

**S.B. C. Writ Petition No. 4335/2010.
(Om Prakash Mittal Vs. State of Raj. & ors.)**

Date of Order: 31/03/2010.

HON'BLE MR. MOHAMMAD RAFIQ,J.

Mr Bipin Gupta, for the petitioner.

Counsel submits that controversy raised herein has been decided by DB decision of this Court at principal seat Jodhpur in ***Special Appeal (Writ) 208/06 & bunch of others (State of Rajasthan Vs. Ramniwas Porwal) on 13/12/07 (Per Hon. Mr. Rajesh Balia, J.) (2008(2) WLC 406)*** clarifying the position ad infra:

"However, it may be clarified that because of the provisions made in Note 8 read with Note appended to Rule 6 a Senior Teacher drawing pay in second selection grade of 6500-10500 prior to 1.7.1998 and promoted as Senior Teacher but after 1.7.1989 who has not completed 10 years as Senior Teacher at the time of commencement of the Act his pay in pay-scale of 6500-10500 was protected as personal to him, though he would become eligible to such scale under the new rules of 1998 only on completion of 10 years. In this view of the matter, the rights of the respondents even under the aforesaid provision remain intact and unaffected and it could not have any adverse effect on them. But those who have been promoted as Senior Teachers drawing their pay in Second Selection Grade of 6500-10500 will not be eligible for this pay protection because even under the Rules of 1998 as initially exist, they were to be promoted to Senior Scale, which was Rs.5500-9000 only. But because of lacuna in the Rules originally enacted, not 26 providing any specific provision, their fixation has been wrongly made by considering all Senior Teachers to be of the same category. The initial fixation in higher pay-scale being without any mistake on their part, until Notification of amendment, the resultant recoveries of excess amount paid to them has been waived. But after correction of this lacuna on amendment of Note 8, no such protection has been granted under the Rules. If any such recovery has become due on account of continued drawing of pay by such Senior Teachers promoted after 1.7.1998, due to no mistake or misrepresentation on the part of such incumbents,

they may make appropriate representation to the Government to consider their cases against recovery. Accordingly, with the aforesaid clarification the appeals are allowed. The judgment under appeal declaring Notification dated 8.6.2001 to be ultra vires is set-aside. However, the view which we have taken on interpretation of the Rules, the existing teachers who have been promoted as Senior Teacher in the Second Selection Grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised rules were required to be fixed in lower pay-scale, their continuance in the higher pay-scale was protected as pay-scale personal to them under Note to Rule 6. The rights of all the appellants stand protected to this extent. In that light, the writ petitions filed by the appellants stand allowed to that extent."

A bunch of 62 Special Appeals (Writ) (No. 936/05 State of Rajasthan Vs. Shyam Swaroop Upadhyaya) came up for consideration before Division Bench at Jaipur Bench – that too vide judgment dt.04/04/08 (per Hon.Mr.R.M.Lodha, J.) were disposed of in the light of judgment in State of Rajasthan Vs. Ramniwas Porwal (2008(2) WLC 406) ad infra:

"The existing teachers who have been promoted as Senior Teacher in the second selection grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised Pay rules are required to be fixed in lower pay scale. Their continuance in higher pay scale protected as pay scale personal to them under Note to Rule 6 would remain to that extent."

Consequently, writ petition is hereby disposed of with the direction to the petitioner to make fresh representation within one month and if made, respondent-authority is directed to pass appropriate orders in terms of DB decision in State of Rajasthan Vs. Ramniwas Porwal (supra) and communicate the decision within three months to petitioner who if feels aggrieved, will be free to avail of remedy under law.

(MOHAMMAD RAFIQ),J.