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

+ **LPA 169/2017 & CM 9163/2017**

RANBIR SINGH & ORS.

.....Appellants

Through: Ms Shobhana Takiar, Advocate.

versus

NDMC & ANR

....Respondents

Through: Mr Anil Grover, Standing Counsel,
NDMC with Mr Nishal Vij,
Advocates for NDMC/R-1.
Mr Tarun Vir Singh Khehar, Mr
Abhimanyu Gupta, Mr Vikas Mathur,
Advocates for R-2.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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07.01.2019

1. This appeal is directed against the judgment dated 17th January, 2017 passed by the learned Single Judge disposing of W.P. (C) No.9543-53/2004.

2. The Appellants are non-teaching Group-D employees of the New Delhi Municipal Council ('NDMC') (Respondent No.1) having been appointed as such in 1982. The Appellants filed the aforementioned writ petitions seeking implementation of the Assured Career Progression ('ACP') Scheme implemented by the NDMC. They also sought quashing of an Office Order dated 10th December, 2002, in terms of which eight of the 11 Petitioners (which include the present six Appellants) had been granted the ACP

benefits, but at a lower pay-scale. The said Office Order dated 10th December, 2002 granted the benefit of the ACP to eight persons, including the present six Appellants, with effect from 9th August, 1999, but at the pay-scale of Rs.2610-60-2910-65-3300-70-4000 (S.2A).

3. It was pointed out by the NDMC before the learned Single Judge that five of the eleven Petitioners who had approached the Court were in fact not eligible for the ACP in terms of the Scheme. This plea was accepted by the learned Single Judge and therefore the petition in respect of five of them was dismissed. The writ petition was allowed in respect of the present six Appellants i.e. Ranbir Singh, Smt. Kamlesh Rana, Prema Mehta, Shri Hari Kishan, Shri Ashok Kumar and Shri Chander Prakash (Appellant Nos. 1 to 6 respectively).

4. The grievance of the present six Appellants is that while recognizing the eligibility of the present Appellants to the grant of the ACP Scheme, the learned Single Judge failed to consider the second prayer in the writ petition, viz., that the Appellants, found eligible for the ACP Scheme, ought to have been granted the next higher pay-scale. The learned Single Judge in the operative portion of the impugned judgment stated that these six Appellants would be granted pay-scale of Rs.2610-4000, as stated in the impugned office order dated 10th December, 2002.

5. Ms Shobhana Takiar, learned counsel for the Appellants points out that in terms of the recruitment rules that were in force at the time of appointment of the Appellants, there was no promotional posts available for these Appellants. The appointment in the next post in the hierarchy i.e. of Junior

Clerk-cum-Typist, which was a Group-C post, was only through direct recruitment. S.5 is the next scale for the Junior Clerk-cum-Typist. Having not earned any promotion for more than 35 years of service, each of the six Appellants were eligible for the first and second upgradation in the pay-scale of S.5 and S.6. It is accordingly contended that each of the Appellants is entitled to the scale of S.5 i.e. Rs.3050-4590 after 12 years and Rs.4000-6000 after 24 years of service. Reference is made to Condition 7 of the Financial Upgradation which reads as under:

“7. Financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose.... ”

6. The Appellants assert that they are entitle to next higher pay scale that would applicable to a Group-C employee i.e. Junior Clerk-Cook. This aspect is not in dispute. However the question before the Court concerns the appropriate pay scale. The Appellant has relied upon para 7 of the ACP scheme, that stipulates that financial upgradation shall be given to the next higher grade in accordance with the existing hierarchy in the cadre/category of post without creating new post for the purpose. It is argued that the intermediary pay scale S-2, S-3, S-4 do not exist in the promotional hierarchy of Navyug School. In Navyug School, if a Group-D employee is promoted or appointed in Junior Clerks scale, he is placed in the pay scale of 3050-75-3950-80-4590. Therefore, there is no other in between scale of S-2, S-3 and S-4 for Group-D employees. No new post can be created in terms of para 7 of the ACP scheme noted above. The Petitioners are thus entitled to S-5 scale.

7. It appears to the Court that the learned Single Judge overlooked the second part of the prayer in the writ petition, although in paragraph 4 of the impugned judgment this has been noticed as one of the issues that arise for determination in the writ petition. With there being no dispute that the whole purpose of the ACP is to provide some relief to those to have not earned any promotion in their entire career, it is consistent with the paragraph 7 of the ACP Scheme to grant relief of the S.5 pay-scale to the Appellants on completion of 12 years i.e. Rs.3050-4590 and the next pay-scale of Rs.4000-6000, after completion of 24 years of service.

8. Accordingly this Court modifies the impugned order of the learned Single Judge to the extent that the directions issued to the NDMC to grant to the present six Appellants the pay-scale of Rs. 2610 to 4000 is set aside and a direction is issued that each of the Appellants would be granted the benefit of the ACP in the pay-scale of Rs.3050-4590 on the completion of 12 years in service and pay-scale of Rs.4000-6000 on the completion of 24 years in service. The consequential orders will now be issued by the NDMC within a period of eight weeks from today.

9. The appeal is disposed of in the above terms with no orders as to costs. The pending application also stands disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 07, 2019

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