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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : January 28, 2013
Judgment Pronounced on : January 31, 2013

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W.P.(C) 4370/2012

GOVT. OF NCT OF DELHI AND ORS Petitioners
Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

SAROJ KHOSLA AND ORS. Respondents
Represented by: Mr.G.S.Vasisht, Advocate with
Mr.Smriti Vasishst, Advocate for R.1 to 3.

AND

W.P.(C) 5145/2012

GOVT.OF NCT OF DELHI AND ORS Petitioners
Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

VEENA SHARMA Respondent
Represented by: None.

AND

W.P.(C) 5949/2012

GOVT. OF NCT OF DELHI AND ORS Petitioners
Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

VIR SINGH

..... Respondent

Represented by: None.

AND

W.P.(C) 6507/2012

GOVT. OF NCT OF DELHI AND ORS

..... Petitioners

Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

USHA AGARWAL

..... Respondent

Represented by: Mr.Rana Ranjit Singh,
Advocate

AND

W.P.(C) 7027/2012

GOVT OF NCT OF DELHI & ORS

..... Petitioners

Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

ASHWANI KUMAR SHARMA

..... Respondent

Represented by: None.

AND

W.P.(C) 7031/2012

GOVT OF NCT OF DELHI & ORS

..... Petitioners

Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

SHASHI BALA

..... Respondent

Represented by: A.K.Trivedi, Advocate.

AND

W.P.(C) 379/2013

GOVT. OF NCT OF DELHI AND ORS

..... Petitioner

Represented by: Mrs.Avnish Ahlawat, Advocate
with Ms.Latika Chaudhary, Mr.Nitesh Singh,
Ms.Nazoo Sharma, Advocates.

versus

ANAND KUMAR

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. The genesis of the above-captioned writ petition lies in the events which took place in the year 1984 when High School Education in the Union Territory of Delhi was under the aegis of Delhi Administration and in particular the Directorate of Education. The Staff Selection Board constituted by the Director of Education headed by the Director himself notified 654 vacancies in various disciplines of Trained Graduate Teachers and invited applications from eligible candidates; a requisition was sent to the Employment Exchange to sponsor names of suitable candidates who had got their names registered with the Exchange. The selection process being completed, the names of 1492 candidates were notified as having been selected to be appointed as Trained Graduate Teachers in various

disciplines. And relevant would it be for us to highlight that displayed on the Notice Board (it was the era when internet did not exist) were the names of 1492 candidates with an announcement/commitment/assurance :

‘The appointment will be in the order of merit. That appointment will be made in the Select List till the last candidate is appointed.’

2. It was further notified :

‘The life of the panel of selected candidates will be valid for infinite period..... That the panel of selected candidates will remain valid till all the candidates are offered appointments’.

3. And relevant would it be to highlight that aforesaid commitment/assurance notified was based on decisions taken in the files by the Director of Education in consultation with the various District Level Education Officers, from whom presumably, data was gathered pertaining to the number of existing vacancies in various schools established and run by the Directorate of Education, Delhi Administration.

4. But, at the first instance only 527 candidates were issued letters offering appointment; and in the order of merit. It was followed by letters offering appointment issued to further 127 candidates. Thus, only 654 candidates were issued letters offering appointment; and this was the number of vacancies originally notified. However, as would be apparent to the reader, the number was far less than the number 1492, being the number of candidates enlisted as per merit position in the Select List with an assurance that all of them would be given appointment and that appointment will be made till the last candidate is appointed.

5. The act of the Director of Education to advertise and invite applications from eligible candidates to fill vacancies in the next year resulted in a large number of candidates approaching the Central

Administrative Tribunal whose name was entered in the Select List of 1492 candidates but to whom letters offering appointment were not issued. They relied upon the assurances contained when the Select List was notified; being the ones we have noted herein above in para 1 and 2. The Department defended the onslaught by urging two points. Firstly, it was impermissible to appoint candidates in excess of the vacancies notified and secondly that only 654 vacancies existed. But, the Department could not justify its act of assuring to the 1492 selected candidates that : *‘The appointment will be in the order of merit. That appointment will be made in the Select List till the last candidate is appointed.’**‘The life of the panel of selected candidates will be valid for infinite period..... That the panel of selected candidates will remain valid till all the candidates are offered appointments’.*

6. The verdict was in the favour of the candidates and a direction was issued to exhaust the panel of 1492 candidates before appointments were offered to others. The challenge by the Department to the decision taken by the Tribunal failed before the Supreme Court when Civil Appeal No.1900/1987 ‘UOI & Ors. v. Ishwar Singh Khatri & Ors.’ was dismissed by the Supreme Court on August 04, 1989. And we would only highlight that the decision of the Tribunal was directly challenged before the Supreme Court because the law then declared was that decisions by the Central Administrative Tribunals could not be challenged before the High Court under Article 226 of the Constitution of India.

