

PUBLIC GRIEVANCES COMMISSION
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
I.P. Estate (near ITO), Vikas Bhawan, M-Block, New Delhi-110110
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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: 15.10.2019

Complainant : Sh.Mahavir Singh.

Respondent : The Director,
Dte.of Education, GNCTD.
Through Sh. Dinesh Kumar Gondyan,
Asstt.Director of Education, Distt. North-East.

Sh. Narender Singh,
Chairman, Vijay Jyoti Co-ed. Middle School,
New Usmanpur

Sh. Archana Choudhary, Vice Principal
Vijay Jyoti Co-ed. Middle School,
New Usmanpur – Present.

Grievance No.: PGC/2018/Annx-II/Edn./35

1. Brief facts of the complaint

1. Shri Mahavir Singh has filed a grievance petition before Public Grievances Commission, aggrieved by non-release of retirement dues as well as benefits of ACP-II by the Dte.of Education, GNCT of Delhi. He has requested for Commission's intervention for direction to the respondent department for taking needful action.

2. Facts emerged during the proceedings.

2.1 A report has been filed on behalf of Shri Satpal Singh, Dy.Director of Education, Distt. North-East, of the respondent department. It states that "*After examining the file, it was found that while appointing I.O. and P.O. in the case, the prescribed procedures have not been followed and hence, the Director of Education has decided to proceed afresh from the stage of appointing new I.O. and P.O. in the case with directions to conclude the proceedings within 45 days.*"

That the directions of Director of Education was communicated on 8/8/2019 to the School Authorities.

That vide memo dated 21.8.2019 issued by DDE(Z-IV), the School was required to submit Compliance Report regarding order dated 8.8.2019 and explanation for non-compliance of the order.

That vide letter dated 19.8.2019, School authorities submitted that order dated 8/8/2019 is improper as the employees of Govt. Aided School do not fall under CCS(Pension) Rules, 1972 since the same is stated to be applicable only for Government Servant.

That the letter dated 19.8.2019 of the School was not found proper yet, the same was processed for re-consideration by Director of Education, being the Competent Authority under Rule 120(2) of DSEAR 1973

That Gratuity and other dues are withheld in view of the pending inquiry and hence decision of Director of Education is awaited in the matter.

As regards issue of ACP benefits, the same was rejected by the Competent Authority. The same was assailed by the complainant in the Hon'ble High Court of Delhi but the decision of the Competent Authority of the School was upheld. Hence, nothing more can be done in this regard.

That representation dated 19.8.2019 of the School has been considered in ASB(HQ) and it has been advised to conclude the Disciplinary Proceedings at the earliest, as per earlier decision of the Director of Education, communicated to the School on 11.10.2019 for compliance.

2.2 A report from Sh. Narender Singh, Chairman, Vijay Jyoti Co-Ed Middle School, New Usmanpur, Delhi, is on record wherein it is clarified that *"all the recruitment/appointment in the government department is made in accordance with rule 9 of CCS(Pension) Rules, 1972.*

However, so far as the matter of recruitment/appointment in the Govt. aided schools is concerned, the same is made in accordance with rule 98 of DSER 1973.

Further vide its report dated 9.10.2019, Vice-Principal, Vijay Jyoti School, stated that *“the main subject of the complaint of Sh. Mahavir Singh is to release his pensionary benefits i.e. Gratuity and Commutation (other dues such as Leave Encashment amounting to Rs.4,12,093/- and GPF amounting to Rs.9,80,244/- have already been paid) but payment of Gratuity and Commutation could not be made due to pending disciplinary proceedings against Sh. Mahavir Singh, Retd. TGT.*

Payment of Gratuity and Commutation are to be paid only after it is duly vetted by the accounts functionaries of District North-East and thereafter, approved by Dy. Director of Education (NE).

The School Authorities have already calculated the amount of Gratuity and Commutation on the basis of last pay drawn by Sh. Mahavir Singh and also D.A. admissible on the very same date, 31.7.2013 i.e. Rs.6,74,989/- on account of Gratuity and, Rs.5,00,853/- on account of Commutation. A proposal has already been sent to District Office on 31.5.2018 requesting them to examine and get the matter vetted by accounts functionaries of Distt. North-East and thereafter convey the approval of Dy. Director of Education (N/E) so that bills of Gratuity and Commutation be submitted in Pay & Accounts Office-VIII for disbursement of amount to Sh. Mahavir Singh. But till date, nothing has been conveyed by the District Authorities with regard to Commutation and Gratuity.

The School Authorities have no objection to make the payment on account of Gratuity and Commutation to Sh. Mahavir Singh, Retd. TGT provided approval of Dy. Director of Education (N/E) to this effect is conveyed.

