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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 21/2002

New Delhi this the 10th day of April 2003.

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

1. Sh. Gaj Raj Singh,
S/o Sh. Lok Man Singh
2. Sh. M.L. Ghai,
S/o Sh. Ram Lubhai
3. Sh. R.D. Sharma,
S/o Sh. Ram Singh
4. Sh. R.C. Sharma,
S/o Sh. K.L. Sharma
5. Sh. Randhir Singh,
S/o Sh. Lachman Singh
6. Sh. R.G. Gupta,
S/o Sh. Daulat Ram Agrawal
7. Sh. C.S. Sarna,
S/o Sh. Hari Singh
8. Sh. V.B. Gupta,
S/o Sh. Bagiswar Vidhyalankar
9. Sh. R.P. Sehgal,
S/o Sh. Pitambher Sehgal

-Applicants

(By Advocate Shri D.R. Gupta)

-Versus-

1. Govt. of NCT of Delhi through~
Chief Secretary,
5, Sham Nath Marg,
Delhi-54.
2. Director of Education,
Govt. of N.C.T. of Delhi,
Old Secretariat,
Delhi.
3. Deputy Controller of Accounts,
Directorate of Education,
Govt. of N.C.T. of Delhi,
Old Secretariat,
Delhi-54.

-Respondents

(By Advocate Shri George Paracken)

O R D E R

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed.

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2. Applicants, 9 in number, impugn respondents' order dated 5.5.2000 and further seek implementation of directions contained in OA-2386/99 for accord of selection scale with arrears.

3. Brief history leading to the present controversy is relevant to be enumerated. Selection grade was introduced in various categories of school Teachers w.e.f. 5.9.1971. However, on the recommendations of Fourth Central Pay Commission scales were replaced by three scales with retrospective effect from 1.1.86, which includes PGT (Ordinary Grade) Rs.1640-2900, PGT (Senior Scale) after 12 years Rs.2000-3500, PGT (Selection Grade) Rs.2200-4000 after 12 years in senior scale, Vice-Principal (Ordinary Grade) Rs.2000-3200 and Vice-Principal (Senior Scale) Rs.2200-4000. One of the conditions for grant of senior scale is 12 years service in ordinary grade of the respective cadres and only 20% of the number of posts in senior scale of respective cadres would be granted after 12 years service in the senior scale. This has been laid down in Ministry of Human Resource Development order dated 12.8.87.

4. In OA-1578/91 this court directed placing reliance on letter dated 12.8.87 reconsideration for grant of scale of Rs.2200-4000. The aforesaid representation was rejected. However, a meeting was held in the chamber of Principal Secretary on 6.6.97 with regard to the claim of grant of selection scale to PGTs who were officiating as Vice Principals in the context of the decision of the Tribunal in OA-1578/91 - Shiv Rattan Gupta v. Director of Education wherein it is decided that prior to 1.4.85 all

PGTs who were promoted as Vice Principals before completion of 12 years service in the old selection grade but not confirmed on the posts are entitled to selection scale on their substantive posts of PGT. Aforesaid copy of the minutes was brought in the case of Jodha Ram v. Union of India, OA No.1295/2000.

5. A direction has been issued vide order dated 29.10.98 to all the PAOs and Accounts Officer regarding grant of selection scale on certain conditions. The aforesaid order was not implemented in the case of applicants as Accounts Officer raised a doubt as to completion of 12 years as PGT.

6. Applicants being aggrieved by non-implementation of respondents' order dated 29.1.98 for grant of selection scale filed OA-2386/99. By an order dated 8.2.2000 placing reliance on an earlier case in OA-1579/91 and also respondents' order dated 29.10.98 allowed the OA with direction to respondents to make payments to applicants within a period of three months with interest with revision of retiral benefits.

7. Instead of complying with the directions respondents passed the impugned order denying benefits to applicants on the ground that they were not eligible for grant of selection scale as they have not completed 12 years service in senior scale and before that they have been promoted as Vice-Principals.

