

14

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 588/2002

with

O.A. NO. 590/2002

New Delhi this the 3¹⁵ day of March, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI A.P. NAGRATH, MEMBER (A)

O.A. 588/2002

1. Rajni P. Puranik,
Working as T.G.T.
Sanskar Ashram (Girls)
Dilshad Garden,
Delhi.

2. Shakuntla Devi,
Working as T.G.T.
Nari Niketan,
Jail Road,
Delhi.

3. Shakuntla Devi Mann,
Working as T.G.T.
Asha Kiran Avantika,
Rohini,
Delhi.

4. N.Z. Rizvi,
Working as T.G.T.
Children Home,
Lajpat Nagar,
New Delhi.

5. Uma Chaudhary,
Working as T.G.T.
S.M.R.C.
Delhi Gate,
Delhi.

... Applicants

(By Shri S.K. Gupta, Advocate)

O.A. 590/2002

1. Krishna Kumari
Working as T.G.T.
Govt. Sr. Sec. School
for Blind Boys,
Sewa Kutir, Kingsway Camp,
Delhi.

2. Sumitra Devi,
Working as T.G.T.
After Care Home,
Narela,
Delhi.

3. Hem Lata Negi,
Working as T.G.T.
S.M.R.C. Delhi Gate,
Delhi.
4. Kaushalya Aneja
Working as T.G.T.
Asha Kiran Avantika,
Rohini, Delhi.
5. Jagram Meena,
Working as T.G.T.
Children Home for Boys,
Kasturba Niketan,
Lajpat Nagar,
Delhi.
6. Sachida Nand,
Working as T.G.T.
Children Home for Boys,
Narela, Delhi.
7. Gulab Singh,
Working as T.G.T.
Govt. Sr. Sec. School
for Blind Boys,
Sewa Kutir, Kingsway Camp,
Delhi.

... Applicants

(By Shri S.K.Gupta, Advocate)

vs.

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Expenditure,
(Implementation Cell)
Bikaji Cama Place,
New Delhi
2. Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
IP Estate, IG Stadium,
New Delhi.
3. Secretary-cum-Director,
Department of Social Welfare,
Govt. of NCT of Delhi,
Kasturba Gandhi Marg,
New Delhi

..... Respondents

(By Shri Ajay Gupta, Advocate)

O R D E R

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of OA No.588/2002 and OA No.590/2002. The question involved is identical. However, for the sake of convenience, we are taking the facts from OA No.590/2002 (Krishna Kumari & ors. V. Union of India & Ors).

2. The applicants herein are working in the Department of Social Welfare, Government of National Capital Territory of Delhi. They entered service in 1989 or thereafter and are aggrieved by the non-grant of the scale of Rs.5500-9000.

3. It is contended that they were working as Trained Graduate Teachers (TGT) in the scale of Rs. 1400-2600 and on the implementation of the recommendations made by the Fifth Central Pay Commission, the cadre of TGT in the Directorate of Social Welfare has been discriminated. They have been awarded lesser pay scale in comparison to the TGTs in the Directorate of Education. The TGTs in the Directorate of Education have been awarded the scale of Rs.5500-9000. They rely on a decision of this Tribunal in the case of Jagdish Raj Gupta & ors. v. Union of India & Ors. in OA No.1083/1988 rendered on 10.5.1994. On the strength of the same, it is contended that they are entitled to the same scale.

U. Aggarwal

19

4. The application has been contested and in the reply filed it is stated that the matter had been examined and it was not feasible to award the scale claimed by the applicants. The duties and responsibilities and service conditions are not at par with the teachers working in the Directorate of Education. The difference in the duties has been enumerated in their reply which reads:-

- (a) they impart only non formal education to the inmates of the Homes/Institutions.
- (b) No syllabus is prescribed for the inmates of these Homes/Institutions.
- (c) No formal examination is conducted for the inmates of these Home/Institutions.
- (d) These Homes/Institutions are not affiliated with the CBSE for the purpose of education.
- (e) The duty hours of the applicants in these Homes/Institutions are from 9.30 to 5.30 p.m.
- (f) These Homes/Institutions are not schools
- (g) The function of those Homes/Institutions are totally different from the functions and activities of the schools.
- (h) The Govt. School for Blind Boys is having a prescribed syllabus and is affiliated with the CBSE, New Delhi.
- (i) The applicant avail of Earned leave of 30 days in a calendar year unlike the teacher of schools of Directorate of Education.
- (j) The present applicants do not enjoy regular summer and winter vacations.
- (k) The duties and responsibilities of the applicants are not at par with the teachers of school under the Directorate of Education."

