

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

Date of Decision: October 10, 2017

+ **DATA DEEN** Appellant
Through: Mr. Rajat Aneja and Ms. Rashmi
Verma, Advocates

versus

DIRCTORATE OF EDUCATION & ANR. Respondents
Through: Mr. Satyakam, Addl. Standing
Counsel for respondent No.1 with Ms. Mukta
Soni, DEO, Zone-14
Mr. Nipur Dwivedi, Advocate for respondent
No.2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The narrow controversy in this appeal pertains to the correctness of the learned Single Judge's order dated 22.02.2017 declining to modify an earlier order in W.P. (C) 7732/2010. The writ petition had sought for an appropriate pay fixation consequent upon the petitioner/appellant's promotion as Laboratory Assistant w.e.f. 01.02.2009. The writ petitioner had occasioned to approach this Court earlier in 2008, contending that he was unfairly denied regular promotion to the grade of Laboratory Assistant even though ACP benefits had been granted to him. The learned Single Judge dismissed the writ petition, but the Division Bench held the petitioner entitled to the benefits of regular promotion.

2. The W.P. (C) 7732/2010 had sought for various reliefs. During its pendency, the petitioner/appellant had retired, but the management of the unaided school—where he was employed, had issued an order on 10.04.2012, which in effect had the result of pay reduction. More specifically, the grade pay—originally fixed at ₹2800/- per month on 26.04.2010, was altered to ₹2400/- per month. The petitioner/appellant had contended that this reduction was unfair and *mala fide*. He had relied upon the instance of one late Kishan Chand, who was promoted 11 months after him but was granted grade pay of ₹2800/- per month on the same post.

3. The reasoning which the impugned order has adopted in this case is that the petitioner/appellant's grievance originally was with respect to his promotion as Lab Assistant, but since that relief had been granted, the fixation was beyond the scope of the proceedings.

4. This Court has considered the submissions of the parties. The respondent-Management has urged that all dues payable to the petitioner/appellant's after his retirement have been collected and that in these circumstances, he cannot have any surviving grievance, and urged that the Court should not disturb the impugned order.

5. The materials on record—in the form of an Office Order of 17.07.2010 sanctioning the gratuity to Kishan Chand, clearly records that he was a Lab Assistant in the Scale of ₹5200/- — ₹20,200/- with Grade Pay of ₹2800/-. In the petitioner/appellant's case, however, the grade pay for the same post originally fixed at ₹2800/- has now been reduced to ₹2400/-. The respondent/Management has not explained the reduction despite a pleading in the concerned application nor was any such

explanation forthcoming even during the course of hearing today.

6. In the above circumstances, the Court is of the opinion that the reduction of the grade pay to ₹2400/- from original grade of ₹2800/- is outside the framework of the Rules, which prescribe that for the post of Lab Assistant, the pay scale would ₹5200/- — ₹20,200/- with Grade Pay of ₹2800/-. Accordingly, a direction is issued to the second respondent- *Mira Model Senior Secondly School* to recalculate the pay benefits and arrears and all terminal benefits, on the basis of petitioner/appellant's having earned and been entitled to grade pay @ ₹2800/- per month from 01.02.2009 till the date of his retirement/superannuation. The appropriate fixation order alongwith arrears constituting the difference between the amounts paid and what is payable, shall be released to the petitioner within six weeks from today.

7. The appeal is allowed in above terms.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

OCTOBER 10, 2017

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