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

+ W.P.(C) 1549/2016

EAST DELHI MUNICIPAL CORPORATION & ORS

..... Petitioners

Through: Mr. Kumar Rajesh, Adv.

versus

VINAI KUMAR SRIVASTAV & ANR

..... Respondents

Through: Mr. R.S.Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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03.03.2016

With the consent of the counsel for the parties, we are taking up the writ petition for final hearing and disposal.

The East Delhi Municipal Corporation by the present writ petition, impugns the order dated 8.9.2015 passed in OA No.1586/2014 whereby it has been directed that Mr. Vinai Kumar Srivastav and Mr. Satish Kumar Sharma would be entitled to grade pay of Rs.5400/- consequent to the Second Financial Upgradation in 2013 on completion of twenty years of regular service under the Modified Assured Career Progression Scheme, 2008 (MACP Scheme, for short). The Tribunal, in the impugned order, has relied on the decision of the Punjab and Haryana High Court in WP(C) No.19387/2011 titled *Rajpal vs. Union of India & Ors.*

The petitioners were appointed as Assistant Teachers in the

year 1993. In 2005, they were granted first financial upgradation in the pay scale of Rs.5500-9000/- under the Assured Career Progression Scheme, 1999 (ACP Scheme). On implementation of the Sixth Pay Commission, as per Central Civil Services Rules Revised Pay Rules, 2008, they were entitled to and paid the replacement pay scale S-13 in pay band of Rs.9300-34,800/- with grade pay of Rs.4600/-. To this extent there is no dispute or *lis* before us.

After introduction of the MACP Scheme, the respondents were granted second financial upgradation in 2013. The question raised is whether they are entitled to second financial upgradation in the grade pay of Rs.4800/-, which is a grade pay applicable to post S-14 or they are entitled to grade pay of Rs.5400/- applicable to post S-15.

The MACP of 2008 is at variance and different from the ACP Scheme of 1999. The relevant portion of the MACP Scheme related to financial upgradation reads as under:-

“2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial up-gradation under the MACPs can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion.

8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of

MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs.5400/- is not in two pay bans viz., PB-2 and PB-3. The grade pay of Rs.5400/- in PB-2 and Rs.5400/- in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

The aforesaid Clauses in the MACP Scheme had come up for consideration before this Court in ***R.S.Sengor & Ors. vs. Union of India & Ors.*** in WP(C) No.3420/2010 which was decided on 4th April, 2011. Paragraphs 2 and 8.1 of the MACP Scheme were interpreted and it was held as under:-

"7. Noting the relevant facts Inspectors in the Pay Band 2 Rs.9,300-34,800/- get a Grade Pay of 4,600/- have been granted under the MACPS the first financial up-gradation by retaining the Pay Band but giving the Grade Pay Rs.4,800/-. Their grievance as raised in the writ petition is that they are entitled to the Grade Pay Rs.5,400/- and to highlight the basis of their claim it is to be noted that the next hierarchical post i.e. that of Asst. Commandant is in Pay Band 15,600-39,100/- with Grade Pay 5,400/-. It be clarified that they do not claim a right to be placed in the Pay Band 15,600-39,100/- but claim benefit of the Grade Pay of the said Pay Band and it is apparent that the basis of the claim is paragraph 2 of the MACPS which states that the Scheme envisages placement in the immediate next higher Grade Pay hierarchy."

This decision also makes reference to the DoP&T OM No.195/2009 which vide illustration 4 clarifies the position. The Division Bench had held:

“6. In case a Govt. servant joins as a direct recruits in the Grade Pay of 1,900/- in Pay Band-I 5,200-20,000/- and he gets no promotion till completion of 10 years of service, he will be granted financial up-gradation under MACP scheme in the next higher Grade Pay of 2,000/- and his pay will be fixed by granting him one increment + difference of grade pay (i.e. 100/-). After availing financial up-gradation under MACP scheme, if the Govt. servant gets his regular promotion in the hierarchy of his cadre, which is to the Grade of 2,400/-, on regular promotion, he will only be granted the difference of Grade Pay of between 2,000/- and 2,400/-. No additional increment will be granted at this stage. ”

Thereafter, the Division Bench observed:-

“11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given the Grade Pay after 10 years in sum of 4,800/- and not 5,400/- which is the Grade Pay of the next Pay Bank and relatable to the next hierarchical post. To put it pithily, the MACPs Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.”

Similarly in **Swaran Pal Singh & Ors. vs. UOI & Ors.** WP(C) No.5082/2013 which decided on 17.3.2015, the MACP Scheme was examined and it was held that the scheme mandates financial upgradation in the hierarchy of grade pay and not the next grade pay in the hierarchy of posts. This being the ratio and the legal position, the order of the Tribunal cannot be sustained and upheld.

Learned counsel for the respondent has relied on the order

dated 14.7.2010 passed in WP(C) No.3608/2014, *National Council of Education Research & Training vs. Om Prakash & Ors.* The said order refers to the order under challenge passed by the Tribunal that was premised on the judgment passed by the Punjab & Haryana High Court in the case of *Rajpal Singh (supra)* and notices that the Supreme Court did not interfere that the said judgment in the SLP preferred. Thereafter, it was held that the petitioner, i.e. NCERT would pass a reasoned order indicating the reason for denying the pay scale claimed by the employee. The said judgment, in our opinion, does not hold that under the MACP Scheme, the Government servant would be entitled to the pay scale applicable to next promotional post in the hierarchy. The order dated 14.7.2010 does not lay down any ratio. The question was left open.

The learned counsel for the respondent has drawn our attention to the circular dated 28.1.2013 passed by North Delhi Municipal Corporation. The said circular makes reference to teachers/principals in pay band Rs.15,600-39,100/-, grade pay of Rs.5400 (S-17) after grant of the second ACP on completion of 24 years of regular service. It has been observed that they would be eligible for third financial upgradation in the pay band of grade pay 6600 after completion of 30 years of service. Such circular would be of no help or assistance to the respondent for the reason that it is applicable only to teachers/principals who are already in the pay band Rs.15600-39100 and grade pay of Rs.5400. Implementation of this circular is not an issue in the present case. The question whether paragraph 8 of MACP Scheme would apply, is not being examined. The respondent

in the present case does not fall in the same category. He is not in the pay scale of Rs.15600-39100 with pay band of 5400.

Accordingly, we set aside the impugned order and hold that the respondents will be entitled to financial upgradation to the grade pay of Rs.4800/- in the pay band of Rs.9300-34800/-, and not grade pay of Rs.5400/- in the pay band of Rs.9300-34800/-. The writ petition is allowed in the aforesaid terms. In the facts of the case, there will be no orders as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 03, 2016/ak