

\$~4

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

%

Date of Decision : April 27, 2016

+

W.P.(C) 3660/2015

VIKAS

.....Petitioner

Represented by: Ms.Saahila Lamba, Advocate

versus

HIGH COURT OF DELHI & ORS.

.....Respondents

Represented by: Mr.Sanjoy Ghose, Advocate for
R-1

Mr.Arun Bhardwaj, Advocate for
R-3

Mr.Gautam Narayan, Advocate
with Mr.R.A.Iyu, Advocate and
Mr.Pradeep Jain, AAO with
Ms.Pamyati Sarup, HC (Principal
Accounts Office)

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The controversy in the present case relates to the post of SAS Accountant in this Court.
2. The petitioner was appointed to the post of Lower Division Clerk (LDC) in the establishment of the District and Sessions Judge, Delhi on July 01, 2003 and on April 23, 2008 he was directly recruited to the post of Junior Judicial Assistant in the Delhi High Court and on September 20, 2013 was promoted to the post of Judicial Assistant, which post he continues to hold even today. The post of Judicial Assistant in the Delhi

High Court is in the pay band ₹9300-34800 (PB-2) with Grade Pay ₹4,600/-.

3. In the year 1986, two posts were created in the Delhi High Court in the Accounts Cadre viz. Accounts Officer and SAS Accountant, which posts are analogous to the posts in Accounts Cadre of Delhi Government and Central Civil Accounts Service.

4. Initially the Controller General of Accounts used to impart training to in-service personnel in order to make appointments to the post(s) of SAS Accountant/Junior Accountant under Delhi Administration. Sometimes thereafter, Delhi Administration decided to conduct examination (in addition to training) in order to make appointment to the post(s) of SAS Accountant/Junior Accountant under Delhi Administration, which examination is presently known as '*Common Assistant Accounts Officer (Civil) Examination*'. Subsequently, the training was scrapped and only an examination was held to make appointment to the post(s) of SAS Accountant/Junior Accountant in Delhi Administration.

5. The Finance (Accounts) Department, Government of NCT of Delhi issued an order on June 24, 2003 allowing the employees of the Delhi High Court and the employees in the establishment of the District and Sessions Judge Delhi to appear in the Common Assistant Accounts Officer (Civil) Examination from the year 2003 onwards subject to the condition that said employees shall be eligible for appointment against SAS posts only in their respective cadre and will not claim appointment under Delhi Governments' Accounts Cadre posts i.e. DASS cadre. Thus, the position which emerged after the order dated June 24, 2003 was issued was that the employees of the Delhi High Court could be appointed to the post of SAS Accountant only on qualifying the Common

Assistant Accounts Officer (Civil) Examination.

6. As a necessary consequence of the order dated June 24, 2003, vide order dated September 20, 2004 undernoted amendment was made in the scheme of Common Assistant Accounts Officer (Civil) Examination:-

“All Group ‘C’ or Group ‘B’ non-Gazetted employees of Delhi High Court & District Courts working in the pay scale below ₹6500-10500 will also be eligible for appearing in S.A.S/Common JAO Examination Part-I alongwith the employees of GNCT of Delhi as mentioned in preceding para. Those officials of Delhi High Court & District Courts working in the pay scale equal or higher than ₹6500-10500 and Group D employees are not eligible for appearing in the Examination.”

7. On September 20, 2004 (when amendment was made in the scheme of Common Assistant Accounts Officer (Civil) Examination for the employees of the Delhi High Court and on the establishment of the office of the District and Sessions Judge Delhi) the employees working on the post of Judicial Assistant (post presently held by the petitioner) became eligible to appear in Common Assistant Accounts Officer (Civil) Examination inasmuch as post of Judicial Assistant was a Group C post in a pay-scale below ₹6500-10500.

8. After the implementation of the recommendations of the 6th Central Pay Commission, the Government of NCT of Delhi issued consolidated instructions concerning the Common Assistant Accounts Officer (Civil) Examination. The eligibility condition prescribed for employees of the Delhi High Court and the employees in the establishment of the District and Sessions Judge Delhi were amended as under:-

“All Group ‘C’ & ‘B’ Non-Gazetted employees of Delhi High Court and District & Sessions Courts working in the Pay Scale below ₹6500-10500 (Pre-revised)/with pay band of ₹9300-34800 & grade pay of ₹4200 (Revised)

are eligible to appear in JAO (Common) examination. The officials of Delhi High Court & District Court working in the pay scale equal or higher than ₹6500-10500 (Pre-revised) and Group 'D' employees are not eligible for appearing in JAO (Common) examination."

