

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

Reserved on: 5th September, 2017

Date of Decision: 25th September, 2017

+ **W.P.(C) No.1608/2015**

B.P. SINGH & ORS.

..... Petitioners

Through: Mr.Raman Duggal, Adv. with
Mr.Akshay Choudhary, Adv.,
Ms.Aayushi Gupta, Adv. & Mr.I.
Duggal, Adv.

versus

MCD & ORS.

..... Respondents

Through: Ms.Mini Pushkarna, Adv. for
North Delhi Municipal
Corporation with Mr.Vasundhara
Nayyar, Adv. &
Ms.Anushruti, Adv.
Mr.Balendu Shekhar, Adv. with
Mr.Sriansh, Adv. &
Mr.Rajkumar Maurya, Adv. for
R-3 & 4.
Mr.Kumar Rajesh Singh, Adv.
for R- 5 & 6.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The present writ petition assails the order dated 09.09.2014 passed by the Central Administrative Tribunal, Principal Bench, New

Delhi in TA No.599/2009 whereby the Tribunal has dismissed the Petitioner's Transfer Application. The Petitioners had filed a writ petition before this Court seeking the benefit of the higher pay scale of the post of School Inspector (General) from 03.01.1994 to 31.12.2003. The writ petition was transferred to the Tribunal as per its jurisdiction and vide the impugned order the Petitioners' claim has been rejected by the Tribunal.

2. The facts relevant for adjudication of the present petition are that the Petitioners while working as Assistant Teachers in the Respondent-Municipal Corporation, were appointed as Area Organisers in the Education Department of the Respondent with effect from 03.01.1994 under the UNICEF Scheme 'Education for All'. The posts of Area Organisers to which the Petitioners were appointed, were amongst the 12 posts in the pay scale of Rs.1640-2900/ created specifically for the project to look after the day to day implementation of the project at various levels.

3. When the UNICEF Scheme came to an end in the year 1996, the Respondent-Corporation vide its resolution dated 15.04.1996 upgraded twelve posts of Assistant Teachers into that of Area Organisers. Resultantly, vide order dated 30.05.1996, the Petitioners were directed to continue as Area Organisers.

4. In 1999, the Petitioners while working as Area Organisers, filed a writ petition being W.P.(C) No.6480/1999, seeking a direction to the Respondents to upgrade them from the post of Area Organizer to the post of School Inspector (General) w.e.f. 03.01.1994. While their petition seeking upgradation was still pending before this Court, the

Respondent-Corporation introduced a Mid-day-Meal Scheme in the year 2003 for its primary schools and, for this purpose, decided to create 16 posts of School Inspector (Mid Day Meal) - hereinafter referred to as MDM. It was also simultaneously decided that 10 posts of Area Organisers be upgraded to the post of School Inspector (Mid-day Meal) in the pay scale of Rs.6500-10500/- i.e. Rs.2000-3500/-(Pre revised). Consequently, upon upgradation of the 10 posts, an office order dated 19.12.2003 was issued approving the appointment of ten Area Organisers including the Petitioners to the post of School Inspector (MDM) in the pay scale of Rs.6500-10500/- on deputation basis with immediate effect.

5. Aggrieved by the fact that their upgradation to the post of School Inspector (Mid-Day Meal) had been done on deputation basis only, the Petitioners filed yet another writ petition being W.P(C) 6726-33/2005 before this Court claiming that their upgradation to the post of School Inspector (MDM) ought to be on regular basis. In this petition, the Petitioners also claimed the salary in the pay scale of Rs.6500-10500/- from the date of their appointment as School Inspector (MDM) i.e. 19.12.2003.

6. By its order dated 06.03.2006, a learned Single Judge of this Court disposed of the petition by directing the Respondents to take appropriate steps to finalise its policies in regard to the newly created and upgraded 10 posts of School Inspector (Mid Day Meal). This Court also held that the Petitioners could not claim a mandatory order direction that they should be treated as substantive School Inspector

(Mid Day Meal) and their claim would be subject to the policies to be formulated by the Respondent in that regard.

