

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

+ W.P.(C) 13790-807/2006

KANWAR SINGH & ORS. Petitioner
Through Mr. Raman Duggal, Advocate.

versus

MCD Respondent
Through Ms. Smita Shankar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
30.05.2008

1. The petitioners 1-17 are working as Additional Directors and Deputy Education Officers in the Department of Education of Municipal Corporation of Delhi. They have filed the present writ petition seeking direction in the nature of mandamus to implement Resolution No. 475 dated 21st November, 2005 passed by the respondent Corporation along with consequential benefits. The second direction sought for in the writ petition is that the respondent Corporation should re-fix and release monthly salary as per revised pay scale approved by the Corporation vide Resolution No. 475 dated 21st November, 2005 and notified by the Additional Deputy Commissioner (Education) vide Office Order dated 28th December, 2005.
2. Learned counsel for the petitioner admits that the Resolution No. 475

dated 21st November, 2005 has been implemented. Monthly salary of the petitioners 1-17 has been re-fixed and pay released. This fact is also mentioned in the order dated 3rd December, 2007. Learned counsel for the petitioner, however, submits that petitioners 1-17 are entitled to interest as the enhanced salary was belatedly released. He relies upon Office Order dated 28th December, 2005 issued by Additional Deputy Commissioner (Education) pursuant to which the pay scales of the Education Officer-cum-Director, Additional Director and Deputy Education Officer were revised with effect from 1st January, 1996. It is also submitted that subsequent resolution passed by the Corporation on 11th December, 2006 being Resolution No. 541 was only reiteration of the earlier resolution. It is submitted that after Office Order dated 28th December, 2005 was passed, a legal right accrued to the petitioners to claim enhanced/revised pay scale with effect from 1st January, 1996. In support of his contention, learned counsel for the petitioners has relied upon two judgments of this Court in the case of ***Union of India and Another versus Rattan Singh***, reported in 139 (2007) DLT 629(DB) and ***Roshan Lal and Others versus DTC***, reported in 140(2007) DLT 49.

3. Learned counsel for the respondent-MCD, on the other hand, submits that after Resolution No. 475 dated 21st November, 2005 was passed, it

could not be implemented because concurrence of the Finance Department was not obtained. It is further stated that there were no common grounds for comparison or revision of pay scales. The final decision for revision of pay scales was taken vide Office Order dated 28th September, 2007 and, therefore, there was no delay in payment of revised/enhanced pay scale and thus question of payment of interest does not arise.

4. The respondents in their counter affidavit have not denied that Office Order dated 28th December, 2005 was issued by the Additional Deputy Commissioner (Education). As per the said Office Order, the Resolution No. 475 dated 21st November, 2005 was approved and the pay scales of Education Officer-cum-Director (Primary Education), Additional Director (Primary Education) and Deputy Education Officer were revised with effect from 1st January, 1996. The said revision was done for removal of anomalies. The Office Order records that the said order was notified for information and necessary action by all concerned. The respondent-MCD has not withdrawn the said Office Order. It is not the case of the respondent-MCD that the said Office Order was passed contrary to the provisions of the Delhi Municipal Corporation Act, 1957 and is ultra vires. It is also not the case of the respondent Corporation that the said Office Order could not have been issued by Additional Commissioner (Education).

If any concurrence was required from the Finance Department, the same was an internal matter of the respondent-Corporation. Under the statute no such concurrence was required.

5. I may note here that the learned counsel for the petitioner has drawn my attention to the Resolution No. 475 dated 21st November, 2005, which records that the proposal for revision of pay scales was referred to the Finance Department, who had concurred with the same by observing that the finance had no objection to the revision of pay scales. In case there was any default or mistake, the proper way for the respondent was to withdraw the said Office Order dated 28th December, 2005. This was admittedly not done. Therefore, the respondent Corporation should have paid the amount towards arrears in terms of Office Order dated 28th December, 2005 within a reasonable time.

6. The plea of the respondent-MCD that after Office Order dated 28th December, 2005 had been passed, there was re-examination and it was felt that the comparison between pay scales of MCD and that of officers working in Government of NCT of Delhi cannot be made, cannot justify the delay in execution of the office order. If at all, these aspects were required to be considered, they had to be gone into before Office Order dated 28th December, 2005 was passed. Admittedly, all objections as are raised by

the MCD were found to be without merit and force, as the petitioners 1-17 have been paid revised/enhanced pay scales. Accordingly, I feel that the petitioners should be paid interest for the belated payment made by the respondent Corporation in terms of Office Order dated 28th December, 2005 with effect from 1st July, 2006 onwards. I have fixed the date 1st July, 2006 as the Corporation was entitled to a reasonable time to arrange for funds and make payment after passing of the Office Order dated 28th December, 2005.

7. The other question which has to be decided is the rate of interest. Keeping in view the bank rate interest during this period, the petitioners will be entitled to interest @ 6% per annum. This Court in ***Union of India and Another versus Rattan Singh*** (Supra), had awarded interest as there was delay in payment of relief in terms of Central Fifth Pay Commission, the delay was attributable to the Railways and there was no proper explanation forthcoming for the delay. In the said case accordingly interest was awarded @ 9% and 12% per annum for different periods. In the case of ***Roshal Lal*** (supra), learned Single Judge of this Court observed that payment of interest is not by way of penalty, but a normal accretion on the capital. It is paid because money due and payable to a third person has been retained and utilized by a party, who was liable to pay the said

amount.

8. The writ petition is accordingly disposed of with the direction that the respondent Corporation will pay interest @ 6% per annum on the amount payable in terms of Office Order dated 28th December, 2005 with effect from 1st July, 2006 till the date payment was made. There will be no order as to costs. All pending applications are also disposed of.

SANJIV KHANNA, J.

MAY 30, 2008
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