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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 10229/2015
UNION OF INDIA AND ORS. Petitioner
Through Mr.Gigi C. George, Advocate
versus

RAJ RANI GAUR AND ORS. Respondent
Through Mr. S.C. Singhal, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **07.11.2016**

1. The Union of India, Director General of Health Services and the Principal and Medical Superintendent, Lady Hardinge Medical College and S.K. Hospital have filed this writ petition impugning the order dated 29th May, 2014 whereby OA 3280/2012 filed by four respondents, namely, Smt. Raj Rani Gaur, Smt. Ranjit Kaur, Smt. Aniamma Kumar and Smt. Mary Hongsha has been allowed with the direction that they would be entitled to financial upgradation under the Assured Career Progression scheme in the pay scale of Rs.8000-13,500 w.e.f. the dates they have completed 12 years of regular service as sister tutors.

2. Having heard the counsel for the petitioner, we are not inclined to interfere with the impugned order which notices that pay scale of sister tutor and senior tutor were identical, i.e., Rs.6500-10500(Rs.2000-3500 pre revised). This being the position, the Tribunal was justified in taking notice and applying OM 35034/1/97-Estt.(D)(Vol.IV) dated 10.2.2000 which on point of doubt no.1

clarifies as under:-

S.No.	Point of doubt	Clarification
1.	<i>Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay-scale as a result of rationalization of pay-scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration: prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay-scales of Rs.1200-1800 and Rs.1320-2040 respectively; the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases?</i>	<i>Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade.</i>

3. Accordingly, the stand of the petitioner that the respondents would be entitled to grant of a financial upgradation but would still be placed in the same pay scale of Rs.6500-10500(Rs.2000-3500 pre revised) is wrong and incorrect. The stand obviously does not notice that the promotional post should not normally carry the same pay

scale of the lower post.

4. In the present case, two posts of sister tutor and senior tutor were clubbed and had merged with a common pay scale. Thus, the post of Senior Tutor cannot be regarded as a promotional post.

5. On the question of financial upgradation, it is noticed that the Tribunal has granted financial upgradation in the pay scale of Rs.8000-13500. The same scale is being paid on promotion and financial upgradation in Dr. RML Hospital, New Delhi. It is also pointed out that the pay scale of the promotional post of principal tutor was identical Rs.8000-13500 (Rs.2200-4000 pre revised).

6. Learned counsel for the petitioner has not been able to show a different pay scale in any equivalent promotional post in any other institutions.

7. In view of the aforesaid position, we find that the Tribunal was justified in granting financial upgradation in the pay scale of Rs.8000-13500 under the Assured Career Progression scheme w.e.f. the date the said respondents had completed 12 years of regular service as sister tutors.

8. The writ petition is accordingly dismissed. No costs.

SANJIV KHANNA, J

SUNITA GUPTA, J

NOVEMBER 07, 2016/rs