7. The Respondents, accordingly, framed the Recruitment Rules and soon after the notification of the Recruitment Rules for the post of School Inspector (MDM), the Petitioners were regularized vide order dated 16.09.2010 - even though, many of them did not possess the prescribed educational qualifications. However, in the meanwhile, the earlier writ petition filed by the Petitioners in 1999 was, in the year 2009, transferred to the Tribunal and re-numbered as TA 599/2009. It is this TA, with which we are concerned in the present petition.

8. The Tribunal initially disposed of the TA with a direction to the MCD/Respondents to reconsider the claim of Petitioners, for grant of higher pay scale of School Inspector (General) w.e.f. 03.01.1994. Upon the Respondents rejecting their claim vide order dated 04.08.2009, the Petitioners preferred a Review Petition before the Tribunal, which was allowed and vide order dated 05.03.2010, the Tribunal directed the Respondents to grant to the Petitioners the pay scale of School Inspector (General) w.e.f. 03.01.1994, along with all annual increments.

9. Aggrieved by this direction of the Tribunal, the Respondents impugned the aforesaid order dated 05.03.2010 before this Court by way of W.P.(C) No.4913/2011. The Court, upon consideration of the matter, came to the conclusion that the only point that needed to be determined was whether the Petitioners herein - when they were working on deputation as Area Organisers w.e.f. 03.01.1994 to 31.12.2003, were discharging the duties and functions of School Inspectors which is a higher post. The Court, upon finding that the

Tribunal had gone on the assumption that there was no dispute with regard to the Petitioner's plea - that they had been working as School Inspectors throughout the relevant period, inspite of there being a clear dispute between the parties on this aspect, remanded the matter back to the Tribunal vide its order dated 28.02.2012 by directing as under:-

“Consequently, we set aside the impugned order and remit the matter to the Tribunal for adjudication on this aspect of this matter alone. We make it clear that the Tribunal shall determine conclusively as to whether the respondents had, during the said relevant period, functioned as and performed the duties of School Inspectors (General) or not. It is an admitted position between the parties that in case the finding is that the respondents had performed the duties of School Inspectors (General), then they would undoubtedly, on the principle of quantum of quantum meruit, be entitled to the higher scale of School Inspectors (General) for the period during which they functioned as such. We also make it clear that the Tribunal is only concerned with the period between 1994 to 31.12.2003.”

10. In these circumstances, the Tribunal once again re-considered the matter and has vide its order dated 09.09.2014, dismissed the TA.

11. Before the Tribunal, the Petitioners had invoked the principle of 'quantum meruit' in support of their claim for the grant of pay scale of the post of School Inspector (General) by contending that even though during the period in question i.e. from 03.01.1994 to 31.12.2003 their designation and appointment had continued to be that of an Area Organiser, but they had been discharging the duties of a School Inspector (General) and were, therefore, entitled to receive the salary of School Inspector (General). Their plea was that, in view of it being an

undisputed fact that School Inspector (General) were not assigned to areas which were being looked after by the Area Organisers, it was evident that the Area Organisers were discharging the duties of School Inspectors (General) and were entitled to receive salary for the same.

12. On the other hand, the stand of the Respondents before the Tribunal was that the Petitioners had been appointed as Area Organisers in the pay scale of Rs.1640-2900/- (pre-revised), and they had worked as Area Organiser only. It was contended that the Petitioners were always aware that the School Inspectors (General) had higher responsibilities, and were drawing a higher pay scale of Rs.2000-3500/- (pre-revised). As per the Respondents, the duties and functions carried out by the Petitioners in their capacity as Area Organisers from 1993 to 2003 were not at all comparable to the duties of School Inspector (General), and it was only in December 2003 that they had - vide specific orders been upgraded from the post of Area Organisers to the post of School Inspector (Mid-Day Meal), whereafter they were being paid the salary of School Inspector (Mid-Day Meal).

