

(1985) 10 DEL CK 0039

In the Delhi High Court

Case No : Letter Patent Appeal No. 69 of 1984

Delhi Administration and Others

APPELLANT

Vs

Om Prakash Verma and Others

RESPONDENT

Date of Decision : 11-10-1985

Acts Referred:

Citation : (1986) 29 DLT 344

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Y.K. Sabharwal and O.P. Tyagi, for the Appellant;

Judgement

D.K. Kapur, J.

(1) These three Letters Patent Appeals (Nos. 69 of 1984, 75 of 1984 and 77 of 1984) have been heard along with L.P A. Nos. 1 and 7 of 1980, in which a separate judgment has been delivered today. As held in the judgment in L P.A. No. 1 of 1980, the effect of the two circulars of 1950 and 1954 is to revise the pay scales of Physical Training Instructors. The circular of 1950 can be reproduced here again with advantage. We may say that it is part of a long document revising pay scales for a number of different posts. But. we are only concerned with Physical Training Instructors, which is entry No. 4 in the document. The proposed new scales of pay are as, follows : 345 "Sr.No. Post Proposed Scale Minimum qualifications Remarks 4. Physical Training Instructors 120-8-EB-10-300 Graduate with Diploma in Physical Training. Future minimum from 1-4.1950. 100-5-150-EB-8-190-10-250. Intermediate with Certificate in Physical Training. Temporary relaxation for existing employees. 80-5-120-EB-8-200-10/2-220. metric with Certificate in Physical Training. 68-4-120-EB-5-170. Any recognised qualifications." The remarks column would show that the minimum after 1st April, 1950, was to be Rs. 120-300, but there was a temporary relaxation for existing employees who were not Graduates. For these persons the pay scales were Rs. 100-250 for Intermediates with Certificate in Physical Training and Rs. 80-220 for matriculates with the said Certificate. For

persons with even lesser qualifications the pay scale was Rs. 68-170. It appears that notwithstanding the new pay scales, persons not holding the minimum qualifications and the Diploma continued to be employed as Physical Training Instructors. This may be due to shortage of Graduates or for any other reason, we cannot say at this stage. In any event, the two persons involved in these appeals, namely, Shri A.S. Tiwari, and Shri Om Parkash Verma joined the Birla Higher Secondary School as Physical Training Instructors on 15th July, 1951 and 15th July, 1953, respectively. Both were given the post of Junior Physical Education Teacher in the pay scale of Rs. 68-170, which is the lowest scale mentioned in the circular. Shri Tiwari was a matriculate holding a Certificate in Physical Training whereas Shri Verma was an Intermediate with a similar Certificate. It is probable that this lowest scale was given to these two persons when they joined as Instructors on the basis that they were unqualified persons. The position changed subsequently as will appear later.

(2) In 1954, the amended circular was issued fixing new pay scales. This circular ran as follows : Amendments To The Schedule Pay Scales Minimum Qualifications Remarks as amended The Delhi Law Times (ii) 100-5-150-8-190- EB-10-250. (iii) 80-5-120-EB-8- 200-10/2-200. (iv) 68-4-120-EB-5- 170. 2. High Schools: Physical Training Instructor. 3. Middle Schools: Physical Training 1986 Inter with Certificate in PT. metric with Certificate in PT. Any recognised Pt qualification. (The same as prescribed above for Higher Secondary Schools). (i) 80-5-120-EB.8- 200-10/2-220. (ii) 68-4-120-EB-5. 170. metric with Certificate. Any recognised Pt qualification. I am further to say that the revision of scales of pay as detailed above will take effect from the date of issue of these orders. Sd/- Dhani Ram Under Secretary"

(3) If these pay scales had come into operation immediately and were applied to the two parties involved in this litigation, namely, Shri A.S. Tiwari and Shri Om Parkash Verma, their pay scales should have become Rs. 80-220 in the case of Shri A.S. Tiwari and Rs. 100-250 in the case of Shri Om Parkash Verma with effect from 17th June, 1954.

