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

+ WRIT PETITION (CIVIL) No. 10738/2015

Date of decision: 22nd January, 2016

RAMESH CHAND SANWAL & ORS. Petitioners

Through Mr. R.K. Saini, Advocate.

versus

DELHI HIGH COURT THROUGH REGISTRAR GENERAL

..... Respondent

Through Mr. Sanjoy Ghose, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

The petitioners, eight in number, are Process Servers working in the High Court of Delhi. Their service conditions are governed by the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972.

2. Having been appointed sometimes in the year 2001 and having completed more than 10 years of service, they are entitled to financial upgradation under the Modified Assured Career Progression Scheme (MACPS). To this extent, there is no dispute or lis.

3. The contention of the petitioners is that at present they are in Pay Band-1/Scale of Rs.5200-20200 and Grade Pay Rs.2800 and are entitled

to financial upgradation in the Grade Pay of Rs.4600.

4. The respondents submit that the petitioners are entitled to financial upgradation in the next higher Grade Pay of Rs.4200. This is the short controversy.

5. Learned counsel for the petitioners relies upon judgment of this Court in *Manoj Kumar and Others versus High Court of Delhi*, Writ Petition (C) No. 6522/2012 decided on 2nd May, 2013 by which Personal Assistant, Judicial Assistant, Junior Translator and Assistant Librarian, who were in Pay Band-2, Rs.9300-34800 in Grade Pay of Rs.4200 were upgraded and granted Grade Pay of Rs.4600. It is accordingly submitted that the Grade Pay of Rs.4200 does not exist in the hierarchy and, therefore, the petitioners would be entitled to Grade Pay of Rs.4600 and not Rs.4200. The next Grade Pay after Rs.2800 in the Delhi High Court hierarchy is Rs.4600 and not Rs.4200.

6. In order to appreciate the contention, we would like to reproduce paragraph 2 of the MACP Scheme, which 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 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation 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/organisation will be given only at the time of regular promotion.”

The said paragraph adumbrates that MACP Scheme envisages mere placement in the 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. The contention of the petitioners overlooks the clear words in paragraph 2, which refers to recommended revised pay band and grade pay as given in Section I, Part-A of the First Schedule. It is an accepted and admitted position that as per recommended revised pay band and grade pay in Section I, Part-A of the First Schedule of the CCS (Revised Pay) Rules, 2008 the next Grade Pay is Rs.4200 and not Rs.4600. It need not be the higher grade pay attached to the next promotion post.

7. Reliance placed on the judgment of the Delhi High Court in the case of ***Manoj Kumar*** (supra) is misconceived and inappropriate. Personal Assistant, Judicial Assistant, Junior Translator and Assistant Librarian are officers in Pay Band-2, whereas the petitioners herein are in Pay Band-1. The judgment adjudicates the grade pay payable to the said officers. This judgment does not obliterate and erase the Grade Pay of Rs.4200.

8. Similar contention was raised and rejected by the Delhi High Court in ***Union of India versus Delhi Nurses Union (Regd.) and Another***, 193 (2012) DLT 584 (DB), observing:-

“18. Most importantly, this very issue had come up for consideration before this Court in the case of *R.S. Sengor v. Union of India*, in **W.P. (C) 3420/2010** decided on 04.04.2011. In that case the petitioners were in Pay Band-1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of Rs. 2400/-. The petitioners herein claimed that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. The Division Bench dismissed the petition of the writ petitioner therein and held as under:-

“10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

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 and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4,800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band 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.”

(underlining added)

9. As noted above, the petitioners herein are in Pay Band-1 and not in Pay Band-2. In order to work out the financial upgradation, we have to refer to the next grade pay. The next grade pay is Rs.4200 and not Rs.4600, as is the submission made by the petitioners. The aforesaid judgment in *Delhi Nurses Union (Regd.) and Another* (supra) has been followed in *Swaran Pal Singh and Others versus Union of India and Others*, Writ Petition (C) No. 5082/2013 decided on 17th March, 2015.

10. Learned counsel for the petitioners has also submitted that Section 1, Part-A of the First Schedule of the CCS (Revised Pay) Rules, 2008 would not be applicable. We do not find any merit in the said contention. In order to work out the next higher grade pay, we have to refer to the grade pay schedule. Learned counsel for the respondent has also stated that they follow the said schedule as the Delhi High Court does not have their independent schedule and presently the same schedule is being followed.

11. For the aforesaid reasons, we do not find any ground to accept the prayer of the petitioners.

The writ petition is dismissed.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

JANUARY 22, 2016
VKR