



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

Judgment reserved on: 06.11.2023

Judgment delivered on: 20.11.2023

+ **W.P.(C) 2148/2023 & CM. APPL No.8113/2023**

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Through: Mr. Sanjeev Sagar, Standing Counsel
with Ms. Nazia Parveen, Advocate
alongwith Ms. Neera and Ms. Rama,
both DDs, MCD.

versus

NEELAM KUMARI

..... Respondent

Through: Respondent-in-person.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this writ petition is to an order dated July 12, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the 'Tribunal') in OA No.3918/2017, whereby the OA preferred by the respondent was allowed.

2. In brief, as noticed in the impugned order, respondent was working as a Teacher in Municipal Corporation of Delhi (MCD) and before her superannuation on June 30, 2017, her pay was re-fixed and grade pay reduced in terms of office order dated February 15, 2017 from Rs.6600/- to Rs.5400/- w.e.f. September 01, 2008.



3. Aggrieved against the order dated February 15, 2017 passed by the petitioner, OA No.3918/2017 was preferred by the respondent challenging the re-fixation of pay and reduction of grade pay from Rs.6600/- to Rs.5400/-. It was contended that the aforesaid order was passed almost after a period of about 09 years and neither any notice was served upon the respondent, nor she was informed of the reasons for the reduction of grade pay.

4. On the other hand, the case of the petitioner in terms of the counter affidavit filed before the Tribunal is that vide order dated February 15, 2017 passed by the petitioner, the pay of the respondent was re-fixed w.e.f. January 01, 1986. Further, the grade pay of Rs.6600/- granted to the respondent w.e.f. September 01, 2008 vide order dated October 09, 2015 was withdrawn since the respondent was getting the grade pay of Rs.4800 till July 01, 2008 which on grant of 3rd MACP was required to be replaced with grade pay of Rs.5400/- being the next grade pay in the hierarchy of MACP but was wrongly granted grade pay of Rs.6600/-. The aforesaid error is stated to have been corrected before the superannuation of the respondent when it came to the notice of the authorities. It was further averred that the grade pay granted under the MACP Scheme has no relevance to the pay scale/grade pay of the promotional post and as such the plea of the respondent that her grade pay was re-fixed w.e.f. January 01, 2006 in the grade pay of Rs.5400/-, was denied.

5. The OA has been allowed by the Tribunal vide impugned order dated July 12, 2022 observing that the petitioner merely made a statement that the respondent was entitled to grade pay of Rs.5400/- instead of Rs.6600/- w.e.f. of September 01, 2008, without justifying the same and just four months



prior to the retirement of the respondent. The order dated February 15, 2017 is further stated to have been passed by the petitioner re-fixing the pay without adducing any reasons and the respondent had neither been given any opportunity, nor any information to present her case. It was also observed that the respondent had been granted Rs.6600/- keeping in view the extant policy and not on account of any misrepresentation or fraud or any omission or commission by the respondent. Petitioner was accordingly directed to restore the grade pay as it existed on September 01, 2008 prior to order dated February 15, 2017 and re-fix the pensionary benefits/other retiral benefits due to the respondent with refund of the amount already recovered.

6. Learned counsel for the petitioner reiterates the submissions and submits that the respondent had been wrongly granted grade pay of Rs.6600/- instead of Rs.5400/- as duly noticed in the re-fixation order dated February 15, 2017, which just came to the notice of the petitioner prior to superannuation of the respondent and order is stated to be self speaking. It is vehemently urged that in the hierarchy of MACP, respondent, who was getting grade pay of Rs.4800/- was entitled only for grade pay of Rs.5400/- and accordingly was entitled to Rs.92,46,404/- during the relevant period but was wrongly paid Rs.92,60,669/-. As such, an amount of Rs.14,265/- was recoverable.

7. On the other hand, respondent in person, justifies the order passed by the Tribunal and also referred to office order dated February 15, 2006 whereby the respondent along with other teachers who had completed 12 years of service in selection grade of Rs.530-630 (pre-revised) and working in senior scale of Rs.1400-2600 were awarded selection scale of Rs.1640-2900 {(pre-revised) (revised Rs.6500-10500)} w.e.f. April 01, 1994.