(4) A copy of a letter dated 4th October, 1951, from the Government of India, Ministry of Education to the Chief Commissioner of Delhi indicates the reason that persons with lower than the minimum qualifications had been appointed. It was clearly stated in that letter that there was a paucity of teachers with the requisite qualifications and it was also indicated that (he unqualified teachers should be replaced as soon as possible.

(5) The amendment to the schedule appears to be an attempt to reconcile the fact that persons not holding the previous minimum qualifications of Ba with Diploma had been appointed. So, new pay scales were fixed which had to take immediate effect.

(6) As already pointed out, Shri A.S. Tiwari, and Shri Om Parkash Verma were both in the pay scale of Rs. 68-170, Shri Om Parkash Verma represented to the

Director of Education that his pay scale was wrong and he should be in the pay scale of Rs. 100-250. This revision of pay scale was ordered on 15th September, 1975, by a letter issued by the Zonal Education Officer to the Manager, Birla Higher Secondary School. The pay scale was given to him with effect from 15th July, 1953, but payment of arrears was restricted to three years. This led to a protest by Shri A.S. Tiwari who claimed that he was teaching the highest classes from the very beginning and he was senior to Shri Om Parkash Verma. He also claimed that he was a Volleyball Coach with the National Institute of Sports. Eventually, Civil Writ No. 211 of 1977 was filed by Shri AS. Tiwari claiming that he was also an Intermediate, but he had not been granted the pay scale of Rs. 100-250.

(7) Shri Om Parkash Verma instituted Civil Writ No 162 of 1981, because the revision of his pay scale Rs. 100-250 was considered to have been wrongly granted with effect from 15th July, 1953. The conclusion of the Education Officer was that Shri Om Parkash Verma was appointed after 1st April, 1950, and Therefore, the scales mentioned in the letter of 1st April, 1950, did not apply to him. It may be reiterated here that Shri Om Parkash Verma was actually appointed on 15th July, 1953, so the Education Officer cancelled the placement of Shri Om Parkash Verma in the higher scale.

(8) It is true that this date, 15th July, 1953, was wrong, but as already held by us in the other appeal, L.P.A. No. 1 of 1980, circular of 1954 had the effect of revising the pay scales, so from 17th June, 1954, Shri Verma should have got the new pay scale of Rs. 100-250. It is not necessary to repeat the reasons.

(9) When the learned Single Judge heard the two Writ Petitions, he was of the view that a large number of Intermediates with Certificate of Physical Education had been given the pay scale of Rs. 100-250 by the Director of Education, so Shri Verma had to succeed in his Writ Petition. The learned Single Judge restored the order placing Shri Verma in the pay scale Rs. 100-250 with effect from 15th July, 1953. But, the above analysis would show that he had to be placed in this new pay scale with effect from 17th June, 1954, so the judgment has to be varied to that extent. In other words, we hold that Shri Verma's Writ Petition had to be allowed to the extent that he had to be placed in the pay scale Rs. 190-250 with effect from 17th June, 1954, and not from the date of his appointment. The question of the inter se seniority of Shri Verma qua Shri Tiwari, who is the other persons involved in this case has to be deferred till we have dealt with Shri Tiwari's Writ Petition.

(10) Now we have to take up the case of Shri A.S. Tiwari from 17th June, 1954, when he was a matriculate with Certificate in Physical Training. He had to be placed in the pay scale of Rs. 80-220 on a similar argument. He later passed the Intermediate examination according to his own case. So, the question is, whether his pay scale changes as a result of this.

(11) It would appear that as Shri Tiwari became an Intermediate in 1974, we

have only to consider whether this would have any effect on his pay scale. Actually, we find that this question does not survive because in the intermediate period between 1954 and 1974, there was another change in the pay scales and also in the classification of Physical Training Instructors. Annexure Vi to the Writ Petition is the fixation of pay under the Central Services (Revised Pay) Order 1960. It is as follows ; "Sr. No. of Name of the Post Pay Revised the Original Letter 23. Physical Training 120-8-200- 170-10-290-EB-15- Instructor Grade EB-10-300 380. I for Class IX & X. 24. Physical Training 80-5-120-130-5-160-8-200- Instructor Grade EB-8-200- EB-8-256-EB-8- II for Class VI to 10/2-220. 280-10-300. VIII. Scale of pay personal to teachers who were in service on 1-4-1950 who did not possess the prescribed qualification 4. Physical Training (i) 100-5-150-8-190- 160-8-200-EB-8- Instructor EB-10-250. 280-10-300. (ii) 80-5-120-8-200- 130-5-160-8-200- 10/2-200. EB-8-280-10-300. (iii) 68-4-120-EB-5- 118-4-170-EB-5- 170. 200-EB-225. Sd/- Director of Education."

