

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(12)

O.A. NO.849/91

New Delhi, this the 2nd day of May, 1996

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Government School Teachers Association
Administrative Cadre, Delhi
through its General Secretary,
Shri Bharat Bhushan,
E-891, Saraswati Vihar,
Delhi.

2. Shri S.N. Dixit
s/o Shri D. Dixit,
Post Graduate Teacher
Govt. Coed. Sr. Secondary School,
New Multan Nagar,
Delhi.

... Applicants

By Advocate: Shri Gopal Subramaniam with
Shri Abhinav Singh and Shri K.N.R.
Pillai

Vs.

1. Union of India
through the Secretary
Ministry of Human Resource Development
New Delhi.

2. Delhi Administration,
through Director of Education,
Old Secretariat, Delhi.

... Respondents

By Advocate: Shri Jog Singh

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants, who are Govt. School teachers
being aggrieved with their scales of pay which they say
discriminate against them vis-a-vis those teachers in
Colleges and Universities, have filed this application
under section 19 of the Administrative Tribunal Act, 1985.

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2. The grievance of the applicants in a nutshell is that the respondents have not taken into account the recommendation of the National Commission on Teachers under the chairmanship of Prof. D. G. Chattpadhyaya (1985). Dr. Gopal Subramaniam, learned counsel, argued fervently on behalf of the applicants that the very considered recommendations of Prof. D. G. Chattpadhyaya in his report after going into the whole gamut of the role of teachers in society, the scale of pay which should be given to teachers in various grades in schools, the basic educational qualifications required for various grades etc. has not been taken into account by the respondents while issuing the Notification No. F.5-180/86-U.T.I. dated 12.8.87 (Annexure A-X). The applicants are challenging this notification. In this notification, para 1 refers to the interim notifications of 13.9.86 and 22.9.86 by which the Fourth Central Pay Commission's replacement scales for school teachers were implemented. Secondly in para 2, it has been stated that the revised pay scales of school teachers in all Union Territories, including aided schools and organisations will be as stated in the schedule. Thirdly, the revised pay scales have been made admissible subject to the conditions, one of which is that the senior scale would be available after 12 years of service while selection grade would be available after 12 years of service in the senior scale. The learned

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counsel pointed out that prima facie for a teacher to reach the selection grade it would take him about 24 years. Further, the number of posts in the selection grade for Primary School Teachers/Trained Graduate Teachers(TGTs) and Post Graduate Teachers/has been restricted to 20% of the number of posts in the senior scale and it is given after screening. In para 5 of the circular it is mentioned that the above scales will be applicable to School Teachers of the categories mentioned in the schedule and to the incumbents of such teaching posts as analogous to the above mentioned categories of posts of teachers who are working in schools in all Union Territories except Chandigarh.

3. Dr. Gopal Subramaniam, learned counsel had submitted that the Third Pay Commission had not undertaken the revision of the pay scales of the senior teachers and had ignored the recommendations of the Kothari Commission which had recommended that teachers in Higher Secondary schools with Post Graduate qualifications should have the same pay scale as junior lecturers. According to him the Third Pay Commission had recommended Rs.440-700 for TGTs and Rs.550-900 for PGTs with a selection grade of Rs.775-1000; whereas the UGC had granted the pay scale of Rs.700-1600 for Lecturers. He further submits that in

certain States for example Punjab, Karnataka, Andhra Pradesh, Tamil Nadu and Gujarat the Kothari Commission's recommendations had been accepted and the pay scales of junior lecturers were given to the PGTs.

4. The learned counsel for the applicant strongly urged that the Central Govt. ought to have accepted the recommendations of the Chattopadhyaya Commission and when they had departed from the same, they should have done so only for adequate reasons which are sustainable in law which they have not done. His argument was that this was a National Commission for Teachers which has been unceremoniously rejected without any proper assignment of reasons. Another submission made by Dr. Gopal Subramaniam, learned counsel, was that there are a number of anomalies which have crept in, as a result of the respondents accepting the Fourth Pay Commission's Report, for example, a Language Instructor i.e. a Hindi Teacher has been granted by the Fourth Pay Commission a new pay scale of Rs. 1640-2900 (pre-revised scale Rs. 440-750) whereas a TGT whose pay scale was also the same (pre-revised) is being given Rs. 1400-2600 by the Central Govt. Another anomaly he has pointed out is that in the case of certain categories like Instructors, Subedars, Subedar Majors, Language Instructors, Pharmacists, Inspectors

Grade II, Drivers, Nursing Sisters and Theatre Masters, they got a higher scale of pay as recommended by the Fourth Pay Commission than the teachers. Another anomaly he has pointed out is that in many technical institutes/polytechnics where admission is after class X, the lecturers or teachers in these institutions have lesser educational qualifications than a PGT in a school who has a Master's degree plus a degree or diploma in training or he should have a Ph.D. degree in the subject. In this connection, he had also submitted that while the lecturers working in a Technical Education Department of a polytechnic are declared as gazetted officers, a PGT teacher has not been so designated, although he claims that their functions are similar. He fairly submitted that although there is no doubt that the Central Government may or may not accept the recommendations of the Chattpadhyaya Commission, they have not disclosed the reasons for such rejection of the Commission's report even in the reply filed to this O.A. His argument was that the teachers have merely been given replacement scales as recommended by the Fourth Pay Commission without proper appreciation of the recommendations in the Chattpadhyaya Commission report. He submits that a lecturer in a polytechnic gets a much higher scale of pay of Rs.2200-4000 as against TGT's scale of Rs.1640-2900 under the Govt. order dated 12.8.87 which he states is therefore arbitrary and illegal.

