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

% *Date of decision: 28th August, 2018*

+ W.P.(C) 7427/2011

HARGOVIND SHARMA Petitioner

Through: Mr. Ravi Dev Sharma, Adv.

versus

N.C.JINDAL PUBLIC SCHOOL AND ORS Respondents

Through: Mr. Saurabh Chauhan and

Mr. Varun Jain, Adv. for R-1 and 2

Ms. Latika Choudhary, Adv. for R-3 and 4

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. The petitioner was employed by the Respondent No.1- School (hereinafter referred to as “the School”) in 1973, as Laboratory Assistant, and confirmed in 1975.

2. On 9th August, 1989, the Assured Career Progression Scheme (hereinafter referred to as “ACP Scheme”) was introduced by the Government, whereunder, employees, who were stagnating without promotion, were allowed two financial upgradations within 24 years of their appointment, the first to be given at the end of the 12 years and second after 24 years.

3. *Vide* order dated 2nd June, 2006, the said Scheme was extended, first, to employees of National Capital Territory of Delhi and, thereafter, to employees of unaided public educational institutions,

vide order dated 2nd June, 2006, w.e.f. 1999. It is stated that this was in compliance with order passed by the Central Administrative Tribunal, in O.A. 1507/2003 on 4th June, 2005, which was upheld by this Court *vide* judgement dated 3rd October, 2005.

4. *Vide* office order dated 4th January, 2008, the petitioner was upgraded, by the School, from the scale of ₹ 4000-100-6000 to ₹ 4500-125-7000. The petitioner, however, contends that this upgradation was given effect from 1st April, 2006, whereas, if he were to be extended the benefit of the ACP Scheme, he would be entitled to financial upgradation from 1999.

5. The matter was carried, by the petitioner, to the District Education Officer (DEO), who, apparently, sought for an answer from the School, which responded by stating that, as the petitioner did not possess the essential qualifications for recruitment to the post of Lab Assistant, at the time when he was so recruited, it was not possible to extend, to him, the benefit of the ACP Scheme, the School contended that, despite the Petitioner not possessing the said qualification, he was being continued as a Lab Assistant on humanitarian ground.

6. The District Education Officer (DEO), *vide* communication dated 21st October, 2010, addressed to the School, expressed dissatisfaction with this response, from the School, and sought to know as to why, if the petitioner was not qualified, he was appointed to the said post at first place.

7. The School responded *vide* letter dated 28th October, 2010, stating that the fact that the petitioner, who had been appointed as Lab Assistant in 1973, did not possess the requisite educational qualification for such appointment, was noticed, for the first time, in 2008 and that as, by the time, he had already put in 35 years of service, the School did not deem it appropriate to take any action in that regard, and allowed him to continue in service.

8. The response of the Education Officer, to this communication, as contained in its letter dated 16th November, 2010, of the Education Officer, was that, if the petitioner was not possessing the requisite educational qualification for the post of Lab Assistant, at the time when he was so recruited, his services would either have to be dispensed with or he would have to be granted all financial benefits as per the rules.

9. On 20th May, 2011, the Education Officer issued a Memorandum to the School, directing it to place the case of the petitioner, for grant of ACP, before the Departmental Promotion Committee (DPC) under intimation to him. The School responded, stating that the DPC had, in fact, met on 23rd June, 2011, but did not find the petitioner suitable for being granted ACP benefits until he acquired the minimum educational qualifications for the post of Lab Assistant, which was 'Intermediate with Science'. The petitioner, however, submits, in this writ petition, that this decision was never communicated to him.

10. In this scenario, the case of the petitioner, as ventilated in the writ petition and as urged before me by Mr. Ravi Dev Sharma, learned counsel for the petitioner, that the denial, to him, of the benefits of the ACP Scheme was *ex-facie* illegal.

