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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10298/2015

SUMAN BERERA

..... Petitioner

Through: Mr. B.K.Berera, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Brijesh Chaudhary, Adv. for
Mr. Vijay Chander Joshi, Sr. Adv.
for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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28.01.2016

CM No.25638/2015(exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10298/2015 & CM No.25637/2015(Stay)

The petitioner was appointed as a Bursur in the Lady Harding Medical College with effect from 3.7.1978 in the pay scale of Rs.550-750/- which was revised to Rs.1600-2660/- after the Fourth Pay Commission.

By a letter dated 3.5.1991, a proposal was sent for revision of the pay scale of Bursur and for re-designation of the post of Bursar as Assistant Registrar (Academic) [wrongly mentioned in the letter as Registrar (Academics)]. The post of Assistant Registrar (Academic) was in the pay scale of Rs.2200-4000/-. By letter dated 7.10.1992,

the post of Bursar was abolished and a post of Assistant Registrar (Academic) in the pay scale of Rs.2000-3500/- was created. This letter dated 7.10.1992 which has been quoted in the internal page 3 of the impugned order passed by the Tribunal.

The petitioner was appointed as Assistant Registrar (Academic) vide letter dated 5.7.1993 on *ad hoc* basis for a period of six months and this appointment was subsequently extended. The case of the petitioner was considered by the UPSC and on their recommendation, the petitioner was promoted to the post of Assistant Registrar (Academic) on regular basis with effect from 17.2.1995 vide letter dated 2.3.1995, which reads as under:-

“OFFICE MEMORANDUM

The Director General of Health Services is pleased to appoint Mrs. Suman Berera to the post of Assistant Registrar (Academic) Gr. 'B' Gazetted in LHMC & Smt. S.K.Hospital, New Delhi by promotion on regular basis w.e.f. 17.2.1995 on the following terms and conditions:-

- 1. The appointment will be in the pay scale of Rs.2000-60-2300-EB-75-3200-1---3500/-. The initial pay will be fixed as per rules in the said pay scale. She will be entitled to draw dearness and other allowances at the rate admissible under the rule at the place of duty.*
- 2. Other conditions of service will be governed by the relevant rules and orders on the subject issued from time to time.*

The Charge assumption report of Mrs. Suman Berera may please be sent to this Directorate for further action.”

The Assured Career Progression scheme (ACP Scheme, for short) came into force on 9th August, 1999 and envisaged First Financial Upgradation after service of 12 years and Second Financial Upgradation after service of 24 years.

It is apparent that no financial upgradation was granted to the petitioner presumably on account of his promotion to the post of Assistant Registrar (Academic) vide order dated 2.3.1995 quoted above. The petitioner in view of the promotion, did not protest or raise any claim seeking financial upgradation.

By an order dated 27.4.2007, the appointment of the petitioner to the post of Assistant Registrar (Academic) was ante-dated to 7.10.1992, i.e., the date of creation of post.

The petitioner thereupon staked claim that she was entitled to two financial upgradations in the pay scale of Rs.10,000-15,200/- and Rs.12,000-18,000/- respectively (under the ACP Scheme). She drew analogy referring to the hierarchy in Jawahar Lal Institute of Post-Graduate Medical Education and Research, Pondicherry (JIPGMER Pondicherry) since post of Assistant Registrar (Academic) was an isolated post in the Lady Harding Medical College.

The petitioner filed an OA No.1587/2006 which was disposed of directing the respondents to consider the representation of the petitioner for grant of ACP within a period of three months. The respondents by order dated 15.3.2008 granted First ACP in the pay scale of Rs.8,000-13,500/- with effect from 9.8.1999 and second ACP in the pay scale of Rs.10,000-15,200/- with effect from 3.7.2002. It appears that despite the said order, no payments were made. The

petitioner thereupon filed OA No.1995/2007 which was disposed of by the Tribunal vide order dated 11.4.2008 directing the respondents to pay her arrears within forty five days.

The ACP scheme was replaced with Modified Assured Career Progression Scheme (MACP Scheme) on implementation of the Sixth Pay Commission. The MACP scheme envisages Third Financial Upgradation on completion of thirty years of service. The petitioner filed OA No.1563/2012 claiming her right to the Third Financial Upgradation. This OA was disposed of vide order dated 10.5.2012 directing the respondents to decide petitioner's representation within a period of three months. Thereafter, the petitioner filed a Contempt Petition No.776/2012, which was disposed of on 10.11.2013 taking on record the speaking order dated 9.1.2013. The liberty was granted to the petitioner to challenge the said speaking order dated 9.1.2013.

The speaking order dated 9.1.2013 was made subject matter of the challenge in OA No.302/2013 which has been decided by the impugned order dated 16.12.2014 and is in challenge before us.

This speaking order while rejecting the petitioner's claim for Third Financial Upgradation, withdraws financial upgradations to the scale of Rs.8000-13,500/- and Rs.10,000-15,200/- granted earlier. The petitioner, it is held, was entitled to financial upgradation to the pay scale of Rs.7450-11,500/- as a second ACP [the grade pay of Rs.5400 in PB-2] as the petitioner had been promoted to the post of Assistant Registrar (Academic) vide memorandum dated 2.3.1995. It is factually correct that the petitioner was promoted as Assistant Registrar (Academic) vide memorandum dated 2.3.1995. The

petitioner's promotion to the post was made after consultation with the UPSC. The petitioner was earlier working as a Bursar in the pay-scale of Rs.1,600-2,660/- and consequent to promotion of Assistant Registrar (Academic) became entitled to pay scale of Rs.2,000-3500/-. This was a financial upgradation.

Learned counsel for the petitioner has drawn our attention to paragraph No.10 of the clarification issued by the DOPT relating to ACP Scheme. He submits that financial upgradation to pay scale of Rs.7,450-11,500/- is wrong and lower. The said paragraph reads as under:-

“10. For isolated post, the scale of pay for ACPs as recommended by the Pay Commission may be implemented and not the standard/common pay scales indicated vide Annexure-II of the Office Memorandum, dated August 9, 1999.

For isolated posts, the scales of pay for ACPs shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay commission has recommended specific pay scales for mobility under ACPs. Such specific cases may be examined by respective Ministries/ Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure-II of the Office Memorandum, dated August 9, 1999 (ACPs) shall apply.”

We have considered the said paragraph but the submission of the petitioner has to be read along with the factual narration mentioned in order dated 9.1.2013. The post of Assistant Registrar and Registrar (Academic) in JIPMER, Pondicherry did not constitute a cadre and they are separate posts. Both of the posts have to be filled on deputation basis as per the Recruitment Rules. Thus, there is no hierarchy of Assistant Registrar and Registrar (Academic) in JIPMER, Pondicherry.

In view of the aforesaid factual position, we do not find any merit in the present writ petition impugning the order dated 16.12.2014 disposing off the petitioner's OA No.302/2013. The writ petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

JANUARY 28, 2016/ak