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**(2010) 04 RAJ CK 0053**  
**In the Rajasthan High Court**

Smt. Kamlesh Sankhla

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 16-04-2010

**Acts Referred:**

**Citation :** (2010) 04 RAJ CK 0053

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Final Decision :** Allowed

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### **Judgement**

Mohammad Rafiq, J.—Petitioner, as alleged in writ petition, was initially appointed as Teacher Grade-III. On completion of requisite period of service, she was granted benefit of selection scale of Rs. 6500-10500. However, later on, vide notification dated 08.06.2001 which was given retrospective effect from 01.07.1998, her pay scale was reduced and recovery of excess amount has also been ordered to be made.

2. Learned Counsel for petitioner submits that controversy raised in instant petition has been decided by judgment of Division Bench in D.B. Civil Special Appeal (Writ) No. 208/06 along with 41 other connected appeals, State of Rajasthan and Ors. v. Raniwas Porwal 2008 (2) WLC 406, on 13.12.2007. Relevant part of judgment supra reads as under:

3. However, it may be clarified that because of the provisions made in Note 8 read with Note appended to Rule 6 a Senior Teacher drawing pay in second selection grade of 6500-10500 prior to 1.7.1998 and promoted as Senior Teacher but after 1.7.1989 who has not completed 10 years as Senior Teacher at the time of commencement of the Act his pay in pay-scale of 6500-10500 was protected as personal to him, though he would become eligible to such scale under the new rules of 1998 only on completion of 10 years. In this view of the matter, the rights of the respondents even under the aforesaid provision remain intact and unaffected and it could not have any adverse effect on them.

4. But those who have been promoted as Senior Teachers drawing their pay in Second Selection Grade of 6500-10500 will not be eligible for this pay protection because even under the Rules of 1998 as initially exist, they were to be promoted to Senior Scale, which was Rs. 5500-9000 only. But because of lacuna in the Rules originally enacted, not providing any specific provision, their fixation has been wrongly made by considering all Senior Teachers to be of the same category. The initial fixation in higher pay-scale being without any mistake on their part, until Notification of amendment, the resultant recoveries of excess amount paid to them has been waived.

5. But after correction of this lacuna on amendment of Note 8, no such protection has been granted under the Rules. If any such recovery has become due on account of continued drawing of pay by such Senior Teachers promoted after 1.7.1998, due to no mistake or misrepresentation on the part of such incumbents, they may make appropriate representation to the Government to consider their cases against recovery.

6. Accordingly, with the aforesaid clarification the appeals are allowed. The judgment under appeal declaring Notification dated 8.7.2001 to be ultravires is set aside. However, the view which we have taken on interpretation of the Rules, the existing teachers who have been promoted as Senior Teacher in the Second Selection Grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised rules were required to be fixed in lower pay-scale, their continuance in the higher pay-scale was protected as pay-scale personal to them under Note to Rule 6. The rights of all the appellants stand protected to this extent. In that light, the writ petition filed by the appellants stand allowed to that extent.

7. In the facts and circumstances of the case, there shall be no order as to costs.

8. Accordingly, writ petition stands disposed of with direction that petitioner may file representation within one month and respondents shall pass a fresh order in view of judgment supra, within three months thereafter.

9. However, the respondents shall not make any recovery, if already not made, from petitioner pending representation.