

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

Date of decision: November 30, 2015

+ W.P.(C) 8445/2015, CM No.18089/2015
UMA MUDGAL

..... Petitioner

Through: Mr. Arvind Kumar Gupta, Adv. with
Mr. Abhishek Goyal, Adv.

versus

CRPF PUBLIC SCHOOL & ORS

..... Respondent

Through: Mr. Amit Chadha, Adv. for R-1 & 2
Mr. S.S. Sejwal, Law Officer, CRPF
Mr. Sanjoy Ghose, Adv. with
Mr. Dhananjai Rana, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

W.P.(C) 8445/2015

1. This petition has been filed by the petitioner challenging the advertisement dated June 24, 2015 issued by the respondent Nos.1 & 2 for filling up the post of Principal in CRPF Public School, Rohini, Delhi by direct recruitment and seeking a further direction to the respondents to convene the DPC for the post of Principal in CRPF Public School, Rohini, Delhi.

2. It is the submission of Mr.Arvind Kr. Gupta, learned counsel for the petitioner that the petitioner joined the respondent No.1 School on July 06, 1992. The petitioner is M.Sc., B.Ed. Thereafter in the year 1996

she has acquired the qualification of M.Ed. (Education Management) and has also completed M.Phil. (Education) in the year 2008. Her case for filling up the post of Vice-Principal was not considered by the respondent No.2. Instead they have appointed one Anjali Malik. The said appointment is under challenge before this Court. Subsequently, she has been appointed as Vice-Principal with effect from July 01, 2011. She is a senior most PGT in the school as well as is the Vice-Principal and officiating Principal. In the month of February, 2015 the incumbent Principal – Mr.H.R. Sharma had tendered his resignation. Since the vacancy of Principal has arisen and as per the rules and regulations of the Delhi School Education Act and the circulars, the post of Principal is required to be filled up first by promotion, failing which by direct recruitment. According to Mr.Gupta, the post of Principal is a selection post and the benchmark for the post of Principal is “Good”. He would further state that as per Memorandum dated February 08, 2002, the pay scale of Principal is Rs.10,000-15,200 (pre-revised) and the benchmark is “Good” and only for the higher pay scale of Rs.12,000-16,500, the benchmark is “Very Good”. The DPC for the post of Principal was held on May 25, 2015. The DPC did not consider any candidate including the petitioner on the ground that the benchmark for the post of Principal is “Very Good” and none of the candidates had that benchmark. Pursuant

thereto the respondents have issued the impugned advertisement dated June 24, 2015.

3. According to Mr.Gupta, the petitioner made representations to the respondents on July 10, 2015, July 16, 2015, July 21, 2015 and August 05, 2015 and requested them to reconvene the DPC, as the procedure adopted by the respondents is illegal and also the benchmark for the post is “Good” and not “Very Good”. He has also drawn my attention to the reply to the RTI application received by the petitioner vide letter dated August 03, 2015, wherein the Govt. of NCT of Delhi-respondent No.3 has stated that for promotion of Principal through DPC conducted by UPSC in its DPC meeting held on 02nd, 03rd, 04th and 07th April, 2014, the benchmark was considered as “Good”. It is also his submission that the benchmark being “Good”, which the petitioner has achieved, she could not have been denied promotion to the post of Principal. In other words, it is his submission that had the petitioner been considered with the benchmark “Good”, she would have been promoted and there was no occasion for the respondents to advertise the post of Principal by filling up the same through direct recruitment. He has also stated that even if the benchmark is “Very Good”, in the absence of any communication of the ACRs below the benchmark of “Very Good” for the relevant years, the said ACRs could not have been considered by the respondent Nos.1

& 2 at the time of promotion. He would rely upon the judgment of the Supreme Court in the case reported as **2008 (8) SCC 725 Dev Dutt vs. Union of India & Ors.** He would also rely upon the order dated February 23, 2015 passed by the Division Bench in **LPA 99/2015 Balwant Kaur vs. Director of Education & Ors.**, wherein the learned counsel appearing for the Director of Education has in the hearing dated February 27, 2015 stated that as per the instructions given to her, the benchmark for appointment by promotion to the post of Principal in a Senior Secondary School is “Good”. It is his submission that this statement of learned counsel for the petitioner is in conformity with the reply to the RTI application given on August 03, 2015. He has also drawn my attention to the judgment passed by this Court in the case of Smt. Balwant Kaur vs. Director of Education & Ors., W.P.(C) 7418/2014 dated January 09, 2015.

