GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION
(Act-II Branch)
OLD SECRETARIAT, DELHI-110054.

No.F.DE.15(Misc.)/Act-II/2013/ 2599

ORDER

Dated: 02.12.2013

1. WHEREAS, the Hon’ble High Court of Delhi in Writ Petition(Civil) No. 3408/2011 in the matter of Ajmer Singh V/s Govt. of NCT of Delhi & Ors. has passed an order on 09.07.2013 as under:-

"Petitioner was granted benefit of MACP Scheme and which are withdrawn by the order dated 04.04.2011 & 05.04.2011. Since the monetary benefits were once granted but the same are withdrawn without complying with the principles of natural Justice, it is necessary that Petitioner should have been heard before withdrawing of the benefits of MACP Scheme. Accordingly, it is agreed and the writ petition is disposed off with the direction that respondent no.2 will hear the petitioner and thereafter pass speaking orders in accordance with law."

2. AND WHEREAS, the facts of the case enumerated from the records are that:--

(i) Sh. Ajmer Singh (presently under suspension) was appointed as Class-IV employee in Khalsa Girls Sr. Sec. School, Chuna Mandi, Pahar Ganj, New Delhi(Govt. Aided School) w.e.f. 19.06.1978 in the pay scale of Rs.196-232/-.

(ii) Thereafter, he was promoted as Lab.Assisstant w.e.f. 08.12.1981 in the pay scale of Rs.290-500/- (revised to Rs.4000-6000/- by Vth CPC).

(iii) Further, he was granted Selection Grade of Lab. Assisstant w.e.f. 01.08.1982 in the pay scale of Rs. 530-610/- (revised to Rs. 4500-125-7000/- by Vth CPC).

(iv) Thereafter, he was granted IIInd ACP w.e.f. 19.06.2002 in the pay scale of Rs. 5000-8000/- vide order dated 27.01.2009.
(v) In response to a representation dated 21.06.2010 made by Sh. Ajmer Singh for grant of benefits under MACP scheme, the case was examined by the ACP Cell of this Directorate and it was clarified/ advised as under:-

"Sh. Ajmer Singh had earlier earned two Financial Up-gradations i.e. 1st up-gradation in term of promotion as Lab. Assistant and 2nd up-gradation in term of Selection Grade, as such the employee was not entitled for further up-gradation under ACP Scheme which has been granted to him w.e.f. 19.06.2002 in the pay scale of Rs.5000-8000/- and same should be withdrawn."

(vi) In furtherance, the DDE(C/ND) vide letter dated 04.04.2011 directed the Manager of said School to withdraw the Second Financial Up-gradation of ACP granted to Sh. Ajmer Singh w.e.f. 19.06.2002 stating therein that he is entitled for 3rd MACP w.e.f. the date he has completed 30 years 'regular service' counted from the date of joining as class-IV/Grade-'D' post on 01.09.2008(date of implementation of MACPS) and the same was conveyed by the Manager of the School to Sh. Ajmer Singh, Lab. Asstt. vide letter dated 05.04.2011.

(vii) Thereafter, Sh. Ajmer Singh submitted a representation enclosing with a copy of corrigendum vide letter no. Z/28/2011/248 dated 29.04.2011 issued by E.O. Zone-28 regarding restoration of his 2nd Financial Up-gradation of ACP granted w.e.f. 19.06.2002 and then withdrawn from him. However, the Zonal Authorities have stated that "the said letter dated 29.04.2011 is not having any evidence to be issued and there is no text of issuance of this letter on the note sheet of the file, neither school received the original of this letter."

(viii) Further, DEO (Zone-28) vide its letter dated 15.07.2011 issued to the manager of the said school conveyed the justification with regard to withdrawal of 2nd financial up-gradation granted to Shri Ajmer Singh.

