

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Original Applications No. 389/2013 and 153/2018
Ahmedabad, the 25th of July, 2019

CORAM :

Hon'ble Sh.Pradeep Kumar, Member (Administrative)
Hon'ble Sh. M.C. Verma, Member (Judicial)

Smt. Ushaben J. Jaiswal Wife of Janakkumar Jaiswal, aged about 62 years, Retired as Head Mistress at Railway Primary School, Kothi Compound, Rajkot – 360 002, resident of D/101, Ashrya Pletina, Nr. Swaminarayan Mandir, New Ranip, Ahmedabad – 380 621.

... Applicant in OA No. 389 and 153/2018

[By Advocate : Ms S S Chaturvedi]

- 1- Union of India notice to be served through the General Manager (Western Railway), Churchgate, Mumbai – 400 020.
- 2- The Divisional Railway Manager, Western Railway, Kothi Compound, Rajkot Division 360 001.

... Respondents in the OAs

[By Advocate : Shri M J Patel]

O R D E R (ORAL)
[Per M.C.Verma, Member(J)]

1. Applicant in both aforesaid OAs is the same lady, namely Smt. Ushaben Jaiswal. In OA No. 389/2013 she has prayed to quash order dated 18.09.2013 whereby her representation against order of redeployment, dated 23.4.2013, as Senior Clerk was rejected and she was advised to resume to the post offered. Needless to say that the applicant was serving as Head Mistress in Railway Primary School, Kothi, at Rajkot and on closure of said school she, vide order 23.4.2013, was redeployed as Sr. Clerk in same pay scale at Store (Engg.) Rajkot. An interim prayer for direction of release of salary since May 2013 has also been made. During pendency of this O.A applicant superannuated on 30th June, 2015 and after superannuation, she on 02.02.2018 filed another O.A. No. 153/2018, praying therein to direct the

respondents to release her salary of period up to her superannuation. Both these OAs are having overlapping facts and hence were heard together and are being disposed of by this common order.

2. Briefly the facts, as have been set out by the applicant in OA no. 389/2013 are that she was serving as Head Mistress/Principal in the School run by the respondent Railways at Rajkot, the school was closed as per the decision of the competent authority and the staff working in the school was declared surplus. That vide re-deployment order, dated 23rd April, 2013, passed by the Western Railway Divisional Office, Rajkot, applicant was considered suitable for her redeployment in ministerial cadre and accordingly she was directed to join at Store (Engg.) Department-Rajkot as Senior Clerk duly protecting her salary. Applicant challenged said order before this Tribunal in OA No. 242/2013 and while disposing the O.A, this Tribunal directed the respondent to consider her representation and to pay admissible salary to her till pending disposal of her representation. That pursuant to said order her representation was considered by the authorities and vide their letter dated 18.09.2013, it was directed to her to resume to the post offered and that her further salary will be prepared as per presence / absent on her new post. That being aggrieved by the impugned action of the respondents, conveyed to her vide aforesaid letter dated 18.09.2013, she, on 29.10.2013 preferred instant O.A. No.389/2013. The OA is having prayer to keep her as Principal of the School and to quash the impugned order of posting him as Senior Clerk. An interim prayer to direct the respondent to pay the due salary pending since May 2013 has also been made in the OA.

3. Respondents in their reply to OA no. 389/2013 has pleaded that applicant never had remained as principal. She was appointed on 1.10.1992 as Assistant teacher at Viramgam in Vadodra Division and on her request on 7.9.1993 she was transferred to Rajkot Division and was posted at Primary School, Surender Nagar, and subsequently was posted as Assistant Teacher at Railway Primary School No. 2 at Rajkot. She was promoted to the post of Headmistress in scale of 5500- 9000 w. e. f. 21.07.2003. That due to closure of said school from scholastic session 2013-14, applicant and other teachers of that school were declared surplus. That on the basis of recommendation of the committee of officers for redeployment, all 29 surplus employees were absorbed in the alternative job vide order dated 18.9.2013 and all, except the applicant, accepted the alternative job.

It is also pleaded that due to less number of students, Head Office had directed to close the school and school thus was closed. This decision of closure of school, was challenged by the applicant on the file of Hon'ble High Court and Hon'ble High Court granted the stay but there was no student in the school and accordingly teaching work was also not there.

Options were invited from all staff declared surplus and keeping in view that the applicant is a lady, she was given the alternative job at the same station, i.e. in DRM office, Rajkot but she did not join the post. She was advised to join her offered post but still she did not join it.

In compliance of order of the Tribunal passed in OA number 242/2013, her representation was duly considered and order dated 18.9.2013 was passed which is as per rules prevailing on the subject. That she has been

paid salary of period up to 18.9.2013. Salary for subsequent period was not paid as she neither performed any duty at school, which was already closed nor joined at the new post. Hence salary is not payable.

