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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02.09.2025

+ W.P.(C) 7955/2019

RAM NIWAS AND ANR.

.....Petitioners

Through: Mr.Ranjit Sharma, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

.....Respondents

Through: Ms.Namrata Mukim, SC for
MCD with Ms.Sakshi Saxena,
Adv. & Ms.Seema Sharma,
Addl. Director (Education),
MCD/HQ.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

CM APPL. 32595/2022

1. This application has been filed by the respondents, seeking waiver of the costs imposed on them *vide* Order dated 09.05.2022.
2. For the reasons stated in the application, and the same being not opposed by the petitioners, the costs imposed on the respondents is waived.
3. The application is disposed of.

W.P.(C) 7955/2019 & CM APPL. 8161/2025 & 30448/2025

4. This petition has been filed challenging the Order dated 23.04.2014 passed by the learned Central Administrative Tribunal,



Principal Bench, New Delhi (hereinafter referred to as the ‘Tribunal’), in O.A. No. 3541/2014, titled ***Ashok Kumar Tanwar & Anr. v. North Delhi Municipal Corporation & Ors.***, whereby the O.A. filed by the petitioners herein was dismissed. The petitioners have also challenged the Order dated 01.02.2019 passed by the learned Tribunal in RA No. 269/2016, whereby their review application was also dismissed by the learned Tribunal.

5. To give a brief background of the facts in which the present petition arises, the petitioner no. 1 was appointed as an Assistant Teacher in the Municipal Corporation of Delhi (in short, ‘MCD’) on 16.03.1994, and the petitioner no. 2 was appointed to the said post on 10.05.1993.

6. By virtue of an arrangement between the Directorate of Education, Government of NCT of Delhi and the MCD, they were ‘promoted’ against the 70% vacancies to the post of Trained Graduate Teachers (TGT) under the Recruitment Rules for the post of Trained Graduate Teachers (MIL) under the Directorate of Education, Delhi Administration, Delhi.

7. *Vide* Office Orders dated 02.12.2005, they were relieved from their duties with the MCD, with a lien of one year from the date of relieving, subject to the stipulation that if they wished to return within the lien period, they could do so on depositing with the Corporation the fixed leave salary and pension contribution, either personally or through their “New Employer”, that is, the Department of Education, Government of NCT of Delhi.



8. Exercising their right of lien, they returned to the MCD, *vide* Office Orders dated 09.01.2006 and 17.01.2006, respectively.

9. In the meantime, by a Circular dated 01.09.2005, the MCD introduced the ACP Scheme with effect from 09.08.1999. Clause 14 thereof is relevant for the purposes of adjudication of the present petition and is, therefore, reproduced herein below:

“14. Refusal of Promotion - An employee who has not accepted the normal ‘Vacancy based’ promotion shall not be entitled for up-gradation under the scheme unless he/she accepts the regular promotion after completing the period of debarment on refusal of promotion. The condition is applicable for Ist as well as IInd financial up-gradation. Besides this, where a promotion has been offered before the employee could be considered for grant of benefit under ACP scheme but refused to accept such promotion, than he can not be said to be stagnating as he has opted to remain in the existing grade on his own volition. In such case, he/she can not be granted benefit under ACP scheme.”

10. Treating the repatriation of the petitioners as their refusal to accept promotion, the respondents denied them the ACP benefits. Aggrieved thereby, the petitioners approached the learned Tribunal.

11. The learned Tribunal rejected the claim of the petitioners for grant of the ACP benefits, observing in the Impugned Order that they had forfeited such claim by refusing the promotion earlier granted to them as Trained Graduate Teachers (MIL) under the Directorate of Education, Delhi Administration, Delhi. The relevant findings of the learned Tribunal are reproduced as under:



“9. The recruitment rules (RR) for the post of TGT also have a provision for promotion of Assistant Teacher of MCD to Department of Education to the extent of 70%. Here the use of word ‘promotion’ in RR for the teachers of MCD is significant. It underlined the fact that despite MCD being a Corporation the movement of Asstt. Teacher of MCD as a TGT in Directorate of Education under the Government was treated as normal promotion. It is apparent that for historical reasons and keeping in view the unique relationship between the Govt. of NCT of Delhi and the MCD, and now its successor Municipal Corporations, this special provision was made in the recruitment rules. It is also noticed that the applicants themselves had applied for promotion in the TGT channel and once they were selected as TGT they cannot say that they were not given any option to choose between the TGT and the MCD promotion channels. We are also not impressed by the argument of the learned counsel for the applicant that applicants were not informed at the time of reversion that they would not be entitled to financial upgradation under the ACP scheme, if they went back to the MCD. In such situations, it is for the employee to ascertain his entitlements and the rule position before taking a decision to safeguard his interest. No employer can give a comprehensive set of warning to the employee at the time of reversion or the consequences that would follow if he took a particular course of action. With regard to the instance of Smt. Neelam Devi, Assistant Teacher under South Delhi Municipal Corporation, we are not in a position to examine the same as neither South Delhi Municipal Corporation nor Smt. Neelam Devi were respondents in this case. We do not know under what circumstances the South Delhi Municipal Corporation had granted her the ACP as has been claimed by the applicants. We, however, note that the applicants had made several representations



starting from 25.05.2009 which remained unanswered by the respondents.”