3. AND WHEREAS, in compliance of the Hon’ble High Court order dated 09.07.2013, Sh. Ajmer Singh was accorded a personal hearing on 09.10.2013. During the personal hearing held on
09.10.13 in the chamber of Director (Education), Sh. Ajmer Singh referred to the representation given by him on 22.07.13. He reiterated that recovery of ACP II is illegal as no re-pay fixation has been done by the Directorate of Education. He requested for the release of all financial benefits of ACP II. He also requested for grant of Selection Scale to him which he claimed to have become entitled for w.e.f. 1994.

4. AND WHEREAS, it is observed that the ACP Scheme was introduced by the Govt. of India vide OM No.35034/4/97/Estt.D dated 09.08.1999. Further vide clarifications issued through DOPT OM No.3501/1/2003-East(D) dt. 29.06.04, the same was made applicable to group 'B', 'C' and 'D' services/posts and isolated posts w.e.f. the date of issue of memorandum. The main conditions for grant of benefits under the ACP Scheme are detailed as under:-

- The first financial up-gradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 24 years of regular service subject to fulfillment of prescribed conditions.

- Two financial up-gradations under the ACP Scheme shall be available only if no regular promotion during the prescribed period (12 Years & 24 Years) has been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case, two prior promotions on regular basis have already been received by an employee no benefit under the ACP scheme shall accrue to him.

- Only those employees who fulfill all promotional norms are eligible are to be considered for benefit under ACP Scheme.

5. AND WHEREAS, after due examination of the matter, the following points are observed :-

(a) The original file in which the second upgradation under ACP scheme was granted to Ajmer Singh is stated to be not tracable in the district. Therefore, it cannot be verified from the said file how the second ACP was granted to him.

(b) The implementation of ACP scheme to Lab Assistant of Directorate of Education was granted vide Directorate of
Education Order No. DE.4(1)(83)/E-IV/2005/C.Case/13009-13034 dated 02.06.2006. Vide point No. 8 of the said order it is mentioned that clarification of DoPT dated 10.02.2000 and 18.07.2001 should be referred to in case of any doubt for implementation of ACP scheme.

(c) A perusal of the DoPT OM No. 35034/1/97-Estt(D)(Vol.IV) dated 10.02.2000 reveals that the matter of granting ACP to employees granted Selection Grade/in-situ promotions have been discussed and clarified at Point No. 2 which is detailed below:

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<tr>
<th>S. No.</th>
<th>Point of doubt</th>
<th>Clarification</th>
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<td>2.</td>
<td>Some employees have been allowed selection grade/in-situ promotions though these grades are not a part of the defined hierarchy. Whether this is to be considered as promotion for the purpose of ACPS? Also, what will be the situation if selection grade has been allowed in lieu of higher pay-scale/</td>
<td>Mobility under ACPS to be allowed in the 'existing hierarchy'. As such, if any selection grade/in-situ promotion has been allowed to employees which are not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPS. For illustration sake, junior engineers of CPWD appointed in the grade Rs. 5000-8000/- are allowed the scale of Rs. 5500-9000/- on completion of five years of regular service and the scale of Rs. 6500-10500/- on completion of fifteen years of regular service. The scale of Rs. 5500-9000/- is not a part of the defined hierarchy for them. In such cases, the pay-scale which is not a part of the hierarchy may be treated to have been withdrawn. However, fall in pay resulting out of this shall be protected by granting personal pay in the aforesaid direct entry grade to be adjusted against future increments. Moreover, as per Condition No. 13 of ACPS, such existing (previous) schemes would be discontinued with the adoption of ACPS. However, in the case of common category of posts, the existing hierarchy in relation to a</td>
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In the case of Lab Assistant it is observed that the initial scale of appointment was Rs. 330-530 (as per 3rd Pay Commission) and Rs. 1200-2040 (as per the 4th Pay Commission). Subsequent to grant of Selection Grade the Lab Assistants were placed in the pay scale of Rs. 530-610 (3rd Pay Commission)/Rs. 1350-2200(4th Pay Commission). In the normal course Lab Assistants are entitled for promotion to the post of TGTs in the pay scale of Rs. 1400-2600 (4th Pay Commission). Therefore, it appears that the case of Lab Assistants is covered under the provisions of the aforesaid clarification given by DoPT OM dated 10.02.2000 and benefit granted to Sh. Ajmer Singh appears to be justified.

