

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

% **Date of order : 24th November 2022**

+ **W.P.(C) 4958/2011**

CAMBRIDGE PRIMARY SCHOOL Petitioner

Through: Mr. Amit Goel, Advocate

versus

THE DIRECTORATE OF EDUCATION AND ANR

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Respondents

Through: Mr. J.C. Mahindro and Mr. Deepak
Khurana, Advocates for R-1.
Mr. Puneet Mittal, Sr. Advocate
with Ms. Sakshi Mendiratta and
Mr. Siddharth Saxena, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed seeking *inter alia* the following reliefs:-

- (i) *“Issue a Writ in the nature of Mandamus, or such other Writ, Order or Direction as deemed proper by this Hon'ble Court, quashing the First Respondent's impugned direction dated 18.07.2009, directing the Petitioner to fix the Second Respondent's basic pay at Rs. 6025/-;*

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- (ii) *Pass an appropriate direction, declaring that the fixation of the Second Respondent's basic pay at Rs. 5850/- as previously calculated by the Petitioner is in conformity with applicable law;”*

2. Learned counsel for the petitioner submitted that the Respondent No. 2 was appointed as a Primary School Teacher by the Petitioner with effect from 01.11.1979, in the pay scale and grade of Rs. 320-10-380-12-500-15-560. It is submitted that the impugned order directs the Petitioner herein to fix the basic pay of respondent no. 2 at Rs. 6025/-. It is submitted that the said order is illegal, *inter alia* since it is *ultra vires* the norms for fixation of pay laid down by the Fifth Pay Commission, as accepted by the Ministry of Finance Resolution No. 56(1)/IC/97 dated 30.09,1997, as also the Order regarding revision of Pay Scales of Primary School Teachers dated 04.04.2002 as issued by the Govt. of India, Ministry of Human Resource Development.

3. It is stated that the primary interpretational error which was committed was that the respondent no.1 failed to notice the distinction between the terms "stage in the existing scale" and "increments in the existing scale" as used distinctly in the two provisos to Clause 7 of the Fifth Pay Commission's recommendations.

4. It is submitted that the respondent no. 1 erred in calculating the increments to be added to basic pay as per the second proviso to Clause 7(1)(A), basing the calculation on the erroneous position of the respondent no. 2 that she had received ten increments, whereas she had only received for increments in the existing scale of pay, while previous increments had been received in an earlier, lower scale of pay. Therefore,

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while she was at the tenth stage of the scale (relevant to the first proviso of Clause 7(1)(A), she had received only four increments in the existing scale, entitling her to the benefit of only one increment under the second proviso. The impugned directions, however, effectively gave the respondent no. 2 the benefit of three such increments, contrary to the applicable rules and norms.

5. It is stated that as the respondent no. 2 had received four increments in the "existing scale of pay", she was entitled to the minimum benefit of one increment as a result of fixation of her basic pay at Rs. 5,850. Therefore, it is submitted that the petitioner's fixation of the Respondent No. 2 basic pay was correctly arrived at as a result of due application of mind, whereas the impugned direction of First Respondent misapplied the relevant norms.

6. *Per contra*, Mr. Puneet Mittal, Senior Advocate, learned counsel for the Respondent No. 2 stated that the order impugned in the present petition was passed by the first respondent after inviting comments/objections from all concerned. In fact the petitioner has fallen in error while understanding and implementation of the norms of the fixation of as laid down by the Fifth Pay Commission, 1997.

7. It is further submitted that the difference of understanding has arisen since the petitioner assumed that the answering respondent was eligible for only four increments, whilst the basic salary was fixed at Rs. 1,850 from Rs.1,650, which in itself is an erroneous understanding. In terms of the scheme, the answering respondent was eligible for 10 increments, and thus the bunching effect of Rs.175 per every three

increments on the basic pay of Rs.5,500/- would amount to the basic at Rs.6,025/-, which was so calculated correctly by the respondent No. 1 as well. It is a matter of record that the Government revised the pay scale for teachers to 5500-175-9000 from 5000-150-8000. It is submitted that it is also a fact that the petitioner was drawing pay at Rs. 1,850/- basic salary at a pay scale of 1400-40-1600-50-2300-60-2600 w.e.f. 1.1.1996. Thus the petitioner was at the 10th stage of the existing pay scale, and the respondent no. 2 was therefore eligible for benefit of bunching effect in terms of pay fixation rules, and hence is entitled to fixation of basic pay at Rs.6,025/- as correctly held by Respondent No.1 after applying the scheme and rules.

