

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

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Decided on: 05.05.2017

+ **W.P.(C) 3874/2017**

MAHESH KUMAR AND ORS.

..... Petitioners

Through: Mr Ranjit Sharma, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Mr G.D. Mishra, Standing Counsel for
respondent Nos. 1&2/SDMC

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (ORAL)

CM No. 17082/2017

Exemption allowed, subject to just all exceptions.

The application stands disposed of.

W.P.(C) 3874/2017

1. The petitioners vide present writ petition have impugned the order of the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) dated 02.06.2016, whereby their Original Application was dismissed.

2. Admitted facts are that the applicants (petitioners herein) were appointed as Physical Education Teachers (PETs) and for them the next promotional post is School Inspectors.

3. The contention of the petitioners before Tribunal was that after the introduction of Assured Career Progression (ACP) scheme, they had become entitled for the first upgradation of their pay scale, i.e. the pay scale of the next promotional post on completion of 12 years of regular service. It was submitted that the petitioners possessed the necessary educational qualifications and had also fulfilled the eligibility criteria required for promotion to the post of School Inspectors, yet while giving the benefit of first ACP, the petitioners were given the pay scale of Head Masters (Rs5500-175-9000). The pay scale of School Inspector was given to them only on grant of second ACP i.e. on completion of 24 years of the service.

4. While adopting the ACP Scheme, the respondents had issued a Circular dated 01.09.2005 whereby PET along with Assistant Teacher, Nursery Teacher, Music Teacher and Drawing Teacher and all other categories of teachers were given the scale of Rs 5500-175-9000 on first upgradation. Petitioners challenged the said Circular and sought its quashing on the ground

that it is contrary to the ACP Scheme which speaks of grant of next promotional grade on completion of 12 years of service.

5. In the counter-affidavit before the Tribunal, the respondents had taken the stand that it is a statutory body, and all the Resolutions passed by it are binding on the employees. In order to implement the ACP Scheme, Municipal Corporation of Delhi (MCD) vide Resolution No.102 dated 01.09.2005 had given the financial upgradation to all categories of Assistant Teachers, including the petitioners (PETs) such that the first upgradation was in the scale of Rs.5500-175-9000/- (scale of Head Master), and the second upgradation in the scale of Rs.6500-200-10,500/- (School Inspectors). It was contended that the corporation had followed the same policies which were followed by Government of NCT in its Education Department and Directorate of Education, Government of NCT while implementing ACP Scheme for its teachers. It is further contended that the recruitment process of Assistant Teachers (General) and Assistant Teachers (Physical) is the same and both the posts are equivalent in pay scales and they belong to the same category of teachers at the time of initial appointment. It was submitted that the next promotional post of Teacher [Primary] - other than PETs, is Head Master/Head Mistress in the scale of Rs.5500-175-9000/- and the essential

qualification for promotion is seven years service in the grade on regular basis. Physical Education Teachers are not part of the feeder cadre for the post of Head Master/Head Mistress as they do not have any teaching experience in the classes and experience of academic teaching.

6. It was further contended that if the applicants were awarded the pay scale of School Inspectors as per first upgradation, it would have lead to discrimination to thousands of primary teachers. In order to avoid this anomaly, the respondents had decided to give first upgradation to all teachers whether general or PET in the scale of Head Master/Head Mistress and by adopting this course, the respondents had treated all the teachers equally. The next promotional post of PETs, as well as Head Master/Head Mistress, is School Inspectors Rs.6500-200-10,500/-. Thus, both PET & Assistant Teachers (General) were placed at par. It was submitted that if the applicants were granted pay scale of the post of School Inspectors as the first ACP, that would have had the effect of breaking down the normal hierarchy of pay scales in the same cadre, because it would have resulted in the situations where junior PETs would have been derived higher pay scale than their senior Assistant Teachers (General). To avoid this anomaly and discrepancy, MCD

vide impugned Circular dated 01.09.2005 had adopted the aforesaid scheme for upgradation.

