

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

+ **W.P.(C) No. 7873/2007**

% **27th January, 2017**

SH. SANJEEV KUMAR AND ORS. Petitioners

Through: Mr. S.K. Gupta, Advocate.

versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Satyakam, Advocate for R-1 & 2.

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

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the three petitioners seek the relief of being granted a particular higher scale of pay under the ACP scheme dated 9.8.1999 and which became applicable to Lab Assistants by the order of the Directorate of Education dated 2.6.2006. The issue in this case is what is the higher grade of pay to which petitioners are entitled to in view of the applicability of the ACP scheme to the petitioners who are Lab Assistants.

2. The counter affidavit filed by the respondent nos. 1 and 2/Directorate of Education shows that the petitioners on account of grant of first upgradation under the ACP scheme have been granted pay scale of

Rs.4500-Rs.7000 in terms of the DPC meeting of the respondent nos. 3 and 4/school dated 24.2.2010 and hence the stand of respondent nos. 1 and 2/ Directorate of Education is that the petitioners having already been granted the higher pay scale of Rs.4000-100-6000, hence the petitioners cannot claim the pay scale of Rs.5500-9000/-.

3. Learned counsel for the petitioners has drawn my attention to the recruitment rules for appointment as a Trained Graduate Teacher (TGT) and these rules do show that the feeder cadre for appointment to the post of TGT includes Lab Assistants. This is clear from paragraphs 11 and 12 of the Recruitment Rules of TGT dated 5.7.1972 as amended by subsequent notifications of 11.12.1991 and 1.10.1999.

4. Learned counsel for the petitioners have then taken me through the ACP scheme paragraph 7 read with Annexure-II and as per which the higher pay grade from Rs.4000-100-6000/- to Rs.4500-125-7000/- will apply only to isolated posts and not to posts which are hierarchical posts. This paragraph 7 of the ACP scheme and the relevant portion of Annexure-II reads as under:-

1. Paragraph 7 of ACP scheme

“7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated

posts, in the absence of defined hierarchical grades financial upgradation shall be given by Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification, dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradation only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e., without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts who have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."

2. Annexure - II

"... MOST IMMEDIATE
ANNEXURE -II

STANDARD/COMMON PAY SCALES

As per Part-A of the First Schedule Annexed to the Ministry of Finance
(Department of Expenditure) Gazette Notification,
Dated September 30, 1997

[Reference Para. 7 of Annexure-I of this Office Memorandum]

S. NO.	Revised pay scales	
	Rs.	
1.	S-1	2,550-55-2,660-60-3,200
2.	S-2	2,610-60-3,150-65-3,540
3.	S-3	2,650-65-3,300-70-4,000
4.	S-4	2,750-70-3,800-75-4,400
5.	S-5	3,050-75-3,950-80-4,590
6.	S-6	3,200-85-4,900
7.	S-7	4,000-100-6,000
8.	S-8	4,500-125-7,000
9.	S-9	5,000-150-8,000
10.	S-10	5,500-175-9,000
11.	S-12	6,500-200-10,500
		...
		...
		...

5. It is, therefore, clear from a reading of paragraph 7 of the ACP scheme read with Annexure-II that the pay scale is increased from Rs.4000-6000/- to Rs.4500-7000/- only if the post is an isolated post, but in the present case the post of Lab Assistant is not an isolated post, but is in the hierarchy of posts and is a feeder cadre post to the next higher promotion post of TGT. The pay scale for the post of TGT is Rs.5500-9000/- as revised, and therefore, once the higher post of TGT is a hierarchical post along with the post of Lab Assistant which is a feeder cadre post for the post of TGT, the respondents have therefore fallen into an error in taking the post of Lab Assistant as an isolated post i.e a non-hierarchical post.

6. Petitioners posts of Lab Assistants should be taken as hierarchical posts being the feeder cadre post for appointment to the higher/promotion posts of TGT, and since the pay scale for the post of TGT is Rs.5500-9000/-, petitioners hence have to be granted this pay scale of Rs. 5500-9000/- and not Rs. Rs.4500-7000/- as has been granted by the respondents to the petitioners in the present case.

7. In view of the above this writ petition is allowed and the petitioners will be granted the higher pay scale of Rs. 5500-9000 instead of Rs.4500-7000 and the petitioners will be entitled to this higher scale of pay

of Rs. 5500-9000 in terms of DPC meeting of the respondent nos. 3 and 4/ school dated 24.2.2010.

8. The petition is, accordingly, allowed and disposed of, leaving the parties to bear their own costs. The respondents will process the monetary dues which are payable to the petitioners in terms of this judgment expeditiously and the payments be made to the petitioners preferably within a period of three months from today.

JANUARY 27, 2017/AK

VALMIKI J. MEHTA, J