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8. Against the non-implementation applicants preferred CP-221/2000 which was disposed of on 18.5.2001, giving liberty to applicants to assail the memo dated 5.5.2000 in a separate proceedings, giving rise to the present OA.

9. Learned counsel for applicants Sh. D.R. Gupta contended that it is not permissible for respondent s to sit over the decision of the Tribunal by withdrawing their own order dated 30.10.98 and depriving applicants benefit already accorded to them having found eligible for selection scale the denial of which is arbitrary and a contemptuous act, which cannot be sustained and the action is also violative of Articles 14 and 16 of the Constitution of India and relies upon the decision of this Tribunal in Scientific Workers Association v. Union of India, 1990 (2) SLJ CAT 507, to substantiate his plea. It is further stated that merely because applicants have been promoted on officiating basis as Vice Principals would not deprive them of the benefit of senior scale as till a government servant is confirmed his lien is still maintained on the feeder cadre and as the aforesaid service rendered as Vice Principal is to be reckoned as service in PGT, they cannot be deprived of the benefit.

10. In this conspectus learned counsel placed reliance on a decision of the Principal Bench in OA-2379/2001 decided on 12.3.2003 in Inder Jit & Others v. Govt. of N.C.T. of Delhi & Others, wherein in identical circumstances similarly circumstance PGTs have been accorded the benefit relying upon the decision of the Apex Court and holding that though applicants therein have been

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promoted as Vice Principals on ad hoc basis they still maintain lien on the posts of PGT and would have completed 12 years in the scale had they not been promoted on officiating basis to the post of Vice-Principals. Applicants seek extension of the benefit of the aforesaid decision, which, according to them, on all fours cover their case.

11. On the other hand, respondents' counsel Sh. George Paracken ^{attempts} through his submissions to take a different view and what has been taken by the Tribunal in the cases (supra) and to refer the matter to a larger Bench. Learned counsel in his additional reply has given a detailed history leading to selection scale and at the outset contended that PGTs can be promoted as Vice-Principals without being granted selection grade as they are entitled for such promotions and these scales are substitutes for non-promotion. As applicants have been promoted they cannot be accorded the selection scale.

12. Moreover, it is stated that for grant of senior scale and selection scale the condition precedent is completion of 12 years service in the concerned cadre. As per the clarification by Government of India's letter dated 12.8.87 and clarification dated 8.11.97 promotion to the higher grade is with reference to the basic scale in the feeder cadre and cannot be basis of senior scale/selection scale for the sole reason that seniority is determined on the basis of initial appointment in the basic scale.

13. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, we respectfully agree with the several pronouncements of this court in the matter of grant of selection scale to the PGTs and also reiterate the law laid down by the Principal Bench in Inder Jit's case (supra). As no legal and valid grounds have been adduced which could have persuaded us to take a different view than the consistent view taken by several Benches. We see no reason to disagree with the decision and refer the matter to a larger Bench. The ratio laid down in the aforesaid cases is in accordance with law and the rules on the subject.

14. Moreover, we find that whereas in OA-2386/99 respondents in their reply has not objected to grant of selection scale to applicants but have projected the question of delay and as per them also directions have been issued to implement the orders dated 29.10.98 in the light of which applicants have been found entitled for grant of selection scale. Respondents on the face of Tribunal's order to infiltrate acted contrary and rather re-considered the issue of selection scale and rejected it by OM dated 5.5.2000. To our considered view, this cannot be countenanced as executive orders or administrative instructions cannot be allowed to infiltrate on to an arena covered by judicial orders. Apex Court in Anil Ratan Sarkar and others v. State of W.B. and Others, (2001) 5 SCC 327 held as follows:

"24. This circular however stands challenged before the learned Single Judge who was pleased to quash the same upon acceptance of the contentions of the writ petitioners, the appellants herein.