7. The Tribunal has, after considering the arguments of the parties, reached to the conclusion that the applicants (petitioners herein) have no case in their favour and, therefore, dismissed their Original Application.

8. The petitioners aggrieved by the impugned order have challenged the said order on the ground that since, as per ACP Scheme, they were entitled to grant of first ACP (i.e. the pay scale of next promotional post - which is that of School Inspectors (having pay scale of Rs.6500-200-10,500/-), denial of that scale is contrary to the ACP Scheme and, therefore, the Circular dated 01.09.2005 is violative of ACP Scheme and needs to be quashed. It is further submitted that the learned Tribunal has not interpreted para 9.1 of the said Circular correctly. It is submitted that para 9.1 of the said Circular only talks of normal promotional norms, including educational qualifications, as per Recruitment Rules. On these contentions, it is prayed that the impugned order be set aside and petitioners be given the scale of School Inspectors while giving the benefits of first ACP.

9. We have heard the arguments of learned counsel for the parties and have given our thoughtful consideration to the rival contentions.

10. The admitted facts are that at the time when the petitioners were appointed in MCD, they were in the same pay scale as granted to the Assistant Teacher, Music Teacher and all other categories of Teachers which forms one cadre. It is also the admitted position that while the Teachers (General) get the first promotion as Head Master/Head Mistress after seven years of experience and on fulfillment of other criteria - which includes the experience in teaching etc., the Physical Education Teachers are not eligible for promotion to the post of Head Master/Head Mistress, as they do not teach the students academically and have no teaching experience, and their first promotion is to the post of School Inspectors. Head Master/Head Mistress on fulfilling the criteria subsequently get promoted to the post of School Inspectors. The hierarchy of promotion of Teachers (General and Primary) and PETs are reproduced as under:-

Teachers (General and Primary) ——— Head Master ——— School Inspectors
Head Mistress
(Rs. 5500-175-9000/-)(Rs.6500-200-10,500/-)

PETs ————— School Inspectors
(Rs.6500-200-10,500/-)

11. The only question that arises for consideration by this Court is, whether the petitioners are entitled to the grade of School Inspectors on grant of

benefit of first ACP. The Scheme of ACP was formulated and became effective with effect from 09.08.1999. It recommends the grant of upgradation in the pay scale to the next promotional post on completion of 12 years and 24 years of service, if the person fulfils the conditions required for the regular promotion. It, therefore, is clear that although the grant of ACP does not amount to promotion of the person to the next promotional post, but it requires that the person shall be eligible for promotion to the next promotional post. The contention of the petitioners that on implementation of ACP Scheme dated 09th August, 1999, they ought to have been given the scale of next promotional post, i.e., of School Inspectors, although looks attractive, but in view of the other facts and circumstances of the case, such an adoption of ACP Scheme in the peculiar facts and circumstance of the cadre to which the petitioners belong, would have created discrimination to the similarly placed persons. It is undisputed fact that respondent-MCD is a Statutory Body and has adopted the ACP Scheme by passing a Circular dated 01.09.2005.

12. Per se, the ACP scheme was not applicable to the employees of the Municipal Corporation. It is for this reason that the MCD adopted the same with modifications. The issue that requires consideration by this Court is

whether, while adopting the ACP Scheme dated 09.08.1999, did the respondents violate any of the provisions of the said Scheme, i.e. whether the Circular dated 01.09.2005 is in violation of the ACP Scheme. On perusal of the ACP Scheme, it is apparent that the Ministries and Departments were allowed to keep in mind the ground realities, i.e., the special necessities and requirements of the Department/Cadres etc. while implementing the said Scheme. This fact is clear from the instructions contained in Clause 12 of the Office Memorandum No.35034/1/97-Estt(D) dated 09.08.1999 of the Government of India, Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training):-

“12. All Ministries/Departments may give wide circulation to these instructions for guidance of all concerned and also take immediate steps to implement the Scheme keeping in view the ground situation obtaining in services/cadres/ posts within their administrative jurisdiction;”

(Emphasis Supplied)

13. This instruction envisages that the Departments or Ministries while adopting the ACP Scheme and implementing it, have to keep in mind the ground situation in their Departments relating to services/cadres and posts within their administrative jurisdiction.