13. Before the Tribunal, the Respondents had also relied on the order dated 06.03.2006 passed by this Court in W.P.(C) No.6726-33/2005, in support of their plea that the issue with regard to the grant of higher pay scale of School Inspector (General) from 03.01.1994 already stood decided. Their contention was that vide order dated 06.03.2006 it had already been held that the Petitioners would be entitled to the higher pay scale of School Inspector (Mid-Day Meal) w.e.f. 01.01.2004 and, therefore, their claim for the salary of

School Inspector (General) w.e.f 03.01.1994 was not at all maintainable.

14. The Tribunal, while dismissing the TA vide its impugned order dated 09.09.2014, came to a categorical conclusion that during the period from 03.01.1994 to 31.12.2003 the Petitioners did not function as, and perform the duties of, School Inspector (General). It would be apt to reproduce hereinbelow the comparative duty chart relied upon by the Tribunal :-

Duty Chart of Area Organiser	Duty list of School Inspectors (Gen.)
1.Maintenance of information regarding schools, teachers, children, building and other amenities of school and take action for improvement of the same.	<u>Administrative</u> 1.Maintenance of information regarding schools, children, teachers, class IV servants, amenities buildings and furniture etc.
2.To organize a house to house survey in connection with children of school going age and conduct enrolment drive.	2. Conducting enquiries as and when necessary and as directed by the higher authorities.
3. Forwarding of proposals for opening of new school or additional sections in the existing classes.	3. Conducting staff meetings of teachers, Head teachers in connection with academic and administrative matters pertaining to schools.
4. To raise the achievement level of children by regular monitoring, supervision and inspection to provide guidance to HM and teachers.	4. Conducting preliminary surveys regarding opening of new schools in their respective areas and forwarding proposals thereof.

5. Conducting staff meeting of IIMs teachers in connection with academic and administrative matter to school.	5. Identing requirements of furniture, equipment for schools.
6. Conducting surprise and annual inspection of schools for regular and annual assessment of staff	6. Conducting inspections of private schools which apply for recognition/aid.
7. Conducting seminars for teachers to increase their professional growth.	7. Maintenance of confidential roll of head teachers/teachers.
8. To assist in establishment of contact with the outside agencies such as Directorate of Education, Delhi administration, NCERT, SCERT, NGO & UNICEF.	8. In connection with promotion crossing of efficiency bar, annual increments, confirmation submission of reports with recommendations thereof.
9. Attending the work regarding the welfare of teaching staff to improve the academic atmosphere of the schools.	9. Making arrangements for admission of children the beginning of academic session.
10. To assimilate and disseminate the data base information about enrolment, retention and achievement level of school.	10. Attending to work connected with scrutiny of applications seeking permission for appearing in examinations.
11. To attend any other such duties as assigned by the Head of Deptt. From time to time.	11. Attending to cases regarding transfer of teaching staff. <u>Academic</u> 1. Conducting surprise visits and annual inspections of MC and recognized/aided schools and guiding the teachers.

	2. Providing assistance and guidance to the teachers in the formation of institutional plans and remedial classes for weak children. 3. Conducting seminars and study circles for teachers with a view to increasing their professional growth. 4. Guiding the teachers in the conduct of terminal tests/annual tests and approving annual results, besides making arrangements for conduct of merit scholarship tests. 5. To attend the such other work as are assigned by the higher authorities from time to time.
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The Tribunal after examining this comparative duty chart of Area Organisers and School Inspector (General), also found that the duties of the two posts were not identical but only some part of the duties were similar and, therefore, held that the principle of ‘quantum meruit’ based on ‘equal pay for equal work’ was not attracted to the facts of this case

15. Aggrieved by the rejection of their claim by the Tribunal, the Petitioners have approached this Court, by way of the present petition.

16. Before us, Mr.Raman Duggal, Advocate arguing for the Petitioners has raised primarily the same arguments as had been raised before the Tribunal. He has, however, additionally urged that the Tribunal has failed to consider the additional affidavit and supporting

documents filed by the Petitioners, which according to him, is a jurisdictional error under Section 22 of the Administrative Tribunals Act. Though the said plea is vehemently denied by the learned counsel for the Respondents, we have still taken upon ourselves, the task of examining the additional affidavit and all supporting documents filed by the Petitioners, before the Tribunal.

