

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1460/15

New Delhi, this the 27th day of September, 2017

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE SHRI UDAY KUMAR VARMA, ADMINISTRATIVE MEMBER

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1. Navneeta (Teacher),
w/o Sh.Deepak Kumar,
Primary Girl School-I,
M.C.D., Narela Mandi,
Delhi 110040

2. Sujeet (Teacher),
s/o late Sh.Jai Singh,
Primary Boys School-II,
M.C.D., Narela Mandi,
Delhi 110040

3. Santosh Kumar (TGT Hindi),
D/o Sh. Ram Kishan,
GGSSS, Libaspur, Delhi.

4. Mrs.Twinkle Dabas (Teacher, MCD, Education Department),
D/o Sh.MahavirSingh Davas,
R/o 240-A, Mangolpur Kalan, Delhií ..Applicants

(By Advocate: Shri Sandeep Khatri)

Vs.

MCD & others through

1. The Commissioner,
North Delhi Municipal Corporation,
Civic Centre, New Delhi.

2. The Commissioner,

South Delhi Municipal Corporation,
Civic Center, New Delhi.

3. The Commissioner,
East Delhi Municipal Corporation,
Civic Center, New Delhi.

4. The Secretary,
DSSSB, 3rd Floor, UTSC Building,
Vishwas Nagar, Shahdara,
Delhi

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Respondents

(By Advocates: Mr.K.M.Singh with Mr.C.S.S.Pillai for EDMC, Ms. Vertika Sharma for NDMC, Ms. Rashmi Chopra for DSSSB, and Ms.Anupama Bansal for SDMC)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicants have filed the present O.A. seeking the following reliefs:

- õ(a) Direct the respondent to fix the pay of the applicants (Asstt. Primary Teachers) at par with their batch-mates who were given appointment in the year 2003 and regulated the applicants pensionary benefits under old pension scheme governed under CCS (Pension) Rules 1972 instead of new pension scheme made effective from 01.01.2004; and or
- (b) Cost; and/or
- (c) Any such other or further orders or directions as this Honøble Tribunal may deem fit and proper in the interest of justice.ö

2. Respondent nos.1, 3 and 4, namely, NDMC, EDMC, and DSSSB have not contested the claim made by the applicants. In three

separate counter replies, they have stated that they are only *pro forma* parties.

3. In its counter reply, respondent no.2-SDMC, besides raising the plea of limitation, has resisted the claim of the applicants.

4. We have carefully perused the records, and have heard the learned counsel appearing for the parties.

5. Brief facts, which are not in dispute, are that the applicants, belonging to reserved category, applied for selection and recruitment to the post of Assistant Teacher (Primary) in Municipal Corporation of Delhi (MCD) pursuant to the Advertisement issued by the respondent-DSSSB in the year 2002. They appeared in the written examination held on 27.10.2002. The result of the said written examination in respect of the UR category was declared on 28.12.2003. The publication of results of the reserved category candidates, like the applicants, was purportedly delayed on account of pendency of LPA No.625 of 2002 and other connected LPAs/writ petitions before the Honøble High Court of Delhi, pertaining to the issue whether candidates belonging to reserved communities from outside Delhi could be considered as reserved candidates for selection and recruitment to posts under the GNCT of Delhi. Before the said LPA No.625 of 2002 and other similar petitions could be disposed of by the Honøble High Court, vide judgment dated 13.5.2005, the results of the applicants and other similarly placed persons were declared by the DSSSB, and offers of appointment were issued to the applicants in August 2004. Accordingly, the

applicants joined as Assistant Teachers (Primary) in August 2004. In compliance with the directions issued by the Honøble High Court of Delhi, the respondents granted to persons similarly placed as applicants all consequential benefits of seniority, pay, old pension scheme, etc., with effect from the date(s) of appointment of their batch-mates. Thereafter, O.A.Nos. 372/13, 3719/09, 2045/10, 1205/12, 2650/16 and 4405 of 2015 before the Tribunal were filed by different persons praying for issuance of direction to the respondents to grant them all consequential benefits of seniority, pay fixation, old pension scheme, etc., as granted to similarly placed persons.

6. It is the case of the applicants that although in compliance with the judgments and orders passed by the Honøble High Court and by the Tribunal in various cases, the respondent-SDMC has granted all consequential benefits of fixation of pay, seniority, old pension scheme, etc., to similarly placed persons at par with their batch-mates, yet no heed has been paid to their repeated representations seeking the aforesaid benefits by the respondent-SDMC. Therefore, appropriate direction should be issued by the Tribunal to the respondent-SDMC to consider their cases for grant of the aforesaid benefits as have been granted to the similarly placed persons.