8. Learned counsel appearing for the Respondent No. 1 submitted that the respondent no. 2 was not satisfied with the pay scale as given by the school which is not in consonance with the Delhi School Education Act & Rules. The respondent no. 2 forwarded a representation to the Directorate of Education to direct the school to correct the pay fixation. It is submitted that the Accounts Branch of District South checked the pay fixation and directed the petitioner school to fix the pay at Rs. 6,025/- vide letter no. EO-2MC-25/2009-10/88-882 dated 18th July 2009. The Respondent No.1 directed the petitioner school to fix the basic pay of the respondent no. 2 at Rs. 6025/- as per the order regarding revision of pay scale of primary school teachers dated 4th April 2002 as issued by the Govt. of India, Ministry of Human Resource Development.

9. It is submitted that vide letter dated 8th May 2002 the Directorate of Education directed the petitioner school to comply with the order dated

4th April 2002 as issued by the concerned ministry. It is further submitted that according to the norms for fixation of pay laid down by 5th Pay Commission 1997 as accepted by the Ministry of Finance vide Resolution no. 50(D)/IC/97 dated 30th September 1997 and in conformity with the aforementioned upgradation dated 4th April 2002 the petitioner fixed the basic pay of the respondent no. 2 at Rs. 5850/- w.e.f. 1st January 1996 which was wrong. Accordingly after examining the representation made, the Directorate of Education directed the school to fix the pay of the respondent no. 2 at Rs. 6025/- and the petitioner was directed to comply with the order dated 18th July 2009.

10. Learned counsel for the Respondent No. 1 further stated that vide letter dated 18th July 2019, it has been *inter alia* observed as under:

- a. Mrs. Subodh Sinha, Primary teacher was drawing basic pay of Rs. 1850/- at the time of implementation of 5th Pay Commission in the scale of Rs. 1400-40-1600-50-2600 in the pre-revised scale and revised Rs. 5000-150-8000).
- b. The said scale Rs. 5000-150-8000 was merged with Rs. 5500-175-9000 and the pay of Mrs. Subodh Sinha was to be fixed in the scale of Rs. 6025/-. However, the school placed her on the basic pay of Rs. 5850/-.
- c. Similarly the official has already earned 10 annual increments in the pre-revised scale at the time of implementation of 5th Pay Commission on 1st January 1996 and she was also entitled for punching benefits of at least three increments in the revised pay scale.

11. It is thus submitted that the pay of Respondent No.2 has to be fixed at Rs. 6,025/- in the scale of Rs. 5500-175-9000 after getting the punching benefits instead of Rs. 5,850/-.

12. Heard learned counsels for the parties and perused the record.

13. It is evident that in the instant case, the obstinacy of the Petitioner was to the extent that despite the impugned order being passed in 2009, they refused to comply with the impugned order until this Court vide its judgment dated 19.05.2011 directed the Respondent No.1 to take action for non-compliance of the impugned order. In the said judgment, the petitioner not having complied with the directions/orders of the respondent no.1, it was felt necessary that the respondent no.1 be directed to take action consequential to the non-compliance by the School of the directions. It was directed as reproduced hereunder:

“13. In the circumstances, it is directed that unless there is any stay of the orders/directions dated 18th July, 2009 and 2nd September, 2009 of the respondent no.2 DoE to the respondent no.3 within two months of today, the respondent no.2 DoE to take action in accordance with the law (Section 10(1) of the Act) against the respondent no.3 School for non-compliance of the directions aforesaid. The same is however subject to the condition that the respondent no.3 School in any such challenge shall implead the petitioner herein as a party and shall also place before the fora concerned a copy of this order.

14. It is also the grievance of the petitioner that the respondent no.3 School to harass the petitioner and to coerce the petitioner into the withdrawing the writ petition has not even released to the petitioner the admitted retiral benefits. An application in this regard has been filed and which is pending consideration.

15. Accordingly, while granting liberty to the respondent no.3 School to take remedies now, against the directions aforesaid of the respondent no.2 DoE, further condition is imposed on the respondent no.3 School to within fifteen days of today, pay to the petitioner all undisputed retiral benefits if any remaining together with a computation thereof.”

14. Only after the said proceedings, the petitioner approached this Court by way of the instant petition challenging the order of the Respondent No.1. After sleeping over the impugned order for two years and choosing to disobey the same, one cannot expect the equity to help one's case. In the opinion of this court, the obduracy and obstinacy of the school in refusing to comply with the order of the Directorate of Education by contesting proceedings cannot mean that the said person will have a right after losing in an earlier writ petition, to file a fresh writ petition for setting aside the impugned order which was passed way back in 2009. There is no doubt that the observations in the said judgment enable the petitioner to approach the Court, however, the same must be in accordance with law.