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The learned Single Judge categorically recorded that the petitioners being Graduate Laboratory Instructions, the question of further classifying them does not and cannot arise and upon reliance of the annual report as noticed above quashed and set aside the circular. The State Government however being aggrieved went before the appellate court and the Appellate Bench however allowed the appeal and opined that the Government Order dated 26-12-1994 cannot be said to be arbitrary or contrary to the decision of this Court, since it is clearly stated therein that Graduate Laboratory Instructions shall continue to enjoy the teaching status. The High Court, however, has failed to appreciate the role of Physical Instructors in the matter of fixation of pay scale in terms of the order of this Court and it is on this count a definite statement has been made even before this Bench that there are existing two definite classes of Physical Instructors, one being qualified and another being unqualified, but there is no factual support thereof. Surprisingly, the basis of the order of this Court has not been delved into by the High Court and the High Court thus clearly fell into an error. Needless to say that in the event there was some documentary support vis-a-vis the stand of the respondent State as regards the existence of two definite grades of Physical Instructors obviously the Government Order issued in December 1994 could not have been found fault with --since the same would have been in consonance with the order of this Court. But there being no factual support therefore, we are not in a position to record our concurrence with the submissions of Mr. Reddy as regards the justifiability of making Group B salary available even after conferment of teaching status as upheld by the Appellate Bench of the High Court. The conferment of status as a teacher runs counter to fixation of pay scale of Group B employees since all the other teachers of the government and non-government colleges are placed in the category of teachers. A teacher cannot possibly be allowed a pay scale of a non-teaching post. The same is a contradiction in terms and we need not dilate thereon. The criterion of fixation of pay scale is dependent upon the placement of the person concerned, -- in the event the placement is in a teaching post obviously one expects to get a pay scale fixed for a teacher and not for a non-teaching member of the staff. Apparently the High Court has not dealt with the issue in this perspective and thus clearly fell into an error in categorising a teacher with a non-teaching pay scale. The circular clearly authorises the Graduate Laboratory Instructors of non-government colleges to continue to have the teaching status but decries the financial benefits therefor! Would the same be not an arbitrary exercise of powers or can it by any stretch be suggested to be otherwise rational and indiscriminatory. This Court at an earlier occasion unequivocally upheld the reasoning of the learned Single Judge in the earlier writ petition as accepted by the Appellate

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Bench and in the wake of such a finding of this Court question of decrying a pay scale which is otherwise available to another teacher (in this case the Physical Instructor) does not and cannot arise more so by reason of the earlier order of this Court. Administrative ipse dixit cannot infiltrate on to an arena which stands covered by judicial orders."

15. We have also perused the grounds taken by the respondents and the decision of this Tribunal in Inder Jit's case (supra). The Apex Court in various decisions, including Triveni Shankar Saxena v. State of U.P. & Ors., 1992 Supp (1) SCC 524 and decision of the High Court of Delhi in Lt. Governor of Delhi and two others v. Nand Kishore, 1974 (2) SLR 894 held that confirmation has to be related to the availability of permanent post and as per FR 14-D a government servant's lien on a post shall stand terminated on acquiring a lien on another post. Till the time applicants are confirmed as Vice Principal they still maintain a lien on the lower post of PGT and the service rendered shall have to be counted in the senior scale for the purposes of accord of selection scale. In this view of the matter the stand taken by respondents cannot be sustained.

16. The concept of termination of lien on conferment of permanency on another post has already been laid down by the Apex Court in Dr. S.K. Kakkar v. A.I.I.M.S., (1996) 10 SCC 734.

17. In the result, for the foregoing reasons as applicants were qualified to be accorded the benefits and we find the orders passed by the respondents depriving applicants benefits as illegal and unfounded, we allow the

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OA and set aside the impugned orders and direct respondents to comply with the directions contained in the order passed OA 2386/99~~X~~ in OA-2389/99 with respect to applicants, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

'San.'

⑧ Corrected vide orders dated
13.5.2003.

16.5.2003
DR (Judt.)

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