

“No carelessness until there is a cure. Wear Mask, follow physical distancing & maintain hand hygiene.”

PUBLIC GRIEVANCES COMMISSION
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
I.P. Estate (near ITO), Vikas Bhawan, M-Block, New Delhi-110110
Tel Nos. 011-23379900-01 Fax No.011-23370903
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Order under Para 2(B) of the PGC Resolution No F.4/14/94-AR dated 25.9.97

Date of hearing: 07.09.2021

Complainant : Mrs. Rajesh Devi.

Respondent : The Director,
Directorate of Education,
Govt. of NCT of Delhi.
through Mr. Shamshad Alam, DDE (Zone-29),
District South East, GNCT of Delhi.

Ms. Kavita Saini, HOS/Vice Principal
Govt.Girls Sr.Sec.School, Jasola Village,

Ms. Disha Kala Ghildiyal, Section Officer
Govt.Girls Sr.Sec.School, Jasola Village,
- Present.

Grievance No. : PGC/2020/A.II/Edn./20

1. Brief facts of the complaint

1.1 Mrs. Rajesh Devi, filed a grievance petition before Public Grievances Commission, aggrieved by non-receipt of arrears of salary of her re-employment period for the duration 01.01.2015 to 31.12.2016. Further, increased D.A. of 2% @ 127% from 1.7.2016 to 31.12.2016 has also not been made to her till now. The School Authority has not taken any action in the matter.

2. Relevant facts emerging during the hearing

2.1 Ms. Kavita Saini, Vice Principal, Govt.Girls Sr.Sec.School, Jasola Village, Shaheen Bagh, Jasola, filed a Status Report dated 06.09.2021 stating therein that:-

S. No.		Action taken	Action to be taken
1	Smt. Rajesh Devi had given application for revision of her	Revision of pension done now she is getting	Nothing due

	<i>pension w.e.f. 01.01.2016 according to 7th Pay Commission vide letter dated 07.12.2018 (copy enclosed)</i>	<i>her revised pension as per 7th Pay Commission</i>	
2	<i>Her pay has been refixed by Principal/HOS vide letter No. GGSSS Jasola Village/ 2018/353 dated 11.09.2018 (copy enclosed) (according to Rs.17140/- for TGT).</i>	<u><i>Arrear of Rs.76646/- has been paid to her vide this office bill No. 175 dated 21.01.2019. Accordingly arrear of DCRG Commutation and leave encashment (Bill dated 16.04.2019) has been paid to her.</i></u>	<i>Nothing due</i>
3	<i>Her pay of re-employment period has been refixed vide DDE(SE) vide DDE O/o No. F/DDE/SE/997-999 dated 03.09.2019 (copy enclosed) as per her application dated 26.09.2019(copy enclosed), she has again asked salary of re-employment period 01.01.2015 to 31.12.2016 and salary from 01.01.2016 to 31.12.2016 according to 7th Pay Commission</i>	<i>According to that, a due drawn statement for the period 01.01.2015 to 31.12.2016 has been prepared and a recovery of Rs.77835/- has to be deposited by her vide this office letter No. 655 dt. 25.10.2019.</i>	<i>Recovery of Rs.77835/- is due from Smt. Rajesh Devi, retired TGT</i>
4	<i>Smt. Rajesh Devi, TGT vide her letter dated 30.10.2019 has rejected the 7th Pay Commission in her personal interest and asked school authority to take necessary action in this matter (copy enclosed) which is not justified as per rule.</i>	<i>As per her earlier application dated 07.12.2018 and 26.09.2019 (copy enclosed) she has asked the pension and salary of re-employment period w.e.f. 01.01.2015 to 31.12.2016 and salary from 01.01.2016 to 31.12.2016 according to 7th Pay Commission and after seeing recovery of Rs.77835/- she is rejecting 7th Pay Commission.</i>	<i>recovery of Rs.77835/- is due from Smt. Rajesh Devi, retired TGT for re-employment period w.e.f. 01.01.2015 to 31.12.2016</i>
5	<i>Now she is asking school authorities to pay salary arrear of re-employment period w.e.f. 01.01.2015 to 31.12.2015 and DA arrear 2% from 01.07.2016 to 31.12.2016 vide letter dated 06.11.2019 (copy enclosed)</i>	<i>But since her re-employment period w.e.f. 01.01.2015 to 31.12.2016 and as per due drawn, Rs.77835/- has to be recovered from her which has been conveyed to her vide</i>	<i>recovery of Rs.77835/- is due from Smt. Rajesh Devi, retired TGT for re-employment period w.e.f. 01.01.2015 to</i>

		<i>this office letter No. 655 dt. 25.10.2019. As far as DA arrear is concerned, the amount is already made to her in excess.</i>	<i>31.12.2016</i>
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Since Smt. Rajesh Devi is already getting revised pension according to 7th Pay Commission w.e.f. 01.01.2016 vide her letter dated 07.12.2018 (copy enclosed), it is not possible to give her salary arrear according to 6th Pay Commission for her re-employment period as she desired in her application dated 06.11.2019 (copy enclosed).

