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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. (DR.) A. VEDAVALLI, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 29th DAY OF SEPTEMBER 1997

OA NO.2239/1990

Smt. R. Balamma
R/o Qr. no.1042, Sector 3
R.K. Puram
New Delhi

...APPLICANT

(By Advocate - Shri B.B. Raval)

VERSUS

1. UNION OF INDIA, through
Secretary
Ministry of Education
Government of India
Shastri Bhawan
New Delhi.
2. The Chief Secretary
Delhi Administration
5 Alipur Road
Delhi
3. The Director (Education)
Delhi Administration
Old Secretariat
Delhi

..RESPONDENTS

(By Advocate - Shri Vijay Pandita)

ORDER

R.K. AHOOJA, MEMBER (A)

The applicant seeks payment of the entire amount of pension and gratuity due to her from 1.7.1986 along with penal interest thereon as she retired on 30.6.1986.

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2. The case of the applicant is that she worked in aided schools of the Delhi Administration from 23.7.1962 till 30th April 1970. On the closure of the aided school, she was absorbed, as per the policy of the Delhi Administration, under Rule 47 of the Delhi Education Act 1973 in Government service w.e.f. 14.5.1970. As per the aforesaid rule 47, she claims that she is entitled to count her past service from 1962 onwards for the purpose of pension and other retirement benefits. Further she claims to have worked in different schools under the Delhi Administration as a PGT till her superannuation on 30.6.1986. However, as she had to move various courts because of the injustice done to her, the respondents in order to teach her a lesson withheld her pension and gratuity compelling her to approach the Tribunal in the present O.A.

3. The respondents in their reply have denied that the applicant was absorbed in the Delhi Administration and state that her appointment as PGT English under the Delhi Admn. was by way of a fresh appointment. They point out that rule 47 became applicable only after the coming into force of the Delhi Education Act in 1973. Prior to the enforcement of this Act, the Delhi Education Code 1965 had no provision for absorption of surplus staff of any aided school. In view of this position, the respondents state that the applicant is not entitled to count her service prior to her appointment under the Delhi Administration towards pension and other retirement benefits. They also state that the applicant was last posted at Govt. Boys Sr. Secondary School, Sector 7, R.K. Puram, wherefrom she absented herself since 19.3.1983 till the date of her superannuation on 30.6.1986. She has been facing a departmental enquiry for this absence. Further more, she failed to fill up the requisite pension papers and hence

provisional pension could be allowed only after she had submitted the pension papers in the court in one of the proceedings.

4. The applicant also sought interim relief by way of provisional pension of Rs.1500 per month. By an order dated 7.6.1991, a Bench of this Tribunal ordered that the applicant be paid a basic pension at the rate of Rs.500 per month with dearness relief purely on a provisional basis from 30.6.1986 subject to adjustment depending upon the decision in the main application.

5. We have heard the id. counsel for the parties over a number of days. Since the applicant had made various types of claims, on the directions of the Tribunal she filed a list of payments claimed to be due. In this, she claimed a total of Rs.3,40,08,640/- including Rs.3 crore by way of compensation for loss of prestige, physical and mental torture.

6. We consider that three main issues arise in this case which are as follows:-

- (i) Whether the applicant is entitled to count her past service with the aided schools prior to joining the Delhi Administration towards her pension and other retirement benefits;
- (ii) Whether she is entitled to count the period from 19.3.1983 to 30.6.1986 as period spent on duty since the respondents have issued orders to have this period treated as dies non;
- (iii) Whether the delay in finalisation of the pension papers is on account of the applicant or the respondents?

7. The applicant has also asked for related reliefs, for example, re-fixation of pay on the

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recommendations of the IVth Pay commission w.e.f. 1.1.1986 and recalculation of pension, gratuity and other terminal benefits on the basis of revised pay.

8. In respect of the first issue, Shri Raval, ld. counsel for the applicant, argued that as per the policy of the Delhi Administration whenever a government aided school was closed, the teachers rendered surplus thereon were absorbed in the schools of the Delhi Administration. He pointed out that the 13 days' interval between the closing date of the aided school from 30.4.70 and the applicant's appointment in government school on 14.5.70 had been regularised by the respondents by granting her the pay of that period. Secondly, he drew attention to the fact that at the time of her appointment under the Delhi Administration she had already exceeded the normal upper age limit for direct appointment; being born on 1.7.1926 she was already 44 years of age. Obviously, therefore, age relaxation had been granted to her which could be permissible only under the provisions of Delhi Education Rules that age and educational qualifications could be relaxed for teachers of government aided schools absorbed in government employment. We are however not persuaded that these two factors pointed out by the ld. counsel conclusively establish that her appointment under the Delhi Administration was not in the nature of a direct employment. We have perused the service book of the applicant, a photocopy whereof has also been taken on record, which shows that she had been appointed on 14.3.1970 as PGT and her pay had been fixed at Rs.275/. This was revised to Rs.300/ w.e.f. 27.5.1970 in the scale of Rs.300-600. Under the Delhi Education Rules to which

