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

+ W.P.(C) 7833/2012

RAMA GOPALAKRISHNANPetitioner

Through: Mr. Rajat Joseph, Advocate.

versus

GOVT. NCT OF DELHI AND ORSRespondents

Through: Ms. Latika Choudhary, Advocate for
R1.

Mr. Nikhil Palli and Ms. Niyati Razdan,
Advocates for R3 and R4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.12.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India laying a challenge to order dated 17.03.2009 whereby representation of the Petitioner for grant of financial upgradation under Assured Career Progression ('ACP') Scheme w.e.f. 09.08.1999 has been rejected as also to order dated 24.01.2012 whereby instead of grating ACP benefit, the School simply intimated to Director of Education that Petitioner lacked the requisite qualification for grant of ACP and that the process for grant of upgradation under Modified Assured Career Progression ('MACP') Scheme had been initiated and Petitioner was also considered. Direction is sought to Respondent No.3/Air Force Bal Bharti School ('School') to grant benefits under the ACP and MACP Schemes with arrears and interest.



2. Facts to the extent relevant are that Petitioner was appointed as Trained Graduate Teacher ('TGT') by the School w.e.f. 22.07.1974. In July 1986, she was placed in the senior scale after completing 12 years of service. DoPT, Government of India introduced the ACP Scheme vide O.M. dated 09.08.1999 for Central Government Civilian Employees. Petitioner made a representation dated 07.02.2000 to the School seeking financial upgradation under the ACP Scheme but was informed that she would be granted selection scale from 01.07.2000 instead. By a notification dated 26.05.2003, Directorate of Education ('DoE')/Respondent No.2 made the ACP Scheme applicable to teachers working in the Schools run by Government of NCT of Delhi w.e.f. 09.08.1999.

3. Petitioner again represented on 10.04.2006, followed by reminders till 16.03.2009, but there was no response. On 04.06.2011, DoE wrote to the School that their stand of not granting ACP to the Petitioner was not correct. Petitioner was given selection scale in July 2000, which Scheme itself was not in operation due to implementation of ACP Scheme from 09.08.1999 and since the Petitioner fulfilled the promotional norms for the post of PGT (History) as per Recruitment Rules ('RRs'), her case be considered for ACP. By letter dated 24.01.2012, the School reiterated its stand of lack of requisite qualifications but stated that Petitioner was being considered under the MACP Scheme.

4. It is averred that Petitioner again wrote to the School on 06.02.2012 asserting that requisite qualification for grant of financial upgradation under the ACP Scheme is Post-graduate degree in any subject and the fact that Petitioner was called for DPC for the post of PGT (History) earlier established that she was duly qualified. However, Petitioner has not been



granted any benefit till date.

5. Learned counsel for the Petitioner submits that Petitioner possesses educational qualifications of B.Sc. (Science), M.A. (History) and B.Ed. She was placed in senior scale after 12 years of service in July, 1986 and was given the selection scale in July, 2000. In the meanwhile, the ACP Scheme was introduced and it was decided by the DoE to implement the same for all teachers in the Schools run by Government of NCT of Delhi and in this light, it was decided by the School to review the case of the Petitioner for grant of ACP instead of the selection scale. Petitioner was, however, not granted ACP on the ground that she was not a post-graduate in the Science subject, i.e. Chemistry which she taught, which was an incorrect understanding of the rule position inasmuch as the condition of possessing higher qualification in the same subject is applicable only to Language Teachers and not Science Teachers and in this context, learned counsel draws the attention of the Court to the Recruitment Rules notified on 10.07.1975 and as amended up to 04.11.1999. It is urged that since Petitioner has a Master's degree in History, she is entitled to financial upgradations under ACP Scheme as she fulfils the norms for promotion to the post of PGT (History) and was also called for consideration by the DPC.

6. Insofar as financial upgradation under the MACP Scheme is concerned, the case of the School is that Petitioner does not meet the required benchmark of 'Good' prescribed in O.M. dated 10.05.2009 for grant of MACP since out of the five ACRs in reckoning from 2003-04 to 2007-08, three ACRs are 'Average'. However, the School overlooks the fact that if the ACRs were below benchmark, they ought to have been communicated. Even today, the School asserts that communication was



made but significantly the communication was only of an information that the ACRs were below benchmark and/or 'Average' but there is no material with the School to establish that the ACRs were in fact communicated in consonance with the settled law. In this context, learned counsel relies on the judgments of the Supreme Court in *Dev Dutt v. Union of India and Others*, (2008) 8 SCC 725 and *Sukhdev Singh v. Union of India and Others*, (2013) 9 SCC 566.

7. Learned counsel for the School, on the other hand, contests the petition on the ground that as per RRs for appointment to the post of PGT through direct recruitment, Master's degree or its equivalent in the subject concerned from recognised university is an essential qualification. As per Column 8 of the RRs, qualifications specified in Column 11 are mandatory for promotion. Petitioner seeks financial upgradation under the ACP Scheme in the scale of PGT (History), however, she has never taught in the said subject. Petitioner is a B.Sc. in Chemistry and has been teaching in the said subject and in the absence of Master's degree in Chemistry and without teaching in history, she cannot claim the ACP benefit. As for financial upgradation under the MACP Scheme, learned counsel submits that as per O.M. dated 19.05.2009 for upgradation under MACP Scheme, the benchmark of 'Good' is applicable till the Grade Pay of Rs.6600/- in PB-3 but the Petitioner does not meet the benchmark as three out of five ACRs in reckoning have gradings of 'Average'.

