$~ Suppl.-19

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

\+ W.P.(C) 261/2021 & CM APPL. 650/2021

SK SHARMA ..... Petitioner

Through: Mr. Nilansh Gaur, Advocate.

versus

UNION OF INDIA AND OTHERS ..... Respondents

Through: Mr. S. Rajappa, Advocate for Kendriya Vidyalaya Sangathan.

% Date of Decision: 08th January, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the orders dated 15th January, 2020 and 23rd October, 2019 passed by the Central Administrative Tribunal (hereinafter referred to as 'CAT') in OA No.969/2018 and OA No.2630/2014 respectively. The relevant portion of the impugned order is reproduced hereinbelow:-

> *"7. From the above, it becomes clear that it was dealing with a situation arising out of merger of three posts with the pay scales of (a) ₹5000-8000, (b) ₹5500-9000; and (c) ₹6500-10500, as a result of recommendations of 6th CPC. The merger naturally led to serious imbalances. It can be easily demonstrated. For the pay scale (a), the benefit of merger was*

₹2500/- at the initial stage and for the post (b), it was ₹1000/-, whereas for the post (c), it was NIL.

8. Another discrepancy was that the last of the posts, in many cases, was a promotional one and rest of the two, were feeder categories. Naturally complaints poured in and those, who were earlier in the pay scale of ₹6500-10500 with Grade Pay of ₹4600/-, made a grievance about the merger.

9. The CPC itself suggested some solutions. For example, it recommended segregation of the first two categories and elevation of the third one, to higher level, even while promoting the first two, to the level of third one, in the pre-revised scale. The second alternative was to extend the benefit of enhanced Grade Pay of ₹4600/- to the post, which had the revised pay scale of ₹6500-10500 with Grade Pay of ₹4200/-. Paragraphs (4) & (5) throw light on this aspect.

10. It is not the case of the applicants that the post of Primary Teacher was in the pre-revised pay scale of ₹6500-10500 with Grade Pay of ₹4200/- as on 01.01.2006. That scale accrued to them only as a result of the implementation of the recommendations of 6th CPC. To put it in other words, they did not draw that pay scale as on 31.12.2005.

11. When the benefit under the O.M. was only to those who were in the pre-revised pay scale of ₹6500-10500 with Grade Pay of ₹4200/- as on 01.01.2006, the applicants, who were extended the benefit only from that date onwards and not earlier, cannot be extended it.

12. Learned counsel for applicants submits that within the organization of KVS, the benefit, referable to this O.M., was extended by placing certain interpretations. If that be the case, they have to work out the remedies in a different way."

3. Learned counsel for the petitioner submits that the CAT failed to appreciate that the respondents had misinterpreted the Ministry of Finance OM dated 13th November, 2009 and failed to grant the benefits to the petitioner even though the same had been uniformly and universally applied to the incumbents and posts where on 01st January, 2006, the pre-revised scale was Rs.6500-10500 with grade pay of Rs.4200. According to him, in all such cases, the incumbents were placed in the higher grade pay of Rs.4600. He emphasises that that higher grade pay had been paid to several identically situated employees of various Ministries and Departments like Railways, LIC, FCI and CSS. He contends that as on 01st January, 2006 the petitioner was in the pay scale of Rs.6500-10500 and was thus entitled to OM dated 13th November, 2009. In support of his submission, he relies upon the judgment rendered by the High Court of Patna in ***Prabhas Chandra Karn & Ors. vs. The Union of India & Ors., MANU/BH/1230/2015*** wherein it has been held as under:-

> *"18. The Court after considering the material and the submissions comes to a considered opinion that the decision notified in Annexure-14 cannot be sustained for the reason that the special body like a Pay Revision Committee's recommendations cannot be lightly interfered with or replaced by a notification issued by an executive in such a cursory and casual manner. It was because of such a recommendation that all these persons started drawing the replacement scale from the year 2009 unhindered till Annexure-14 came to be issued unilaterally.*
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> *19. Not only this, if the State's stand is accepted, an anomalous situation is created by giving two kinds of pay-scales to the same kind of employees merely on the basis of their date of appointment, which has no nexus*

with the object sought to be achieved while granting benefit of pay revision.

