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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 97/86

Date of Decision: 10.4.92

Smt. Jaswant Kaur Anand .. Applicant(s)

Shri G.D.Gupta .. Counsel for the applicants

Vs

Delhi Administration and .. Respondents

others

Ms. Mukta Gupta for Smt. .. Counsel for respondent(s)

Avanish Ahlawat

CORAM

Hon'ble Mr. S.P.Mukerji- Vice Chairman

Hon'ble Mr. T.S.Oberoi - Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes

J U D G M E N T

(Delivered by Hon'ble S.P.Mukerji, Vice Chairman)

In this application the applicant who has been working as Professional Assistant in the Women's Polytechnic under the Directorate of Technical Education, Delhi Administration has prayed that the pay scale of Rs.550-900 should be allowed to the applicant for holding the post with effect from 30.11.73 with arrears of pay.

2. The brief facts of the case are as follows. The applicant was appointed to the post of Professional Assistant in the Department of Library Science on Women's Polytechnic, Delhi on 30.11.73. This post was newly created with the pay scale of Rs.260-500. When on the recommendations of the Third Pay Commission the pay scale of Rs.260-500 attached to different posts was revised to Rs.470-750 with effect from

1.1.73 the applicant represented claiming the pay scale of Rs.470-750 and ultimately ^{the} Delhi Administration granted her the revised scale of Rs.470-750 with effect from 30.11.73, the date of her appointment vide the order dated 27.8.77 at Annexure-C. It appears that the technical posts in the Polytechnic, Delhi Administration which were carrying the pay scale of Rs. 260-500 before 1.1.73 were in the pay scale of Rs. 210-380 which was revised to Rs.260-500 with effect from 27.5.70 vide the Government of India's letter dated 21.1.71 (Annexure-D). This pay scale was further revised by the Government of India on 14.4.75 (Annex-E) from Rs.260-500 to Rs.300-600. The post which were included in this order for revision were as follows:

"Demonstrator/Drawing Instruction/Survey.

Instructors/Draughtsman and other technical posts in the same scale in the Polytechnics." (emphasis added)

It will be seen from the above that the post of Professional Assistant held by the applicant which was created in 1973 was not included in that order. The Government of India issued another order dated 27.12.77 (Annexure-F) clarifying that "other technical posts" mentioned in the order of 14-4-75 covers the following posts:

- "1. Draughtsman/Draughtsman-cum-Artist.
2. Studio Assistant.
3. Instructor
4. Investigator.
5. Technician
6. Cine Project Operator."

Again the post of Professional Assistant was not included in that order. By still another Office Memorandum dated 15.7.78 (Annexure-G) the ^{pay scale} ~~the~~ ^{of the} ~~aforesaid~~ posts was revised from Rs.300-500 to Rs. 550-900 with effect from 1.1.73. The applicant had been representing from 26.10.78 claiming that since other technical posts with the pay scale of Rs.260-500 like her post of Professional Assistant had been allowed the revised pay scale of Rs.550-900 with effect from 1.1.73 she should also be given that pay scale. She followed it up with a number of reminders. Her representations were taken up by the Delhi Administration with the Government of India who asked for certain particulars about the post of Professional Assistant which were also given to the Government of India. Finally on 10.3.83 her representation regarding inclusion of her name in the Seniority List of other technical officials like Demonstrator/Instructions was rejected as they were in the higher pay scale of Rs.550-900 while her post was in the lower pay scale of Rs.470-750. Her case was taken up demi-officially by the Principal of the Womens Polytechnic where she was working, with the Director of Technical Education on 17.5.83 (Annexure Q) strongly recommending the assigning of the pay scale of Rs.550-900 to the post of Professional Assistant. The Principal was informed on 18.6.83 (Annexure-P) that the Government has decided to set up a Fourth Pay Commission and the case may be referred to that Commission. The Principal of the Polytechnic again wrote to the Directorate of Technical Education stating that the post of Professional Assistant held by the applicant was created along with two posts of Studio Assistants in the scale of Rs.260-500 in 1973 and ^{pay scale} of the posts in

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the scale of Rs.260-500 was revised to Rs.470-750 and the original pay of Rs.260-500 was revised to Rs. 300-750 and Rs.500-900. The Principal urged that the Ministry of Education of the Government of India should be informed that the Professional Assistant^{post} is a Technical post and therefore the order of 14.4.75 at Annexure-E should be made applicable to that post also.