12. Aggrieved thereby, the petitioners have approached this Court by way of the present petition.

13. We may herein itself note that petitioner no. 1 was subsequently promoted to the post of Principal in the MCD in the year 2017, being the first vacancy available by promotion, and the petitioner no. 2 re-joined the Department of Education, on 29.08.2025. In our opinion, however, these facts would have no bearing on the entitlement of the petitioners to the grant of ACP benefits, for the reasons that we shall state hereinbelow.

14. The learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the appointment of the petitioners as TGTs with the Directorate of Education was not a promotion. He submits that, under the MCD cadre structure, the promotional avenue for an Assistant Teacher is to the post of Principal and, thereafter, to the post of School Inspector. The post of TGT with the Directorate of Education is not a cadre within the MCD, but with a separate employer which merely extends recruitment opportunities to Assistant Teachers employed with the MCD. That, however, would not make it a promotional avenue, even though, under the recruitment rules of the Directorate of Education, Government of NCT of Delhi, it is termed as ‘promotion’.

15. He submits that, equally, the arrangement between the MCD and the Department of Education, would not make the post of TGT a normal promotional avenue for the Assistant Teacher. In support of



this submission, he places reliance on the Circular dated 14.02.2014, issued by the North Delhi Municipal Corporation, and the Office Order dated 21.10.2015, issued by the South Delhi Municipal Corporation.

16. He further submits that, in any case, as per Clause 14 of the Circular referred to herein above, the bar for grant of ACP benefits is only for the period of debarment from promotion, which, in terms of the Office Order dated 25.02.2010, issued by the Government of NCT of Delhi, is one year from the date of refusal to accept promotion. He submits that applying the said Office Order, the petitioner no. 1 was, in fact, granted the ACP benefits from the year 2007. However, as the petitioner no. 2 was not granted this benefit, the same was reconsidered, and has been withdrawn even from the petitioner no. 1. He submits that the petitioners were, therefore, entitled to the grant of the ACP benefits from the date it became due in terms of the Circular dated 01.09.2005.

17. On the other hand, the learned counsel for the respondents submits that the petitioners had applied for promotion as TGT with the Department of Education, and on being selected for the same, had been granted such promotion *vide* Office Orders dated 23.12.2004 and 08.08.2005, respectively. They accepted this promotion and even joined the Department of Education, however, they later sought repatriation to their original post of Assistant Teacher with the MCD. This was treated as refusal of promotion and, in terms of Clause 14 of the Circular dated 01.09.2005, reproduced hereinabove, they were not entitled to the grant of the ACP benefits. She submits that the post of



TGT with the Department of Education is a promotional avenue for the petitioners, in terms of an internal arrangement between the MCD and the Department of Education and, therefore, the petitioners cannot be heard to say that their refusal to continue as TGT was not a denial of promotion granted to them.

18. We have considered the submissions made by the learned counsels for the parties.

19. It is not denied that, in terms of the Recruitment Rules of the MCD, the promotional avenue for Assistant Teachers is to the post of Principal within the MCD. The Department of Education, under its own Recruitment Rules for the post of TGT, gives recognition and makes eligible the candidates who are working as Assistant Teachers with the MCD for the purpose of recruitment. That would not, however, make it a promotional post for the Assistant Teachers working with the MCD, even though it is nomenclatured as a 'promotion'; Directorate of Education being a separate employer and MCD being an autonomous body constituted under the Delhi Municipal Corporation Act, 1957. It is recognition of the same, that the Office Orders dated 02.12.2005 kept a lien of one year from the date of relieving for the petitioners to join back the MCD, subject to the condition that they would deposit with the Corporation the fixed leave salary and the pension contribution either themselves or through the 'New Employer', which is the Department of Education. Recognizing this distinction, the North Delhi Municipal Corporation, in its Circular dated 14.02.2014, gave an option to the Municipal Teachers to opt for being recruited in the Department of Education, or



to continue in the schools run by the Municipal Corporation. It was further stipulated that those who opted to continue in the Education Department of the North Delhi Municipal Corporation, shall not be treated to have refused promotion and, therefore, shall be entitled to the grant of the ACP benefits. Similarly, by the Office Order dated 21.10.2015, the South Delhi Municipal Corporation also decided that the hierarchy of the promotional avenues of teachers as per the feeder cadre in the recruitment rules, is to be considered for grant of ACP pay scales and as the promotional post of teachers (Primary/Nursery) in the MCD is Principal (Primary/Nursery) and not a post of TGT in the Department of Education, it cannot be considered as a regular departmental cadre promotion, which would deny the benefits of ACP benefit to the employee.

20. Keeping in view the above, the decision of the petitioners to join back the MCD in spite of being appointed as TGT with the Department of Education, Government of NCT of Delhi, cannot be treated as their refusal to accept promotion. Clause 14 of the Circular dated 01.09.2005 would, therefore, not apply to the case of the petitioners.

21. Accordingly, they are held entitled to the grant of the ACP benefits from the date it became due to them in terms of the Circular dated 01.09.2005.

22. Accordingly, the Impugned Orders dated 23.04.2014 and 01.02.2019, passed by the learned Tribunal, are set aside.



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23. The respondents are directed to pass consequential orders within a period of three months from today and release the benefits to the petitioners within the same period.

24. The petition, along with the pending applications, is disposed of.

25. There shall be no order as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 2, 2025/rv/DG