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

Decided on: 28.04.2023

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LPA 773/2017

LEELA GAUR

..... Appellant

Through: Mr. Amit Seth and Mr. Naveen
Kaushik, Advocates.

versus

PRESIDENT GENERAL COUNCIL INSTITUTE OF
PHYSICALLY HANDICAPPED & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The appeal impugns the judgment dated 08.03.2017, whereby the learned single judge granted the appellant the benefit of initial pay band for Primary Teacher (Senior Scale) at Rs. 5000-8000/-. The learned Single Judge opined as under:

“ ...

2. It is undisputed that petitioner is entitled to the senior scale. The issue however is what is the first pay-band of the senior scale. The first pay-band of the senior scale as per the petitioner is Rs.5500-9000, and for which purpose petitioner places reliance upon the circular of the Government of India, Ministry of Human Resources Development, Department of Secondary and Higher Education dated 4.4.2002.

3. No doubt, the circular dated 4.4.2002 mentions the senior scale having been upgraded from Rs.5000-8000 to

Rs.5500-9000, however, it is seen that the Government of India itself had subsequently issued a circular dated 18.12.2002 which has fixed the initial pay-band of a primary teacher senior scale at Rs. 5000-8000 i.e not Rs.5500-9000 as stated in the earlier circular of the Government of India dated 4.4.2002. Since the circular of the Government of India dated 18.12.2002 is a subsequent circular clarifying the position, the same will supersede the earlier circular dated 4.4.2002. Therefore, the earlier circular dated 4.4.2002 fixed the initial pay-band of a primary school teacher senior scale at Rs.5500-9000 but that has been specifically set to Rs.5000-8000 in terms of the circular dated 18.12.2002 and which will therefore apply. For the sake of convenience the circulars of the Government of India dated 4.4.2002 and 18.12.2002 are reproduced as under:-

Circular dated 4.4.2002

“ No.F.5-21/97-UT 1
Government of India
Ministry of Human Resource Development

Department of Secondary & Higher Education

A-2/W-4, Curzon Road Barracks,
New Delhi, Dated 04/04/02

To

- | | |
|---|---|
| 1. Secretary (Education
Andaman & Nicobar Admin.
Port Blair | 4. Director of Education
Director of Education
Govt. of NCT of Delhi
Delhi |
| 2. Secretary (Education)
Dadra & Nagar Haveli
Admin.
Silvassa. | 5. Secretary Education
Lakshadweep Admin.
Kavarati |
| 3. Secretary (Education)
Daman and Diu Admin.
Moti Daman | 6. Secretary (Education)
Govt. of Pondicherry
Pondicherry |

Subject: Revision of pay scales (senior and selection scales) for Primary School Teachers in the employment of Govt. of India, in the Union Territories and other autonomous bodies sponsored by the Government of India.

Sir,

In continuation to this Ministry's letter No.5-14/97-UT.I dated 7.8.1998 regarding revision of pay scales of teachers, I am directed to state that the matter regarding anomaly in the pay scales (senior and selection) of Primary School Teachers was under consideration of the Govt. It has now been decided to revise senior and selection scales of Primary Schools Teachers w.e.f.1.1.96 as under:

	Existing	Revised
Entry Scale	4500-7000	4500-7000(No change)
Senior Scale	5000-8000	5500-9000
Selection Scale	5500-9000	6500-10500

2. This issues with the concurrence of Integrated Finance Division of this Ministry vide their Dy. No.3053/2002-IFD dated 4.4.2002.

Yours faithfully,

Sd/-

(ANIL KAPOOR)

Deputy Secretary to the Govt. of India"



सत्यमेव जयते

Circular dated 18.12.2002

T.No.22-20/99-NI-I

Government of India

Ministry of Social Justice & Empowerment

Desk NI-I

To,

Dr. Dharmender Kumar,

Director,

Institute for the Physically Handicapped,

4, Vishnu Digambar Marg,

New Delhi-110002

Subject: Adoption of the recommendations of the Anomalies Committee regarding the scales of Staff of the National Institutes.

Sir,

The recommendations of the Anomalies Committee regarding the scales of National Institutes have been under consideration of the Ministry of Social Justice & Empowerment for some time. In consultation with Internal Finance Division of the Ministry and Department of Expenditure, Ministry of Finance, it has now been decided to revise the pay scales of the following categories of posts as given under:

S. No	Name of the Post	Existing Pay Scale (Rs.)	Revised pay scale (Rs.)
1.	Machine Man Grade I	4000-6000	4500-7000
2.	Physiotherapist/Occupational Therapist	4500-7000	5500-9000
3.	Head Mistress	5500-9000	6500-10500
4.	Primary School Teacher (Senior Scale)	4500-7000	5000-8000
5.	Primary School Teacher	4000-6000	4500-7000

2. This sanction has the concurrence of Ministry of Finance, Department of Expenditure vide their U.O.No. 6(14)/E.III-(B)/2000 dated 2.1.2002.
3. This issues with the approval of competent authority.
4. This order comes into force with effect from the date of issue

Yours faithfully

Sd/-

(D.K.Bhat)

Under Secretary to the Govt. of India."