(d) As the MACP Scheme was introduced by Govt. Of India w.e.f. 01.09.2008, so Sh. Ajmer Singh would be entitled for 3rd MACP w.e.f. the date he has completed 30 years of regular service counted from the date of joining as Class-IV/Grade-D post or w.e.f. 01.09.2008 i.e. the date of implementation of MACP Scheme, whichever is later, subject to fulfillment of other required conditions of MACP Scheme.

6. AND WHEREAS, the issue of grant of Selection Scale to Sh. Ajmer Singh, Lab Assistant was also examined and it is seen that the provision for grant of Selection Grade was made vide Govt. of India, Ministry of Education & Social Welfare, OM No. F.48-27/71-UT.1, dated 26.11.1971 wherein the list of beneficiaries includes Laboratory Assistants. Further, vide Government of India, Ministry of HRD, Department of Education OM No. F.5-180/86-UT.1 dated 12.08.1987 the scheme of grant of Senior Scale and Selection Scale was introduced. It is worthwhile to note that vide the said OM the benefits for grant of Selection Scale have not been granted to Laboratory Assistants. Even if the Laboratory Assistant are considered to be analogous to miscellaneous posts then also an important condition for grant of Selection Scale is the requirement to obtain higher qualification. In the case of Sh.
Ajmer Singh, it is observed that he does not have the requisite higher qualifications. Therefore, his request for grant of Selection Scale cannot be considered.

7. NOW, THEREFORE, in view of the above facts and rule position, the admissibility of the clarification No. 2 of Government of India, DoPT OM No. 35034/1/97-Estt(D)(Vol.IV) dated 10.02.2000 in the case of Sh. Ajmer Singh needs to be examined. Deputy Director of Education (C/ND) is accordingly directed to re-examine the order of withdrawal of benefits granted to Sh. Ajmer Singh, Lab. Assistant, Khalsa Girls Sr. Sec. School, Chuna Mandi, Pahar Ganj, New Delhi (Govt. Aided School) in consultation with the Accounts functionaries of the Headquarters and pass an order within four weeks. The DDE (C/ND) is also directed to inquire into the matter of the missing files of the case of Sh. Ajmer Singh and take requisite action including filing of FIR, if required, within two weeks. Further, the Manager of the School is hereby directed to constitute the DPC to consider the case of 3rd MACP in respect of Sh. Ajmer Singh, Lab. Assistant w.e.f. the date he has completed 30 years of regular service counted from the date of joining as Class-IV/Grade-D post or w.e.f. 01.09.2008 i.e. the date of implementation of MACP Scheme, whichever is later, subject to fulfillment of other required conditions of MACP Scheme, without any delay.

8. This order disposes off the directions issued by the Hon’ble High Court of Delhi on 09.07.2013 in Writ Petition(Civil) No. 3408/2011 in the matter of Ajmer Singh V/s Govt. of NCT of Delhi & Ors..

(AMIT SINGLA)
DIRECTOR OF EDUCATION

To,
Sh. Ajmer Singh,
R/o 238-B, Paschim Vihar Extension,
New Delhi-110063.

No.F.DE.15(Misc.)/Act-II/2013/ 2600-2601 Dated: 02/12/2013
Copy to:-
1. Regional Director (Central), Directorate of Education, GNCT of Delhi.
2. Special Director of Education (Act-II), Directorate of Education, GNCTD.
3. DDE(C/ND) with the direction to serve a copy of the order to Sh. Ajmer Singh, Lab. Assistant(under suspension)/petitioner and the Chairman / Manager of Khalsa Girls Sr.Sec. School, Chuna Mandi, Pahar Ganj, New Delhi(Govt. Aided School) through special messenger and ensure the compliance of the order/directions by the School Management.
4. The P.S. to Director of Education, Directorate of Education, Delhi.
5. O.S.(IT) with the directions to upload the order on the web site.

(USHA SAINI)
DEO(Act-II)