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

+ **W.P.(C) 9971/2024 and CM APPL. 40838-40839/2024**

PIRAIVANMATHI P

.....Petitioner

Through: Ms. Srishti Agnihotri, Ms. Ayushma Awasthi and Ms. A. Reyna Shruti, Advocates.

versus

DIRECTORATE OF EDUCATION AND ORS.Respondents

Through: Mr. Gaurav Dhingra and Mr. Shashank Singh, Advocates for Respondent No.1/DOE.

Mr. Mayank Bhargava and Mr. Kartikeye Dang, Advocates for Respondent No.2.

Mr. Rishabh Sahu, SPC with Mr. Anubhav Tyagi, GP and Mr. Sameer Sharma, Mr. Gaurav Shukla and Ms. Pooja Suri, Advocates for Respondent No.4/DOI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.07.2024

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1. This writ petition has been preferred on behalf of the Petitioner seeking the following reliefs:

“a) Direct the Respondent No. 2 to furnish the service records of the Petitioner, including the seniority list/roaster maintained under the relevant rules;

b) Issue a writ of mandamus or such other direction or order, directing the Respondent No. 2 to consider the Petitioner for promotion to the post of PGT (English) in accordance with the PGT Recruitment Rules, 2022 and ignore the belatedly communicated ACRs/APARs of the Petitioner for the years 2014-15 to 2019-20;

c) Issue a writ, order or direction quashing the adverse remarks against the Petitioner under the ACRs/APARs for the years 2014-15 to 2020-21;

d) Issue a writ, order or direction granting the Petitioner the benefit of Modified Assured Career Progression Scheme-II [“MACPS-II”]; and



e) Pass such other or further order or direction as this Hon'ble Court may deem fit in the light of justice and equity."

2. Petitioner is a TGT working at the Delhi Tamil Education Association (Regd.) School, Pusa Road (hereinafter referred to as 'School') and seeks a direction to consider her case for promotion to the post of PGT (English) in accordance with the PGT Recruitment Rules, 2022 ignoring the belatedly communicated ACRs/APARs which were downgraded and/or contain adverse remarks.
3. From a plain reading of the writ petition, it appears that the grievance of the Petitioner is that her ACRs/APARs for the years 2014-15 to 2020-21 have been downgraded/contain adverse remarks based on extraneous considerations and *mala fide* and were belatedly communicated against the law laid down by the Supreme Court in ***Dev Dutt v. Union of India and Others, (2008) 8 SCC 725*** and DoPT O.M. dated 14.05.2009 *inter alia* stating that full APAR including overall grade and assessment of integrity shall be communicated to the concerned officer. Additionally, it is urged that Rule 112 of the Delhi School Education Rules, 1973 ('1973 Rules') mandates that any adverse entry in the confidential report shall be communicated to the employee.
4. Learned counsel for the Petitioner submits that representations have been made to the School and the Directorate of Education for ignoring the uncommunicated ACRs/APARs and for considering her case for promotion to the post of PGT (English) and 2nd financial upgradation under the Modified Assured Career Progression-II (MACP-II) Scheme but there is no response.
5. From the averments in the writ petition, it emerges that it was only on



24.05.2022 that Petitioner was supplied with copies of ACRs/APARs for the years 2014-15 to 2020-21 in which she has been graded as 'Above Average', 'Good', 'Good', 'Average', 'Good' and 'Average' respectively. However, none of the representations placed on record show that Petitioner has challenged the downgradings and/or the adverse remarks and by sketchy representation has only sought for a consideration for promotion to PGT (English) and MACP benefits. The law on communication of ACRs/APARs was laid down by the Supreme Court in **Dev Dutt (supra)**, in the following terms:-

"12. It has been held in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the ACR of a public servant is arbitrary because it deprives the employee concerned from making a representation against it and praying for its upgradation. In our opinion, every entry in the annual confidential report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. v. Yamuna Shanker Misra [(1997) 4 SCC 7 : 1997 SCC (L&S) 903] . Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

13. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.



14. *In most services there is a gradation of entries, which is usually as follows:*

- (i) Outstanding*
- (ii) Very Good*
- (iii) Good*
- (iv) Average*
- (v) Fair*
- (vi) Poor*

A person getting any of the entries at Items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the authority concerned.

15. *If we hold that only “poor” entry is to be communicated, the consequences may be that persons getting “fair”, “average”, “good” or “very good” entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit).*

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17. *In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.*

18. *Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.*

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22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

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36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

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41. In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”



6. These principles laid down in *Dev Dutt (supra)*, were reiterated by the Supreme Court in *Sukhdev Singh v. Union of India and Others, (2013) 9 SCC 566*. Therefore, there is merit in the contention of the Petitioner that the ACRs/APARs which are downgraded/containing adverse remarks ought to have been communicated on time to the Petitioner, enabling her to represent against the same. At this stage, considering that Petitioner has not made a comprehensive representation against the below benchmark gradings, this writ petition is disposed of granting liberty to the Petitioner to prefer a detailed and comprehensive representation against the impugned ACRs/APARs. As and when the representation is made, Respondent No. 2 shall consider the same within a period of four weeks from the date of receipt, in accordance with law. The decision shall be communicated to the Petitioner within one week thereafter and she will be at liberty to take recourse to legal remedies, in case of any surviving grievance. Needless to state, if the impugned ACRs/APARs are upgraded and/or adverse remarks are expunged, case of the Petitioner shall be considered for promotion to the post of PGT (English) in accordance with PGT Recruitment Rules, 2022 as well as for grant of financial upgradation under MACP-II. It is made clear that this Court has not expressed any opinion on the merits of the case.

7. Pending applications stand disposed of.

JYOTI SINGH, J

JULY 22, 2024

B.S. Rohella/shivam