9. It needs to be emphasized here that after the implementation of the recommendations of the 6th Central Pay Commission, the pay-scale of the post of Judicial Assistant was revised to ₹9300-34800 (PB-2) with Grade Pay of ₹4200/-. Meaning thereby, the employees of the Delhi High Court working on the post of Judicial Assistant became eligible to appear in the Common Assistant Accounts Officer (Civil) Examination inasmuch as the post of Judicial Assistant was below the pre-revised scale ₹6500-10500 and drawing revised pay-scale ₹9300-34800 with Grade Pay ₹4200/-.

10. On May 13, 2010 an office order was issued by the Government of NCT of Delhi relating to the Common Assistant Accounts Officer (Civil) Examination, the relevant portion whereof reads as under:-

*"I would like to inform you that as per the Scheme circulated by the Finance (Accounts) Department, Government of NCT of Delhi, Vide letter No.F. 20(3)/79-AC dated 11.5.83 for the conduct of common JAO/SAS Examination, this department conducts Examination for part-I and Part-II regularly every year in the month of December and the qualified candidates are appointed to the post of J.A.O. now A.A.O to cater the need of Account and Finance function in the Departments of the Government of NCT of Delhi." **(Emphasis Supplied)***

11. In the year 2012 some employees of the Delhi High Court filed a writ petition registered as W.P.(C) No.6751/2012 Sharvan Kumar Tanwar & Ors vs. High Court of Delhi & Ors praying therein that the grade pay of ₹4,600/- be granted to the employees working on the post of

Personal Assistant, Judicial Assistant, Judicial Translator and Assistant Librarian on the premise that analogous posts in Central Secretariat Service have been granted grade pay of ₹4,600/- pursuant to the implementation of the recommendations of the 6th Central Pay Commission. Vide order dated May 21, 2013 this Court allowed the said petition and granted grade pay of ₹4,600/- to the posts of Personal Assistant, Judicial Assistant, Judicial Translator and Assistant Librarian. The aforesaid judgment was implemented and thus Judicial Assistants started getting grade pay ₹4,600/-

12. Now comes the problem.

13. As a result of the implementation of the judgment dated May 21, 2013:- (i) post of SAS Accountant and other posts which were feeder posts to the post of SAS Accountant came in the same pay-scale ₹9300-34800 (PB-2) with Grade Pay ₹4,600/-; and (ii) petitioner who was holding the post of Judicial Assistant became ineligible to appear in the Common Assistant Accounts Officer (Civil) Examination inasmuch as the pay-scale attached to the post of Judicial Assistant got revised/upgraded to ₹9300-34800/- with Grade Pay ₹4,600/-, whereas only those employees of the Delhi High Court were eligible to appear in the Common Assistant Accounts Officer (Civil) Examination who were drawing pay-scale ₹9300-34800/- with Grade Pay ₹4,200/- as per Consolidated Instructions issued for Common Assistant Accounts Officer (Civil) Examination.

14. In these circumstances, the petitioner has filed the present writ petition essentially claiming following three reliefs:-

(a) Respondent No.1 (High Court of Delhi) be directed to upgrade/revise the pay-scale attached to post of SAS Accountant from ₹9300-34800 with Grade Pay ₹4,600/- to ₹9300-34800 with Grade Pay

₹4,800/-;

(b) Respondent No.2 (Government of NCT of Delhi) be directed to amend the eligibility condition prescribed for the employees of the Delhi High Court and the employees in the establishment of the District and Sessions Judge Delhi in the Consolidated Instructions issued for Common Assistant Accounts Officer (Civil) Examination, in that, the Grade Pay ₹4,200/- mentioned in said instructions be amended to Grade Pay ₹4,600/-.

(c) Respondent No.2 (Government of NCT of Delhi) be directed to hold a Common Assistant Accounts Officer (Civil) Examination. (In this regard, it is highlighted by the petitioner that the last Common Assistant Accounts Officer (Civil) Examination was conducted in the year 2012).

15. Needless to state, the petitioner has approached this Court after his representation was rejected on the administrative side of this Court.

16. During the pendency the Delhi High Court has upgraded/revised the pay-scale of the post of SAS Accountant by granting the grade pay ₹4,800/-. Thus, relief (a) claimed by the petitioner in the present petition has already been granted by the administrative decision and to said extent learned counsel for the petitioner concedes that the writ petition has become infructuous.

