

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 349/2002
MA No. 345/2002

New Delhi this the 29th day of January, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Santosh Kumar,
S/o Shri Alam Chand Verma
2. Suresh Chand Verma,
S/o Shri Deep Chand Verma
3. Harish Chand Vashishtha,
S/o Shri Suraj Bhan Vashishtha
4. Chandra Singh,
S/o Shri Buddha Singh
5. Krishan Dutt Sharma
6. Munna Pandey,
S/o SH. Raj Nath
7. Badruzzadman
8. Gian Bir Singh

-Applicants

(By Advocate - None)

--VERSUS--

Government of N.C.T. of Delhi

~Respondents

(By Advocate Shri Mohit Madan, proxy for Mrs. Avnish Ahlawat)

O R D E R

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed.

2. Applicants who are TGTs/PGTs have impugned respondents' orders dated 20.07.2001 and 27.11.2001, whereby their request for accord of seniority from the date of initial appointment and parity of pay has been turned down. They have sought quashment of these orders and to count the period spent on duty as part time Teachers, as qualifying service for pension as well as seniority.

3. Applicants, most of them are TGTs barring two who are appointed on a consolidated salary with the respondents on contractual basis as part time Teachers in Adult Schools. This has been done on the basis of an advertisement issued by the respondents. As they have been found eligible, offer of appointment has been made, which, *inter alia*, includes an opportunity for direct appointment in the regular scale to the posts of PGT/TGT after satisfactory completion of two years' working in the Adult Education School. Applicants joined on 27.8.81, 1.9.81, 14.9.81 and 30.9.81. They continued to perform work as part time Teachers.

4. Being aggrieved with their non-regularisation a Writ Petition under Article 32 of the Constitution of India had been filed before the Apex Court and by an order passed on 30.4.91 in WP-1350/90 directions have been issued to respondents to hold a selection test for regularising the petitioners therein and those who are found successful shall be forthwith regularised.

5. In pursuance thereof, a selection has been conducted and applicants having qualified the same have been appointed on a temporary post on a definite scale of pay as PGTs/TGTs on regular basis. A seniority list was issued on 10.12.99 of Lecturers appointed and promoted from January, 1976 to March, 1990 but names of applicants have not been included. Representations have been made to claim the benefit of counting of seniority. Being aggrieved with non-accord of seniority and treating the part time service as qualifying service for all purposes OAs-912 and 1942/2000 filed by applicants have been disposed of through

a common order dated 20.7.2001, directing applicants to raise their grievance in a representation with further direction to respondents to dispose of the same by a speaking order.

6. In compliance thereof, representations have been filed by applicants and respondents through impugned orders, rejected the claim of applicants, giving rise to the present OA.

7. As none appeared for ~~Applicant~~ " OA is disposed of in the light of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987) in the absence of learned counsel for applicants.

8. Placing reliance on the following decisions of Apex Court it is contended that denial of counting of previous service as part time Teachers for the purposes of seniority to applicants as well as for pension respondents have acted in violation of Articles 14 and 16 of the Constitution of India, as though applicants had performed as per Rule 31 of the Delhi School Education Rules, 1973, worked equal to what has been performed by regular Teachers and had incurred more than 1000 hours per annum and having regard to the fact that educational qualifications are identical and they have taught the same syllabus and performed identical duties, they cannot be deprived of seniority from the date of initial appointment:

i) The Direct Recruit Class II Engineering Officers Association v. State of Maharashtra, AIR 1990 SC 1607.

ii) Rajbir Singh v. Union of India, AIR 1991 SC 518.

iii) Rattan Lal & Others v. State of Haryana, AIR 1987 SC 478.

9. Applicants have further stated that as the initial appointment has been made by following the procedure laid down in the rules, their uninterrupted service is to be reckoned for the purpose of seniority.

10. In so far as factual matrix is concerned, it is contended that they are at par with regular Teachers performing duties from 6.00 p.m. to 9.30 p.m. in the Night Schools, rendering equal working hours and for this they have been issued certificates by the concerned Schools. By citing example of one Devender Kumar it is contended that he has been accorded seniority from the earlier date. As such, applicants have been treated arbitrarily in violation of Articles 14 and 16 of the Constitution of India. According to them terms and conditions of appointment on part time basis is at par with that of regular Teachers within the ambit of Delhi Education Act and Rules, 1973.

11. On the other hand, respondents' counsel Shri Mohit Madan, appearing for Mrs. Avnish Ahlawat denied the contentions of applicant and placing reliance on the decision in CP-388/2000 in OA-998/2000 - Arunesh Awasthi & Ors. v. Director of Education, decided on 15.3.2001, it is contended that similar request for equal pay for equal

work has been turned down by this court. He further placed reliance on a decision of the Single Bench in OA-1698/2000, Bhoo Dev Sharma & Others v. Directorate of Education & Others decided on 31.8.2001, wherein a similar claim for equal pay for equal work has been rejected.