7. On the other hand, it has been contended by the respondent no.2-SDMC that the O.A. is grossly barred by limitation, and that the judgments and orders passed by the Honøble High Court of Delhi and by this Tribunal in favour of other persons in different cases, which have been cited by the applicants, are *in personam* and cannot be treated as *in rem*.

Therefore, according to the respondent no.2-SDMC, the O.A. is liable to be rejected as being barred by delay and laches, and the applicants in the present O.A. are not entitled to the reliefs claimed by them.

8. In *M.R.Gupta v. Union of India and others*, (1995) 5 SCC 628, it has been held by the Honøble Supreme Court that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

9. In *Union of India and others v. Tarsem Singh*, (2008) 8 SCC 648, it has been observed by the Honøble Supreme Court that the principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically; each wrong giving rise to a distinct and separate cause of action. A belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

10. In the present case, the non-fixation of correct pay, non-counting of seniority, non-grant of benefit of old pension scheme, etc, as asserted by the applicants and not controverted by the respondent no.2-SDMC, certainly create a continuing source of injury to the applicants. Therefore, we are not inclined to accept the plea of limitation raised by the respondent-SDMC. Accordingly, MA No.973 of 2016 filed by the applicants for condonation of delay in the filing of the OA is allowed.

11. During the course of hearing, Mr.Sandeep Khatri, the learned counsel appearing for the applicants, produced before us copies of orders passed by the coordinate Bench of the Tribunal in O.A.No.2650 of 2016 (*Ms.Sonia Vs. South Delhi Municipal Corporation*) decided on 8.8.2016, and in O.A.No.4405 of 2015 (*Kanta and others vs. The Commissioner, NDMC and others*), and submitted that the applicants in the present O.A. are similarly placed as applicants in those cases. It was also submitted by Mr.Sandeep Khatri that in compliance with the said orders of the Tribunal, the respondent no.2-SDMC has considered the cases of the applicants in those cases and has granted them all consequential service benefits of pay fixation, seniority, old pension scheme, etc., at par with their batch-mates. Mr.Sandeep Khatri also took us through an order No.D/ADE/Admn./HQ/SDMC/2014/1207, dated 8.9.2014, issued by the respondent-SDMC granting the aforesaid benefits to various persons, who are stated to be similarly placed as applicants in the present case, in compliance with the Tribunal's order dated 30.1.2013 passed in OA

No.372/2013. He also took us through order No.F.28(19)/DISM&H/09/CC/356-371, dated 28.9.2012 issued by the Department of Health & Family Welfare, GNCTD, and office order No. AO(Estt.)-II/CED-II/Srty/RPA-VII/2011/2730, dated 16.6.2011, issued by the Municipal Corporation of Delhi granting the benefits of pay fixation, seniority, old pension scheme, etc., to persons, who are stated to be similarly placed as applicants in the present O.A., in compliance with the Tribunal's order passed in OA No. 3719 of 2009. Copies of the said orders have been filed as Annexures to the O.A. When the assertion of the applicants in the present case that they are similarly placed as applicants in the aforesaid two cases and in different cases decided by the Hon'ble High Court of Delhi and by the Tribunal has not been seriously disputed by the respondent-SDMC, we are not inclined to accept the contention of the respondent-SDMC that the judgments/orders passed by the Hon'ble High Court and by the Tribunal are *in personam* and cannot be treated as *in rem*. If at all any person or persons junior to the applicants in the cadre has/have been granted the benefits of pay fixation, seniority, old pension scheme, etc., at par with their batch-mates, the denial of the aforesaid benefits to the applicants would amount to invidious discrimination being meted out to them. In this connection, it would be apposite to refer to the decisions of the Hon'ble Supreme Court in *Indrapal Yadav Vs. Union of India*, 1985(3) SCR 837, and in *State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava and others*, Civil Appeal No.9849 of 2014 [arising out of SLP (Civil) No.18639

of 2012], decided on 17.10.2014. In *Indrapal Yadav Vs. Union of India* (supra), it has been observed by the Honøble Supreme Court that those who could not come to Court need not be at a comparative disadvantage to those who rushed in here, and if they are otherwise similarly situated, they are entitled for similar treatment, if not by anyone else, at the hands of the court. In *State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava and others* (supra) it has been observed by the Honøble Supreme Court that normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

12. In the light of our above discussions, we direct respondent no.2-SDMC to consider the cases of the applicants of the present O.A. for granting them the aforesaid benefits at par with their batch-mates and other similarly placed persons in whose favour judgments and orders were passed by the Honøble High Court of Delhi and by this Tribunal in different cases, referred to in this order. Respondent no.2-SDMC shall take appropriate

decision by passing a reasoned order and communicate the same to the applicants within a period of six months from today.

13. Resultantly, the O.A.is allowed to the extent indicated above.

No costs.

(UDAY KUMAR VARMA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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