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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4560/2015**
KARUNA AGGARWAL

..... Petitioner

Through: Mr. Sanjay Aggarwal, Adv.

versus

DELHI STATE LEGAL SERVICES AUTHORITY AND ANR.

..... Respondent

Through: Ms. Deepali Gupta, Adv. for R-1
Mr. Sanjoy Ghose, ASC with
Mr. Vikramaditya, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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02.08.2016

1. The present petition has been filed by the petitioner with the following prayers:-

- a) Issue a writ of Mandamus or any other appropriate writ directing the respondents to fix the pay of the petitioner in the pay band of Rs 5200-20200+ 2400/- Grade Pay, keeping at par with the pay of Data Entry Operator of Govt of NCT of Delhi, who are similarly placed in all respects, w.e.f 01.09.06 along with the annual increments (as per the mandate of FR 26 which is also applicable to the Ad-hoc employees)*
- b) Any other order (S) which this Hon'ble Court deem proper and adequate in the facts and circumstances of the case be*

passed in favour of the petitioner and against the respondents.”

2. Some of the relevant facts are, the petitioner was appointed as a Data Entry Operator with the respondent No.1 Authority on September 1, 2006 on ad-hoc basis in the pay scale of Rs.3050-4590. On June 15, 2012, the services of the petitioner were regularised in the Pay Band-1 of Rs.5200-20200 plus Rs.1900/- grade pay. On October 28, 2012, the petitioner filed an RTI application in the office of the respondent No.2 seeking the pay-scale of her counterparts in the Government of NCT of Delhi. The reply to the said application was given by the respondent No.2 stating that the pay-scale of her counterparts in the Government of NCT of Delhi is Pay Band-1 Rs.5200-20200 plus Rs.2400/- grade pay. On May 21, 2013, the petitioner gave a representation to respondent No.1 for keeping her pay-scale at par with the pay-scale of her counterparts employed in Government of NCT of Delhi. On November 12, 2014, an Office Order was issued, whereby it was decided to grant the pay in the PB-1 Rs.5200-20200 with grade pay of Rs.2400/- to the petitioner with prospective effect i.e. with effect from October 17, 2014, based on a communicated dated 31st October, 2014 of the Government of NCT of Delhi. (Annexure R2/4).

3. It is the submission of learned counsel for the petitioner that the respondents having acceded to the request of the petitioner, the grade pay of

Rs.2400/- must relate back to the date when the petitioner was appointed. He would state that in terms of the Delhi Legal Services Authority Rules, 1996, an employee of the said Authority is entitled to draw pay and allowances in the scale of pay indicated against each post in the schedule or at par with the employees of the Government of NCT of Delhi holding equivalent post. He states, that even at the time of the *ad-hoc* appointment, the petitioner was given the lower pay-scale of Rs.3050-4590, whereas, the pay-scale granted to her counterparts was Rs.4000-6000. According to him, in view of the notification dated November 12, 2014, it must be held that the appointment of the petitioner was, in the Pay Band of Rs.5200-20200 plus Rs.2400/- grade pay.

4. On the other hand, Mr. Sanjoy Ghose, states that the Recruitment Rules in the Authority contemplate, a Data Entry Operator to be in the pre-revised scale of Rs.3050-4590 and the revised scale of Rs.5200-20200 plus Rs.1900 grade pay. The Recruitment Rules were appropriately amended to bring it at par with the pay of the Data Entry Operators in the Government of NCT of Delhi i.e Rs.4000-6000 (pre-revised) corresponding to PB-1 Rs.5200-20200 with grade pay of Rs.2400 with effect from October 17, 2014. He states that the Rules having been amended and in terms of GFR

267, which does not allow revision of pay with retrospective effect, the petitioner was granted the pay prospectively.

5. Having heard the learned counsel for the parties, there is no dispute that the Data Entry Operator Rules stipulated the post to be in the scale of Rs.3050-4590. It is also not disputed that in terms of the Delhi Legal Services Authority Rules, an employee would draw pay and allowances in the pay-scale indicated against each post in the Schedule to the Rules or at par with the employees of the Government of NCT of Delhi holding equivalent post. There is also no dispute that the pay of the employees in the Government of NCT of Delhi being Rs.4000-6000, was higher to the pay being drawn by Data Entry Operator in the Authority. The petitioner on her appointment, has immediately made a representation seeking information in that regard and she was informed the scale being in the Pay Band-1 of Rs.5200-20200 with grade pay of Rs.2400, surely, that gave a cause of action for the petitioner to make representation to the Authorities in the year 2013. I note, that the Authority respondent No.1, in its communication dated April 11, 2014 to the Principal Secretary for correction of the pay-scale of the post of Date Entry Operator, has stated as under:-

“As per the Legal Services Authorities Act, 1987 read with the Delhi Legal Services Authority Rules, 1996, officials of this

Authority are entitled to similar scales of salary and other allowances as applicable to employees of Govt. of NCT of Delhi. The relevant provisions are as under:-

Section 6(6) of The Legal Services Authorities Act, 1987:-

“The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.”

Rule 7 of The Delhi Legal Services Authority Rules, 1996:-

“7. The conditions of service and the salary and allowances of officers and other employees of the state authority under subsection (6) of Sec. 6.

(1) The officers and other employees of the State Authority shall be entitled to draw pay and allowances in the scale of pay indicated against each post in the Schedule to these rules or at par with the employees of the Government holding equivalent posts.