17. As noted above, the basic plea raised by the learned counsel for the Petitioners is that right from 03.01.1994 itself, the Petitioners had been regularly discharging the duties of School Inspector (General) and, for this purpose, he has drawn our attention to various ACR forms initiated by Petitioner Nos.1, 2, 5, 8 and 9 in respect of Head Masters and Assistant Teachers, as also to some applications relating to transfer and permission for appearing in exams which had been forwarded by the Petitioners. According to the learned counsel for the Petitioners, it is only a School Inspector who is competent to initiate ACRs or to forward the applications relating to the request of Headmaster/Assistant Teachers for transfers/permission for appearing in examination. He, therefore, contends, that the Petitioners were given the entire responsibility to take care of the needs of the School, and that is the reason why no School Inspector (General) was appointed in any of the schools where the Petitioners while working as Area Organisers, and had been satisfactorily discharging the duties of a School Inspector (General). By placing reliance on these documents, which are a part of the additional documents, filed by the Petitioners before the Tribunal, it is contended by Mr. Duggal that the learned Tribunal erred in not even referring to a single document which was a part of the additional

affidavit. In fact, the submission of Mr. Duggal is that this failure on the part of the Tribunal is in itself sufficient to set aside the Tribunal order.

18. The second submission made by learned counsel for the Petitioners is that the Division Bench of this Court while remanding the matter back to the Tribunal on 28.08.2012, had clearly specified that, the focus of the Tribunal should be to examine and consider the effect of the documents produced by the Petitioners and, thereafter, determine conclusively as to whether the Petitioners had during the relevant period, functioned as and performed the duties of School Inspector (General), or not. He, therefore, submits that the Tribunal had gravely erred in not keeping in mind the directions given by this Court and contends that the Tribunal has, in fact, not even cared to appreciate the observations of this Court, that the duties indicated in Paras 2, 6, 7, 8, 10 and 11 of the chart relating to School Inspector (General), are not found in the chart relating to Area Organisers. He, therefore, contends that the Tribunal has failed to appreciate the fact that, the Petitioners were actually performing duties No.7,10 and 11 which fell exclusively in the domain of School Inspector (General). Mr.Duggal goes on to submit that, though, he has been able to file documents only in respect of duties No.7, 10 and 11, but the Petitioners were actually performing all other duties of School Inspector (General) also. His submission is that supporting documents in respect of duties namely, duty Nos.2, 6 and 8 could not be produced by the Petitioners, as they were in the custody of the Respondents, who had deliberately not produced them, despite the Petitioners' application seeking their production by the

Respondents. He therefore, contends that an adverse inference, should be drawn against the Respondents, on this aspect and prays that the petition be allowed.

The last submission on which great emphasis was laid by the learned counsel for the Petitioners is that, once it is an admitted fact that no School Inspector (General) had been appointed in the Schools where the Petitioners had been appointed, it was conclusive proof of the fact that the Petitioners were functioning as School Inspector (General), and that they were entitled to receive the salary of School Inspector (General) for the entire period from 03.01.1994 to 19.12.2003. Mr. Duggal has relied on the following judgments in support of his plea that, once an employee discharges functions of a higher post, he must be paid the salary for the higher post:-

- I. Pritam Singh Dhaliwal v. State of Punjab and Anr 2004 (6) SLR 758, Punjab and Haryana High Court.
- II. Delhi Cantonment Board v. Smt. Raj Kumari Sachdeva & Ors. W.P(C) No.614/2010, Delhi High Court.
- III. Secretary-cum-Chief Engineer Chandigarh v. Hari Om Sharma & Ors. V (1998) SLT 1 , Supreme Court of India.
- IV. Selvaraj v. L.G. of Island Port Blair & Ors. 1998(4) SCC 291, Supreme Court of India.
- V. Aridam Chattopadhyay & Ors. v. State of West Bengal & Ors. 2013 (3) SCALE 508.

