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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10847/2022, CM APPLs. 31533/2022 & 31534/2022**
MS ANJU CHAWLA & ORS.Petitioners
Through: Mr. Mithilesh Kumar Singh,
Mr. Dharmendra Kishor and Mr. Ashutosh
Tiwari, Advs.

versus

GOVT OF NCT OF DELHI & ORS.Respondents
Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat, Advs. for
R-1 to 3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT(ORAL)

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16.10.2024

C.HARI SHANKAR, J.

1. The petitioners were the respondents before the learned Central Administrative Tribunal, Principal Bench, New Delhi¹ in OA 733/2021.

2. Respondents 5 to 13² in the present writ petition were employed in schools under the Directorate of Education, Government of

¹ "the learned Tribunal", hereinafter
² hereinafter collectively "the respondents"



National Capital Territory of Delhi³. They had initially been appointed as Post Graduate Teachers in various subjects and had been successively promoted as Vice-Principal and thereafter as Principal, between the years 2010 and 2012, against vacancies pertaining to the years 2005-06 to 2008-09. The post of Principal, as per the applicable Recruitment Rules, was to be filled 50% by direct recruitment and 50% by promotion.

3. During the years 2014 and 2017, i.e., much after the respondents have been promoted to the post of Principal, the present petitioners were directly recruited as Principal.

4. Following this, a tentative seniority list was issued on 5 November 2018, in which the respondents, who had been promoted as Principal prior in point of time to the direct recruitment of the petitioners as Principal, were shown above the petitioners. In other words, the earlier promotes were shown senior to the later Direct Recruits⁴. This, according to the respondents, represented the correct seniority position, as it was based on the date of entry in the cadre of Principal, whether as DR or as promotee. An earlier entrant was shown as senior to a later entrant.

5. Eight years thereafter, however, a fresh seniority list of Principals came to be circulated by the DOE on 3 November 2020. In the said seniority list, the petitioners (the later DRs) were placed above the respondents (the earlier promotees).

³ “the DOE, GNCTD” hereinafter

⁴ “DRs” hereinafter



6. Aggrieved thereby, the promotee respondents instituted OA 733/2021 before the learned Tribunal, submitting that, as they had been promoted and had joined as Principal much prior to the DR petitioners, the petitioners could not be placed above them, by according them seniority from dates on which they had not even been born on the cadre of Principal.

7. Before the learned Tribunal, it was an admitted position that the seniority, in the seniority list dated 3 November 2020, had been fixed on the basis of the judgment of the Supreme Court in *UOI v N.R. Parmar*⁵.

8. The learned Tribunal has, by the impugned judgment, noted that the decision in *Parmar* was overruled by the subsequent judgment of the Supreme Court in *K. Meghachandra Singh v Ningam Siro*⁶, which holds that the seniority, whether of DRs or promotees, has to be reckoned from the date on which the concerned officer or employee joins her, or his, post, whether as a DR or as a promotee, and becomes part of the cadre, and cannot be reckoned from any earlier date. The Supreme Court specifically held that the seniority of direct recruits could not be granted from dates on which they were not even borne on the cadre and held the decision to that effect, as contained in *Parmar*, not to be correct law.

⁵ (2012) 13 SCC 340

⁶ (2020) 5 SCC 689



9. While so holding, the Supreme Court, in para 39 of the report in *Meghachandra*, protected the cases of *inter se* seniority already based on *Parmar*.

10. The learned Tribunal held that, as the seniority list dated 3 November 2020 had been issued after *Meghachandra* had been rendered, and there was no prior seniority list in existence, the seniority list was unsustainable as it was contrary to the law laid down in *Meghachandra*. Accordingly, the learned Tribunal set aside the seniority list dated 3 November 2020 and has directed the seniority of Principals to be redrawn keeping in mind the law laid down in *Meghachandra*.