12. It is stated that the OA is barred by the principle of constructive res judicata, as despite opportunities applicants have not raised the plea of seniority and counting of service on part time whereas Apex Court has ~~nowhere~~ directed regularisation from retrospective date or directed counting of past service for seniority.

13. It is stated that applicants have been initially appointed on part time basis as TGT/PGT on a consolidated salary having working hours from 6.00 p.m. to 9.30 p.m. These employees were neither temporary nor ad hoc or officiating and the same have been sanctioned separately and terms and conditions of appointment of those regular PGT/TGT were different from what has been made applicable to part time Teachers. These posts were neither pensionable nor contribution to GPF, CGIS and DHS were taken from them and this part time contractual service not being regular service cannot count towards qualifying service as per Rule 2 and 13 of CCS (Pension) Rules, 1972.

14. Moreover, it is stated that seniority list issued is of PGTs appointed between 1976 to March, 1990, whereas applicants who were appointed only in 1992 would be shown in the seniority list for the year 1992-93 as they have been treated as directly recruited on a regular post only in the year 1992.

15. In so far as seniority assigned to Devender Kumar is concerned, the same is under review and on a wrong applicant cannot have an indefeasible right.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. The initial appointments of applicants were made on contract basis on part time basis on the terms and conditions, inter alia, stipulating consolidated salary and no right to claim regular appointment. These part time Teachers have not been recruited following the rules and selection process meant for regular TGTs/PGTs. Any of the benefit like CGIS, CHS and CPS were not applicable to them and they were performing the work of teaching in Night Adult School from 6.00 p.m. to 9.30 p.m. It is for the first time that on raising their grievance Apex Court directed respondents to hold a selection test to forthwith regularise them. Nothing in this order transpires that directions were for any retrospective regularisation which would have an effect of treating the earlier service on part time basis as regular service to be reckoned for seniority and other purposes.

18. It is a settled principle of law that any service rendered on contingency basis a consolidated salary and on contractual basis would not be reckoned as a qualifying service and the service which has been rendered after a person has been appointed on regular basis in accordance with statutory rules and instructions is to

count for such purpose. As applicants have qualified the ^{luk} Selection and were appointed on temporary post their service is to be reckoned for all purposes from the date(s) of their appointment(s) and not earlier.

19. We find that terms and conditions and other working conditions, as applicable to regular TGTs/PGTs are not applicable to applicants and they are not mutatis mutandis entitled for the same. No parity has been established with those of regular TGTs/PGTs by applicants. Merely because applicants have worked from 6.00 p.m. to 9.30 p.m. and had rendered 1000 hours a year would not bring them within the ambit of regular Teachers. Moreover, for equal pay for equal work not only the functional requirements but all other relevant factors, including duties, responsibilities, educational qualifications, conditions of appointment should be identical. As held by this Bench in Arunesh Awasthi's case (supra) applicants who were never appointed on regular basis in a time scale post and were not holding the regular status, merely on working as part time Teachers they are not entitled for equal pay for equal work. We respectfully agree with the same.

20. In so far as counting of seniority for all purpose is concerned, the rulings cited by applicants in Direct Recruit's case (supra) would not apply, as therein the pre-condition to treat seniority from the date of initial appointment is that incumbents should be appointed to a post according to rules. As applicants have not been appointed as per rules and have been put to work on a consolidated salary as part time in view of Rule 2 of Pension Rules ibid those persons employed on contract

cannot come within the ambit of persons to whom pension rules apply. Moreover, as per Rule 13 of the Rules ibid qualifying service commences from the date one takes over charge of the post in an officiating/temporary or substantive capacity. In so far as service on contract basis as part time is concerned, as per OM dated 14.5.68 service paid from contingency is to be counted half for regular service if the job involve whole time appointment. Whereas applicants have not been appointed whole time and have been performing duties from 6.00 p.m. to 9.30 p.m. their terms and conditions are different from regular Teachers and their posts have been sanctioned as part time basis was separate. The ratio cited of the Apex Court in Rajbir Singh's case (supra) would not apply as therein the seniority was counted while the employees have been promoted on ad hoc basis and subsequently regularised. In Rattan Lal's case (supra) Teachers were appointed on ad hoc basis and have been performing duties akin to regular employees whereas in the case of applicants they were employed on part time basis on a consolidated salary without following the rules and it is only after they have been put to selection their appointment has been treated on regular basis from that date and this would be the initiation for reckoning their regular service. Moreover, Apex Court has also not meant regularising the service after selection retrospectively. As such the ratio would be applied prospectively.

21. In so far as the plea of applicants that one of the similarly situated has been accorded seniority viz. Devender Kumar is concerned, respondents have inadvertently by mistake has reckoned his seniority from the date of

initial appointment and are in the process to review the same, applicants cannot take advantage of a wrong committed by respondents.

22. In so far as their seniority is concerned, as applicants have been appointed in 1992, whereas the seniority list pertains to regular Teachers appointed from 1976-1990, their seniority would be reflected when the list pertaining to regularly appointed Teachers is issued pertaining to year 1992-1993.

23. In the result for the foregoing reasons OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."

(Govindan S. Tampli)
Member (A)