VI. Allora Electric & Cable Company v. M/s Shiv Charan & Bros. & Ors, 72 (1998) Delhi Law Times 761.

19. Per Contra, Ms. Mini Pushkara, Advocate arguing for the Respondents has, while supporting the impugned judgment, contended that the present Petition is wholly misconceived and is liable to be dismissed. The learned counsel contends that appointment letter issued to the Petitioners in 1993- in no uncertain terms, stated that they were being appointed as Area Organiser in the pay scale of Rs.1640-2900/-, which offer was accepted by them voluntarily and, merely because some of the duties discharged by them as Area Organiser were overlapping with those assigned to the School Inspectors (General), it does not mean that they were discharging duties of School Inspector (General), or that they have a valid claim to the salary of a School Inspector (General). Ms. Pushkarna has, while drawing our attention to the comparative duty chart of Area Organisers viz-a-viz School Inspector (General), contended with specific reference to duty No.11 of Area Organiser which reads as '*To attend any other such duties as assigned by the Head of Deptt. from time to time*', that mere discharge of some duties by the Petitioners - which School Inspectors (General) generally perform, cannot at all be taken to imply that the Petitioners were functioning as School Inspectors (General). Her submission is that as Area Organiser, the Petitioners, were duty bound to discharge all such duties as assigned to them by the Head of Department and, therefore, mere performance of some of the duties of School Inspector,

cannot imply that they were working as School Inspectors, or entitled to receive the salary of School Inspector.

20. The learned counsel for the Respondents, has further submitted that the Petitioners were always aware that they were merely working as Area Organiser and that they always held a lien against their original post of Assistant Teacher. She submits that, in fact, the Petitioners had taken this specific stand regarding having a lien against the post of Assistant Teacher, while pressing their relief for regular appointment to the post of School Inspector (Mid Day Meal) w.e.f. 19.12.2003 in their writ petition being W.P(C)No.6726-33/2003 before this court. While drawing our attention to the prayer clause of the Petitioners in the said writ, and also to para 4 and para 11 of the judgment dated 06.03.2006 of the Learned Single Judge of this Court in the aforesaid case, she contends that it was always acknowledged by the Petitioners, that they had been working as Area Organisers and, therefore, their claim that they had worked as School Inspector (General) from 03.01.1994 to 19.12.2003, is totally misplaced.

21. The learned counsel for the Respondents has also refuted the plea of the Petitioners that the additional documents filed by them before the Tribunal were not examined. She submits that, on the other hand, the Respondents had filed before the Tribunal, a threadbare analysis of all the additional documents submitted by the Petitioners, and, the Tribunal after considering the same did not find any merit in the claim of the Petitioners. Ms. Pushkarna has placed reliance on the following judgments, in support of her plea, that some similarity in the

duties and functions of two posts, is not enough to claim parity of pay scales.

- i. Mohd. Swaleh v. Union of India & Ors. (1997) 6 SCC 200.
- ii. Union of India v. D.P Sharma 2005 (2) SCT 646 (Delhi).
- iii. Municipal Corporation of Delhi v. Devinder Narayan & Anrs. W.P(C) No.7869/2002, 13288-91 & 58679/2005 decided on 15.12.2009 by Delhi High Court.
- iv. Garhwal Jal Sansthan Karmachari Union & Anr. v. State of U.P & Ors. (1997) 4 SCC 24.
- v. State of T.N & Anr v. M.R. Alagappan & Ors. (1997) 4 SCC 401.
- vi. M.P Rural Agriculture Extension Officers Association v. State of M.P & Anr. (2004) 4 SCC 646.
- vii. Umesh Chandra Gupta & Ors. v. Oil and Natural Gas Commission & Ors. (1989) SCC (L & S) 522.
- viii. Uttar Pradesh State Electricity Board & Anr. v. Aziz Ahmad (2009) 2 SCC 606.
- ix. State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72.
- x. Federation of All India Customs and Central Excise Stenographers (recognised) & Ors. v. Union of India & Ors. (1998) 3 SCC 91.