5. As already referred to above, on behalf of

USAg

18

the applicants, strong reliance has been placed on the decision of this Tribunal in the case of Jagdish Raj Gupta (supra). On the strength of the same, it has been contended that earlier also similar benefits that were given to the TGTs of the Directorate of Education were awarded to the applicants therein.

6. To appreciate this controversy, we take liberty in referring to the decision in the case of Jagdish Raj Gupta (supra). In that case certain persons were employed as teachers in the Directorate of Social Welfare. The relief claimed was:-

"(a) Extend the same benefits which have been given to teachers in any of the schools run by the Directorate of Social Welfare namely the benefits flowing out of the instructions Vide letter No.4-16/83-VC dated 29.3.85 (Annexure P-2_ and letter No.F.16 (1)/83-DSW/Estt. dated 20.9.88 (Annexure U)."

This Tribunal had recorded that earlier, there was only one Directorate of Education which dealt with Education as well as the field of Social Welfare. All the teachers used to be appointed under the Directorate of Education. With the expansion of activities, the need was felt by the Delhi Administration to form a separate Directorate known as Directorate of Social Welfare. Some of the employees of the Directorate of Education were transferred to the new Directorate. Under the

As Ag

common Directorate of Education, the terms and conditions of the teachers who were working in the Homes or Institutions or Schools were the same and no distinction had been made. The distinction came into being thereafter. A number of benefits have been extended to the teachers working the schools under the Directorate of Education. Those working in the Directorate of Social Welfare had also prayed for the same. This Tribunal recorded that the teachers working in the Homes/Institutions working under the Directorate of Social Welfare are not transferable to the schools run by the same Directorate and accordingly, the application was allowed holding that a different treatment cannot be given the Homes/Institutions and those in the schools under the same Directorate.

7. It is abundantly clear from the decision rendered in the case of Jagdish Raj Gupta (supra) that therein the question was of certain benefits that had to be granted. The matter in question has already taken a different turn. After the said decision, the report of the Fifth Central Pay Commission came into being. Necessarily, therefore, in the light of the recommendations, the principle of law had to be examined.

8. The Supreme Court in the case of Union of India & Anr. v. P.V. Hariharan & Anr, 1997(2) SLR

AS Ag

232 had gone into this controversy. It came heavily on the Tribunal fixing the different scales of certain Government officials. It held:-

" Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by the Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

More recently in the case of State of Haryana and Another v. Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72, once again the same question had cropped up for consideration. The Supreme Court held that the pay structure is evolved keeping in mind several factors such as method of recruitment, level at which the recruitment is made, the hierarchy of service in a

UAg

given cadre, minimum educational qualification, the nature of duties and responsibilities and employer's capacity to pay etc. All these factors have to be kept in view and further that the court should approach such matters with restraint and interfere only in extreme cases where there is total discrimination in this regard. In para 10, the Supreme Court held:-

"10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are

CS Ag

material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case, the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre."

9. It is obvious from the aforesaid that in the normal circumstances, it is for the administrative authorities to take a decision pertaining to pay scales. Equal pay for equal work is a principle culled out of Article 39 (d) read with Article 14 of the Constitution. If there is total discrimination only in that event, the court/Tribunal would be competent to interfere and give necessary directions.

10. Our attention has been drawn towards the recruitment rules to the post of TGT (Deaf Dumb) in the Directorate of Social Welfare, the educational and other qualifications are said to be as under:-

"ESSENTIAL:- (1) Degree of a recognised University or equivalent

(2) Degree or Diploma in teaching the Deaf and Dumb from a recognised institution.

(3) One year teaching experience in a recognised institute of Deaf & Dumb.

As Ag

(4) Knowledge of Hindi."

In addition to that as already pointed above, the Fifth Central Pay Commission has also examined this aspect. There is no specific recommendations to maintain parity in this regard. In fact it provided that a single post of Adult Education Teacher be given the Assured Career Progression Scheme scale of Rs.1600o-2660 and 1640.2900.

11. Once the Fifth Central Pay Commission had come into being, a decision had to be taken in this regard. The decision rendered by this Tribunal in the case of Jagdish Raj Gupta (supra), therefore, loses its significance. It cannot be that for all times, when two different departments are functioning and there are different scales with respect to the TGT in the Directorate of Education and those in the Directorate of Social Welfare, they must maintain the parity.

12. In face of the aforesaid, we are of the considered opinion that the present applications are devoid of any merit and the same are dismissed with no order as to costs.

(A.P.Nagrath)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/