Reference was also made to Office Order No.D/ADE/Admn./HQ/1209 dated November 01, 2011, Circular No.D-335/Edu/HQ/SDMC dated July 04, 2012 and Office Order No.D/3029/ADE/Admn./Edu./HQ/2015 dated July 28, 2015 issued by the petitioner.

8. We have given considered thought to the contentions raised.

On the face of record, the issue of re-fixation of pay in terms of order dated February 15, 2017 is to be examined in terms of the entitlement of the respondent. In case any discrepancy in fixation of pay is noticed by the concerned department, the same is liable to be corrected in accordance with the applicable rules.

9. Before analyzing the factual position, reference may be made to relevant office orders/circulars dated November 01, 2011 and July 04, 2012. Vide Office Order No.D/ADE/Admn./HQ/1209 dated November 01, 2011 issued by Addl. Dy. Commissioner (Edn.), it was observed that in terms of ACP Scheme declared by the government on November 01, 2011, the employees who do not get two promotions/financial upgradation due to shortage of vacancies are entitled to financial upgradation in the next pay scale of the hierarchy in the MCD. It was also noticed that in the MCD, the promotional posts for teachers are HM/Principal, who are further promoted to the post of School Inspector on availability of the vacant post and having educational qualification for the post and fulfillment of other conditions. It was further clarified that as per circular dated September 01, 2005 of MCD, the first ACP is given to all teachers, while the 2nd ACP is given on the basis of educational qualifications to only those teachers who possess the necessary qualification for promotion to the post of School Inspector as per Recruitment Rules. Therefore, the teachers who are found entitled for 2nd



ACP till August 31, 2008 shall be considered for granting pay scale of Rs.7500-12000 instead of Rs.6500-10500 as granted vide circular dated September 01, 2005.

10. Thereafter, Circular No.D-335/Edu/HQ/SDMC dated July 04, 2012 issued by South Delhi Municipal Corporation clarifies the grade of pay for the post of Asstt. Teacher, Head Master and School Inspector as Rs.4200/- (PB2), Rs.4600/- (PB2) and Rs.5400/- (PB3) respectively. It further provides that as per hierarchy of grade pay, MACP w.e.f. September 01, 2008 on completion of 10 years, 20 years and 30 years of service shall be correspondingly Rs.4600/- Rs.4800 and Rs.5400/- respectively. The circular may further be quoted for reference:

“No:-D-335/Edu./HQ/SDMC

Dated: 4/7/12

CIRCULAR

In continuation to office order no.D/ADE/Admn.HQ/1209 dated 01/11/2011, it is clarified that as per ACP guidelines, the financial upgradation shall be as per the hierarchy of the promotional post. In the case of Asstt. Teachers of MCD, next promotional post is HM/Principal and further to the post of School Inspector.

As per the 6th CPS following pay scales are to be granted to teachers.

<i>Post</i>	<i>Pay Scale as per 5th CPC</i>	<i>Corresponding Grade Pay as per 6th CPC as on 01/01/2006</i>	<i>Pay Band</i>
<i>Asstt. Teacher</i>	<i>4500-7000</i>	<i>4200 (PB2)</i>	<i>9300-34800</i>
<i>Head Master</i>	<i>5500-9000</i>	<i>4600 (PB2)</i>	<i>9300-34800</i>
<i>School Inspector</i>	<i>7500-12000</i>	<i>5400/- (PB3)</i>	<i>15600-39100</i>

Hence for ACP Scheme, following pay scales are to be granted upto 31/08/2008 subject to fulfillment of all other conditions of ACP.

<i>1st ACP on completion of 12 years</i>	<i>5500-9000</i>	
<i>2nd ACP on completion of 24 years</i>	<i>7500-12000</i>	<i>(upgraded to 8000-13500+GP5400/- in PB 15600-39100 as on 01/01/2006)</i>



MACP is granted as per hierarchy of Grade Pay primary teachers under MACP are entitled for Grade Pay as mentioned below w.e.f. 01/09/2008, subject to fulfillment of all other conditions of MACP.

<i>On Completion of 10 years</i>	<i>Grade Pay of Rs.4600</i>	<i>9300-34800 (PB2)</i>
<i>On Completion of 20 years</i>	<i>Grade Pay of Rs.4800</i>	<i>9300-34800 (PB2)</i>
<i>On Completion of 30 years</i>	<i>Grade Pay of Rs.5400/-</i>	<i>9300-34800 (PB2)</i>

This has the concurrence of CA-cum FA and approval of Addl. Commissioner (Edn.).