7. While dismissing CA No.1900/1987, the Supreme Court returned a categorical finding of fact that the Selection Board prepared the panel containing 1492 names against the then available vacancies. Noting that in the interregnum i.e. during pendency of proceedings before Tribunal

as also the Supreme Court certain appointments were made, expressly stating that the Supreme Court did not intend to disturb said appointments, directions were issued that candidates who would be appointed pursuant to the decision dated August 04, 1989 passed by the Supreme Court dismissing CA No.1900/1987, would get their seniority as per their ranking in the select panels over the persons appointed in the interregnum.

8. Matter attaining finality before the Supreme Court, the Delhi Administration gave appointment to the remaining empanelled candidates and we are informed that the period of giving appointment stretched on for 3 to 4 years, probably for the reason pertaining to the vacancies the same got filled up over the next few years when other candidates were given employment.

9. Another round of litigation ensued. The empanelled candidates in the list of 1492 candidates who got employment as also their seniority in terms of the order dated August 04, 1989 passed by the Supreme Court started claiming back-wages from the year 1984 onwards. The basis of their claim was that as determinatively held by the Supreme Court 1492 vacancies existed as of the year 1984, but for the Department depriving them the opportunity to serve they would have served and earned wages. The issue pertaining to seniority was also raised by few teachers.

10. OA No.1691/1994 filed by 10 persons was disposed of by the Tribunal on February 14, 1996 on the subject of the seniority, a matter with which we are not directly concerned. A Contempt Petition filed thereafter pertaining to seniority was disposed of by the Tribunal on September 03, 1997, an issue with which once again we are not directly concerned.

11. Another OA No.569/1996 filed by 10 teachers on the subject of seniority was decided by the Tribunal on January 18, 2000, but we need to

highlight that the order in question notes that there was a dispute pertaining to pay fixation.

12. Ignoring that the issue of pay-fixation had 2 elements : (i) Notional fixation of pay from the date the left over candidates from amongst the Select List of 1492 were overlooked for promotion and other candidates in the next year were appointed, and (ii) back-wages; the Tribunal only decided the latter holding that having not worked, the claimants cannot be paid back-wages.

13. Disposing of RA No.56/2000 in Original Application No.569/1996, the Tribunal held that the issue of notional pay fixation based on seniority had to be treated as a subsequent one giving rise to a fresh cause of action, which they can impugn by filing fresh OA and this the Tribunal did when it was pointed out to it that in the Original Application, alternatively to the prayer for back-wages, a prayer was made for notional fixation of pay with reference to seniority which issue had been overlooked by the Tribunal.

14. On May 07, 2004 the Directorate of Education passed an order which reads as under:-

“In supersession of order No.F.DE-3(12A) Estt.III/Spl.Cell/97/17385-17445 dated 30.04.1998 based on the departments letter No.F.DE-3(31)/Estt.III/Spl.Cell/96/7766-7801 dated 22.04.1997, followed by letter No.F.DE-3(144)/E-III/95/2424951-25031 dated 10.11.1997 and subsequent corrigendum No.DE-3(31)/Spl.Cell/96/E-III/25753-813 dated 27.11.1997 and in compliance with the directions passed by Hon’ble Supreme Court on Civil Appeal No.1900 of 1997 titled Union of India & Ors. vs. Ishwar Singh Khatri & Ors. It is hereby ordered that the Directorate of Education will assign the proper seniority to the candidate as per their ranking in the select panel over the person appointed. In the interregnum, the incumbent will not be

entitled for the notional pay fixation, since there was no mention of the pay fixation/notional fixation in the order passed in Hon'ble Supreme Court. Hence, the seniority of the applicant in OA No.1691/94 titled Shri Sohanbir Singh and Ors., OA No.569/1996, titled Ms.Nirmala Gupta Vs. DE OA No.208/1998 titled Alam Chand Sharma Vs. DE and OA No.2098/1998 titled Satpal Singh Saini Vs. DE and other petitioners shall be determined in term of the directions passed by the Apex Court as per the select panel. The earlier order dated 30.04.1998 hereby cancelled.

These (sic) issue with the approval of competent authority.

Sd/-
(Gitanjali Kundra)
Addl. Director of Education (Admn.)”

