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

+ **W.P.(C) 3681/2015**

Date of decision: 8th February, 2017

DHARAMBIR RETIRED HEAD MASTER Petitioner
In person.

versus

DIRECTOR OF PRIMARY EDUCATION, SOUTH MCD & ORS Respondent
Through Mr. Puneet Taneja and Ms. Shaheen,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

We have heard Mr. Dharambir, a retired Head Master, who appears in person in this writ petition which impugns order dated 13th February, 2015 passed by the Principal Bench of the Central Administrative Tribunal in OA Nos. 5/2011 and 3723/2011.

2. The petitioner was appointed as an Assistant Teacher in Municipal Corporation of Delhi on 18th September, 1972 in the pay scale of Rs.135-320. The petitioner was granted senior scale after completion of 12 years' of service in the scale of Rs.1400-2600, with effect from 1st January, 1986 which was revised to Rs.5500-9000 with effect from 1st January, 1996 on

implementation of the Fifth Pay Commission recommendations. The petitioner was promoted as Head Master on 31st January, 2003 in the pay-scale of Rs.5500-9000, as applicable at the time of promotion.

3. The Municipal Corporation of Delhi vide circular dated 1st September, 2005 had implemented the Assured Career Progression Scheme with retrospective effect from 9th August, 1999. The petitioner had already got the first financial upgradation when he was granted senior scale with effect from 1st January, 1986. The petitioner claimed entitlement to the second financial upgradation as he had completed 24 years of regular service, his initial appointment being as a Primary Teacher on 18th September, 1972. The respondent-Municipal Corporation of Delhi, however, were not ready and willing to grant benefit of financial upgradation for the reason that the petitioner did not have the qualification i.e. B.Ed. or S.A.V. certificate and, therefore, was not eligible for consideration for promotion.

4. The petitioner had filed a writ petition in Delhi High Court in 2008, which was transferred to the Tribunal and registered as TA No.543 of 2009. The said TA was disposed of on 2nd December, 2009, recording as under:-

“4. In our considered view, as per the circular issued and adopted by the respondents as well as implemented in the case of Nursery Teacher who do not have BEd or SAV certificate when this scale is made admissible to them, non-

grant of this to the applicant would smack invidious discrimination violative of Articles 14 and 16 of the Constitution of India.

5. In the above view of the matter, we dispose of this TA with a direction to the respondents to consider under circular dated 1.9.2005 the claim of the applicant for grant of scale of 6500-10500 from the date he completes 24 years of service with all consequences, if he is found eligible. Consequently this places the applicant in an appropriate scale in the pay band of 6th CPC with arrears. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”

The Tribunal, in paragraph 4, has referred to the circular issued by the Municipal Corporation of Delhi in the case of Nursery Teacher, who did not have B. Ed. or SAV certificate. The Tribunal then held that the denial of similar benefit in the case of the petitioner would smack of invidious discrimination, violating Articles 14 and 16 of the Constitution of India. Pertinently, in paragraph 5 of the order, no relief was granted to the petitioner and direction was issued to the respondents to consider the petitioner’s case under circular dated 1st September, 2005 for grant of scale of Rs.6500-10500 from the date he had completed 24 years of service. This incongruity in the order of the Tribunal has been noticed by us in the orders dated 3rd May, 2016 and 25th May, 2016.

5. In order to decide the controversy, we would like to reproduce

paragraph 9.1 of the circular dated 1st September, 2005, which reads as under:-

“Fulfilment of normal promotion norms (including educational qualification as per Recruitment Rules) for grant of financial upgradation, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradation as personal to incumbent for the stated purpose and restriction of the ACP scheme for financial and certain other benefits (HBA, allotment of Municipal accommodation, advances etc.) Only without conferring any privileges related to higher status shall be ensured for grant of benefits under the ACP scheme.”

Thus, the grant of financial upgradation was subject to the fulfilment of normal promotional norms, including educational qualifications.

6. The petitioner, however, relies upon the clarification issued by the Government of India, Ministry of Human Resource Development, Department of Education vide OM dated 18th September, 1990, which stipulated as under:-

“Govt. of India, Min of HRD, Deptt. Of Edn., O.M. No.F.5-180/86-UT.1, dated 18.9.90 (Dte. Of Edn. Delhi endorsement No.30-31 (103)/90-Coord.34050 dated 4.10.90]

Clarification regarding counting of 18 years for waiving the requirement of higher qualification for selection scale

I am directed to refer to your letter No. 30-31 (103)/90-Coord./20106 dated 20th May 1990 on the above subject.

2. It is clarified that the period of 18 years of service for waiving the requirement of acquiring the higher qualification for grant of Selection Scale will be counted from the date of initial entry in the particular grade, i.e. PST, TGT and PGT etc. The period of 18 years will be counted as on 1st January 1986.

The aforesaid OM states that the requirement of acquiring higher qualification for grant of selection grade would be counted from the date of initial entry in the grade. The period of 18 years has to be counted as on 1st January, 1986, meaning thereby those employees, who had completed service of 18 years as on 1st January, 1986 were not required to acquire the higher qualification of B. Ed. or S.A.V. certificate. The petitioner in this case had not completed 18 years of service as on 1st January, 1986, as he had joined the service on 18th September, 1972. The petitioner is B.A. and does not have B. Ed. or a S.A.V. certificate. The petitioner claims that he had applied for S.A.V certificate. However, there is no document or material to show that said certificate was ever granted or issued to the petitioner.

7. The respondents thereafter had passed the speaking order dated 9th November, 2010, holding that the petitioner does not have a B.Ed. or S.A.V. certificate, which is an essential qualification for promotion to the post of

School Inspector and, therefore, he cannot be granted the scale of Rs.6500-10500. This order also notes that the petitioner was appointed as a Teacher (Primary) and was not similarly placed as Teacher (Nursery).

8. Fortunately for the petitioner, the Assured Career Progression Scheme was replaced by the Modified Assured Career Progression Scheme, which is applicable and effective with effect from 1st September, 2008. Pursuant to the orders passed by this Court, the respondents have examined the petitioner's case for grant of second and third financial upgradation under the Modified Assured Career Progression Scheme. The petitioner has been granted second and third financial upgradation to the Grade Pay Rs.4800/- and Rs.5400/-, respectively in the Pay Band of Rs.9300-34800. Payment of Rs.1,56,854/- was made way of a cheque as recorded in the order dated 29th April, 2016. Counsel for the respondents states that another amount of Rs.34,774/- has been paid to the petitioner towards the difference on account of leave encashment.

9. If the petitioner was granted the second financial upgradation under the Assured Career Progression Scheme, he would not have been entitled to the second financial upgradation under the Modified Assured Career Progression Scheme.

10. In view of the aforesaid position, we are satisfied that the petitioner has got his dues.

11. Accordingly, we dispose of the present writ petition. There will be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 08, 2017
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