22. Having heard the learned counsel for the parties, perused the record and the impugned judgment, we are of the view that there is no merit in the present petition.

23. The undisputed facts which emerge from the record, running into 1400 pages, show that the Petitioners were appointed as Area Organizers in the year 1993, pursuant to the creation of 12 posts of Area Organisers in the pay scale of Rs.1640-2900/- for a specific project called 'Education for All', which was implemented by the Respondent-Corporation in collaboration with UNICEF, NCERT and Government of India. After the project ended in 1996, the Respondent after upgrading 12 posts of Assistant Teachers to the post of Area Organisers, issued fresh appointment letters in August 1996 against which the Respondents continued to work as Area Organiser. Pertinently, the fresh appointment letters issued to the Respondents also clearly specified the post and pay scale of Area Organisers.

24. It is an undisputed position that while the Petitioners were continuing to work on the post of Area Organisers, the Respondent-Corporation had introduced a Mid-day-Meal (MDM) Scheme in 2003 for its primary schools, for which 16 new posts of School Inspector (Mid-day Meal) were created. It is also an admitted position that upon upgradation of 10 posts of Area Organisers to that of School Inspector (MDM), the Petitioners were - vide order dated 19.12.2003, appointed as School Inspector (Mid-day Meal) in the pay scale of Rs.6,500-10,500/- on deputation basis.

25. The Petitioners also do not dispute the fact that while their earlier writ petition seeking pay scale of School Inspector (General) from

03.01.1994 was pending adjudication, they had filed another writ petition bearing W.P.(C) No.6726-33/2005 before this Court, claiming that their upgradation to the post of School Inspector (MDM) w.e.f. 19.12.2003 ought to be on regular basis and not on deputation as done by Respondents. In this petition, they had also claimed the salary in the pay scale of Rs.6500-10500/- from the date of their appointment as School Inspector (MDM) i.e. 19.12.2003.

26. The writ petition was disposed of by the learned Single Judge of this Court vide its order dated 06.03.2006, holding that the Petitioners having worked as Area Organisers, could not claim the right to be treated as substantive School Inspector (General). The Court, however, directed the Respondents to finalise its policy for filling up the newly created 10 posts of School Inspector (MDM) and consider the Petitioners for the said posts by keeping in mind the duties discharged by them as substantive Assistant Teacher from 1993.

27. We deem it appropriate, to reproduce Paras 4, 11 and 12 of the aforesaid judgment, in extenso

“4. It is not disputed that the petitioners continued to work as Area Organisers for three years between 1993 and 1996. In 1996 the funding under the plan had come to an end but nevertheless the MCD continued with the project on a Non-Plan basis. It is the common case of the parties that the Petitioners were continued to work as Area Organisers.

11. In my considered opinion, in terms of the Resolution of the Education Committee and the Standing Committee, the petitioners cannot claim an overriding right to be regularly posted at the newly added post of

School Inspectors (MDM). It is an admitted case of both the parties that the grade of School Inspectors have to be filled both by direct recruitment as well as by promotion. In the case of promotion it is from the feeder category of Head Masters. Therefore, the petitioners cannot claim any pre-eminent right on the basis of having worked as Area Organisers, when admittedly they were holding a lien to the post of Assistant Teacher/ Head Masters.

12. Having said so, however, I am of the opinion that the respondents who deputed the petitioners as Area Organizers cannot wipe out or ignore their entire period as Area Organizer for the purposes for considering their case for the post of School Inspector (MDM), in the event, the respondent-MCD is of the opinion that the post of School Inspector (MDM) has to be filled according to the existing rules. The Petitioners were admittedly chosen after they responded to Circular calling for application from eligible candidates; they worked for this length of time, and continued to retain substantive lien in their posts. Therefore, if the seniority of all the eligible candidates, has to be seen, the petitioners claim necessarily, therefore, has to be considered on the basis of their having discharged their duties on behalf of the MCD, as substantive Assistant Teachers/ Head Masters during this period. In other words, the period of service between 1993 and till the date of decision as to the manner of filling up of the post of School Inspectors, cannot be ignored. It has to be taken for the purposes of seniority and the petitioner's seniority vis-a-vis, other colleagues have to be approximately determined. The petitioner cannot claim a mandatory order or a direction that they should be treated as substantive School Inspectors (MDM); in view of the decision that the newly created 10 posts will have to be filled in accordance with the policies to be formulated by the MCD in that regard. Since some time has already

elapsed after the Resolution was made in the year 2003, I am of the opinion that the MCD should take proposed steps to finalize its policies in that regard at the earliest in any case within the period of four months from today. A direction to that effect is accordingly issued.”

