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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1939 /1993 Decided on : 9.4.99.

JARNAIL SINGH & ANOTHER ... Applicant(s)

(By Shri G.D. GUPTA Advocate)

versus

The Administrator, ... Respondent(s)
National Capital Territory of Delhi
and Ors.
(By Shri Rajinder Pandita Advocate)

CORAM

THE HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. To be referred to the Reporter or not ? *Y*

2. Whether to be circulated to other Benches
of the Tribunal ?

JK
(K.M. AGARWAL)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
D.A. No. 1939/1993.

NEW DELHI, THIS THE 9TH DAY OF APRIL, 1999.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A).

1. Shri Jarnail Singh,
S/o Shri Gurdial Singh,
R/o Village Kurani, Narela,
Delhi.

2. Shri Milap Chand Gupta,
S/o Shri Karorimal,
R/o A-10, C.C. Colony,
Rana Pratap Bagh,
New Delhi.

...

APPLICANTS.

(BY ADVOCATE SHRI G.D. GUPTA)

Vs.

1. The Administrator,
National Capital Territory of Delhi,
Delhi Administration, Delhi.

2. The Chief Secretary,
Government of N.C.T. of Delhi,
Delhi.

3. The Commissioner-cum-Secretary (Edn.),
Govt. of N.C.T. of Delhi,
Delhi.

4. The Director,
Directorate of Education,
Govt. of N.C.T. of Delhi,
Old Secretariat,
Delhi.

...

RESPONDENTS

(BY ADVOCATE SHRI RAJINDER PANDITA)

ORDER

JUSTICE K.M. AGARWAL:

The main relief claimed in this O.A. is mentioned in
sub-clause (B) of the relief clause 8 as follows:

"(B) issue appropriate direction or directions, order
or orders

(i) declaring to give effect to the new rules
with retrospective effect and ratio-
promotion to the applicants with retrospective
effect as per their seniority on the basis
of service rendered in the Directorate of
Technical Education retrospectively from
the dates from which the applicants became
due on that basis with all consequential

benefits including promotion to the higher posts as and when the applicants became entitled to and again with retrospective effect with all consequential benefits;

(ii) directing the respondents to give effect to the new rules with retrospective effect and ratio-promotion to the applicants with retrospective effect as per their seniority on the basis of service rendered in the Directorate of Technical Education retrospectively from the dates from which the applicants became due on that basis with all consequential benefits including promotion to the higher post again with retrospective effect with all consequential benefits."

2. Briefly stated, the applicants were initially Post Graduate Teachers in a school run by the Directorate of Technical Education under the Delhi Administration. In 1874 they were declared surplus and, thereafter, pursuant to certain directions and orders given by the Delhi High Court and this Tribunal, they were taken in a school or schools run by the Directorate of Education under the Delhi Administration firstly on ad hoc basis and then on regular basis from a certain date in 1975. The applicants, therefore, started agitating their demands for counting their past service under the Directorate of Technical Education for purposes of their seniority and promotion to certain posts under the Directorate of Education by forming a separate cadre for them. On that basis, a decision was taken in a meeting dated 22.4.1977 of the officers of the Directorate of Technical Education and those of the Directorate of Education in that regard, but not implemented. Further decision taken by the Directorate of Education in August 1986 for forming a separate cadre for them was also not implemented. The applicants had, therefore, to file O.A. No.905/1987, which was allowed by this Tribunal by its order dated 8.9.1989 and the respondents were directed to implement

the order dated August 1986 for framing a separate cadre for the staff transferred from the Directorate of Technical Education to the Education Department. This direction was implemented during pendency of C.C.P. No.198/91 and C.C.P. No.17/90 in O.A. No.905/1987 by amending the Recruitment Rules and implementing the same with effect from 1991. Thereupon the contempt proceedings were dropped by a common order dated 6.1.1992 after over-ruling the contention that as per the direction, the amended rules should have been given retrospective effect. Thereafter the present O.A. was filed for the said relief. The O.A. is resisted by the respondents.