4. On the other hand, Mr.Amit Chadha, learned counsel for respondent Nos.1 & 2 would submit that there is a fallacy in the argument of learned counsel for the petitioner inasmuch as the pay scale for the post of Principal was Rs.10,000-15,200 but later on revised to Rs.12,000-16,500, which was thereafter revised to Rs.15,600-39,100 with a grade pay of Rs.7600 (under 6th CPC) and as per instructions of February 08, 2002, the promotions upto and excluding the level in the

pay scale of Rs.12,000-16,500, the benchmark is “Very Good”. That apart, he would rely upon the Central Civil Services (Revised Pay) Rules, 2008, wherein it is shown, the scale of Rs.10,000-15,200 was revised to Rs.12,000-16,500 and which was further revised to corresponding pay band and grade pay under the 6th Pay Commission i.e. Rs.15,600-39,100 with grade pay of Rs.7600. He would state, there is no illegality in the action of the respondents. It is also his submission that there is no challenge to the gradings “Good” in the ACRs in the writ petition. He has also pointed out the averments made by the petitioner in the writ petition to contend that the petitioner was aware of her gradings being “Good” in the ACRs and not very good and the said gradings remained unchallenged in this petition, no relief in that regard can be granted.

5. Mr.Sanjoy Ghose, learned counsel for the respondent No.3 would primarily rely upon the judgment of the Division Bench in ***LPA 99/2015 Balwant Kaur vs. Director of Education & Ors.***, wherein it has been categorically held that post of Principal was in the pay scale of Rs.12,000-16,500 before the recommendations of the 6th Central Pay Commission. Pursuant thereto, the pay scale of the Principal was revised in Pay Band-3 of Rs.15,600-39,100 with grade pay of Rs.7600. According to him, even this Court had in ***J.S Tomar vs. Govt. of NCT of***

Delhi & Ors., Writ Petition (Civil) No.7846/2015 decided on August 19, 2015 has held that the benchmark for the post of Principal is “Very Good”. According to him, two Courts having come to a conclusion that the post of Principal was in the pay scale of Rs.12,000-16,500 before the recommendations of the 6th Central Pay Commission and the fact that the benchmark for the post of Principal is “Very Good”, this Court would not take a contrary view to upset the settled position. According to him, the present petition is liable to be dismissed.

6. Mr.Gupta in his rejoinder to the submission made by Mr.Amit Chadha would submit that the petitioner has for the first time come to know that the gradings in the ACRs for the 5 years were “Good”. According to him, the case of the petitioner in the writ petition being that the benchmark being “Good”, the petitioner meeting the benchmark of “Good” in the relevant years, should have been promoted. The said averment in the writ petition cannot be considered to mean that she has accepted her gradings as “Good”.

7. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the benchmark for the post of Principal is “Good” or “Very Good”. There is no dispute to the fact that the petitioner was not graded as “Very Good” by the DPC held on May 25, 2015 keeping in view her record. The revised pay rules as relied

upon by Mr.Chadha stipulate as under:-

Sl. No.	Post	Present Scale	Revised Pay Scale	Corresponding Pay Band & Grade Pay		Para No. of the Report
				Pay Band	Grade Pay	
5	Principal	10000-15200	12000-16500	PB-3	7600	

Pre-revised scale (S-21)
Rs.12000-375-16500

Revised Pay Band + Grade Pay
PB-3 Rs.15600-39100+7600

8. From the perusal of the above, it is noted that before the 6th Central Pay Commission, the pre-revised scale of Principal was Rs.10,000-15,200, which was revised to Rs.12,000-16,500(a sort of upgradation). The said scale of Rs.12,000-16,500 was revised to pay band of PB-3, Rs.15,600-39,100 with grade pay of Rs.7,600, post 6th Central Pay Commission recommendations.