Further, Shri Mahavir Singh, Retd. TGT is getting Provisional Pension amounting to Rs.35,880/- per month and upto the month of August 2019, it has been paid. Bills of Provisional Pension for the month of Sept.2019 has been submitted in District Office for further action.

2.3 The complainant's stand is that despite complying with the directions of the PGC, the respondent department has passed an order for re-inquiry vide order dated 8.8.2019 which will cause further delay in getting his legitimate dues. His contention is that as per rule/pension rules, after his retirement of 06 years (31.7.2013), no action can be taken against him and hence the action of the School

Management and the respondent department is absolutely illegal and violation of pension rules. Further, as per CVC circular dated 23.5.2000, the departmental inquiry must be concluded within six months but even after six (06) years, the case could not be concluded and now it has been further prolonged by ordering a re-inquiry by Director of Education.

2.4 The Commission observes that although the complainant behaviour was fit to be properly enquired into and should have followed due course of law, but the manner in which investigation was done has lost the whole purpose and the inordinate delay in releasing his retirement benefits in itself is a punishment. Now a re-enquiry has been ordered by the Director of Education to be completed within 45 days.

2.5 The Hon'ble Supreme Court of India in case of State of Andhra Pradesh Vs. N. Radhakishan (1998 (4) SCC 154) has held that *"the delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings.*

2.6 The Commission further notes that there has been an inordinate delay of seven years and the enquiry has not been finalized so far against the complainant, hence depriving him of his pensionary benefits. In case of Prem Nath Bali VS. Registrar, High Court of Delhi & Anr. (2015) 16 SCC, the Hon'ble Supreme Court of India held that ***"...every employer must conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority and as far as possible, within six months as an outer limit. Where it is not possible to conclude the inquiry due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and nature of inquiry but not more than a year."***

Also it is not acceptable that the Gratuity/commutation can not be paid to the complainant due to non-conclusion of departmental or judicial proceedings. If there is no financial or pecuniary loss, retirement benefits can not be withheld as

laid down by the Hon'ble Supreme Court of India in 2013(12)SCC 210 State of Jharkhand Vs. Jitender Kumar Srivastav.

2.7 It is further noted that School Management is functioning arbitrarily and not following the directions passed by the Competent Authority. It should not be forgotten that these aided schools get 95% aid from the Government for running their schools and have to follow the provisions of DSEAR 1973. Non-compliance of the orders of the competent authority and high handedness can lead to disciplinary & coercive action against the management also.

3. Directions :

3.1 In view of the above facts and circumstances, Director (Education), GNCTD is requested to take appropriate decision in a time-bound manner to ensure that either fresh inquiry, as ordered by him, is concluded within 45 days time or he may consider the request of the Vijay Jyoti Co-Edn. Middle School for review of earlier decision to order fresh inquiry proceedings, as conveyed by them, to Dy. Director of Education, District North-East, vide their letter dated 19.8.2019, whereby they have stated that ***"Since the delinquent official has retired, the Hon'ble Director of Education, may approve or disapprove the proposed penalty or may modify the penalty as deem fit. But there is no logic at this belated stage to initiate fresh inquiry proceedings, particularly when, no discrepancy is reported in the disciplinary proceedings conducted in accordance with the provisions of DSER, 1973."***

3.2 Further, while taking a decision, Director of Education, GNCTD, may also take into consideration the inordinate delay caused in this matter due to which the complainant has not received his retiral benefits for long. Furthermore, although the conduct of the complainant was questionable, the inquiry was also not conducted properly. Hence, there was an inordinate delay without any fault on the part of the complainant. The complainant can not be made to undergo the process of inquiry/re-inquiry and wait endlessly for the outcome of completion of the same.

3.3 Shri Satpal Singh, Dy. Director of Education, Dist. North-East, GNCTD, is directed to coordinate and follow up the matter scrupulously with the Competent Authority for appropriate decision in the matter and for release of outstanding dues

of the complainant. He is also directed to convey the decision of the Competent Authority to the Commission.

3.4 With the above observations, the case of the complainant stands disposed of in the Commission.

(MRS. MADHU SHARAN)
MEMBER

No.PGC/2018/Annx-II/Edn./35

Date :

Copy to :-

1. The Director, Directorate of Education, Govt. of NCT of Delhi, Old Secretariat, Delhi-110054.
2. Spl.Director/Nodal Officer, Directorate of Education, Govt. of NCT of Delhi, Old Secretariat, Delhi-110054.
3. The Dy.Director of Education, Distt. North-East, GNCT of Delhi, RPVV School Building, B-Block, Yamuna Vihar, Delhi-110053.
4. Shri Narender Singh, Chairman, Vijay Jyoti Co-Ed. Middle School, New Usmanpur, Delhi-110053.
5. Principal, Vijay Jyoti Co-Ed. Middle School, New Usmanpur, Delhi-110053.
6. Sh. Mahavir Singh.