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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2379/2001
M.A. NO.1991/2001

This the 12th day of March, 2003

HON'BLE SHRI JUSTICE V. S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1. Inder Jit S/O Chaman Singh,
B-3 A/292 Janakpuri, New Delhi
and retired as Principal,
Govt. Boys Sr. Sec. School No.2,
Khyala (under Directorate of Education),
Govt. of NCT of Delhi.
2. R.K. Goel S/O Shiv Narain,
Retired as Principal, Sarvodaya Bal
Vidyalaya, Qutab Road, Delhi-6,
under Directorate of Education,
Govt. of NCT of Delhi and resident of
6359/7, Gali No.1, Dev Nagar,
Karol Bagh, New Delhi-110005.
3. Mahendra Singh S/O Hira Lal,
R/O 72 Rampura, Delhi 110035 and
retired as Vice-Principal, G.B. Secondary
School, Roshanara Road, Delhi under
Directorate of Education,
Govt. of N.C.T. of Delhi.
4. Yash Pall Kaura S/O Gurdial Mal,
R/O D-826, Saraswati Vihar,
Delhi-34 and ~~retired as~~ Principal,
G.B. Sr. Secondary School No.1,
Madangier Sector IV, New Delhi-19
under Directorate of Education,
Govt. of NCT of Delhi. Applicants

(By Shri Gyan Prakash, Advocate)

-versus-

1. Government of National Capital
Territory of Delhi through
Chief Secretary,
5, Sham Nath Marg, Delhi-110054.
2. Director of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi-110054.
3. Deputy Controller of Accounts,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi-110054.

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4. Secretary,
Department of Education,
Ministry of H.R.D.,
Govt. of India, Shastri Bhawan,
New Delhi. ... Respondents

(By Shri George Paracken, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

These four applicants were appointed/promoted as PGTs in the early 1960s in the Directorate of Education, Delhi. They were subsequently confirmed as PGTs. Subsequently they were promoted as Vice Principals. Applicant No.1 had further been promoted as Principal. All the applicants have retired. After completion of 12 years of service as PGT in senior scale, PGTs become eligible for grant of selection scale of PGT. Present applicants had, in the meantime, before completing 12 years of service as PGT in senior scale, been promoted to officiate as Vice Principals. However, they were not confirmed as Vice Principals at the time when they acquired eligibility on completion of 12 years as confirmed PGTs in the senior scale (old selection grade). Earlier on, applicants had filed OA No.206/2000 for grant of selection scale of Rs.2200-4000 (old scale), as also revised pension and other consequential retiral benefits. The aforesaid OA was disposed of vide order dated 26.7.2000 with the following observations/ directions to respondents :

"5. Having regard to afore-stated facts, we find that the ends of justice will be met by issuing directions to the respondents to consider the claim of the applicants for grant of Selection Scale in terms of their order No.1 dated 29th October, 1998 at Annexure-A-1 as also the clarification contained in Office Memorandum

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dated 5th May, 2000 which is annexed at Annexure-R-1 to the counter within a period of two months from the date of service of this order upon them. Ordered accordingly. The applicants be paid the arrears that will be found due to them along with interest at the rate of 12% per annum from the date the same have become due till payment. If found eligible, the applicants will also be granted their retiral benefits accordingly. The payments be made to the applicants within a period of one month from the date of the decision to be taken by the respondents, which has been directed to be taken within a period of two months as stated hereinabove. It is clarified that it will be open to the present applicants, if so advised to once again approach the Tribunal in case orders adverse to them are passed by the respondents. The OA is disposed of with the above directions. No order as to costs."

