

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00776/2018

Friday, this the 26th day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Lysamma Francis,
Music Teacher,
Jawahar Navodaya Vidyalaya,
ETC P.O., Kottarkara, Kollam – 691 531.
Residing at Jawahar Navodaya Vidyalaya Quarters,
ETC P.O., Kottarkara, Kollam – 691 531.

...Applicant

(By Advocates Mr.Vishnu.S.Chempazhanthiyil)

v e r s u s

1. The Chairperson,
Navodaya Vidyalaya Samiti,
Ministry of Human Resource & Development,
Shastri Bhawan, New Delhi – 110 001.
2. The Commissioner,
Navodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Government of India, B15 Institutional Area,
Sector 62, Noida, Gautam Budh Nagar Dist.,
Uttar Pradesh – 201 309.
3. The Deputy Commissioner (Pers.),
Navodaya Vidyalaya Samiti (Hyderabad Region),
Ministry of Human Resource & Development,
1-1-10/3, Sardar Patel Road, Secunderabad – 500 003.
4. Union of India represented by the Secretary,
Ministry of Human Resource & Development,
Shastri Bhawan, New Delhi – 110 001.

...Respondents

**(By Advocates Mr.Millu Dandapani [R1-3]
& Mr.Anil Ravi, ACGSC [R4])**

This application having been heard on 17th March 2021, the Tribunal on 26th March 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant is a Music Teacher at Jawahar Navodaya Vidyalaya (JNV) at Kottarakara, Kollam. Her grievance has arisen on account of the inaction on the part of the respondents Navodaya Vidyalaya Samiti (NVS) to grant Selection Scale on completion of 24 years of service. As per the applicant, Music Teachers in JNV are categorized as Miscellaneous Category of Teachers (MCT). The applicant is a Diploma holder in Ganabhushanam issued by the Government of Kerala and was recruited as a Music Teacher in the JNV with effect from 01.09.1992. The NVS had issued instructions for grant of Senior Scale/Selection Scale to Teachers and Vice Principals of NVS, as per which, Senior Scale would be granted after 12 years of service to TGTs/MCTs, Regional Language Teachers and PGTs. Similarly, Selection Scale would be granted after 12 years of service in the Senior Scale of the respective cadre.

2. The applicant was granted Senior Scale on completion of 12 years of service and placed in PB-2 Rs.9300-34800 + Rs.4800/- Grade Pay (GP). It has also been provided that Senior Scale and Selection Scale will be given after screening regarding their satisfactory performance by an appropriate Departmental Promotion Committee (DPC). Such DPCs for TGTs/MCTs are to be conducted at the Regional Office level and approval from the NVS Headquarters is required before implementation of the same. The applicant had completed 24 years of service and 12 years service in Senior Scale on 01.09.2016 and, therefore, in terms of the Scheme in force, she claims that

she is due for placement in Selection Scale in PB-2 Rs.9300-34800 + Rs.5400/- GP. The same, however, has not been extended to her on the ground that for grant of Selection Scale, one must possess a higher qualification in the concerned subject.

3. The question of whether for grant of Selection Scale to MCTs of Kendriya Vidyalaya Sangathan (KVS) possession of higher qualification is necessary or not had come up for consideration before the Ministry of HRD. It was decided by the KVS, with the approval of Ministry of HRD, that in respect of MCTs, Selection Scale can be granted without insisting upon higher qualifications vide the order produced at Annexure A-2. This order states that the Ministry of HRD, Government of India, vide letter dated 24.05.2011 has conveyed that, considering the recommendations of the committee constituted for the purpose, the Government has decided to grant Senior Scale and Selection Scale to the MCTs of KVS without insisting on higher qualifications. The applicant's case is that the JNV, being an autonomous body under the Ministry of HRD akin to KVS, was also bound by the decision of Ministry of HRD, as produced at Annexure A-2 and should not be insisting on higher qualifications for grant of Selection Scale.