In view of this, the OA is devoid of merit and may be dismissed.

4. During pendency of aforesaid O.A No. 389/2013, on 02.02.2018 another OA No. 153/2018 with MA for condonation of delay was preferred by the applicant and in this OA applicant, mutatis mutandis, reiterated the fact of her earlier OA, and pleaded that respondent has paid the salary of period up to 18.9.2013 but no salary of further period, till her superannuation, which took on 30.6.2015, has been paid to her. It has been prayed to direct the respondents to release her salary of period till she superannuated.

Respondents in their reply to this OA has pleaded that due to closure said school from scholastic session 2013-14 applicant and other teacher of that school were declared surplus, were absorbed in the alternative job but applicant did not join her offered post and remained absent till her superannuation up to 30.6.2015 and hence she is not entitled to any salary. It is also pleaded in Para 13 of reply, that SCA No. 8485/2013 filed by applicant against order of closure of school, has since been disposed of on 16.7.2015 and interim relief granted therein, also stood vacated. Therefore, instant OA is devoid of merit and needs to be dismissed.

5. In aforesaid backdrops both OAs are on Board today for final hearing and they were heard together. Ms. S.S. Chaturvedi, learned advocate appeared on behalf of the applicant and learned advocate Shri M.J.Patel pleaded the

case on behalf of respondents. Learned advocate Shri M.J.Patel, at threshold contended that the applicant on attaining age of superannuation has retired on 30.6.2015 and that Writ Petition, preferred against closure of school has since been disposed of, school has been closed and is not in function hence all other prayer except the prayer AA of Para 8 of OA no. 389/2013 do not survive. He pointed out that prayer AA of Para 8 of OA No. 389/2013 is for payment of salary to the applicant from May to till date.

Learned Counsel for applicant urged that she is going to press only for direction to the respondent to make payment of due & admissible salary of the applicant from May to till date of her retirement.

6. Learned counsel Ms. S.S. Chaturvedi urged that applicant was recruited in teacher category and thus she cannot be redeployed as Senior Clerk. That respondent are declining salary to the applicant only on the ground that she did not join her offered post on redeployment but against the said order of redeployment, applicant actually preferred a representation and when it was not decided she preferred OA on the file of this Tribunal and this Tribunal directed the respondent to decide her representation and to pay her salary till decision of her representation.

Counsel contended further that applicant also approached Hon'ble High Court against order of closure of School and Hon'ble High Court stayed the closure and that stay, as per respondent was also in operation till 15.7.2015. She referred Para 13 of reply of the respondents and added that stay order was, thus, in operation till her retirement. That when respondent illegally rejected her representation, applicant preferred instant OA No.

389/2013 and this Tribunal vide interim order dated 20.11.2013, directed respondents to maintain status quo as was on that day and the said interim order is still continuing even now. Ms. Chaturvedi, therefore, vehemently argued that when stay order was in operation, firstly by Hon'ble High Court up to 16.7.2015 to prevent closure of school and in an overlapping period w.e.f. 20.11.2013 and continuing even now to maintain status quo for paying salary pending decision on instant OA, respondents ought not to have denied the salary on the ground that she has not joined her offered post after redeployment.

7. Controverting the submission of applicant's counsel, learned counsel Mr. M.J.Patel urged that as applicant was relieved from the School, which was closed as per the instructions of the higher authorities, she was required to join her new post but despite issuance of specific orders, which included protection of salary, she did not join as Senior Clerk at Rajkot. That as per her redeployment order when she failed to join, no question of payment of salary arises.

He also urged that applicant has not worked during this period and therefore applying the principle of no work no wages also, she is not entitled to salary for the period in question.

He also pointed out that certain portion of said claimed period, has already been treated as leave without pay and applicant is also well aware of said order of treating the period as leave without pay but she has not challenged those orders. Having accepted this, how can she now be paid for

that period. He pleaded that the OAs, being devoid of merit, needs to be dismissed.

8. Matter has been heard. It is significant to note here that aforesaid OA No. 389/2013 came on Board for motion hearing on 20.11.2013 and the Tribunal was pleased to direct to maintain status quo. Having received the notice even though respondent filed a reply but never challenged this order of status quo.

It is also pertinent to mention here that applicant thereafter preferred MA No. 427/2013 and one of the prayers in said MA was for release of salary and this Tribunal by way of interim order passed on 1.1.2014 directed the respondent to pay the applicant the salary as admissible and due to her till 18.9.2013. Respondent challenged said order dated 1.1.2014 on the file of Hon'ble High Court in SCA 4763/2014, however, Hon'ble High Court declined to entertain the writ petition observing that the direction of the Tribunal is by way of interim relief, and such direction requires the petitioner (petitioner of SCA & respondents of the instant OAs) to pay the salary to the respondent (respondent of SCA & petitioner of the instant OAs) and ultimately, if in the final judgment, the Tribunal holds that the respondent is not entitled to such salary, it would be open and possible for the petitioner to recover such sum.

