2002 circular for an equivalent post i.e the pay scale/pay band in the 2002 circular will have to be read at Rs.10,000-15,200/- so far as para 2.2 of the OM dated 08.2.2002 is concerned and not Rs.12,000-16,500/- which is the subject matter of para 2.3 of the OM dated 08.2.2002.

7. It is conceded on behalf of the petitioner that the revised pay scale with respect to the pre-revised pay scale of Rs.12,000-16,500/- is Rs.15,600-39,100/- and once that is so then the new pay scale of Rs.12,000-16,500/- will be referable to para 2.3 of the 2002 circular and not para 2.2, which latter para is for pay scale excluding and below the pay scale of Rs.12,000-16,500/-, viz of Rs.10,000-15,200/-

8. In sum and substance, therefore the appointment to the post of the principal in terms of the OM dated 08.2.2002 would be in terms of paras 2.2 and 3.4 i.e selection by merit with the bench mark being 'good' and not in the pay scale of Rs.12,000-16,500/- as per para 2.3 of the OM dated 08.2.2002, which pre- revised pay scale of Rs.12,000-16,500/- is now Rs.15,600-39,100/-.

9. Learned counsel for the petitioner places reliance upon an order dated 09.12.2011 passed by the Director of Education with respect to one Sh. Ram Suresh Sharma, Vice Principal who was appointed as the Principal of Ramjas Secondary School, Sita Ram Bazar, Delhi-6 where the bench mark of 'very

good’ was applied, and to which the counsel appearing for the Director of Education/respondent no.1 contends that there are different guidelines when a person has to be appointed as the principal from a PGT and from a vice principal, however, I am not going into this aspect inasmuch as even if there is an order dated 09.12.2011 which is passed wrongly with respect to another school by the Director of Education, the same will not give any legal right to the petitioner to argue against the direct language of the OM dated 08.2.2002 inasmuch as Article 14 of the Constitution of India is a positive concept and not a negative concept. A petitioner before the court of law cannot invoke Article 14 of the Constitution of India to claim equality by seeking application of an order which is illegal and beyond the applicable provisions which require the bench mark of ‘good’ in this very case for appointment of the principal and not ‘very good’ in terms of the OM dated 08.2.2002.

10. Dismissed.

JANUARY 09, 2015
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VALMIKI J. MEHTA, J