9. Mr.Gupta, learned counsel for the petitioner during his submissions did concede to the fact that grade pay of the post of Principal is Rs.7600/-. If that be so, I note that it is only the post of Principal which has the grade pay of Rs.7600 and not any post in the feeder grade(s). Hence, it conclusively proves that the pre-revised scale being 12,000-16,500 and in terms of the office memorandum dated February 08, 2002, as noted by the Division Bench it must be held that the post of Principal was in the pay scale of Rs.12,000-16,500 (pre-revised) and in the pay band PB-3 with grade pay of Rs.7600 (revised under 6th CPC), it must conclusively be held that the benchmark is “Very

Good” and as the petitioner could not be graded as “Very Good” by the DPC was not promoted.

10. I note for benefit the following paragraphs from the judgment of the Division Bench in ***Balwant Kaur vs. Director of Education & Ors.,***

LPA No.99/2015:-

“6. It is not in dispute that the post of Principal was in the pay scale Rs.12000-16500/- pre-recommendations of the 6th Central Pay Commission being implemented and post-recommendations of the 6th Central Pay Commission being implemented in Pay Band-3 with Grade Pay Rs.7600/-, Pay Band-3 was having the band Rs.15600-39100/-.

7. A perusal of para 3.1 of the Office Memorandum dated February 08, 2002 evinces that where merit was the criteria for promotion reference to the relevant bench mark had to be determined with reference to the subsequent paragraphs of the Office Memorandum. Para 3.3 of the Office Memorandum dated February 08, 2002 would make it clear that for the post in the then existing pay scale Rs.12000-16500/- and above the bench mark prescribed was ‘Very Good’. For post below the pay scale Rs.12000-16500/- the bench mark was ‘Good’. It is trite that since the Office Memorandum continued to exist, replacement pay scales or replacements placement in the pay bands would be termed as what would be the bench mark. As noted above, the scale Rs.12000-16500/- was placed in Pay Band-3 with Grade Pay Rs.7600/-. When the promotion was made the recommendations of the 6th Central Pay Commission had come into being. The learned Single Judge has clearly erred in holding that the appellant is comparing oranges with apples. The learned Single Judge overlooked the fact that the applicability of the

Office Memorandum dated February 08, 2002 had to been seen with reference to the pay scales then in vogue, of course as replaced by the pay bands.”

11. On the aspect of non-communication of ACRs for the relevant years, wherein the petitioner has been graded as “Good”, suffice to state, OM dated February 08,2002 being very clear that the benchmark is “Very Good” for the posts above pay scale of Rs.12,000-16,500, and noting the fact that the petitioner was aware of her gradings being “Good” in those years, had not cared to challenge the said gradings on the ground that they are below the benchmark and could not have been considered by the DPC in view of the ratio of the judgment of the Supreme Court in ***Dev Dutt (supra)***. In the absence of any challenge to the said gradings in this writ petition, one must proceed on a premise that the petitioner has accepted those gradings. If that be so, the submission of learned counsel for the petitioner that the petitioner was under the impression that the benchmark being “Good” and she had been graded as “Good” for the relevant years, there was no occasion for the petitioner to challenge the same cannot be accepted. Rather I find, the petitioner relied upon the same OM in support of her stand in the writ petition. In any case, when the OM dated February 08, 2002 is in existence and the fact that the petitioner was aware of the fact that she was drawing the grade pay of Rs.7600 which is of PB-3 of Rs.15,600-39,100, revised

scale of Rs.12,000-16,500, she should have challenged the said gradings in the writ petition. Having not challenge the same, no relief in that regard can be granted.

12. I do not see any merit in the writ petition. The same is dismissed. Interim order dated September 10, 2015 is vacated.

CM No.18089/2015

In view of order passed in the writ petition, the application is dismissed as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

NOVEMBER 30, 2015
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