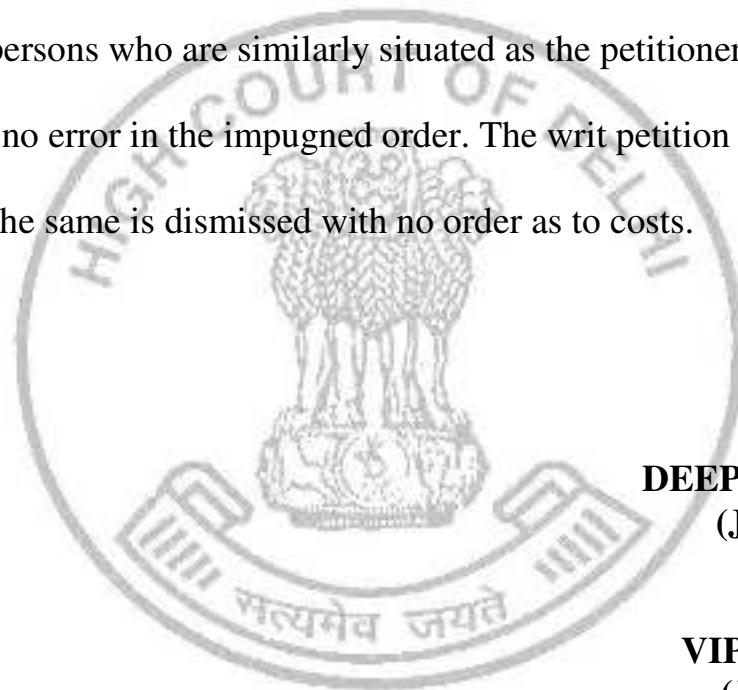
14. As discussed above the norms for appointment of Nursery Teacher, PETs, Assistant Teacher, etc. are the same for all. They form a category of

posts together having the same pay scale. However, for the post of Head Master/Head Mistress, PETs do not form the feeder cadre for the simple reason that they do not fulfill the criteria of promotion to the post of Head Master/Head Mistress. Candidates from other category of posts other than PET's, form the feeder cadre for the post of Head Master/Head Mistress and PETs are promoted to the post of School Inspectors. In order to avoid the anomaly which would have arisen on implementation of ACP as it is - by giving to the PETs the pay scale as that of School Inspectors on grant of first ACP, i.e. after 12 years of service (which would have had the effect of placing the PETs in a higher scale than the other teachers of the same category of posts) the MCD in its wisdom has adopted the ACP scheme subject to the modification by which the petitioners are aggrieved. In the absence of the impugned Circular, the Teacher (General) would have got the pay scale of Head Master/Head Mistress, because for Teacher (General) the next promotional post is Head Master/Head Mistress. In order to avoid this anomaly, the respondents have adopted the mode of granting the first ACP in the scale of Head Masters/Head Mistress to all the teachers, irrespective of the fact whether they were PETs, or otherwise, who could not get their first promotion within 12 years of service. All the teachers, including PETs, who

could not be promoted within 24 years of their regular service as per Circular would get the scale of School Inspectors.

15. This Circular, therefore, nullifies the anomaly in the pay scale of same cadre of teachers which might have cropped up otherwise. The petitioners have failed to point out that in any other Department of the Government of NCT of Delhi, the Scheme of ACP has been adopted in any other way in respect of the persons who are similarly situated as the petitioners.

16. We find no error in the impugned order. The writ petition is devoid of any merit and the same is dismissed with no order as to costs.



**DEEPA SHARMA
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

**MAY 05, 2017
BG**