

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

+ **W.P.(C) No. 9543-53/2004**

% **17th January, 2017**

RANBIR SINGH & ORS. Petitioners
Through: Mr. Pramod Kumar Sharma,
Advocate.

versus

NDMC & ANR. Respondents
Through: Mr. Vikas Mathur, A.O. and Mr. K.L.
Miglani, A.A.O. of respondent no.
2/NSES.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the 11 petitioners. Petitioners are employees of a school which is run by respondent No.2/Navyug School Education Society. Respondent No.2/Navyug School Society is managed by respondent No.1/New Delhi Municipal Council. Petitioners by the writ petition besides pleading their entitlement of ACP scheme also pray for quashing of office order dated 10.12.2002 as per which out of the 11 petitioners 8 petitioners have already been granted the ACP benefits but at a lower pay scale than as being prayed by the petitioners.

2. This impugned order dated 10.12.2002 reads as under:-

**“NAVYUG SCHOOL, LAXMI BAI NAGAR
OFFICER ORDER”**

No. 67/NS/LBN/2002

Dated: 10/12/2002

In pursuance of O.O. No. 641/NSES/M/SEC.Y/2002 dated 3/12/2002 the following group ‘D’ employees are granted Pay scale of Rs. 2610-60-2910-65-3300-70-4000 (S. 2A) under ACP Scheme w.e.f. 9/8/99.

S.No.	Name	Designation
1.	Sh. Ranbir Singh	Peon
2.	Smt. Prema Mehta	K.G. Attendant
3.	Smt. Kamla	K.G. Attendant
4.	Smt. Kamlesh	Kitchen Attendant
5.	Sh. Harikrishan Kukreti	Bus Conductor
6.	Sh. Balbir Singh	Bus Conductor
7.	Sh. Bhagwan Pal	Chowkidar
8.	Sh. Abhey Singh	Chowkidar

The above-mentioned employees are hereby directed to exercise their option under FR 22 for fixation of Pay within one month for the date of issue of these orders.

Sd/-
(Mrs. U.S. Tomar)
Principal

Copy to :-

1. Individual concerned
2. Personal File
3. Accounts Clerk
4. O.O. Book”

3. Admittedly, there is an ACP Scheme and this is not disputed on behalf of the respondents. Respondent no.2, however, pleads that the petitioners have already been granted benefit of the ACP scheme w.e.f. 09.08.1999 as per the pay scale of Rs.2610-60-2910-65-3300-70-4000. Respondent no.2, however pleads that so far as petitioners being petitioner no.6/Smt. Kamla, petitioner no.8/Sh. Balbir, petitioner no.9/Smt. Vijay

Laxmi, petitioner no.10/Sh. Abhay Singh & petitioner no.11/Sh. Bagwan Pal, these persons were wrongly granted ACP scheme benefits inasmuch as these five petitioners Smt. Kamla, Sh. Balbir, Smt. Vijay Laxmi, Sh. Abhay Singh and Sh. Bagwan Pal ought not to have been granted the ACP benefits because for grant of ACP benefits, the employees must at least have qualification of being 10th class pass, however, these five persons Smt. Kalma, Sh. Balbir, Smt. Vijay Laxmi, Sh. Abhay Singh and Sh. Bagwan Pal are only 8th class pass. Accordingly, respondent no.2 states that these five petitioners have wrongly been granted the ACP benefits by the impugned order dated 10.12.2002 and the same would be withdrawn.

4. Two issues arise in this writ petition. First issue is that whether the 11 petitioners satisfy the eligibility criteria for being granted first ACP benefit after 12 years of service, and the second issue is as to whether the petitioners have to be granted which particular higher pay scale if not the one of Rs.2610– Rs.4000/- as stated in the impugned order dated 10.12.2002 which has been reproduced above.

