

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

+ **W.P.(C) No.7732/2010**

% **22nd February, 2017**

DATA DEEN Petitioner

Through: Mr. Rajat Aneja, Advocate with
Ms. Shifa Nagar, Advocate.

versus

DIRECTORATE OF EDUCATION & ANR. Respondents

Through: Mr. Satyakam, Additional
Standing Counsel.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.6498/2012 (under Section 151 CPC by petitioner)

1. The relief which is claimed in this application is totally beyond the scope of the present writ petition. By this interim application, petitioner sought correction of lower scale of pay granted to the petitioner on account of recalculation order of the respondent no.3/employer. An interim application cannot be beyond the scope of the main writ petition. If there is a fresh cause of action which is not included in the scope of the cause of action of the main writ petition, petitioner necessarily has to file appropriate independent proceedings,

but an interim application cannot become main writ petition and the main cause of action for being decided in a pending writ petition based on a different cause of action and whose scope of cause of action is not the scope of cause of action as stated in the interim application.

This application is therefore dismissed and the interim orders, if any, are vacated.

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2. In this writ petition, the following reliefs are claimed:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to issue of a writ in the nature of MANDAMUS and/or any other appropriate Writ, Order or Direction of like nature directing the Respondents to treat the petitioner as a member of teaching staff, and to remove the anomalies in fixation of Pay Scale of the Petitioner under Fifth Pay Commission recommendation w.e.f. 01.01.1996, to remove the anomaly on grant of 2nd ACP i.e. 01.05.2001, and to further direct the Respondents to rectification the Pay Scale of the Petitioner w.e.f.01.02.2009 i.e. the date of promotion to Laboratory Assistant, grant of facility of Half Pay Leave to the petitioner since the date of his joining i.e. 01.05.1977 and to further issue a Writ of MANDAMUS and/or any other Writ, Rule, Order or Direction to Respondents to pay the arrears with interest @ 10% in the light of the Order dated 12.01.2009 and 24.02.2009 passed by this Hon’ble Court in L.P.A.No. 4802008.

Any other relief, which this Hon’ble Court deem fit and proper in the facts and circumstances of the present case may also be passed in favour of the petitioner and against the respondents.”

3. Counsel for the petitioner states that as of date the omnibus prayer clause does not survive but what survives is the relief which will arise as per averments made in para 3(xix) of the writ petition and which para reads as under:-

“3(xix) That it is respectfully submitted that the Office Order dated 26.04.2010 thereby fixing the pay scale of the petitioner at Rs. 8530/- is writ with anomalies in as much as if it is compared with the basic pay scale of one of the deceased employee of the respondent No.3 namely Kishan Chand, who expired on 002.06.2010 and was also working at the post of Laboratory Assistant with the Respondent No.3, it is clearly discernible that the said employee namely Late Shri Kishan Chand was having basic pay of Rs. 8680/- as on 01.06.2010. It is pertinent to mention here that late Shri Kishan Chand joined the services of the respondent No.3 on 01.07.1982 as a peon whereas the petitioner joined the services of the respondent No.3 on 01.05.1977 as a peon and as such the said employee namely Late Shri Kishan Chand was five years junior to the petitioner. Moreover, the petitioner was promoted to the post of Laboratory Assistant w.e.f. 01.02.2009 whereas Late Shri Kishan Chand was promoted to the post of Laboratory Assistant w.e.f. 01.01.2010. Thus, the conduct of the respondent No. 3 in discriminating against the petitioner is violative of the fundamental right of equality guaranteed to the petitioner under the Constitution of India. The Office order dated 17.07.2010 depicting the pay scale of the deceased Kishan Chand as on 01.06.2010 is hereby annexed **ANNEXURE P-16** to the present petition.”

4. Effectively what is argued is that the scale of pay of the petitioner is wrongly calculated because juniors to the petitioner are receiving higher pay scales. Grant of pay scale is fact dependant i.e depending on the facts, on the service conditions and facts as regards services rendered of each employee. There is no law that if a junior is getting higher pay, then, the senior must also get the higher pay, inasmuch as, it is possible that a junior in service would have got promotion to the higher post earlier or a higher pay scale earlier than the senior person. It all depends upon the facts of each case.

5. In the present case admittedly petitioner as per the earlier litigation got promotion to the post of Lab Assistant from 1.2.2009.

This is undisputed. Once petitioner got promotion to the post of Lab Assistant from 1.2.2009, obviously the pay scale of Lab Assistant has to be from 1.2.2009 and not from an earlier date. Pay scale/grade pay in the post of Lab Assistant for the petitioner will commence from 1.2.2009 and not from an earlier date, just because and simply because the petitioner chooses to compare himself with other employees of the employer who have received certain higher pay scales.

6. In view of the above, no relief of higher pay scale can be granted to the petitioner, inasmuch, as petitioner has received the legally payable pay scale of Lab Assistant w.e.f 1.2.2009.

7. Dismissed.

FEBRUARY 22, 2017
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VALMIKI J. MEHTA, J