*Director (Edn.)
South DMC"*

11. Reverting back to the facts of the case, vide office order No.D/DDE/11707 dated February 01, 2012 issued by Municipal Corporation of Delhi, Office of DDE/NG, Education Department, Najafgarh Zone, respondent was placed/granted scale+grade pay of Rs.9300-34800+5400 (gp) and was recommended for 3rd ACP along with other officials w.e.f. September 01, 2008.

Thereafter, Office Order No.D/3029/ADE/Admn./Edu./HQ/2015 dated July 28, 2015 issued by South Delhi Municipal Corporation, Education Department: HQ provided that benefit of grade pay of Rs.6600/- under Assured/Modified Career Progression Scheme to those teachers of South DMC, presently working or retired as Principal (Pry.)/School Inspector, who had availed 2nd ACP and presently getting pay in the Pay Band-3 i.e. Rs.15600-39100+Grade Pay Rs.5400/-, may be granted 3rd MACP after completion of 30 years service from the date of direct recruitment as Teacher in the Pay Band : 3, Rs.15600-39100+Grade Pay Rs.6600/- as per rules of MACP.

Consequently, the respondent was granted the pay fixation in PB-3 i.e. Rs.15600-39100+6600 (gp) w.e.f. benefit of 3rd MACP i.e. September 01,



2008 as reflected in the relevant note-sheet referred and produced by the respondent during the course of arguments.

12. The case of the respondent is that she was already availing the grade pay of Rs.5400/- as admissible to School Inspector though she was working as the Head Mistress on account of possessing the relevant qualifications and meeting out the conditions. Even noting affixed in the Service Book reflects that the respondent prior to order dated February 15, 2017, on being granted benefit of 3rd MACP w.e.f. September 01, 2005 was placed in the scale of Rs.9300-34800+5400/- (gp) w.e.f. September 01, 2008. Thereafter, the pay of the respondent as per concurrence of DCA/WZ dated October 06, 2015 and under office order dated 28.07.2015 was fixed in the grade pay of Rs.6600/- w.e.f. September 01, 2008. The same was finally revised under 7th CPC vide concurrence of DCA dated December 16, 2016 to Rs.83300/- w.e.f. January 01, 2016.

However, perusal of order dated February 15, 2017 re-fixing the pay of the respondent reflects that the pay of the respondent has been re-fixed w.e.f. September 01, 2005 on grant of 3rd MACP from Rs.19690+6600/- (gp) to Rs.20510+5400/- (gp) without taking into account that respondent was already drawing grade pay of Rs.5400/- as per her entitlement. The aforesaid order dated February 15, 2017 does not reflect any reasons for holding that the respondent was incorrectly placed in grade pay of Rs.5400/- w.e.f. September 01, 2008 in the light of Office Order dated July 28, 2015.

13. We are of the considered opinion that re-fixation of pay vide impugned order dated February 15, 2017 does not reflect any reasons or take into consideration the office orders relied by the respondent as referred to above, and the fixation of pay has been simply termed to be erroneous on the



ground that the hierarchy of next grade pay in MACP is Rs.5400/- instead of Rs.6600/-. The petitioner was bound to reflect the reasons for holding that respondent was not entitled to grade pay of Rs.5400/- w.e.f. the relevant date as was approved by the concerned Deputy Controller of Accounts along with other similarly placed officials.

In the facts and circumstances, order dated February 15, 2017 passed by the petitioner re-fixing the pay is set aside with directions to pass a fresh speaking and reasoned order within four weeks accordingly. Further, liberty shall be with the respondent to challenge the same in accordance with law, if she has any grievance in this regard.

We further hold that the action for recovery taken by the petitioner is not justified in view of the principles laid down in *State of Punjab & Others v. Rafiq Masih*, (2015) 4 SCC 334 since the recovery on account of re-fixation in terms of order dated February 15, 2017 was carried within a year from the date of superannuation of respondent.

The order passed by the Tribunal is accordingly set aside and petition is disposed of in terms of directions issued above. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

NOVEMBER 20, 2023/R/sd