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

Date of Decision: 13.07.2018

+ W.P.(C) 7149/2018 & C.M. No.27277/2018, 27278/2018

GOVT. OF NCT OF DELHI AND ORS. Petitioners

Through: Ms.Avnish Ahlawat, Standing
Counsel with Mr.Nitesh Kumar
Singh, Ms.Tania Ahlawat & Ms.Palak
Rohmetra, Advs.

versus

VANDANA PANWAR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **13.07.2018**

1. The petitioner, Department of Education, Government of NCT of Delhi, is aggrieved by the judgment dated 06.11.2017, passed by the Principal Bench, Central Administrative Tribunal, New Delhi allowing OA No.1562/2017, filed by the respondent for quashing and setting aside the memorandum dated 18.06.2015, whereunder, her application for implementation of the increment payable to her from July, 2008 was turned down by the competent authority on the ground that she did not fulfil the requirement of 6 months qualifying period

for earning an increment, as on 01.07.2008. Further, the respondent had sought directions to the petitioner to step up her pay at par with that of her junior, Ms.Mamta Meena w.e.f. 01.07.2008, by granting her an increment payable to her w.e.f. the said date.

2. The brief relevant facts of the case are that the petitioner/Directorate of Education had issued Advertisement No.2/2006 for the post of PGT/Lecturer in the year 2006. In response thereto, the respondent, Ms.Mamta Meena and several others had submitted their applications. Both the respondent and Ms.Mamta Meena were duly selected to the post of PGT/Lecturer in schools under the petitioner/GNCTD. The petitioner had issued an offer of appointment, vide letter dated 19.07.2007, calling upon the respondent to produce all her documents relating to her educational qualifications, proof of age on 07.08.2007, etc. , which she did. The respondent was declared medically fit on 05.10.2007 whereas Ms.Mamta Meena, with whom the respondent claims parity, was declared medically fit on 09.10.2007 i.e. after the petitioner.

3. A letter of appointment was issued to Ms.Mamta Meena on 07/08.11.2007 and she joined the subject post on 19.11.2007. However, on account of a delay in the verification of her age, the respondent could not be appointed on the same date as Ms.Mamta Meena. She was appointed later on, vide letter dated 28.02.2008, received by her on 04.03.2008.

4. In the final seniority list of the PGT/Lecturer promoted/appointed between 01.04.2006 to 31.03.2010, based on comparative merit of candidates issued by the petitioner vide circular

dated 19.07.2013, admittedly, the respondent was placed at Sl. No.3235 whereas Ms.Mamta Meena was placed much below her at Sl.No.3279. On issuance of the aforesaid seniority list, the respondent submitted an application dated 06.11.2013 to the School Principal for stepping up of her pay to bring it at par with that of Ms.Mamta Meena, who was junior to her. The said representation was considered and rejected by the petitioners vide their impugned letter dated 18.06.2015. Aggrieved thereby, the respondent filed the aforesaid OA before the Tribunal.

5. The petitioners filed a counter affidavit admitting *inter alia* the factual position. They referred to the revised pay rules wherein the qualifying period for earning an increment has been prescribed as 6 months as on 01.07.2008 and submitted that since the respondent had joined her duty on 04.03.2008, she did not have to her credit, the qualifying period of 6 months as on 01.07.2008 and was, therefore, not entitled to any increment. As against the above, it was stated that Ms.Mamta Meena with whom the respondent sought parity, had qualified a period of six months on 01.07.2008, since she had joined duty on 07/08.11.2007 and consequently, she was granted the increment.

6. After considering the submissions made by both sides, the Tribunal observed that it is only because of non-payment of one annual increment to the respondent, that the pay of her junior was more than her and held that she was entitled to salary at par with her junior in view of the well settled legal position in the cases of ***Gurcharan Singh Grewal vs. Punjab State Electricity Board, (2009)***

3 SCC 94; **Punjab State Electricity Board vs. Gurmail Singh**, (2008) 7 SCC 245; and **Commissioner and Secretary to Government of Haryana vs. Ram Swarup Ganda**, (2011) 15 SCC 722, wherein, it has been held that the principle of stepping up of pay has to be applied across the board in all cases where a person who is senior, gets lesser salary than his junior, requiring the salary of the senior to be stepped up and brought at par with the junior. The Tribunal also referred to a judgment in the case of **Government of NCT of Delhi & Ors. vs. Saroj Khosla & Ors.**, (2013) 199 DLT (CN) 27 DB, wherein relying on the decisions of the Supreme Court cited above, a Division Bench of this Court had directed that the respondent employee in that case would be entitled to stepping up of pay at par with persons immediately junior to them in the combined seniority list.

7. After referring to the facts of the captioned case, the Tribunal concluded that the mandate of the aforesaid decisions is clear that where the salary of the junior is higher than that of the senior, the senior shall be entitled to fixation of salary at par with the junior, irrespective of the circumstances under which the junior was/is drawing a higher pay. In the light of the aforesaid decisions, the impugned memorandum dated 18.06.2015 issued by the petitioner rejecting the request of the respondent for stepping up of her pay was quashed and set aside by the Tribunal and the petitioner has been directed to fix the salary of the respondent at par with Ms.Mamta Meena w.e.f. 01.07.2008.

8. Ms.Avnish Ahlawat, learned counsel for the petitioner submits that the learned Tribunal failed to appreciate that the respondent could

not have earned increment as she had to her credit, less than 6 months of service as on 01.07.2008, whereas her junior, Ms.Mamta Meena was granted an increment since she had 6 months of service to her credit, as on 01.07.2008 and simply because her junior had joined before her, could not be a ground to grant an annual increment to the respondent, at par with the junior. Learned counsel further states that the petitioner cannot be blamed for any delay in verification of the proof of age submitted by the respondent. She submits that the appointment letter could have been issued by the petitioner only after verification of the respondent's age, which took some time. It was due to this that the same was issued to the respondent on 04.03.2008.

9. We have heard learned counsel for the petitioner and carefully perused the impugned judgment, the documents and pleadings before the Tribunal. We are of the opinion that the view expressed by the Tribunal in the impugned judgment to the effect that where the salary of the junior is higher than that of the senior, the senior is also entitled to fixation of salary at par with her junior, is a logical conclusion backed by several decisions of the Supreme Court and High Court on the aforesaid aspect. In any case, the respondent cannot be held responsible for the delay in verification of her age as she had taken all necessary steps to submit the requisite documents to the petitioner in time. It is only fortuitous that the documents of Ms.Mamta Meena were got verified earlier due to which a letter of appointment was issued to her on 07/08.11.2007, whereas it took some time to verify the documents submitted by the respondent and resultantly, the letter of appointment was issued to her on 04.03.2008. The respondent

cannot be held responsible for the said delay. Further, in the seniority list drawn by the petitioner, the respondent's seniority has been fixed over and above that of Ms.Mamta Meena. This being the position, the respondent was justified in claiming that she is entitled to stepping of pay at par with that of her junior.

10. For the aforesaid reasons, we do not see any merit in the present petition. The impugned judgment is affirmed and the petition is dismissed in *limine* along with the pending applications.

(HIMA KOHLI)
JUDGE

(REKHA PALLI)
JUDGE

JULY 13, 2018

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