4. I may note that the respondent/institute/employer has observed in its additional affidavit dated 15.4.2005 that besides the petitioner there were other primary teachers in the school, and that to no primary teacher or any other employee of the respondent/institute, the pay band/pay-scale was fixed of senior scale of Rs.5500-9000 and that for every primary school teacher of senior scale, the initial pay band was fixed at Rs.5000-8000 w.e.f 1.1.1996. Once therefore the respondent/institute has not granted a senior scale of Rs. 5500-9000 to any other primary teachers, and which is because of the circular dated 18.12.2002, petitioner also cannot get the scale of Rs. 5500-9000.

5. In view of the above discussion, it is seen that the circular dated 18.12.2002 prevails, and which supersedes the earlier circular dated 4.4.2002, and thereby, initial pay band in senior scale of primary school teacher is Rs.5000-8000 and not Rs.5500 -9000 as is contended on behalf of the petitioner.

6. In view of the above, the petitioner cannot be granted the initial pay band of Rs.5500-9000 in the senior scale inasmuch as initial pay band of a primary teacher in the senior scale is Rs.5000-8000 in terms of the circular dated 18.12.2002 of the Government of India.”

2. It is the case of the appellant that the impugned judgment is erroneous insofar as it disregards the error in the communication dated 18.12.2002 issued by the Ministry of Social Justice and Empowerment India (‘MSJE’)/R-1, wherein the revision of pay scale applicable to Primary Teachers (Senior Scale) had been noted to be enhanced from Rs. 4500-7000/- to Rs. 5000-8000/-. However, the existing pay band was already subsisting at Rs. 5000-

8000/- following the revision of the first pay band of the Primary Teachers (Senior Scale) in terms of the Fifth Central Pay Commission ('Fifth CPC') w.e.f 01.01.1996. This revision was amiss from the circular dated 18.12.2002. The appellant contends that she was entitled to the pay scale for the selection scale for Primary Teachers (Senior Scale) at Rs 5500-9000/- in lieu of the communication dated 04.04.2002.

3. The court on 04.12.2018 had held *inter-alia* as under:

“3. The denial to the Appellant of the first pay band or Rs. 5500-9000 with effect from 1st January 1996 is sought to be justified by the Respondents on the basis of a letter dated 18th December 2002 issued by the Ministry of Social Justice and Empowerment (MSJE), the relevant portion of which reads as under:

“To,

Dr. Dharmender Kumar,

Director,

*Institute for the Physically
Handicapped,*

*4, Vishnu Digambar Marg,
New Delhi-110002*

*Subject: Adoption of the recommendations of the
Anomalies Committee regarding the scales of Staff of
the National Institutes.*

Sir,

*The recommendations of the Anomalies Committee
regarding the scales of National Institutes have been under*

consideration of the Ministry of Social Justice & Empowerment for some time. In consultation with Internal Finance Division of the Ministry and Department of Expenditure, Ministry of Finance, it has now been decided to revise the pay scales of the following categories of posts as given under:

<i>S. No</i>	<i>Name of the Post</i>	<i>Existing Pay Scale (Rs.)</i>	<i>Revised pay scale (Rs.)</i>
1.	Machine Man Grade 1	4000-6000	4500-7000
2.	Physiotherapist/Occupational Therapist	4500-7000	5500-9000
3.	Head Mistress	5500-9000	6500-10500
4.	Primary School Teacher (Senior Scale)	4500-7000	5000-8000
5.	Primary School Teacher	4000-6000	4500-7000

2. This sanction has the concurrence of Ministry of Finance, Department of Expenditure vide their U.O.No. 6(14)/E.III-(B)/2000 dated 2.1.2002.

3. This issues with the approval of competent authority.

4. This order comes into force with effect from the date of issue.”

4. It must be noted here that the Appellant was working as Primary Teacher (Senior Scale) in the Institute for the Physical Handicapped, New Delhi which is admittedly a National Institute functioning under the aegis of the MSJE. In fact the President of the General Council of the Institute is also the Secretary, MSJE. The Chairperson of the Standing Committee of the Institute is also the Joint Secretary, MSJE. Virtually, therefore, the senior

bureaucrats of the MSJE are the President and Chairperson respectively in the Institute.

5. The learned Single Judge has in the impugned judgment relied on the aforementioned circular and upheld the contention of the Respondents that the Appellant is not entitled to the pay band of Rs. 5500-9000 in the Senior Scale from the date on which the recommendation of the Fifth Central Pay Commission (CPC) was to become effective.

6. Learned counsel for the Appellant has pointed out that on 7th August 1998 itself while revising the first pay band of the Primary Teachers (Senior Scale) in terms of the Fifth CPC, it was noted that the present pay band was Rs. 1400-40-1600-50-2300-60-2600 and the revised scale was Rs. 5000- 150-8000. Therefore, the existing scale as of 18th December 2002 was already Rs. 5000-8000 and not Rs. 4500-7000 as noted in the circular dated 18th December 2002. Therefore, there prima facie appears to be an error in noting what the existing pay was and this perhaps has influenced the figure written in the column on 'revised pay' which reads as Rs. 5000-8000 for Primary School Teachers (Senior Scale) which in fact was already the existing pay scale as on that date.