28. This aforesaid judgment of the learned Single Judge of this Court was implemented and upon notification of the Recruitment Rules for the post of School Inspector (Mid Day Meal), all the Petitioners were appointed as School Inspector (Mid Day Meal) on regular basis after giving them relaxation in educational qualifications.

29. What thus emerges is that from 19.12.2003, when the Petitioners were appointed as School Inspector (Mid Day Meal), initially on deputation basis and thereafter on regular basis, they were being paid the pay scale of School Inspector (Mid Day Meal). The question, thus, which needs to be addressed is, whether in view of the admitted fact that from 03.01.1994, the Petitioners had not only been specifically appointed as Area Organisers but also specifically put to notice that, their salary would be in the pay scale of an Area Organiser, can they still claim the salary of a School Inspector (General), by contending that from 03.01.1994 to 19.12.2003, they were asked to discharge some duties of School Inspector, even when there is, admittedly, no order directing or authorising them to work as School Inspector.

30. The answer, in our considered view, is a clear ‘No’. Having carefully examined the voluminous documents filed by the Petitioners, we find that none of these documents show that the Petitioners while working as Area Organiser were discharging the duties as School Inspector (General). No document showing any delegation of duties of

a School Inspector (General) to any of the Petitioners, has been brought to our notice. Merely because some duties which are to be generally performed by School Inspectors (General) might have been performed by the Petitioners, who were working as Area Organiser, cannot be a ground to grant them the pay scale of a School Inspector (General).

31. In fact, the findings arrived at by the learned Single Judge of this Court in his judgment dated 06.03.2006(referred to hereinabove), also go a long way to show that the Petitioners had been appointed as Area Organisers and were indeed discharging the duties only of Area Organiser, and their claim of performing duties of School Inspector (General) is wholly without any basis. Para 10 of the said judgment reads as:-

“10. The terms of the Resolution dated 9.7.2003 and 30.7.2003, in my opinion are clear. The Commissioner had indicated that 12 posts of Area Organisers ought to be dealt with in a separate manner. 10 posts were proposed for upgradation and two posts were required to be surrendered under the Non-Plan Scheme. The Commissioner's proposal had stated that the incumbents namely, persons like the petitioners ought to be placed in the newly upgraded posts. However, the Education Committee and the Standing Committee endorsed the proposal only so far as it pertained to upgradation. Significantly enough the Resolution of the two Committees were silent as to the upgradation of the incumbents of the posts.”

32. We find that though the learned counsel for the Petitioners has raised various grounds, the crux of his submissions is that no School Inspector (General) had been allocated to all those schools where the

Petitioners had been working as Area Organisers from 03.01.1994 to 19.12.2003. This, according to him, is a conclusive proof of the fact that the Petitioners as Area Organisers, had been asked to discharge the duties of School Inspectors (General) and on this ground itself they are entitled to receive the higher pay scale of School Inspector (General).

33. In our view, merely because School Inspectors (General) were not allotted for the schools, where the Petitioners were working as Area Organisers, cannot be taken to conclude that Area Organisers were working as School Inspector (General). All that it could imply was that keeping in view the nature of duties of Area Organisers, which were admittedly higher than that of Assistant Teachers, no requirement was felt by the Respondents to post School Inspectors (General) in respect of their schools.