11. This Bench has considered this aspect in some detail in its recent judgment in *ICAR v Yugal Kishore Sah*⁷. We have taken the view that the saving clause contained in para 39 of *Meghachandra* would apply only in case the seniority of the concerned officers/employees has been fixed by way of drawing up of a seniority list prior to the rendition of the decision in *Meghachandra*. Where the seniority list is drawn up for the first time after *Meghachandra* was rendered, we have held that seniority list has to subscribe to the law laid down in *Meghachandra* irrespective of the date of recruitment of the DRs or promotees whose *inter se* seniority is being fixed.

12. Mr. Mithilesh Kumar Singh, learned Counsel for the petitioners has drawn our attention to an Office Memorandum⁸ dated 13 August

⁷ W.P.(C) 14126/2024 in Judgment dated 07.10.2024

⁸ "QM" hereinafter



2021 issued by the Department of Personnel and Training⁹, particularly emphasizing para 7 (ii) and (iii) of the said OM, which may be reproduced thus:

“7. Based on the above, it has been decided to modify the instructions relating to determination of inter se seniority between promotees and direct recruits as under:-

ii. As the Order dated 19.11.2019 is prospective cases of inter se seniority of direct recruits and promotees, already decided in terms of O.M. No. 20011/1/2012-Estt.(D) dated 4.3.2014, shall not be disturbed, i.e. old cases are not to be reopened.

iii. *In case of direct recruits and promotes appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case inter se seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, unless where a different formulation/manner of determination of seniority has been decided by any Tribunal or Court.”*

(Emphasis supplied)

13. Para 7(iii) of the aforesaid OM does not accord with our understanding of **Meghachandra**, as explained in detail in **Yugal Kishore Sah**. It is clearly an executive instruction, and is not a rule within the meaning of para 39 of the judgment in **Meghachandra**. **Meghachandra** expressly overrules **Parmar**, declaring it to be bad law. In our view, having done so, **Meghachandra** cannot be understood to have permitted seniority to be fixed on the basis of the overruled judgment in **Parmar**. Fixation of seniority, post **Meghachandra**, has, in our view, to abide by **Meghachandra**, and cannot be effected on the basis of **Parmar**. The fact that the DRs and



promotees, in respect of whom the seniority was being fixed, may have been recruited prior to *Meghachandra*, cannot alter this position, and allow fixation of their seniority on the basis of the overruled *Parmar*. We cannot understand para 39 of *Meghachandra* to hold that, despite *Parmar* having been specifically held to be incorrectly rendered, and expressly overruled, the Supreme Court nonetheless permits seniority, in respect of DRs, or promotees, recruited prior to *Meghachandra*, to be fixed on the basis of *Parmar*. What para 39 of *Meghachandra* protects, in our view, is only inter se seniority which stands fixed, on the basis of *Parmar*, before *Meghachandra* was rendered. That, in our view, is the correct interpretation to be placed on the expression “inter se seniority already based”, as employed in para 39 of *Meghachandra*. Where there has been no *Parmar*-based determination of inter se seniority between DRs and promotees prior to the rendition of the judgment in *Meghachandra*, this saving caveat would have no application. Simply put, post-*Meghachandra*, inter se seniority would have to abide by the law declared in *Meghachandra*, and resort to the overruled *Parmar* decision would be completely ruled out.

14. Para 7(iii) of the DOPT OM dated 13 August 2021, which observes otherwise, is, in our view, clearly erroneous in law. It cannot be followed, in preference to the judgment of this Court in *Yugal Kishore Sah*.

15. The learned Tribunal was, therefore, perfectly justified in setting aside the seniority list dated 3 November 2020 and directing a



fresh seniority list of Principals to be drawn up on the basis of the law declared in *Meghachandra*.

16. We, therefore, find no reason to interfere with the impugned judgment, which is accordingly upheld in its entirety. The writ petition is, therefore, dismissed.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 16, 2024/N

Click here to check corrigendum, if any