15. Suffice would it be to state that in the order it was specifically mentioned that the incumbents will not be entitled to any notional pay fixation since the Supreme Court had not so directed when Civil Appeal No.1900/1997 'UOI & Ors. v. Ishwar Singh Khatri & Ors' was decided, and this led to OA No.2618/2005 being filed by 2 candidates named Karan Priya Gautam and Raj Kumar Singh who questioned denial of notional pay fixation. Vide order dated October 30, 2006 the Tribunal dismissed the Original Application holding that since back-wages was denied and only protection given was seniority, the two claimants could not be directed to be given benefit of notional pay fixation and on the issue of persons junior in the seniority list receiving higher wages, the Tribunal observed that if a person joins before another person, the former would draw increments before the latter and that this was inevitable. One Ms.Rita Tara also filed OA No.2154/2005 claiming same benefit as was claimed by Karan Priya Gautam and Raj Kumar Singh. Her claim was rejected by the Tribunal as

per order dated July 27, 2000 following the decision dismissing OA No.2618/2005. One Krishna Kumari who filed OA No.1790/2008 however succeeded when vide order dated May 15, 2009 the Tribunal decided in her favour directing that her pay be fixed notionally from the back date, a decision which was set aside by a Division Bench of this Court by a cryptic order dated December 12, 2009 allowing WP(C) No.13987/2009 'Director of Education & Ors. v. Smt.Krishna Kumari' against which the Supreme Court refused to grant Leave to Appeal as per the order dated October 14, 2011.

16. Noting conflicting views of the Tribunal, on December 16, 2009 disposing of OA No.536/2007 'Deepti Arora v. Govt. Of Delhi' a Full Bench of the Tribunal held that benefit of pay-fixation on notional basis had to be granted to the applicant therein. The said decision of the Tribunal currently awaits a conclusive view from the Supreme Court where Leave to Appeal stands granted.

17. This then is the past history which we need to note and while so doing would simply highlight one fact : neither decision i.e. the ones where benefit was denied nor the ones in which benefit was granted have taken note of the principle of '*Stepping Up*' of pay.

18. We may pithily state the law. On an adjudication of a claim by a person to be entitled to promotion in his favour from a retrospective date, the person becomes entitled to seniority with effect from the date he ought to be promoted as per the law declared by the Supreme Court in the decision reported as 1977 (3) SCC 399 S.B.Patwardhan v. State of Maharashtra subsequently relied upon and followed by the Supreme Court in the decision reported as 1990 (2) SCC 715 Direct Recruit Engineers' Asscn. V. State of Maharashtra. But simultaneously applying the principle of '*No work no*

pay' as held by the Supreme Court in the decisions reported as 2007 (11) SCC 632 Union of India v. B.M.Jha and 2007 (15) SCC 777 State of Haryana & Anr. v. S.K.Khosla back-wages may be denied. But, acting as an exception to the principle of '*No work no pay*', as held by the Supreme Court in the decision reported as 2007 (7) SCC 689 Commissioner, Karnataka Board v. C.Muddaiah where a Court holds that whereas the person was willing to work but was illegally and unlawfully not allowed to do so as an exceptional case benefits as if he had worked can be granted.

19. But the principle of '*stepping up*' of pay have to be applied across the board in all cases where a person who is senior gets less salary than his junior; requiring the salary of the senior to be stepped up and brought at least at par with the junior as was held by the Supreme Court in the decisions reported as 2009 (3) SCC 94 Gurcharan Singh Grewal & Anr. v. Punjab State Electricity Board & Ors., 2008 (7) SCC 245 Punjab State Electricity Board & Ors. v. Gurmail Singh and 2006 (12) SCALE 440 Commissioner and Secretary to Govt. Of Haryana v. Ram Sarup Ganda.

20. The aforesaid opinions are in fact the logical culmination which flow from OM No.F.2(78)-EIII(A)/66 dated February 04, 1966 which reads:-

“In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior office in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.”

(Emphasis underlined)

21. And we only highlight sub-para (a), as per which, even in case of appointment in the same cadre, both the junior and senior officers have to be given equal pay; requiring the pay of the senior officer to be stepped up to bring it at par with the junior officer.

22. Thus, since the Supreme Court has decided that the left over candidates from the list of 1492 empanelled candidates would be accorded seniority above the candidates who joined after the dispute arose and in the interregnum by which time the dispute was decided, law would enjoin salary of said candidates to be fixed keeping in view their seniority and the salary drawn by the person immediately junior and removing the difference by stepping up the pay of the senior.

23. Following the law declared by the Supreme Court in the afore-noted three decisions we find that the only corrective action which is required to be taken by us is to dispose of the writ petitions directing that the respondents would be entitled to their pays being stepped up and brought at par with the pay received by persons immediately junior to them in the combined seniority list; and to be received by the respondents from the date they joined service.

24. Directing as aforesaid the writ petitions stand disposed of declining relief as claimed. Compliance be made within 12 weeks.

25. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

JANUARY 31, 2013
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