15. It is well settled position that “*Vigilantibus non dormientibus aequitas subvenit*” which means that equity assists the vigilant and not those who sleep on their rights. Unreasonable and unexplained delays in agitating is a valid ground for denial of indulgence by the court. Thus, laches can lead to denial of claim, especially, when those who are duty bound to implement an order choose to disobey the same. Therefore, since the law does not permit entertaining of stale challenges which are barred by delays and laches, this court is as such not inclined to interfere

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with the impugned order. The ordinary period of limitation cannot be overlooked as a matter of routine, and the same can be done only in extenuating circumstances and when warranted in the interests of justice. In the instant case, there has been no reasonable explanation made to satisfy the court regarding the delay in approaching the court.

16. Upon a perusal of the material before this Court, it is evident that as per the norms for fixation of pay laid down by 5th Pay Commission 1997 as accepted by the Ministry of Finance vide Resolution no. 50(D)/IC/97 dated 30th September 1997 and in conformity with the Upgradation dated 4th April 2002 the petitioner fixed the basic pay of the respondent no. 2 at Rs. 5850/- w.e.f. 1st January 1996 which was wrong and the respondent no. 2 gave representation to the school as well as Directorate of Education.

17. Accordingly after examining the same, the Directorate of Education directed the school to fix the pay of the respondent no. 2 at Rs. 6025/- and the petitioner was directed to comply with the order dated 18th July 2009.

18. The details of the pay fixed @ Rs. 6025/- as mentioned in the counter affidavit filed by Respondent No. 2 is detailed as under:

Old Pay Scale 1400-40-1600-50-2300-60-2600		New Pay Scale 5500-175-9000	
		Amount in Rs.	
1. Add one increment		1,400.00	
		40.00	
2. Add one increment		1,440.00	
		40.00	
3. Add one increment		1,480.00	
		40.00	
4. Add one increment		1,520.00	
		40.00	
5. Add one increment		1,560.00	
		40.00	
6. Add one increment		1,600.00	
		50.00	
7. Add one increment		1,650.00	
		50.00	
8. Add one increment		1,700.00	
		50.00	
9. Add one increment		1,750.00	
		50.00	
10. Add one increment		1,800.00	
		50.00	
		1,850.00	
Basic Pay as on 01.01.1996		1850	
DA as on 01.01.1996		2738	
Interim Relief-I & II		285	
40% of Old Basic		740	
Total		5613	
A. Basic Pay fixed in the New		5675	
Pay Scale as on 01.01.1996			
New Pay Scale 5500-175-9000		As per Rule	As per School
B. Add one increment for every three increments i.e. in old scale			
	=175 X 3=	525	0
	=175 X 1=	0	175
		5500	5675
		6025	5850
C. Basic Pay to be fixed as on 01.01.1996 is (higher of A & B)		6025	5850

19. It is evident from a perusal of the material on record that the Respondent No. 2 was drawing a basic pay of Rs. 1,850/- at the time of implementation of 5th Pay Commission in the scale of Rs. 1400-40-1600-50-2600 in the pre-revised scale and in the revised scale of Rs. 5000-150-8000. The said scale Rs. 5000-150-8000 was merged with the scale of Rs. 5500-175-9000 and her pay was to be fixed in the scale of Rs. 6,025/-. Again, the petitioner has already earned 10 annual increments in the pre-revised scale at the time of implementation of 5th Pay Commission on 1st January 1996 and she was also entitled to punching benefits of at least

three increments in the revised pay scale.

20. Therefore, in view of the aforesaid, it is evident that there is no error whatsoever in the calculation done by the Directorate and the impugned order is just, fair, and reasonable and hence, the Respondent no. 2 is entitled to a basic pay of Rs. 6,025/-. Thus, there is no ground made out in this case to interfere with the impugned order. In view of the aforesaid, the instant writ petition stands dismissed as being devoid of merits as well as on delays and laches.

21. Accordingly, the petitioner is directed to release the payment of the respondent no. 2 in accordance with the direction dated 18.07.2009, to fix the respondent no. 2's basic pay at Rs. 6025/- within a month from the date of this order, failing which the Directorate can take recourse to all measures as prescribed under law for its enforcement.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 24, 2022
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