Applicants are aggrieved by respondents' orders dated 8.9.2000, 29.9.2000 and 27.9.2000 (Annexure A-2) whereby their demand for grant of selection scale of PGT has been rejected. In doing so, respondents have relied upon Government of India's instructions dated 12.8.1987 read with clarifications dated 3.11.1987. As per these instructions, the selection scale is available after 12 years of service in respective cadre in senior scale; the number of posts in the selection scale are restricted to 20% of the number of posts to the senior scale; and the incumbent is also required to participate in an in-service training programme of at least three weeks duration before promotion to selection scale. It has been stated that applicants were promoted to the post of Vice Principal before completion of 12 years in the senior scale and as such did not meet the requirement as laid down in the aforesated instructions of the Government of India. The pay scales of school teachers in Delhi Administration before the Fourth Central Pay

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Commission (CPC), replacement scales after the Fourth CPC and pay scales after the Chattopadhyaya Commission, are stated as follows :

"A) Pay scales before 4th Pay Commission

Trained Graduate Teachers (TGT)

- (i) Entry Scale Rs.440-750
- (ii) Selection Grade Rs.740-880

Post Graduate Teachers (TGTs)

- (i) Entry Scale Rs.550-900
- (ii) Selection Grade Rs.775-1000

B) Replacement Scales after 4th Pay Commission
w.e.f. 1.1.1986

TGT (i) Entry Scale Rs.1400-2600
(ii) Selection Grade Rs.1640-2900

PGT (i) Entry Scale Rs.1640-2900
(ii) Selection Grade Rs.2000-3500

C) Pay Scales after Chattopadhyaya Commission w.e.f.
1.1.1986 vide Govt. of India notification dated
12.8.1987

TGT (i) Entry Scale Rs.1400-2600
(ii) Senior Scale
(after 12 years) Rs.1640-2900
(iii) Selection Scale
(after 12 years of
Senior Scale) Rs.2000-3500

PGT (i) Entry Scale Rs.1640-2900
(ii) Senior Scale
(after 12 years) Rs.2000-3500
(iii) Selection Scale
(after 12 years of
Senior Scale) Rs.2200-4000

Vice Principal

Entry Scale Rs.2000-3500
Senior Scale
(after 12 years) Rs.2200-4000"

According to applicants, they had been promoted as Vice Principal on officiating basis. They had not been confirmed on that post. They had been confirmed on the post of PGT only and, therefore, had lien on the post of PGT. The senior scale of PGT and entry scale of Vice

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Principal are the same. The period spent by applicants on the post of Vice Principal on officiating basis should be counted as period on the basis of PGT (senior scale) for purposes of computing the period of 12 years and they should be granted the selection grade of Rs.2200-4000 on completion of 12 years in this manner.

2. On the other hand, respondents have stated in their counter reply that as applicants had been promoted as Vice Principal before completion of 12 years of service in senior scale of PGT (Rs.2000-3500), they are not eligible for grant of senior scale of PGT. Service rendered by them in the higher post of Vice Principal for grant of senior scale of PGT (Rs.2200-4000) cannot be counted.

3. Learned counsel of applicants drawing our attention to Annexure A-11 which is OM dated 28.3.1988 of the DOP&T on the subject of confirmation procedure stated that under this OM confirmation procedure on a post was simplified delinking confirmation from availability of permanent vacancy in the grade. Under these instructions lien represents the right/title of a Government servant to hold a regular post, whether permanent or temporary. The benefits of having a lien in a grade will be enjoyed by all officers who are confirmed in the grade of entry. The learned counsel stated that these instructions have prospective effect from 28.3.1988. As such, in the applicants' case confirmation has to be related to availability of permanent posts and as they had lien on the post of PGT and had been promoted on officiating

basis to the post of Vice Principal, until they were confirmed on the higher post, they had to be considered for grant of benefits of the lower post as they maintained lien thereon. In this connection, the learned counsel has relied on the following :

- (1) **B.N.Nagarajan & Ors. v. State of Karnataka & Ors.** (1979) 4 SCC 507;
- (2) **Triveni Shankar Saxena v. State of U.P. & Ors.** 1992 Supp (1) SCC 524;
- (3) **Pritam Singh, IAS v. Union of India & Ors.** 1990 (2) SLJ 58 (CAT, Chandigarh);
- (4) **Lt. Governor of Delhi & Ors. v. Nand Kishore** 1974 (2) SLR 894.