5. This application has been filed in 1991 and recently the Fifth Pay Commission has been constituted. The learned counsel has submitted that any recommendations of the Fifth Pay Commission without looking afresh into the recommendations of the Chattpadhyaya report is bound to produce distorted results. He has, therefore, made a prayer to direct the Fifth Pay Commission to consider the representations of the applicants afresh in the light of the Chattpadhyaya Commission/uninfluenced by the order dated 12.8.87, so that the pay scales which should ensure to the benefit of the teachers for the period ^{from} 1.1.86 till the date of the Fifth Pay Commission may be ascertained.

6. We have seen the reply filed by the respondents and have also heard the learned counsel, Shri Jog Singh for the respondents. The respondents have denied that the Fourth Pay Commission had not fully dealt with the matter regarding pay scales of school teachers. They state that Post Graduate teachers have never had pay parity with the college lecturers and they state that ~~the~~ school teachers and college teachers are two different categories. According to them pay scales of school teachers have been revised from time to time keeping in view the pre-revised pay scales. They state that any comparison with the service conditions of school teachers in other States is not relevant. They have stated that the

Govt. had carefully examined the recommendations of the Chattopadhyaya Commission which had recommended running scale of Rs.500-3900 which they decided was not desirable for the sake of maintaining the educational standards, as it may prove disincentive for teachers in acquiring higher qualifications and professional efficiency. They have stated that the Govt. was free to accept, reject or modify any of the recommendations of the Chattopadhyaya Commission. They claim that the notification dated 12.8.87 is a big improvement in the pay scales recommended by the Fourth Pay Commission. They have, therefore, denied that the school teachers have been discriminated vis-a-vis other Central Govt. employees. Shri Jog Singh, learned counsel for the respondents had also pressed the ground of limitation, as the impugned order is dated 28.8.87 and this application has been filed in March, 1991. He had also denied the averments made by the applicants that the respondents have rejected the report of Chattopadhyaya Commission without application of mind. The learned counsel did not have any serious objection to the alternate prayer made by the learned counsel for the applicants that the matter may be referred to the Fifth Pay Commission for a fresh consideration of the issues.

7, We have carefully considered the pleadings and the submissions made by Dr. Gopal Subramaniam, learned counsel for the applicant and Shri Jog Singh, learned counsel for the respondents.

8. The Supreme Court ^{has} in a catena of judgements [See for example State of Madhya Pradesh & Anr. V. Pramod Kumar Bhartiay & Ors (JT 1992(5) SC 683), State of U.P. v. J.P. Chaurasia (AIR 1989 SC 19), State of West Bengal & Ors. V. Hari Narayan Bhowal & Ors. (1994) 27 ATC 524) and Shyam Babu Verma & Ors. V. UOI & Ors. ((1994) 27 ATC 121)] held that it is for the administration to decide the question whether two posts which very often may appear to be the same or similar should carry equal pay, the answer to which depends upon several factors, namely evaluation of duties and responsibilities of the respective posts and that its determination should be left to expert bodies like the Pay Commissions. Further, the Supreme Court in State of West Bengal and others V. Hari Narayan Bhowal and ors. (supra) has held as under -

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"The principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequals. Unless a very clear case is made out and the court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the court, an anomaly in different services may be introduced, of which the court may not be conscious, in the absence of all the relevant materials being before it. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14, courts should be reluctant to issue any writ or direction to treat them equal, particularly when a body of experts has found them not to be equal." (emphasis supplied)

9. The issues raised in this application deal with the fixation of scale of pay for school teachers in which allegations have been made by the applicants that they have been discriminated *vis-a-vis* the pay scales

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of other Central Govt. employees, that the recommendations of the Chattopadhyaya Commission which were salutary have been ignored by the respondents and that there are a number of anomalies in their pay scales as a result of the implementation of the impugned notification dated 12.8.87. We have no reason to doubt the averments made by the respondents that they have in fact considered the recommendations of the Chattopadhyaya Commission while giving the various pay scales to school teachers. However, it cannot also be denied that some anomalies as pointed out by the applicants exist in their pay scales which need further consideration. This necessarily means that a detailed examination of the qualifications required under the Recruitment Rules, duties, functions and responsibilities will have to be undertaken by an expert body to see whether there has been a denial of equal pay for equal work, as we feel that all necessary material is not before us nor is this Tribunal/Court the proper authority to undertake ^{is} ~~the~~ exercise as often pointed out by the Hon'ble Supreme Court.

10. Having regard to the facts in this case and particularly to the fact that the Fifth Pay Commission is currently looking into the matter of revision of pay scales and the observations of the Supreme Court referred to above, we dispose of this O.A. with the following directions:-

Yours

- i) The applicants may submit a self-contained representation within 10 days from the date of receipt of a copy of this order to the respondents including therein all the points raised in this application.
- ii) The respondents shall thereafter forward such representation together with their comments, if any, to the Fifth Pay Commission for their consideration as expeditiously as possible and in any case not beyond four weeks so that the Commission may be able to consider the applicants' demands and make appropriate recommendations, provided the Commission accepts the same.

11. O.M. is disposed of as above. No order as to costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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(S.R. ADIGE)
MEMBER(A)

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