9. In the instant case, respondent-department never approached to get the interim order of status quo vacated which was granted against order of redeployment and posting order of applicant impugned in the OA. It is the case of respondents that under the instructions of the competent authority,

applicant was directed to join at her new place of posting but, she did not join. It is an admitted fact that neither did the applicant join at her place of posting as Senior Clerk nor respondent-department could have taken work from her as Head Mistress due to order of closure of school/non-existence of School.

Applicant has pleaded that in view of interim order it was not incumbent upon her to join her offered place of posting on redeployment and she could not perform her duties as Head Mistress Railway's School because respondents stopped her to do so.

The question that needs consideration is whether the act on the part of applicant in not joining at her place of posting as Senior Clerk is protected by the interim order of status quo and if it is so definitely she can claim salary and in case she is not protected then she would not be entitled.

10. Apparently, this Tribunal on 20.11.2013 had granted status quo against the order of redeployment when OA No. 389/2013 came on Board for motion hearing on that day. The order passed on that day verbatim reads : *“Heard Ms. Vilas Purani, learned proxy counsel for the applicant. Mr. M.J.Patel, learned counsel waives notice on behalf of the respondents and object for grant of interim relief. Post this matter for hearing on issue of interim relief. In the meantime, the respondents are directed to maintain status quo as on today. Post this matter on 3-12-2013.”* Said order of status quo continued not only until the date of superannuation of applicant but it is in operation till date also.

It is the contention of learned Counsel of respondents that on the day of status quo, applicant was not working as Headmistress in the School and, she has not joined at her offered place of posting, she was neither here nor there, so she can't be paid salary till she join at some place which could only be the place of her offered post.

We have considered this aspect as well. As per order dated 7th August 2013 passed in OA No. 242 of 2013 applicant has been paid salary up to 18.09.2013 and at that time also the position was same, the applicant was not working as headmistress in the school and she has not joined at her offered place of posting. The order passed in in OA no. 242 of 2013 has since attained finality.

11. In view of aforesaid circumstances and the fact that this Tribunal had, rightly or wrongly, granted status quo, and respondents never challenged this interim stay and this order of status quo continued till date and that the stay granted by Hon'ble High Court, against order of closure of school also remained in force till 15.7.2015, and meanwhile the applicant has superannuated on 30.6.2016, therefore this Tribunal find itself unable to hold that act of applicant of not joining the offered post on redeployment, is not protected by interim order. Interim relief granted has to have some positive effect. Therefore, once it is held that her act is having umbrella of interim order, she can't be denied salary.

However, as per submission of learned counsel for respondents, certain portion of said period has already been treated as leave without pay and applicant is well aware of said order of treating the period as leave

without pay but she has not challenged those orders. It is a fact that the order of treating the period, as leave without pay, has never been challenged. It can't be said at this stage that applicant was not aware of said order/orders, even otherwise. Even if she was unaware earlier, then also she came to know about it at least on 10.3.2017. Needless to mention here that this factum of order of treating the period as leave without pay, is found recorded in the proceeding order dated 10.3.2017.

12. In view of legal and factual scenario, it deems fit and proper to direct the respondents to calculate the due Salary of the applicant from May 2013 till the date of her superannuation and while doing so, the respondents may exclude the salary of portion of period for which order has already been passed for treating as leave without pay and the amount already paid, on account of salary of any intervening period may also be set off and thereafter to pay the net amount so calculated to the applicant. In the facts and circumstances, it would not be appropriate and justified to allow interest on arrear.

Accordingly, these two OAs are disposed of with following directions:-

- (i) Respondents shall calculate the amount of due Salary of the applicant from May 2013 to till the date of her superannuation and while calculating this amount of salary, the period for which order has already been passed for treating as leave without pay, shall be excluded.

- (ii) The amount already paid to the applicant, if any, on account of salary of intervening period may also be set off and arrears shall be payable to applicant without interest. Any due recovery towards quarter retention, electricity, water etc. may also be made.
- (iii) Respondent-department shall have to comply aforesaid directions (i) & (ii) within three months from the date of receipt of copy of this order and applicant be advised the detailed calculation statement of her dues.

13. With aforesaid directions, O.A. No. 389/2013 and O.A. No. 153/2018 stand disposed of. MA, if pending in either or both of these two OAs, also stands disposed of. There is no order as to costs.

[M.C.Verma]
Member (J)

[Pradeep Kumar]
Member (A)

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