17. We are thus concerned with reliefs (b) and (c) prayed by the petitioner.

18. With respect to relief (b) the stand taken by the Government of NCT of Delhi in its counter affidavit is as follows:-

“In respect of the relief at prayer (ii) of the Petition, it is submitted that no prejudice is caused to the petitioner even if the consolidated instructions are not amended as prayed for. It is submitted that in any event, consolidated instructions/circular regarding conduct of AAO

examination are issued on the basis of the provisions contained in the Recruitment Rules. It is submitted that since in Pay in Pay Band and Grade Pay are not prescribed in the Recruitment Rules for eligibility, only the nomenclature of the post/cadres shall be included in the consolidated instructions/circular regarding conduct of the AAO Examination going forward.” **(Emphasis Supplied)**

19. The aforesaid stand taken by the Government of NCT of Delhi is misplaced for the reason the eligibility for employees of the Delhi High Court prescribed in the Consolidated Instructions for appearing in the Common Assistant Accounts Officer (Civil) Examination is clearly linked with the Pay Band and the Grade Pay attached to the post held by them at the time when they appeared in the Examination.

20. From the afore-noted factual conspectus, it is evident that when Consolidated Instructions for Common Assistant Accounts Officer (Civil) Examination were issued by the Government of NCT of Delhi the grade pay of the posts of Personal Assistant, Judicial Assistant, Judicial Translator and Assistant Librarian i.e. the posts feeding the post of SAS Accountant was ₹4,200/- which subsequently got upgraded/revised to ₹4,600/- due to implementation of the judgment dated May 21, 2013 of this Court in Sharwan Kumar’s case (supra). Once grade pay attached to the posts feeding the post of SAS Accountant got revised from ₹4,200/- to ₹4,600/- it was incumbent upon the respondent No.2 (Government of NCT of Delhi) to have made necessary amendment in the Consolidated Instructions so that the posts which were earlier feeding the post of SAS Accountant continues to feed the said post, more so when the grade pay attached to the post of SAS Accountant was revised to ₹4,800/-.

21. With respect to relief (b) the stand taken by the Government of NCT of Delhi in its counter affidavit is as follows:-

“It is submitted that the Answering Respondent is not bound to conduct the AAO Examination every year, as contended or otherwise. It is submitted that the document at Annexure-P11 to the Petition, which the petitioner seeks to place reliance on, does not impose any obligation upon the Answering Respondent to conduct AAO Examination every year as alleged or otherwise. It is submitted that the AAO Examination is only a limited departmental qualifying examination. As set out in the document at Annexure P-11 to the Petition, the AAO Examination is conducted to cater to the need of Account and Finance function in the Departments of the Government of National Capital of Territory (“GNCTD”). Currently, about 200 successful candidates from the 2010 and 2011 AAO Examination are awaiting appointment for want of vacancies. It is submitted that GNCTD/Answering Respondents will take appropriate/necessary directions in respect of holding the AAO afresh once the present Panel is exhausted.”

22. The aforesaid stand taken by the respondent No.2 to not hold of Common Assistant Accounts Officer (Civil) Examination is wholly untenable.

23. The petitioner has produced before us a copy of office order dated April 08, 2016 issued by Government of NCT of Delhi which records that 108 posts of Assistant Accounts Officer (the entry post in Accounts Cadre of Government of NCT of Delhi) have been created in the Accounts Cadre of Government of NCT of Delhi. The order further prescribes that creation of 60 higher posts in Accounts Cadre, filling up of which posts would create 60 vacancies to the post of Assistant Accounts Officer. Further, information received by petitioner under Right to Information Act, 2005 shows that as many as 76 posts of Accounts Assistant Officer are lying vacant as on May 28, 2015. Thus, there are more than 200 posts of Assistant Accounts Officer lying vacant in

Accounts Cadre of Government of NCT of Delhi.

24. In any case, the petitioner who is aspiring for an appointment in Accounts Cadre of the Delhi High Court cannot be made waiting for lack of vacancies, if any, in the Government of NCT of Delhi.

25. In view thereof, it is obligatory upon respondent No.2 (Government of NCT of Delhi) to conduct the Common Assistant Accounts Officer (Civil) Examination in view of the prescription contained in the Office Order dated May 13, 2010 and further to conduct the same regularly every year and particularly in view of the fact that the Common Assistant Accounts Officer (Civil) Examination has not been conducted for last more than three years.

26. In view of above discussion, the present writ petition is allowed. Reliefs (b) and (c) claimed by the petitioner as detailed in paragraph 14 are granted. Mandamus is issued to conduct the necessary examination within a period of 6 months and further action taken depending upon the result of the examination.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 27, 2016
mamta