11. The petitioner, it may be noted, superannuated on 31st July, 2012.

12. The School, in its counter affidavit, placed reliance on a judgment of the Division Bench of this Court in ***Rameshwar Singh v. Union of India, MANU/DE/3187/2009***. The said judgement dealt with the challenge, by the petitioner therein, to an order, dated 13th December, 2005, which required fulfilment of educational qualifications prescribed for the promotional post, as a pre-condition for grant of ACP.

13. The Division Bench of this Court, speaking through Anil Kumar, J., in paras 5 and 6 of the judgement, held thus:

“5. The plea of the petitioners is contrary to the object of the ACP Scheme. Under the ACP Scheme, an up-grading is to be granted only if an employee is eligible for promotion, however, on account of stagnation, adequate promotional avenues are not available. Assured Career Progression Scheme, however, does not entitle a person to the next promotion despite not having eligibility qualification or possessing the educational qualification or other requirements for promotions.

6. The ACP Scheme gives relief to those who are eligible but who do not get promotion on account of stagnation or other similar reasons, however, under the ACP Scheme an employee who is not eligible for promotion does not become eligible for promotion despite not having the requisite

qualification. Such a plea is apparently contrary to very basic objective of scheme and such a plea of the petitioners, cannot be accepted in the circumstances, the decision of the Tribunal declining the claim of the petitioners for up-gradation under the ACP Scheme as they are not eligible for promotion cannot be faulted. Learned Counsel for the petitioner has failed to show any error or illegality in the decision of the Tribunal which will entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own costs”.

14. The counter affidavit also relies on guidelines, issued by the GNCTD, for implementing the ACP Scheme in the case of Lab Assistant, which postulate that it would be governed by the instructions issued by the DoPT in this regard. Condition No.6 of the instructions issued by the DoPT, as contained in O.M. No.35034/1/97-ESTT.(D) dated 9th August, 1999, reads as under:

“6. Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group D employees, etc.) 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 the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme”.

15. In law, therefore, the position, that fulfillment of possessing of the requisite educational qualifications, for the promotional post, is a

sine qua non for the benefits of the ACP Scheme, may well be regarded as unassailable. The case of the School is that the petitioner did not possess the essential qualifications for the post being held by him of Lab Assistant, so that there could be no question of extending, to him, the benefits of the said Scheme.

16. The petitioner placed, on record, in the present proceedings, under an index, a Gazette Notification dated 1st July, 1960, issued by the Delhi Administration, which reflected the essential qualifications for the post of Lab Assistant, to be “middle pass with English”, with the further stipulation “Matriculates will be given preference”.

17. However, Mr. Saurabh Chauhan, appearing for Respondent Nos.1 and 2, points out that the said notification was not applicable at the time of recruitment of the Petitioner as Lab Assistant, inasmuch as, on 23rd April, 1971, fresh Recruitment Rules for the post of Lab Assistant had been issued, which stipulated “Senior Secondary/Intermediate with Science from a recognized University or Board” as the essential qualification for recruitment as Lab Assistant. This, I may note, is also in line with Annexure-R1 to the counter affidavit of Respondents No. 1 and 2, which also reproduce the same Recruitment Rules, though the heading of the said Recruitment Rules, as filed in Annexure-R1, reflects that they were amended on 7th May, 1975, 3rd March, 1981, 14th March, 1986 and 21st March, 1990.

18. Mr. Saurabh Chauhan, however, submits that the Recruitment Rules handed over in court today were the Rules as were extant on

23rd April 1971, which required, as noted above, “Senior Secondary/Intermediate with Science from a recognized University or Board”, as the essential qualification for recruitment as Lab Assistant.

19. In that view of the matter, as the petitioner did not possess the requisite qualifications for recruitment as Lab Assistant at the time when he was so recruited in 1973, the Petitioner cannot be granted the benefits of the ACP Scheme, in view of the law laid down by this Court in *Rameshwar Singh (supra)* as well as the instructions dated 9th August, 1999, of the DoPT, to which reference has already been made hereinabove.

20. For the forgoing reasons, I do not find any merit in this writ petition, which is dismissed without any order as to costs.

C.HARI SHANKAR, J

AUGUST 28, 2018

dsn/bh