(2) In all matters like age of retirement, pay and allowances, benefits and entitlements; and disciplinary matters, the officers and other employees of the State Authority shall be governed by the rules as are applicable to employees of the Government holding equivalent posts.

(3) The officers and other employees of the State Authority shall be entitled to such other facilities allowances and benefits as may be notified by the Government from time to time.”

It may be noted that while fixing the pay scale for the above post for this Authority on 13.06.2006 instead of adopting the scales already fixed by Govt. of NCT of Delhi @ Rs.4000-100-6000/- (pre-revised), the same got mentioned as Rs.3050-4590/- (pre-revised) Annexure 'B'. As per the 6th Pay Commission, entry level Data Entry Operators, grade 'A' working with Govt. of NCT of Delhi are receiving Rs.5200-20200 + 2400 Grade Pay, while owing to above initial error Data Entry Operator, working with this Authority is receiving only Rs.5200-20200 + 1900 Grade Pay.

May I further bring to your kind consideration that this matter was taken vide Agenda Item No.8 in the Statutory Meeting of the DSLSA attended by you goodself alongwith Ms. Archana Arora, Principal Secretary (Finance) held on 16.1.2014 and it was resolved as under:-

“It was unanimously resolved that a proposal be sent to the Govt. of NCT of Delhi.”

Your goodself is, therefore, requested to kindly take up the matters with appropriate authority and get the necessary corrections made in the entry level pay scale of Data Entry Operator from 3050-70-3950-80-4590 to Rs.4000-100-6000/- and bring it par with Recruitment Rules of Govt. of NCT of Delhi from the date of creation of this post in this Authority i.e 13.06.2006 and consequential correction in the Recruitment Rules of this Authority notified vide notification No.F.22/2/8-Judl./Suptlaw/1359-1365 dated 08.12.2010 (Annexure- 'B').

The support material/brief note is enclosed herewith.”

6. This request of the Authority was accepted by the Government of NCT of Delhi vide its communication dated October 31, 2014, wherein the following was mentioned:-

“With reference to your letter No.48/E.F./DSLISA/Admn./2014/449 dated 09.04.2014, on the subject cited above, I am directed to convey the approval of the Hon’ble Lt. Governor, Delhi, for grant of pay scale of Rs.4000-6000 (Pre-Revised) corresponding to PB:1-5200-20200 with Grade Pay of Rs.2400 in respect of the post of Data Entry Operator in the Delhi State Legal Services Authority with prospective effect since GFR 267 does not allow revision of pay with retrospective effect.”

But the same was made prospective in view of the provisions of GFR 267, which does not allow revision with retrospective effect.

7. On a consideration of the facts, it is clear that the Delhi Legal Services Authority Rules, 1996 contemplate, an employee shall draw the scale of pay as mentioned in the Schedule against each post or at par with the employees holding equivalent post. As the pay of the employees of the Government of NCT of Delhi holding equivalent post of Date Entry Operator being higher, given the nature of the Rule, the same should be interpreted and followed in favour of the employee concerned. The

petitioner was prompt in seeking her remedy for a higher scale. The notification of October 31, 2014 would reveal that the Government of NCT of Delhi has accepted the anomaly, which has existed in the grant of a lower scale to the Data Entry Operator working in the Authority. It is noted that the pay-scale of Data Entry Operators in Govt. of NCT of Delhi was Rs.4,000 to 6,000/- (pre-revised). The 6th CPC has recommended the pay-scale of Rs.5,200 - Rs.20200 + 2400 (Grade Pay) to the Data Entry Operators, which scale has been given to the Data Entry Operators working in the Govt. of NCT of Delhi. It appears so has been stated in the communication dated 11th April, 2014 of the Member Secretary of the Authority that the Authority while adopting the scales on 13th June, 2006 has mentioned Rs.3050 – Rs.4590 as pre-revised instead of Rs.4,000 - Rs.6,000/- (pre-revised). The petitioner was denied the scale of Rs.4,000 - Rs.6,000/- even on her appointment as Data Entry Operator in the year 2006. She continued to draw the said scale thereafter. In any case, it is too late for the petitioner to claim the pay-scale of Rs.4,000-Rs.6,000/-. It is also noted that there is only one post of Data Entry Operator in the Authority on which the petitioner is working. The revision would mean that the appointment of the petitioner as Data Entry Operator is in the Pay Band-I Rs.5,200 –

Rs.20,200 with Grade Pay of Rs.2,400. It would be an anomalous situation inasmuch as the petitioner working as Data Entry Operator has been given the pay with two Grade Pays of Rs.1,900/- between 2012-2014 and Rs.2,400/- w.e.f. 2014. No doubt on the date when the petitioner was appointed, the Recruitment Rules reveal a Grade Pay of Rs.1,900. Having revised the Grade Pay of Rs.2,400/- as the same would not have any wide ramification and this anomaly is confined to the Date Entry Operator working in the Authority, this Court is of the view that in the peculiar facts of this case, the petitioner shall be entitled to a higher Grade Pay of Rs.2,400/- from the date of her regular appointment as Data Entry Operator on 15th June, 2012 and fixation thereof. This grant of higher Grade Pay and fixation thereof shall be notional and arrears w.e.f 17th October, 2014 when her pay was actually fixed in the Grade Pay of Rs.2,400/-, shall be paid within three months from the date of receipt of the copy of this order.

8. Petition stands disposed of.

V. KAMESWAR RAO, J

AUGUST 02, 2016/ak