3. After hearing the learned counsel for the parties and perusing the record, we are of the view that not only the relief claimed in this O.A. is misconceived and untenable, it is also barred by the principle of res judicata. The general principles of res judicata are provided in Section 11 of the Code of Civil Procedure, 1908 with eight Explanations. Section 11 and Explanations IV and V read as follows:

"11. Res Judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

"Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit, shall be deemed to have been a matter directly and subsequently in issue in such suit."

"Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section be deemed to have been refused."

Admittedly the relief claimed by the applicants in their earlier O.A. No.905/1987, dated 8.9.1989 was to the following effect:

"It is, therefore, prayed that the Hon'ble Tribunal may be pleased to order the implementation of the order dt. August 1986 forming separate cadre, showing the seniority and the promotion due to the petitioners and the petitioners be given their promotion to the post of Vice Principal and further consequential relief for the promotion to the post of Principal. The costs be also awarded to the Petitioners."

The operative part of the order passed on 8.9.1989 in the said O.A. was in the following form:

"6. In the premises, the respondents are hereby directed to implement the order dated August 1986 for framing a separate cadre for the staff transferred from the Directorate of Technical Schools to the Education Department and to grant consequential benefits to the Applicants within a period of three months from today."

The said direction of the Tribunal was carried out by the respondents by implementing the impugned amended Recruitment Rules dated 19.2.1991, Annexure A-20, during pendency of C.C.P. No. 198/91 and CCP No.17/90 and accordingly by a common order dated 6.1.1992, Annexure A-15, both the contempt proceedings were dropped. The common order in the contempt proceedings was as follows:

"We are satisfied that the judgment of the Tribunal has since been complied with. A separate cadre for the staff transferred from the Directorate of Technical Education to the Education Department, has since been prepared. The case of the complainants on the basis of the same has also been considered and promotions also accorded to them. Learned counsel for the complainants, however, submits that this cannot be regarded as due compliance, as retrospective

effect has not been given to the creation of a separate cadre, directed to be made in pursuance of the judgment of the Tribunal. We do not find any positive direction in the judgment of the Tribunal to create a separate cadre with retrospective effect. Though in para 6 of the judgment, it is observed that the order of August 1986 should be implemented for creating a separate cadre, there is no direction that such a cadre should be created with reference to any retrospective date. The order of August, 1986 also does not in terms say that a separate cadre should be created with reference to any particular date. In these circumstances, we will not be justified in taking the view that the respondents have contumaciously violated the order of the Tribunal by their not giving retrospective effect to the creation of a separate cadre for the staff transferred from the Directorate of Technical Education to the Education Department. Though, there is some delay, the same has been explained and apology has been tendered. We accept the explanation and apology and drop these proceedings. The rule is, accordingly, discharged. No costs."

The present O.A. was, thereafter, filed for the said relief even after the following finding in the said contempt proceedings:

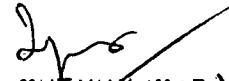
".....Learned counsel for the complainants, however, submits that this cannot be regarded as due compliance, as retrospective effect has not been given to the creation of a separate cadre, directed to be made in pursuance of the judgment of the Tribunal. We do not find any positive direction in the judgment of the Tribunal to create a separate cadre with retrospective effect. Though in para 6 of the judgment, it is observed that the order of August, 1986 should be implemented for creating a separate cadre, there is no direction that such a cadre should be created with reference to any retrospective date. The order of August, 1986 ^{does not} also in terms say that a separate cadre should be created with reference to any particular date."

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Argument that the finding recorded in contempt proceedings could not operate as res judicata deserves to be rejected as misconceived. Even otherwise, in view of Explanation V to Section 11 C.P.C., the claim is barred by res judicata.

4. For the foregoing reasons, this O.A. fails and accordingly it is hereby dismissed. No costs.


(K.M. AGARWAL)
CHAIRMAN


(K.M. MUKUND KUMAR)
MEMBER (A)