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

+ **W.P.(C) 17677/2024**

BASANT KUMAR JAIN

.....Petitioner

Through: Ms. Sonika Gill and Ms. Vatsala
Gaur, Advocates.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Anshuman, SPC with Mr. Gokul
Sharma, Advocate for R-1.

Mrs. Avnish Ahlawat, Standing Counsel with Ms.
Laavnaya Kaushik, Advocate for R-2 and R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

20.12.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking quashing of impugned order/circular dated 03.03.2023 aggrieved by the fact that Directorate of Education ('DoE'), Government of National Capital Territory of Delhi ('GNCTD'), has decided to extend the benefit of the judgment dated 27.02.2015 passed in OA No. 2639/2012 upheld by this Court and finally by the Supreme Court only to the applicants therein on the ground that the judgment is a judgment *in rem*. Direction is sought to the Respondents to grant first and second financial upgradations to the Petitioner under the Modified Assured Career Progression Scheme ('MACP').

2. Petitioner was appointed to the post of PGT/Lecturer (Commerce) on 21.11.1978 in Respondent No.4 School which is an aided School, in the pay



scale of Rs.550-900 (pre-revised). He was granted senior scale on completion of 12 years of service and financial upgradation under ACP Scheme on completion of 24 years of service in PB-3 with Grade Pay of Rs.7,600/- w.e.f. 01.01.2006.

3. Petitioner avers that on implementation of 6th CPC recommendations, CCS (Revised Pay) Rules, 2008 were notified as per which pay scales of Principal, Education Officer and Deputy Director of Education were identical. MACP Scheme was introduced by Government of India vide O.M. dated 19.05.2009 and vide order dated 27.05.2009, GNCTD adopted the Scheme, in furtherance whereof DoE issued a circular on 19.08.2009 and vide letter dated 22.10.2009, directly recruited Principals and Education Officers were to be placed in Grade Pay of Rs.8,700/-, Rs.8,900/- and Rs.10,000/- in PB-4 on grant of first, second and third financial upgradations under the MACP Scheme.

4. It is stated that DoE initiated the process of grant of financial upgradations but benefits were not granted to Principals and Education Officers leading to number of representations by them including the Petitioner who sought Grade Pay of Rs.8,700/- under the MACP Scheme. Similarly placed employees working in Government Schools filed OA No. 2639/2012, which was allowed by the Central Administrative Tribunal ('Tribunal') vide judgement dated 27.02.2015 directing the Respondents therein to grant Grade Pay of Rs.8,700/- in PB-4. The judgement was assailed by the Respondents and W.P.(C.) 9266/2015 was dismissed by this Court vide judgment dated 09.05.2016 and SLP (C) 6860/2017 was dismissed on 03.08.2022. Applicants in the O.A. also challenged the Tribunal's order to the limited extent the Tribunal had directed grant of first



financial upgradation from the date of order of the Tribunal in W.P. (C) No. 5106/2016. This writ petition was disposed of on 12.10.2022 by the Division Bench setting aside the order of the Tribunal to the extent impugned and directing that the applicants will be entitled to draw salary in the new Grade Pay from the date of implementation of the scheme or their respective entitlement, whichever was later.

5. Following the decisions of the Courts, Petitioner again made a representation for extending the benefit of the judgment of the Tribunal by granting first financial upgradation in Grade Pay of Rs.8,700/- in PB-4. Grievance of the Petitioner is that vide order dated 03.03.2023, DoE decided to implement the judgment but restricted the benefit to the applicants only, basis some communication received from Ministry of Home Affairs, which is not known to the Petitioner.

6. Learned counsel for the Petitioner submits that judgement of the Tribunal as upheld by the Supreme Court is a judgment *in rem* and therefore, all similarly placed persons must be given its benefit. Petitioner is identically placed as the applicants before the Tribunal and fulfils the conditions of the MACP Scheme. It is argued that the Supreme Court in ***State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others, (2015) 1 SCC 347***, has held that when a particular set of employees are given relief by the Court, all identically placed persons must be treated similarly.

7. Issue notice.

8. Counsels, as above, accept notice on behalf of the respective Respondents.

9. Broadly understood, case of the Petitioner is that he is entitled to a



financial upgradation under the MACP Scheme in the Grade Pay of Rs.8,700/- in PB-4 and is entitled to the benefit of the judgment of the Tribunal passed on 27.02.2015 in OA No. 2639/2012 which has been upheld by the Supreme Court in SLP (C) 6860/2017. Petitioner urges that the judgment is *in rem* and therefore, benefit must be granted to all similarly placed persons including the Petitioner. The impugned circular dated 03.03.2023 issued by DoE indicates that benefit of the judgment has been restricted to the applicants and as rightly placed by the Petitioner, the decision is apparently based on some communication from MHA. There is no clarity on why the benefit of the judgment is restricted to the applicants and cannot be granted to the Petitioner who has made repeated representations claiming to be similarly placed.

10. In my view, at this stage, it would be appropriate to dispose of the writ petition with a direction to treat this writ petition as a representation as there is no clarity and reasoning in the impugned order/circular. Accordingly, it is directed that Respondents No.2 to 4 shall treat this writ petition as a representation and look into the grievances raised by the Petitioner with respect to financial upgradation under the MACP Scheme. The decision will be taken within two months from today. Needless to state if the Petitioner's case is covered by the judgment as aforementioned, his case will be considered for grant of the MACP benefit as per law forthwith. In case the decision is otherwise, a reasoned and speaking order shall be passed, which shall be communicated to the Petitioner and he shall be at liberty to take recourse to legal remedies, if so advised.

JYOTI SINGH, J

DECEMBER 20, 2024/shivam