3. Though the Government of India was made a party by the applicant and they were served through notice, there was no representation before the Tribunal by the Union of India. The Delhi Administration has filed the counter-affidavit confirming the factual position as indicated above. They, however, clarified that the pay scale of Rs.470-750 originally given to the Technical posts in the scale of Rs.260-500^{was} not revised across board to Rs.550-900 but the latter pay scale was granted to the selected categories of posts. They have also indicated that the post of Foreman of the Technical Higher Secondary School which was also in the scale of Rs.260-500 was not given the pay scale of Rs.500-900.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It may be recalled that the original order dated 21.1.71 at Annexure-D upgraded the pay scale of Rs.210-380 to that of Rs.260-500 inter alia^{of} "and other technical posts in the same scale" of Polytechnics and Technical Higher Secondary Schools. The further order dated 14.4.75 at Annexure-E likewise upgraded the pay scale of Rs.260-500 further to Rs.300-600 of "other technical posts in the same scale in the Polytechnics". The Principal of the Womens Polytechnic in her letter dated 17.5.83 at Annexure-Q as also in her further letter^{dt 11.0.83.} at Annexure-Q² emphatically stated that "in the first instance a clarification be sent to the Ministry of Education that the post of Professional Assistant is a technical post"

Prima facie therefore the Government of India's order of 14th April, 1975 at Annexure-E should have been automatically applied to the post of Professional Assistants in the Womens Polytechnic and the pay scale of Rs.260-500 should have been revised to Rs. 300-600. It is not known why it was not done. But the Government of India vide their letter dated 27.12.77 (Annexure-F) included only the six posts in the category of "other technical posts" without including the post of Professional Assistant. No reason had been given so far by the Government of India in any of the communications why this solitary post of Professional Assistant was excluded despite the assertion of the Delhi Administration and the Principal of the Polytechnic that the post was also a technical post. In her letter dated 17.5.83 at Annexure-D the Principal of the Polytechnic observed as follows:

"However, the cases of Lab. Technicians and Prof. Assistants were not included in the above.

(iv) Although the scale of other identical technical posts and Lab. Technician were revised but the pay scale of Prof. Asstt. was not revised, although when the old scale of Rs.260-500 was revised to that of Rs.470-750 the scale of Prof. Asstt. was duly revised to that of Rs.470-750, but at the time of 2nd revision of pay scale the Prof. Asstt. and Lab. Technician were totally ignored although it was brought at part in the first instance. However, the case of Lab. Technician was duly represented by Delhi Administration and ultimately their scale was revised to Rs.550-900, but no action was taken to upgrade the scale of Prof. Assistant.

(v) The duties performed by Prof. Asstt. are not only identical, but also more responsible than those of Studio Asstt/Lab. Technician. As such the Prof. Asstt. was also entitled to the revised scale of Rs.550-900.

(vi) The Studio Asstt. etc. of this Polytechnic are in receipt of the pay scale of Rs.550-900, the revision should have virtually covered all the identical posts but in spite of the fact that Mrs. J.K. Agani has been representing her case again and again, no action has been taken so far in the matter."