5. Firstly, it is seen that entitlement of being given a higher pay scale under the ACP Scheme is on account of an employee satisfying the eligibility criteria for being promoted/appointed to the higher post, and that since there are lack of avenues of promotions to the higher posts on account

of sufficient vacant posts not existing or sufficient posts not existing, accordingly ACP scheme was framed for granting a higher pay scale of the higher post so as to avoid stagnation in services. As per the relevant recruitment rule in question for the higher post of Junior Clerk-cum-Typist, being a group “C” post higher than the group “D” post in which the petitioners are working, it is seen that there is requirement of the candidates *inter alia* having a senior secondary/intermediate school certificate from a recognised board/university. Five petitioners petitioner no.6/Smt. Kamla, petitioner no.8/Sh. Balbir, petitioner no.9/Smt. Vijay Laxmi, petitioner no.10/Sh. Abhay Singh and petitioner no.11/Sh. Bagwan Pal as per the counter affidavit filed by the respondents are only 8th class pass and nothing has been filed by the petitioners to show that these five petitioners have the secondary school qualifications, i.e are at least 10th pass, and therefore, these five petitioners in any case cannot get benefit of ACP scheme.

6. Writ petition, accordingly, stands dismissed so far as these five petitioners being petitioner no.6/Smt. Kamla, petitioner no.8/Sh. Balbir, petitioner no.9/Smt. Vijay Laxmi, petitioner no.10/Sh. Abhay Singh and petitioner no.11/Sh. Bagwan Pal are concerned inasmuch as these five petitioners do not satisfy the eligibility criteria for the higher group “C” post.

7. So far as the remaining six other petitioners, namely, petitioner no.1/Ranbir Singh, petitioner no.2/Smt. Kamlesh Rana, petitioner no.3/Smt. Prema Mehta, petitioner no.4/Sh. Hari Kishan, petitioner no.5/Sh. Ashok Kumar and petitioner no.7/Sh. Chander Prakash are concerned, these persons are having educational qualification of either 10th pass or 12th pass, and therefore, these petitioners do satisfy the eligibility requirement of the ACP scheme, however, the issue still remains as to what is the pay scale of the higher post of Junior Clerk-cum-Typist and which pay scale is to be granted to these petitioners. In the opinion of this Court, such petitioners would be granted the pay scale of Rs.2610-Rs.4000/- as stated in the letter of the respondent no.2 dated 10.12.2002 unless these petitioners would show that the pay scale of group “C” post is not Rs.2610-Rs.4000/- and that then which higher pay scale of the group “C” post. In this regard, it is seen that petitioners have failed to file any documentary proof that what is the pay scale of a group “C” post of Junior Clerk-cum-Typist as on 9.8.1999 when the ACP scheme became effective and when these six petitioners had completed 12 years of service. In view of such a situation this Court would therefore have to take the first ACP scheme benefit for these six petitioners in the pay scale of Rs.2610-Rs.4000/- as stated in the letter of the respondent no.2 dated 10.12.2002. I cannot agree with the argument urged on behalf of the petitioner that pay scale of Junior Clerk-cum-Typist is Rs.3050-75-3950-80-4590 as stated in the

counter affidavit of the respondent no.1/NDMC dated 13.12.2005 inasmuch as the said higher pay scale is for the second ACP scheme benefit after completion of 24 years and not the first ACP scheme benefit which is to be given after 12 years as on 09.08.1999. As on 09.08.1999, therefore, we would have to go by the pay scale as stated in the impugned order dated 10.12.2002. These six petitioners are, therefore, granted ACP scheme benefits w.e.f. 09.08.1999 at the pay scale of Rs.2610-60-2910-65-3300-70-4000/-

8. In view of the above, this writ petition is dismissed so far as five petitioners being petitioner no.6/Smt. Kamla, petitioner no.8/Sh. Balbir, petitioner no.9/Smt. Vijay Laxmi, petitioner no.10/Sh. Abhay Singh and petitioner no.11/Sh. Bagwan Pal are concerned, but, the writ petition is allowed with respect to six other petitioners being petitioner no.1/Ranbir Singh, petitioner no.2/Smt. Kamlesh Rana, petitioner no.3/Smt. Prema Mehta, petitioner no.4/Sh. Hari Kishan, petitioner no.5/Sh. Ashok Kumar and petitioner no.7/Sh. Chander Prakash with the observation that ACP scheme benefit to be granted to these petitioners will be as per the pay scale of Rs.2610-Rs.4000/- as stated in the impugned order dated 10.12.2002. Writ petition is accordingly allowed to the extent of six petitioners but is dismissed so far as five other petitioners as stated above. Parties are left to bear their own costs.

JANUARY 17, 2017/ TR

VALMIKI J. MEHTA, J