The case had been forwarded to DCA O/o RDE (E) for their action/advice and as per DCA (East), the pay fixation under 7th Pay Commission structure as on 01.01.2016 of Smt. Rajesh Devi was unnecessary and unwarranted. Her pay could have been continued under 6th CPC till the end of reemployment period. Therefore, the authority who approved pay fixation under 7th Pay Commission structure as on 01.01.2016 may withdraw and write to PAO concerned to revise her pension under 7th CPC w.e.f. 01.01.2017 instead of 01.01.2016 and recover the over payment of pension paid during the above period.

The advise issued by DDE Zone 29 to process the case on top priority as per direction of Hon'ble PGC shall be taken into consideration to expedite the matter.

As per direction of Hon'ble PGC on 08.07.2021 and vide their letter No.2767 dated 13.07.2021, a letter mentioning the steps taken by the department vide this office letter No. GGSSS Jasola Village/2021/446 dated 24.07.2021 was sent to Smt. Rajesh Devi (Retd. TGT) by hand through class IV staff of this school but she refused to receive the letter. The same letter was sent to her by speed post again on 29.07.2021 (Photocopy of receipt enclosed).

As per direction of Hon'ble PGC on 18.08.2021 and vide their letter No.4778 dated 19.08.2021, the school authorities are looking into the matter of similar cases on urgent basis. ”

2.2 The complainant was not present in the hearing.

2.3 During the last hearing dated 18.08.2021, the Commission advised the complainant to give names of other teachers of the school (with supporting documents) including Ms. Tanveer, in whose case, salary arrears are being paid as per 6th Pay Commission whereas pension are released as per 7th Pay Commission. In this regard, an e-mail dated 27.08.2021 of the complainant to the Principal, Govt. Girls Sr. Sec. School, Jasola Village, Shaheen Bagh was received in the Commission,

wherein, the complainant has requested the school authorities to issue her the names of other teachers of the school whose case are similarly placed vis-a-vis her case.

2.4 The departmental representative submitted that cases of three other teachers similarly placed with the complainant's case were sent to the office of concerned DDE (Zone-29) and if and when, the case files of the above cited teachers were received in the school, necessary action will be initiated as per decision taken by the higher authorities.

2.5 Mr. Shamshad Alam, DDE (Zone-29), District South East submitted that the department will not initiate proceedings for recovery of excess amount from the complainant if the complainant withdrew her demand for salary payment as per 7th Pay Commission.

2.6 The Department of Personnel & Training (DoPT), Govt. of India, in its Office Memorandum dated 02.03.2016 dealing with the subject of "Recovery of wrongful/excess payments made to Government Servants", incorporated the judgement of Hon'ble Supreme Court dated 18.12.2014, in the case of ***State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012)***, wherein, the Hon'ble Supreme Court decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation / fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments.

The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

(i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

(iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

(v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*

The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc.

2.7 Another landmark judgement, in a similar case of excess recovery from the retired government servant, of the Hon'ble Supreme Court of India in case of "**Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors.**" (Civil Appeal No. 3355 of 2003 & Civil Appeal No. 3364 of 2003) is related to the present matter. The operative part of the judgement is reproduced below:-

"28. Undoubtedly, the excess amount that has been paid to the appellants – teachers were not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar.

Learned Counsel appearing on behalf of the appellants – teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any

hardship to appellants – teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants – teachers should be made.

30.We direct that no recovery of the excess amount, that has been paid to the teachers of Secondary Schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgement was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgement.”

3. Directions of the PGC

3.1 Director (Education), GNCT of Delhi is requested to direct the Dy. Director of Education, District South-East, to look into the matter in the light of above cited DoPT, Govt. of India Office Memorandum dated 02.03.2016 incorporating the judgements of Hon'ble Supreme Court dated 18.12.2014, in the case of State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012 and another judgement in the case of “Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors.” (Civil Appeal No. 3355 of 2003 & Civil Appeal No. 3364 of 2003).

3.2 The DDE (District South-East) shall get the above mentioned judgements examined by their Legal Section and further necessary action shall be taken after receipt of opinion from the Legal section of the respondent department. Further, the Directorate of Education shall intimate the complainant as well as the Commission of the outcome of this grievance.

3.3 With these directions, **the case stands disposed of in the Commission.**

(SUDHIR YADAV)
MEMBER

PGC/2020/A.II/Edn./20

Dated:

1. The Director, Directorate of Education, Govt. of NCT of Delhi, Old Secretariat, Delhi-110054.
2. Addl. Director of Education/Nodal Officer, Directorate of Education, Govt. of NCT of Delhi, Old Secretariat, Delhi-110054.
3. Section Officer, (HQ), Directorate of Education, Govt. of NCT of Delhi, Old Patrachar Building, Lucknow Road, Timarpur, Delhi-110054.
4. Dy. Director of Education, GNCT of Delhi, District South East, C- Block, Defence Colony, New Delhi-110024.
5. Head of School, Govt. Girls, Sr. Sec. School, Jasola Village, Shaheen Bagh, Jasola, New Delhi-110025.
6. Mrs. Rajesh Devi

