



2025:DHC:7998-DB



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

Date of decision: 09.09.2025

+ W.P.(C) 15399/2023 & CM APPL. 61761/2023
KENDRIYA VIDYALAYA SANGATHAN & ANR.

.....Petitioners

Through: Mr.Anil Nag, Adv. (through
VC)

versus

Y S SAINI

.....Respondent

Through: Ms.Sonika Gill, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 19.05.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') in O.A. 4511/2018, titled ***Y.S. Saini v. Kendriya Vidyalaya Sangathan & Anr.***, allowing the O.A. filed by the respondent herein with the following directions:

"13. In view of the situation detailed and discussed above, the OA is allowed and the Order dated 02.11.2018 is quashed and set aside. It is further held that the applicant would be deemed to have completed the qualifying service for eligibility for grant of selection scale on completion of 12 years from 01.01.1996, that is, the date on which the



senior scale was granted to him. Accordingly, the competent authority among the respondents shall pass an order afresh in this regard within a period of eight weeks from the date of receipt of a copy of this order. It is further directed that the amount already recovered from the applicant in pursuance of the impugned order shall be re-funded to him within this period of eight weeks from the date of receipt of a copy of this Order. Needless to say that other consequential benefits as may accrue shall also be released within this period. If these entitled dues are released and refund made within this period of eight weeks the applicant would not be entitled to any interest. However in the event of delay of beyond this period such payment shall accompany simple interest at the rate of 6% per annum.”

2. The respondent was appointed as a Yoga Teacher with the petitioners on 07.09.1981 and was granted Senior Scale on completion of 12 years of service on 01.01.1996. The petitioners issued a Circular dated 02.07.1998 stating that the Yoga Teachers, who possessed the requisite qualifications for the post of Physical Education Teachers (in short, ‘PET’), will be converted to the said post. Pursuant to the respondent exercising such option, the respondent was appointed as PET on 24.10.2000.

3. The respondent was then granted the Selection Scale *vide* Order dated 09.04.2014, counting his service as Yoga Teacher for the purposes of calculating 24 years of service. The respondent superannuated from service on 30.04.2018. Post the superannuation of the respondent, the petitioners *vide* an Order dated 02.11.2018, sought to withdraw the benefit of the Selection Grade granted to the



respondent claiming that his appointment as PET on 24.10.2000 is to be considered as a fresh appointment and the service rendered by the respondent as Yoga Teacher is, therefore, not to be counted for purposes of grant of Selection Grade. The petitioners also sought to make recovery of the alleged excess amount paid to the respondent.

4. The learned Tribunal, however, *vide* its Impugned Order, has held that the appointment of the respondent as a PET cannot be considered as a fresh appointment, and that the respondent was entitled to the counting of his services as a Yoga Teacher for the purpose of granting the Selection Scale.

5. The petitioners aggrieved of the said Order have approached this Court.

6. The learned counsel for the petitioners submits that the appointment of the respondent as PET was pursuant to an option exercised by the respondent and, therefore, is to be treated as a fresh appointment. He submits that the period of service rendered by the respondent as a Yoga Teacher, therefore, cannot be counted for grant of Senior Scale.

7. On the other hand, the learned counsel for the respondent submits that in terms of the Circular dated 02.07.1998, the Yoga Instructors were to be converted as PET. She submits that, therefore, the appointment of the respondent as PET cannot be treated as a fresh recruitment. She submits that the respondent would be entitled to the service rendered by him as Yoga Teacher for grant of Senior Scale. She further submits that, in any case, recovery cannot be allowed to be made by the petitioners post the retirement of the respondent. In



support, she places reliance on *State of Punjab v. Rafiq Masih (White Washier) & Ors.*, (2015) 4 SCC 334.

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

9. As would be evident from the above, the learned Tribunal placing reliance on the Circular dated 02.07.1998 issued by the petitioners, has observed that the appointment of the respondent as PET cannot be treated as a fresh recruitment. It was a case of mere conversion of the post and, therefore, the respondent was entitled to the counting of the service rendered by the respondent as a Yoga Teacher for grant of Senior Scale.

10. We further find that the respondent had superannuated on 30.04.2018, and the impugned recovery order was issued only on 02.11.2018, that is, post the superannuation of the respondent. In terms of *Rafiq Masih* (supra), the same was not permissible. Further no show cause notice appears to have been given to the respondent before withdrawing the benefit of Senior Scale from the respondent.

11. Keeping in view the above, we find no infirmity in the order passed by the learned Tribunal. The petition, along with the pending application is, accordingly, dismissed.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 9, 2025/ns/VS