(12) The division indicated by this order has also been taken into consideration by the learned Single Judge, but it is not indicated as to whether Shri Tiwari or Shri Verma came into the pay scale 170-380 or 130-300, or 160-300, or 118-225. It would appear that this order does have some effect qua these two persons, but the entry regarding pre 1st April, 1950 teachers cannot cover them because they were not in service on 1st April, 1950. As already observed above, Shri Verma came into the pay scale Rs. 100-250 whereas Shri Tiwari came in the pay scale Rs 80-220. In actual application, there is a document on record which shows that Shri Verma was treated as having come into the pay scale of Rs. 160-300, but this cannot be so because he was not a Physical Training Instructor prior to 1st April, 1950. This could not be because he was appointed in 1953. Therefore, it is peculiar that there is no revised pay scale for persons in the category of Rs. 100-250. Moreover, the new categorisation is according to whether they are teaching in Class IX or X or teaching in classes 6 to 8. According to Shri Tiwari, he was teaching persons even in Class XI, i.e , in his representation. In Shri Verma's Writ Petition, it is also mentioned that he is teaching persons in the senior classes. As there is no other entry to cover these two persons, it would appear that they must both come into the category Rs. 170-380 with effect from 9th December, 1960. If this is so, then both of them come into the same revised pay scale Rs, 170-380. It is difficult for us to say which is senior out of the two because neither party has been able to focus attention on this document. Still later, there is a further revision of scales of pay of which there is a some mention, but no particularization .We cannot, Therefore, say with any degree of accuracy as to what is the correct pay scale of Shri verma and Shri Tiwan after the revised scales were applied. In other words, it is difficult to specify what their actual salary became when they were put in the revised pay scale. The reason for this is that the order qua Shri Verma was passed in 1975 and was then cancelled. We have observed above that he has to come into the pay scale Rs. 100-250 with effect from 17th June, 1954. Similarly, Shri Tiwari has

to come into the pay scale Rs. 80-220 with effect from 17th June, 1954. On the revision of scales in 1960, their pay scales have to be adjusted according to the grade in which they fall. This would depend on which classes they were teaching. There is no particularization as to whether they were actually teaching classes IX and X on 9th December, 1960, or they were teaching lower classes. They would obviously fall in the pay scale Rs. 170-380 or Rs. 130-300 according to the classes they were teaching. If they are right in their contention that they were teaching the higher classes, then they were to be in the higher pay scale Rs. 170-380. But, if they were teaching the lower classes, then their pay scale would be Rs. 130-300. As there is a real difficulty in this question which depends on facts which are not available with us, we would in the case of Shri Tiwari have to hold that there has to be a direction issued to re-fix the pay scale of Shri Tiwari in the revised scale and only then the seniority of Shri Tiwari can be adjudged. Similarly, although we have accepted the contention of Shri Verma to the extent that he had to be in the pay scale Rs. 100-250 with effect from 17th June, 1954, we cannot determine as to which pay scale he enters on 9th December, 1960. We would accordingly decide all these appeals by merely holding that the pay scales of Shri Verma and Shri Tiwari were respectively Rs. 100-250 and Rs. 80-220 with effect from 17th June, 1954, and thereafter they had to be placed in the pay scales Rs. 170-380 or 130-300 with effect from 9th December, 1960. Unless their actual position in the scale is determined, it is impossible to determine as to whether Shri Verma is senior of Shri Tiwari or senior.

(13) The appeals are accordingly allowed to this extent. The parties are left to bear their own costs.