4. In the case of **B.N.Nagarajan**, it was held that regularisation does not connote permanence and that regularisation would not mean that the appointment would have to be considered to be permanent as an appointment to be permanent would still require confirmation. In **Triveni Shanker Saxena**, it was observed that a person can be said to acquire a lien only when he has been confirmed and made permanent on that post and not earlier. In the case of **Pritam Singh**, wherein the applicant a Punjab Civil Service officer who had been promoted to the IAS, it was held that before confirmation an IAS officer is legitimately entitled to draw all benefits in the State Civil Service in which he holds a lien till he is confirmed. Accordingly, Shri Pritam Singh's claim for protection of stagnation increments earned by him was held justified during the period of his probation. It was held that confirmation shall have a prospective effect so that an order could not be passed to take away

his vested rights. In the case of **Nand Kishore**, Hon'ble Delhi High Court also held that confirmation shall have prospective effect.

5. The learned counsel relying on the ratio of above judicial pronouncements contended that in view of the fact that applicants had lien on the post of PGT, period spent by applicants in the senior scale of PGT as also on the post of Vice Principal whereon they had been promoted should be counted for purposes of according selection scale of PGT. The learned counsel also referred to the minutes of the meeting held on 6.6.1997 by the Principal Secretary of Education regarding grant of selection grade to PGTs who were officiating as Vice Principals. He also drew support from order dated 25.5.2001 in OA No.1295/2000 : **Shri Jodha Ram v. Directorate of Education & Ors.**, in which in an identical case, it was held as follows :

"6. In view of the facts and circumstances of the case, respondents are directed to consider the case of the applicant for grant of pay in the scale of Rs.2200-4000 w.e.f. 1.3.87 with all consequential benefits, keeping in view the above directions and pass a detailed and speaking order thereon within a period of two months from the date of receipt of a copy of this order with intimation to the applicant."

6. Admittedly, confirmation was linked with availability of permanent posts upto 28.3.1988 whereafter confirmation procedure was simplified vide Annexure A-11 dated 28.3.1988. Applicants had been confirmed as PGTs. Although they had been promoted on an officiating basis

as Vice Principal, they had not been confirmed against the post of Vice Principal and maintained a lien on the lower post of PGT. Instructions on confirmation promulgated on 28.3.1988 cannot be made applicable to the present case. Applicants have to be treated as confirmed PGTs maintaining lien on the post of PGT and could be reverted from the post of Vice Principal any time. The judicial pronouncements referred to on behalf of applicants support the case of applicants who had not been confirmed on the post of Vice Principal and were maintaining lien on the lower post of PGT, and as such, had acquired vested rights thereon. Instructions promulgated on 28.3.1988 regarding confirmation cannot be applied retrospectively.

7. It is true that a decision taken in a meeting does not become effective until it is translated into official orders issued by a competent authority. In the meeting dated 6.6.1997 held by the Principal Secretary of Education regarding grant of selection grade to PGTs who were officiating as Vice Principals, it was decided that such PGTs who were working as Vice Principals on ad hoc basis on the date of their eligibility would also be entitled for selection scale of PGT. Applicants admittedly continued as confirmed PGTs till their retirement though they had been promoted as Vice Principals on ad hoc basis. These applicants had lien on the post of PGT and would have completed 12 years of service in the scale had they not been promoted on officiating basis to the post of Vice Principal. Facts and circumstances of the present case are identical with

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those of Shri Jodha Singh (supra). The decision in that case is squarely applicable to the present case.

8. In view of the discussion made above and in the facts and circumstances of the case, respondents' orders dated 8.9.2000, 29.9.2000 and 27.9.2000 (Annexure A-2) are quashed and set aside. Respondents are directed to grant to applicants Selection Scale of PGT (old scale Rs.2200-4000) from the dates they completed 12 years in the senior scale of PGT in combination with entry scale of Vice Principal, with consequential benefits. Their pension and other retirement benefits be also re-fixed after grant of selection scale of PGT.

9. The OA is allowed in the above terms. No costs.

V. Majotra
(V. K. Majotra)
Member (A)

/as/

V. Aggarwal
(V. S. Aggarwal)
Chairman