

**(1996) 07 DEL CK 0110**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 2868 of 1991**

P.M. Lalitha lekha

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

**Date of Decision : 01-07-1996**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Delhi School Education Act, 1973 — Section 10

**Citation : (1997) 70 DLT 558**

**Hon'ble Judges : Chander Mohan Nayar, J**

**Bench : Single Bench**

**Advocate : K.N. Balgopal, P.R. Madhavan, S.N. Gupta and K.C. Mittal, for the Appellant;**

## **Judgement**

C.M. Nayar, J.

(1) The present is filed by the petitioner, inter-alia for the following two reliefs:

(A) For direction to the respondents to fix the salary of the petitioner at Rs. 550.00 with effect from May 1, 1981 with all consequential benefits and for quashing the Office Order dated March 31, 1983 which fixed the salary of the petitioner at Rs. 440.00 at the minimum of the scale of Rs. 440-750 with effect from May 1, 1981 (Annexure A-5 to the writ petition);

(B) For writ or direction in the nature of mandamus to grant senior scale of Trained Graduate Teacher (TGT) from May 1, 1988 as per Government of India letter No. F.5-180/86-U.T.I dated August 12, 1987 files as Annexure A-8.

(2) The petitioner was appointed as Trained Graduate Science Teacher in the Delhi Tamil Education Association (Regd.) on January 1, 1976 "The said school was accorded recognition under the Delhi School Education Act, 19/3 (hereinafter referred to as the Act) on May , The petitioner was appointed by a regularly constituted Selection Committee for the post of Trained Graduate Teacher on October 3, 1977 on the basis of the interview held on September 29, 1977. The

school was brought under grant-in-aid tie-up of the Directorate of Education, Delhi Administration on May 1, 1981 and the petitioner's basic pay as on that date was Rs. 500.00 per month. The respondents, however, fixed the pay at Rs. 440.00 at the minimum of the scale of Rs. 440-750 with effect from May 1, 1981 by office order dated March 31, 1983. The petitioner felt aggrieved and submitted a representation dated April 5, 1982 apprising the school management that the petitioner was drawing the basic pay of Rs. 550.00 as on May 1, 1981 and the same should be protected while fixing her pay. It was further requested while fixing the pay that the service rendered by the petitioner from the date of recognition of the Institution i.e. May 1, 1976 should duly be taken into account as qualifying service for the benefit of pension and gratuity and that the services of 17 months between May 1, 1976 and October, 1977 be taken notionally for fixing pay as on May 1, and accordingly her basic pay on the date of grant-in-aid should be Rs. 550.00.

(3) The next contention which is raised in this petition is that the office order dated August 12, 1987 clearly stipulated that the Trained Graduate Teacher must get senior scale after 12 years and the same should have been awarded to the petitioner after completion of that period w.e.f. May 1, 1976 i.e. on May 1, 1988 instead of May 1, 1993 which has been granted on the basis of completion of 12 years w.e.f. May 1, 1981 when the school was brought under grant-in-aid.

(4) The first point which has been raised in this petition can be disposed of on the well settled law that the basic pay of the petitioner could not have been reduced to Rs. 440.00 as she was entitled to Rs. 550.00 after the grant-in-aid tie-up on May 1, 1981. The respondents have not given any satisfactory Explanation to this contention of the petitioner except to say that there is a change in status and after the school was brought under grant-in-aid by the Director of Education, the Managing Committee of the school have to abide by certain conditions and restrictions of the Department of Education especially so laid down under Chapter VI Grant-in-aid of Delhi School Education Rules, 1973 Reference is made to the provisions of Rule 107 which reads as follows: 107. Fixation of pay

(1) The initial pay of an employee, on first appointment, shall be fixed ordinarily at the minimum of the scale of pay : Provided that a higher initial pay, in the specified scale of pay, may be given to a person by the appointing authority; Provided further that no higher initial pay shall be granted in the case of an aided school except with the previous approval of the Director.

(2) The pay of an employee on promotion to a higher grade or post shall be determined by the same rules as are applicable to the employees of Government schools".