... ”

4. In the aforementioned order, the court sought an explanation apropos the error in the Circular dated 18.12.2002. The compliance affidavit filed on behalf of the Ministry of Social Justice and Empowerment ('MSJE')/R-1 states, *inter-alia*, as under:

“ ...

5. That the Institute revised the pay scale of teachers as per Schedule A of the 5th Pay Commission w.e.f. 01.01.1996 and the petitioner was given the pay scale of Rs.5000-8000/-. Part B of the revised pay scale 1997 was under examination of standing committee of the

Institute and Ministry of Social Justice & Empowerment.

6. That vide order dated 18.12.2002 the Government of India, Ministry of Social Justice & Empowerment revised the pay scale of the National Institutes which had been under consideration of the said Ministry. This revision was a result of consultations with the Internal Finance Division of the Ministry and Department of Expenditure, Ministry of Finance. The said sanction also had the concurrence of Ministry of Finance, Department of Expenditure vide their U.O. No.6(14)/E.III-(B)/2000 dated 2.1.2002. The said order came into force w.e.f. 18.12.2002 i.e. the date of issuance of the sanction letters. As per the said sanction the pay scales of Primary School Teacher (Senior Scale) were revised from Rs.4500-7000/- to Rs.5000-8000/-.

7. That it is submitted that in pursuance of the Hon'ble High Court order dated 04.12.2018, Ministry of Finance, Department of Expenditure was requested to advise whether the higher scale of Rs.5500-9000/- may be given to the Petitioner as she was already drawing the pay scale of Rs.5000-8000/-. Ministry of Finance, Department of Expenditure returned the proposal and advised that:-

I. As per S. No. VII of Part-B of the First Schedule to the COS (Revised Pay) Rules, 1997, The Primary School Teacher (Senior Scale) in the pre-revised (4th CPC) pay scale of Rs. 1400-2600/- has been granted the revised pay scale of Rs.5000-150-8000 with effect from 1.1.1996. Hence the pay scale of Primary School Teacher (Senior Scale) stands Rs.5000-8000 w.e.f. 1.1.1996.

II.As regards, Ministry of Human Resource

Development's letter dated 07.08.1998 and its subsequent letter dated 04.04.2002, this department was advised to consult Ministry of Human Resource Development.

8. *That as suggested by Ministry of Finance, Department of Expenditure, Department, vide letter dated 3rd April, 2019, requested Ministry of Human Resource Development to clarify the position as advised.*

9. *That Ministry of Human Resource Development vide O.M. No. 5-4/2019-UT-I dated 22.04.2019 replied that the Cabinet at its meeting held on 19.03.2002 approved the proposal of their Note dated 22.02.2002. Accordingly, the Ministry of Human Resource Development issued the order dated 4.4.2002 granting the senior and selection scales to the Primary School Teachers (Senior Scale) from 5000-8000/- to 5500-9000/- and Selection Scales of Primary School Teachers from 5500-9000/- to 6500-10500/- w.e.f. 1.1.1996 as approved by the Cabinet.*

Copy of O.M. No. 5-4/2019-UT-I dated 22.04.2019 issued by Ministry of Human Resource Development is being placed on record as Annexure- A-1 appearing from page no... .to.....

10. *That it is submitted that the order dated 07.08.1998 issued by the Ministry of HRD is not applicable to the employees of National Institute under the administrative jurisdiction of this Ministry.*
... ”

5. The aforesaid affidavit states that by way of the order dated 04.04.2002 of the Ministry of HRD, the selection scale of Primary Teachers (Senior Scale) was revised from Rs.5000-

8000/- to Rs 5500-9000/- w.e.f 01.01.1996. Therefore, that was the existing pay scale as of 18.12.2002, and not the scale of Rs.4500-7000/-. However, in para 10 it says that the order dated 07.08.1998 issued by the Ministry of HRD is not applicable to the respondent's employees who are under a different Ministry. Therefore, the said monies were not payable. The said contention is bald and untenable, and cannot be a ground to deny the petitioner the benefits of the revised pay scale. The Circular of 04.04.2002 was regarding "Revision of Pay-Scales (Senior and Selection Scales) for Primary School Teachers in the employment of Government of India, in the Union Territories and other autonomous bodies sponsored by the Government of India." The respondent is covered by the said Circular.

6. Insofar as R-1/MSJE has itself accepted that the revised pay scale of Primary Teacher (Senior Scale) was Rs.5000-8000/- w.e.f 01.01.1996. The revision of pay scales by Circular dated 04.04.2002 should have been and was rightly revised to Rs.5500-9000/-. Nothing further is required to be examined and the same will be applicable to the appellant.
7. In view of the above, the appeal is allowed. The revised pay scales of Primary Teacher (Senior Scale) as of the said date shall be read as Rs.5500-9000/-. The impugned order is modified accordingly. All consequential benefits in terms of this order shall be made available to the appellant within a period of 8 weeks from the receipt of a copy of this order.

8. The appeal is disposed-off in terms of the above.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

APRIL 28, 2023

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