

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

+ **W.P. (C) No.7400/2007**

% **16th February, 2017**

MR. RAM KALA

..... Petitioner

Through: Mr. S.S.Nehra, Mr. Neeraj Dutt
Gour and Mr. Rakesh Kumar,
Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Arjun Mitra and Ms.
Jaskaran Kaur, Adv. with Mr.
Hari Ram, Assistant Parvi
Officer Zone-29, for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of being granted arrears of senior scale of pay as a TGT from 1.4.1997 till 7.1.2003 including interest for this period on the arrears at 24% per annum simple. Petitioner seeks the relief by seeking quashing of the impugned order of the respondent no.2/Director of Education dated 21.4.2007, and which order reads as under:-

“ **ORDER**

.....
.....

AND WHEREAS, Sh. Ram Kala, Petitioner No.3 in Writ Petitioner No.3261/2001 has claimed the balance of arrears of Rs.14,244/- from 01/01/86 to 31/01/2000 and interest to the tune of Rs.13,674/- @ 24% from 01/02/2000 to 29/02/04. He further claimed, an interest amounting to Rs.43,881/- for the period from 01/04/97 to 06/01/03, on the grounds that the school management did not provide him the opportunity to exercise the option for fixing his pay in senior scale.

AND WHEREAS, the school management has submitted that they had permitted Sh. Ram Kala to exercise his option, but the department did not permit the same and re-fixed his increment from 01/01/87 due to which Petitioner No.3 continued to draw his salary on above re-fixation of pay till 31/01/2000, i.e. upto his date of retirement. According to Management, he never represented for an option. Instead, he filed an application for option on 25/02/02. Thus, school management cannot permit to change his option against the rule at a belated stage.

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In respect of Sh. Ram Kala, TGT's claim that he was not allowed to submit his option by the School Management, I have examined the submission of Petitioner, school management as well as Department thoroughly. It is found that there is contradiction in the statement of Petitioner and the Management regarding option. It seems that no option was filed by the petitioner as stated by him. He also did not represent or file option till his retirement on 31/01/2000 or even till 24/02/02 but filed the same at a belated stage on 25/02/02 which does not hold a valid ground to allow him to exercise option as per rules. The option is to be exercised within one month of orders as per rules. Hence, his claim for balance payment of arrears is not maintainable.

Claim of Sh. Ram Kala regarding interest @ 24% on arrear of senior scale from 01/04/97 till the date of payment is not maintainable as there is no provision for payment of interest on the arrears of pay and allowances.

Sd/-
(VIJAY KUMAR)
DIRECTOR OF EDUCATION"

2. The petitioner in this case is Sh. Ram Kala. It is seen that before a person gets a senior scale as a TGT, such a person has to exercise an option whether such a person/employee wants a senior scale or he wants to remain in the existing scale with increments inasmuch as it is perfectly possible in the facts of a particular case that

actually pay received at the lower grade, on account of subsequent increments granted, would be higher than the base senior grade/scale pay. If the employee exercises the option of base senior scale pay he would on the day of grant of senior scale pay may in some cases actually end up getting lesser total salary, and therefore, from such a person an option is sought which has to be exercised as to whether such an employee wants a senior scale at base pay or he wants to continue till a particular point of time of the lower pay grade with yearly increments already granted of an ordinary TGT but not at the senior scale of pay inasmuch as pay-scale on account of increments at the lower grade is higher than the base pay of the senior scale TGT. This option has to be exercised in terms of the option form, and which option form so far as the petitioner is concerned, and as exercised by the petitioner reads as under:-

FORM OF OPTION

(As per the Central Civil Services (Revised Pay) Rules, 1997)

[See Rule 6(1)]

For Sr. Scale as T.G.T.

(i) I.....hereby elected the revised scale effect from 1st January, 1986.

(ii) I.....hereby elect to continue to the existing scale of pay of my substantive/officiating post mentioned below until:

*the date of my next increment
The date of my subsequent increment
Raising my pay to Rs.
I vacate or cease to draw pay in the
Existing scale

Existing Scale Rs.1400-40-1600-50-1650-EB-50-1450-EB-50-2250-EB-2300-60-2600.

Signature..... Ram Kala.....

Name.....Ram Kala.....

Designation.....T.G.T......

Office to which employed Shri Baij Nath
Sec. School, Ishwar Nagar, New Delhi

Date: 13-7-99
25-2-2002

Station: New Delhi.

3. This form of option which is exercised by the petitioner shows that the option was exercised actually on 25.2.2002 because below the date of 13.7.1999 there is another date written of 25.2.2002. Petitioner/Sh. Ram Kala had however already retired earlier on 31.1.2000 and therefore it is found that he had not exercised his option even till retirement and which option was exercised much later at belated stage on 25.2.2002. Hence, the respondent no.2/Director of Education in terms of the fourth last para of the impugned order dated 21.4.2007 has rightly denied the petitioner the pay-scale of a senior scale TGT.

4. I have queried from counsel for the petitioner, so as to find out that if counsel for the petitioner is correct in arguing that it is the respondent no.3/school which prevented the petitioner from exercising the option, then what is the correspondence which the petitioner has entered into with the respondent no.3/school as to

petitioner being not given the option form for being exercised. It is seen that alongwith the writ petition not a single document has been filed which shows any letter/communication by the petitioner to the respondent no.3/school that respondent no.3/school was not giving the option form to the petitioner for such form being filled in by the petitioner and thereafter to be submitted to the respondent no.3/school. Once this is so, therefore, by the impugned order dated 21.4.2007, the respondent no.2/Director of Education was justified in holding that once option was not exercised by the petitioner for grant of senior scale, and which exercise of option was mandatory, petitioner hence cannot be granted senior scale of the TGT for the period from 1.4.1997 till 7.1.2003. Once principal is not payable, hence interest will also not be payable. In any case, even if principal was payable, interest is not payable against the respondent no.2/Director of Education in view of the detailed reasoning given while disposing of W.P. (C) No. 7138/2007 and which discussion shows that it was not on account of the respondent no.2/Director of Education, but it was on account of the respondent no.3/school, that, there was delay in grant of senior scale arrears to the teachers of the respondent no.3/school.

5. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

FEBRUARY 16, 2017/ib

VALMIKI J. MEHTA, J