34. We have also carefully considered the judgments relied upon by the learned counsel for the Petitioners, but find that none of them apply to the facts of the present case. These judgments relate to the cases where the Courts have directed grant of the pay scale of the higher post after it was found as a fact, that the employee was actually directed to officiate on the higher post. We are, however, unable to return any such finding in the present case. On the other hand, we find that the duties being discharged by the Petitioners during the relevant period, were well within those to be performed by an Area Organiser.

35. We are also of the view that the decision of the Supreme Court in the case of *Secretary-Cum-Chief Engineer, Chandigarh vs. Hari Om Sharma & Ors.*, V(1998) SLT 1 and the decision of this Court in the case of *Delhi Cantonment Board vs. Smt. Raj Kumari Sachdeva &*

Ors., 2014 X AD (Delhi) 198 on which reliance has been placed by the learned counsel for the Respondents are relevant and show that the grant of pay-scale of the higher post would be justified only if the employee was actually performing duties of the higher post.

36. It would be apt to refer to Para 6 of the decision of the Supreme Court in the case of **Secretary-Cum-Chief Engineer, Chandigarh** (*supra*), which reads as under:-

“6. Having regard to these facts, we are of the view that the Tribunal was fully justified in ordering that the respondent shall be promoted on the basis of "quota" fixed for non-diploma holders with 10 years of service and not on the basis of integrated seniority. The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer-I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer-I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer-I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.”

37. It would also be appropriate to refer to Paras 7 and 9 of the decision of this Court in the case of **Delhi Cantonment Board** (*supra*), where this Court held as under:-

“7. The respondents had claimed promotion to the post of TGT and scale of pay w.e.f. 10.08.1989 i.e. from the date they claimed they were teaching middle classes and thus discharging duties of a TGT. The learned Single

Judge by a judgment and order dated 27th April 2009 was pleased to allow this petition of the respondents. The single judge held that once the Board had taken the stand that the respondents were teaching middle level students from the year 1992 and these schools were also given recognition by the Directorate for upgradation, the appellant owed a duty to initiate steps to either grant promotion to the aggrieved assistant teachers or to take steps for direct recruitment in accordance with their rules, none of which were taken despite the respondents continuing to discharge their duties to teach middle level students.”

“9. The said judgment declared that the Delhi Cantonment Board is directed to pay the entire arrears within the period of two months from the date of the order to the aggrieved teachers on the scale of TGT w.e.f. 14. 09. 1992. This benefit was given keeping in mind appointment by promotion was one of the methods prescribed under the rules and the benefit ought to be given from the date when middle schools were sanctioned by the Directorate of Education on the subject that the pay being claimed by the teachers on the principle of quantum meruit i.e. commensurate pay for commensurate work done. The learned judge thereby directed the Board not to induct TGT by direct recruitment overlooking the claim of such assistant teachers who were working as TGT and to reckon service rendered from 1992 for the purpose of seniority in the context of entitlement to be considered for promotions. The Board was also directed to consider the case of the teachers for promotion to the post of TGT in terms of the recruitment rules of the Delhi Cantonment Board within a period six months, subject to the fulfillment of eligibility criteria of these teachers after giving due benefit of their service on the said post.”

38. The posts of Area Organisers on which the Petitioners served till the year 2003, constituted a completely different cadre and post, from

that of the School Inspectors (General). The post of Area Organiser was a Grade 'C' post, while the post of School Inspector was a Grade 'B' post. The Petitioners were upgraded w.e.f. 19.12.2003 from Area Organisers to School Inspector (MDM) which was a newly created post and we find no merit in their claim that they had been discharging duties of School Inspector (General) from 03.01.1994 itself.

39. We are, thus, of the considered view that there is nothing to substantiate the claim of the Petitioners that they were ever asked to discharge the duties of School Inspector (General), or that they actually discharged the duties of School Inspector (General). Mere overlapping of some duties of Area Organiser and School Inspector (General) cannot lead to the conclusion that the Petitioners as Area Organisers, were performing the duties of School Inspector (General).

40. In these circumstances, we find no infirmity in the order of the Tribunal. The writ petition has no merit and is dismissed with no order as to costs.



(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

September 25 , 2017
gm/Saurabh