8. Heard learned counsels for the parties and examined their rival contentions.

9. It is not in dispute that Petitioner joined the School in July 1974 as TGT (Chemistry) with educational qualifications being B.Sc. (Science),



B.Ed. and M.A. (History). It is equally undisputed that Petitioner was granted senior scale after 12 years of service in July, 1986 and selection scale in July, 2000. In the meantime, ACP Scheme was introduced by DoPT vide O.M. dated 09.08.1999 and in Clause 9, it was provided that cases where senior scale/selection scale had been granted on or after 09.08.1999, could be reviewed. DoE decided to implement the ACP Scheme for all teachers working in the Schools run by Government of NCT of Delhi w.e.f. 09.08.1999. There is no dispute that ACP Scheme is applicable to the Petitioner.

10. The narrow controversy with respect to the ACP Scheme in the present case is that according to the School, in order to qualify for PGT (Chemistry), Petitioner is required to have a PG degree in Chemistry in which she has the undergraduate degree and which is the subject she taught. Petitioner had also applied for PGT (History) in view of her Master's degree in History but a TGT (Chemistry) cannot be promoted to the post of PGT (History) as she is not a teacher in that subject.

11. In order to resolve this issue, the Recruitment Rules will be relevant. It is true that Petitioner is a TGT (Chemistry) and has been teaching Chemistry as a subject. She applied for promotion for both the posts, i.e. PGT (Chemistry) and PGT (History). Petitioner states that she was considered by the DPC for PGT (History) but promotion was not granted and she now seeks financial upgradation under ACP Scheme to the next post of PGT. RRs for the post of PGT have been placed on record by the Petitioner. The RRs are applicable for the post of PGT (History), is beyond dispute. Column 7 of the RRs provides that Master's degree or its equivalent in the subject concerned from a recognised university is the essential



qualification for direct recruitment for PGT posts. Column 8 stipulates that for promotion qualifications to the extent mentioned in Column 11 will apply. Column 11 provides essential qualifications for promotion as TGT. Para 2 in Column 11 is in two parts. The first part stipulates that *“For the post of Lecturer in Hindi, Sanskrit, Punjabi etc. only Trained Graduate Teachers/language Teachers in Sanskrit and Modern Indian Language concerned will be considered for promotion in their respective subjects.”*. The second part deals with posts in other subjects and as rightly put forth by counsel for the Petitioner would include PGT (History). Second part of para 2 reads as *“For the post of lecturer in other subjects only Trained Graduate Teachers (Science ‘A’ Science ‘B’, Commerce, Agriculture and General) will be considered.”*. From a plain reading of para 2, it is clear that the condition to possess higher qualification in the same subject is applicable to language teachers and not to science teachers and therefore, as rightly contended on behalf of the Petitioner, her Master’s degree in History cannot be an impediment in considering her case for financial upgradation under the ACP Scheme as there can be quarrel with the legal proposition that for benefit under the ACP Scheme, all promotional norms are required to be fulfilled. Petitioner has thus, made out a case of consideration of her case for first financial upgradation under the ACP Scheme.

12. Insofar as the MACP Scheme is concerned, there can be no debate that as per O.M. dated 19.05.2009, the benchmark required to be achieved for MACP benefit is ‘Good’ till Grade Pay of Rs.6600/- in PB-3. As per the additional affidavit filed by the School, the ACRs in reckoning for grant of MACP to the Petitioner are from 2003-04 to 2007-08. It is the stand of the School that three ACRs of the Petitioner, i.e. 2003-04; 2006-07; and 2007-



08 have gradings of 'Average' and are thus, below the benchmark. In light of this position, it was an obligation of the School to communicate the below benchmark ACRs to the Petitioner. This obligation cannot be put to any debate in light of the landmark judgment of the Supreme Court in ***Dev Dutt (supra)***. While the School contends that the 'Average' gradings were communicated, Petitioner has been consistently denying this position. On a pointed query, counsel for the School is unable to produce records to evidence the communication of the below benchmark ACRs to the Petitioner and in fact, a stand is taken that the said record is untraceable. In light of this position, the benefit must enure to the Petitioner and the ACRs, as aforementioned, must be communicated.

13. Accordingly, this writ petition is allowed with the following directions:

- (a) Petitioner's case will be considered for grant of the first financial upgradation under the ACP Scheme w.e.f. from the date of her eligibility, i.e. 09.08.1999;
- (b) ACRs for the period 2003-04 to 2007-08 will be communicated within a period of 6 weeks from the date of receipt of this order and upon representation being received, the same shall be considered as per law;
- (c) Case of the Petitioner shall be considered for grant of second MACP under the MACP Scheme after consideration of the representation with respect to the ACRs in the reckoning.
- (d) Needless to state that if the Petitioner is found fit for grant of the financial upgradations, the same shall be granted to her and arrears will be released. Since the Petitioner has superannuated, in case of



grant of the financial upgradation(s), revision will be carried out in her retiral benefits.

(e) The entire exercise will be completed within four months from today.

14. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 3, 2024/jg