The said rule merely says that the initial pay of an employee on first appointment shall be fixed ordinarily at the minimum scale of pay. The proviso further clarifies the provision that a higher initial pay, in the specified scale of pay, may be given to a person by the appointing authority. In the present case the petitioner was

appointed as Trained Graduate Teacher with effect from January 1, 1976 and the school was accorded recognition under the Act on May 1, 1976. The petitioner as on May 1, 1981 when the school was brought under grant-in-aid was entitled to basic pay of Rs. 550.00. There is no serious challenge to this plea by learned Counsel for the respondents as raised in the petition. The basic pay of the petitioner, accordingly has to be fixed at Rs. 550.00 and the impugned office order dated March 31, 1983 (Annexure A-5) is accordingly quashed. The respondents shall fix her salary at Rs. 550.00 w.e.f. May 1, 1981 with all consequential benefits.

(5) The next point which now arises for consideration is as to whether, the petitioner is entitled to be considered for senior scale after completion of 12 years with effect from May 1, 1976 when the school was accorded recognition or with effect from May 1, 1981 when the school was brought under grant-in-aid. The learned Counsel for the petitioner has referred to the provisions as contained in Section 10 of the Act to reiterate the proposition that the scales of pay and allowances etc. of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority. The said provision reads as follows : "10. Salaries of employees

(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority : "Provided that where the scales of pay the allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority: Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

(2) THE managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools".

Similar reference is made to the circular issued on 12th August, 1987 by the Government of India. The relevant portion is contained in paragraph 2 which can be reproduced as follows :

"2. In partial modification of Finance Ministry's Notification No. F.15(1)-OIC/ 86 dated 13th September, 1986 and 22nd September, 1986, by which replacement

scales were given to school teachers, it has now been decided that the revised pay scales of school teachers in all Union Territories (except Chandigarh) including Government aided schools and organisations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools Administration etc. will be as under: Category of School Teachers (b) Trained Graduate Teachers/Headmasters of Primary School Revised Pay Scales Rs. 1400-40-1600-50-1650-EB- 50-1950-EB-50-2250-EB-50- 2300-60-2600. Senior Scale (After 12 years) Rs. 1640-60-2000-EB-60-2360- EB-60-2600-75-2750-EB-75-2900. Selection Scale Rs. 2000-60-2300-75-2375-EB- (After 12 years in Senior 75-2825-EB-75-3200-100- Scale and attainment of . 3300-EB-100-3500. 562 qualifications laid down for PGTs)"

(6) The learned Counsel, Therefore, contends that the petitioner was entitled to senior scale after completion of 12 years of service with effect from May 1, 1976 whereas she has been granted senior scale only with effect from May 26, 1993 i.e. after completion of 12 years from the date of school was brought under grant-in-aid scheme by the Directorate of Education. The main contention of the learned Counsel for respondents I and 2 is that the contribution of the said respondents towards grant-in-aid only arose with effect from May 1, 1981 and the petitioner could be considered for senior scale after completion of 12 years from that date only. Reference is made to Sub-clause (2) of Section 10 which stipulates that the managing committee of every aided school shall deposit, every month, its share towards pay and allowances etc. and as the school was not given any grant prior to May 1,1981, no relief can be granted to the petitioner on this ground. It is no doubt true that the respondents would only contribute their share after May 1,1981 when such grant- in-aid was approved and not from an earlier date. The fact, however, remains that the school was duly recognised under the statutory provisions with effect from May 1, 1976 and the petitioner continued to work with respondent No. 4 till date. Therefore, the benefit of the period of 12 years should commence from May 1,1976 and not from the later date. The contribution of the Government only commenced with effect from May 1,1981 and it is reasonable to hold that the petitioner shall be entitled to consequential benefits as a result of her being eligible for senior scale with effect from May 1, 1988 i.e. after completion of 12 years from the date school was accorded recognition. The respondents are directed to issue necessary directions in this regard within two months from today.

(7) The writ petition is allowed in the above terms. The petitioner shall also be entitled to costs which are assessed at Rs. 2000.00 .