From the above it is clear that there has been a thoughtless discrimination by the exclusion of Professional Assistants

from the category of 'other technical posts'. In her further letter dated 1.10.83 the Principal observed as follows:

- "1. There are a number of posts with different designations but with similar duties & responsibilities which were created in this Polytechnic from time to time in the pay scale of Rs.260-500.
2. One post of Professional Assistant was also created along with two posts of Studio Assistants in the same scale of Rs. 260-500 in 1973, Copy of the orders enclosed (3 posts of Studio Asstt. already existed alongwith other 3 posts of Lab. Technician.)
3.
4.
5. In the first instance a clarification be sent to the Ministry of Education that the post of Professional Assistant is technical post, and therefore, the order No.13/25/71-T.I dated 14.4.75 be made applicable to the post of Professional Assistant created in June, 1973."

They further indicated that there has been discrimination against the post of Professional Assistant as compared to other identical posts and recommended that the post should also get the same pay scale of Rs.500-900 as was given to other technical posts.

5. The duties attached to the post of Professional Assistant inter-alia includes assisting the lecturers of the Polytechnic in the practical classes of Library science, maintaining students record, tabulation, sessionals finding reading materials for the students and performing of such duties which are Studio Assistants/Demonstrator . to do in other disciplines like Architecture..... The Professional Assistants have to prepare schedule of practical training in the library science and liase between the Library Science department and the Library of the Institution and to demonstrate to the students the practical work of the Library etc. (Enclosure to Annexure-R.6).

6. All technical posts in the Womens Polytechnic according to the Principal were upgraded from the scale of

Rs.260-500 to that of Rs.300-600. The only post which was not upgraded was that of Foreman of the Technical Higher Secondary ^{School} ~~Education~~ of an inferior category than the Polytechnic^h. The recruitment requirements for the post of Professional Assistants in the Polytechnic are B.A. with Degree in Library Science from a recognised university whereas ^{for} the post of Foreman the qualifications required are matric with diploma. Therefore, by no stretch of imagination can the post of Professional Assistant be equated with that of Foreman. The Principal of the Polytechnic herself stated that the post of Professional Assistant is not only technical like those of Studio Assistant and Laboratory Technician but carry higher responsibilities than the latter.

7. We are conscious of the fact that the Tribunal cannot ordinarily be called upon to adjudicate on determination of pay scales for a particular post or category of posts. In the instant case, however, the circumstances clearly indicate that there has been discrimination in not including the post of Professional Assistant in the category of "other technical posts" in the Government of India's letters dated 14.4.75 at Annexure.E and dated 27.12.77 at Annexure-F. Instead of correcting the omission in ^{the face} ~~phase~~ of the emphatic assertion by the Principal of the Womens Polytechnic and the Delhi Administration who are the best judge about the characterisation of the post, the Union of India without rebutting the assertions of the local administration and local Head of the Institution evaded the issue by suggesting that the matter can be taken up with the Fourth Pay Commission. The Union of India has been scrupulously avoiding giving any reason to

justify the discrimination being perpetrated by them against the post of Professional Assistant. Such a discrimination ex-facie is violative of Articles 14 and 16 of the Constitution. The Union of India who had excluded the post of Laboratory Technician also later included the post for upgradation but still excluded the post of Professional Assistant even though the latter ^{is} ~~was~~ as Technical as Studio Assistant or Laboratory Technician and carry more responsibilities than either of these posts. Nothing has been placed before us to show that this matter has been considered by the Fourth Pay Commission and they had rejected the plea of the applicant and the Delhi Administration.

8. In the conspectus of facts and circumstances we are convinced that a judicial intervention in this case is absolutely necessary. Accordingly we allow this application and direct the respondents to treat the post of Professional Assistant in the Women's Polytechnic Delhi at par with the post of Studio Assistant/Laboratory Technician in the matter of pay scale and seniority and to grant the applicant the revised pay scale of Rs. 550-900 from the date ^{she} took over as Professional Assistant. The arrears of pay, however, should be given to the applicant with effect from the date three years prior to 5.1.86 when the O.A. was instituted. Action on the above lines should be completed within a period of three months from the date of communication of this judgment. There is no order as to costs.


(T.S. OBEROI)
MEMBER (JUDICIAL)


(S.P. MUKERJI)
VICE CHAIRMAN

10.4.92