20. In the totality, therefore, both the writ applications succeed. The impugned order, contained in Annexure-14, stands quashed."

4. Learned counsel for petitioner also submits that the Central Administrative Tribunal Ernakulam Branch vide its order dated 07th March, 2013 passed in OA 84/2011 while allowing the OA directed the respondents therein to adopt the same method of fixation of pay i.e. by first placing the employees in the revised pay scale notionally on 01st January, 2006 and accordingly, thereafter, in the revised pay structure in the terms of the revised Pay Rules. He states that it was observed by the Tribunal that the decision shall be treated as a judgment *in rem* to grant the same benefit to similarly situated persons in order to avoid multiplicity of litigation. He contends that the petitioner in his OA had also sought the extension of benefit of this judgment. Accordingly, he prays for a direction to the respondents to extend the benefit of OM dated 13th November, 2009, issued by the Ministry of Finance, to the petitioner, by granting grade pay of Rs.4600 w.e.f. 01st January, 2006 with arrears and benefits.

5. Per contra, Mr. S. Rajappa, learned counsel for Kendriya Vidyalaya Sangathan submits that the contentions and submissions advanced by learned counsel for the petitioner are contrary to the facts and untenable in law.

6. He states that the Ministry of Finance vide OM dated 13.11.2009 had granted the Grade Pay of Rs.4600/- in place of Rs.4200/- to those cadres who were in the pre-revised scale of pay Rs.6500-10500 (Fifth Pay

Commission), whereas the post of PRT in KVS was in the pay scale of Rs.4500-125-7000. He further states that the Sixth Pay Commission, while recommending the pay scales for teaching staff i.e. under Part-B, Section II (XVII) had generously upgraded this cadre from 1.1.2006 i.e. by granting them the Pay Band-II with Grade Pay of Rs.4200/- otherwise the replacement scale for the pre-revised Pay Scale of Rs.4500-125-7000 was in the Pay Band-I with Grade Pay of Rs.2800/-.

7. Having heard learned counsel for the parties, this Court finds that the petitioner is a primary teacher in KVS in grade-III who was in the pay band of Rs.4500-7000 under the Fifth Pay Commission. As pre-revision the petitioner's pay scale was not in the pay band of Rs.6500-10500, this Court is in agreement with the view of the Tribunal that the petitioner is not entitled to the benefit under the said OM. This Court is of the opinion that the OM dated 13th November, 2009 seeks to remove the grievance of those who were in the highest pay scale prior to the merger of three pay scales on account of Sixth Pay Commission recommendations. It is pertinent to mention that on account of Sixth Pay Commission recommendations there was merger of three pay scales, namely Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. As the aforesaid three pay scales were merged together, the highest pay scale i.e. Rs.6500-10500 received no increment/benefit on account of merger but the lower two pay scales got increment/benefits. Accordingly, the OM dated 13th November, 2009 provided enhanced grade pay only to those who were in the highest pay scale prior to the merger of three pay scales on account of Sixth Pay Commission recommendations.

8. This Court is further of the view that the judgments of the Patna High Court in ***Prabhas Chandra Karn & Ors. vs. The Union of India & Ors.,***

(Supra) as well as the Central Administrative Tribunal, Ernakulam Branch offer no assistance to the petitioner as they neither deal with nor interpret the OM dated 13th November, 2009. The employees of various Ministries and Departments like Railways, LIC, FCI and CSS received benefits under separate and independent circulars and OMs and not the OM dated 13th November, 2009.

9. Accordingly, the present writ petition, being bereft of merits, is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

JANUARY 08, 2021
JS/AS