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the ld. counsel has pointed out, the applicant would have been entitled to protection of her pay in the government aided private school. She would have also been allowed to carry her leave account and GPF, but there is no mention about either of these two privileges. A copy of appointment order No.591 in respect of the applicant issued by the Dte. of Education has also been taken on record. This also makes no reference about the services rendered in the aided schools. In fact, it has been mentioned by the applicant in one of her applications that she was allowed to draw the GPF with the aided school with the permission of the Head of Department. In any case, the most significant fact which militates against her claim is that the Delhi Education Act was promulgated in 1973. The Delhi Education Rules framed under that Act would also take effect from a date not earlier than the notification of the Act itself. Consequently, her case could not be covered by the provisions of the said rules since her appointment under Delhi Administration took place much earlier in 1970. No document, rules or orders have been produced on behalf of the applicant which were in force in 1970 to show that her case was covered for carry over of the service rendered in the aided school which could count for retirement benefits under the Government. The applicant has stated that she was asked to fill up a form in 1974 in regard to her claim. No orders thereon have however been produced. We are therefore unable to agree that the applicant is entitled to count the period of her service in the aided school towards her pensionary benefits.

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9. The second issue to decide is in respect of the period of absence from 19.3.83 to 30.6.1986, i.e., till her superannuation. Shri Raval contended before us that the respondents started a motivated disciplinary proceedings on the basis of her so called unauthorised absence. However, these proceedings were dropped in 1993. This clearly shows that the respondents had given up the charge that the applicant's absence was unauthorised. Shri Raval submitted that the conduct of the respondents towards the applicant throughout had been adversarial and exhibited malice and mala fide. The charge against her was also trumped up and when the respondents realised that it would not stand scrutiny they dropped the proceedings but sought to hurt the interests of the applicant by declaring the period as dies non. Shri Raval vehemently argued that once the disciplinary proceedings were dropped by the respondents, there was in the result a clear admission that the period was to be treated as on duty. We, however, do not see any basis for this assertion. In our view, the proper course for the respondents would have been to grant her leave of the kind due to cover as much of the period of absence as possible and to treat the remaining period as dies non to enable her to draw the pensionary benefits. If there is leave at her credit which extends to 1.1.1986, she will be entitled to the revision of pay and recalculation of her retirement benefits accordingly, otherwise not.

10. As regards the third issue regarding delay in finalisation of pension papers and payment of pension, Shri Raval has argued that the applicant had submitted the requisite pension papers except for the joint photograph with her husband. He pointed out that this is

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not possible since the applicant's relations with her husband were estranged and they were judicially separated. There are allegations of non-cooperation and delay on both sides. We, however, notice that in any case, all the papers except for the joint photograph had been handed over in the Court before another Bench of the Tribunal to the respondents' counsel on 4.7.1988 and 27.8.1988 in CCP No.125/87 in T-801/86. The respondents should have calculated and drawn the pension at least in the light of what they thought to be her entitlement. They cannot take the plea that any disciplinary proceedings were pending against her since they have ultimately now been dropped. We therefore hold that the applicant is entitled to 18% interest on the arrears of pension and other retiral benefits after adjustment of payments already made, if any, which have not been paid to her from 27.11.1988, i.e., three months after the papers were given to the respondents' counsel on 27.8.1988.

11. The applicant has made a claim for compensation and damages which are matters for a civil court and not for this Tribunal.

12. In the light of the above discussion, we partly allow the O.A. and dispose it off with the following directions:-

(i) The respondents will grant her leave of the kind due to the maximum extent as per her leave account for the period of her absence from 19.3.1983 to 30.6.1986 and treat the remaining period of absence as dies non. In case the leave due to her credit covers a period beyond 1.1.1986, she will be entitled for revision of pay as per IVth Pay Commission recommendations and calculation of her retiral benefits on that basis.

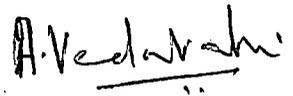
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- (ii) The respondents will finalise her claim for pension and other retirement benefits after adjustment of payments already made, if any, and pay the same to her with 18% per annum interest from 27.11.1988 till the date of actual payment. This shall be done within three months from the date of receipt of a copy of this order.

- (iii) For the purpose of calculating the retiral benefits, the applicant will not be entitled to count the period of her service under the government aided private school.

The O.A. is disposed of accordingly. No order as to costs.


(R.K. AHOJJA)
MEMBER (A)


(DR. A. VEDAVALLI)
MEMBER (J)

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