4. The applicant submits that earlier, in fact, the NVS was granting Selection Scale on completion of 24 years of service/12 years service in Senior Scale even to MCTs vide their Circular produced at Annexure A-3. The individuals indicated at Sl.Nos.1 to 11 produced under Annexure A-3/3 at (VIII) were all granted Selection Scale on completion of 24 years of

service. In fact, they were all Music Teachers under Miscellaneous Category just like the applicant. However, this grant of Selection Scale given to MCTs was later withdrawn by the NVS on the ground that they did not possess higher qualifications. The withdrawal letter in respect of one of them, Shri.N.Krishnakumar, Music Teacher of JNV, Kollam has been produced at Annexure A-4. This was however challenged by the said Music Teacher by filing O.A.No.180/627/2016 in this Tribunal. The O.A was allowed on 04.08.2017 and a copy of the order has been produced at Annexure A-5. It is noted that while allowing the O.A., this Tribunal observed that the respondents in the case had presented no plausible argument as to why the discrimination was extended to the respondent institution or why the respondent institution had not taken up the case for similarity of treatment for grant of Selection Scale to MCTs on completion of 24 years of service. It was also observed that Ministry of HRD is the nodal Ministry for both the schools ie. Kendriya Vidyalaya and Navodaya Vidyalaya. Ministry of HRD on 24.05.2011 while extending the grant of Senior Scale and Selection Scale to the MCTs without insisting on higher qualifications to teachers of Kendriya Vidyalaya, should have thus similarly extended the scheme to teachers of Navodaya Vidyalaya also. It was observed that no plausible reasons are offered for the dissimilarity of treatment of the same category of persons. It was further observed that the Government of India while introducing schemes like MACP to non teaching staff and Senior Scale and Selection Scale to teaching staff had intended that no employee should suffer stagnation. Having offered the scheme to some, not offering the same to others would not only be a demotivating

factor but also defeat the objective of offering a solution to the matter of stagnation. It was also observed that it was never intended that the MCTs should pass 30-35 years of their teaching career with only one promotion, when the Government extended various schemes to declutter stagnation with various schemes of time bound promotion. Hence, it was ordered that the applicant in the O.A was entitled to the same treatment as meted out to MCT of KVS and the O.A was allowed.

5. The applicant claims that she is similarly situated to the applicant in O.A.No.180/627/2016 and is entitled to be extended with the benefit of orders as in the Annexure A-5 orders and the grant of Selection Scale on completion of 24 years of service with effect from 01.09.2016. The reliefs sought by her are as follows :

1. Direct the respondents to consider granting Selection Scale to the applicant with effect from the due date on completion of 24 years of service in Navodaya Vidyalaya Samiti.

2. Declare that the applicant is eligible to be granted Selection Scale with effect from 01.09.2016 in view of Annexure A-5 judgment dated 04.08.2017 in O.A.No.180/00627/2016 and direct the respondents to extend the above benefits with all consequential benefits.

3. Direct the respondents to extend the benefit of Annexure A-2 to the Miscellaneous Category of Teachers in Jawahar Navodaya Vidyalaya.

4. Direct the respondents to extend the benefit of Annexure A-5 order to the applicant and sanction all consequential benefits.

5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

6. *Award the cost of these proceedings.*

6. The respondents in the O.A in their reply statement without touching on the issues decided by this Tribunal in O.A.No.180/627/2016 and directions in a very similar case relating to another MCT working possibly at the very same school have simply repeated the arguments as they possibly did in that O.A. They have stated that as per the provisions brought out by them at Annexure R-1(a) and R-1(b) Selection Scale will be granted after 12 years of service in the Senior Scale of the respective cadre. The number of posts in the Selection Scale for TGTs/MCTs/Regional Language Teachers and PGTs will be restricted to 20% of the number of posts in the Senior Scale of the respective cadre. Further TGTs, MCTs and Regional Language Teachers will be required to obtain higher qualifications. It is submitted that the DPC that met on 28-29 May 2015 recommended to review all the 79 cases of teachers who were granted Selection Scale by earlier DPCs, to ensure fulfillment of the mandatory condition to possess higher qualification in the concerned subject. The DPC which met subsequently on 30.05.2016 then reviewed the 79 cases and decided to withdraw Selection Scale in the case of 31 teachers on the basis of the non-possession of higher qualifications in the concerned subject of graduation. It is therefore submitted that the applicant was well aware of the insistence for higher qualifications. The comparison of the scheme of Senior/Selection Scale applicable to teaching staff with that of the scheme of ACP/MACP applicable to non-teaching staff is untenable as they are totally different schemes. It is submitted that the exemption of higher qualification to MCTs

for grant of Selection Scales allowed by KVS is not applicable to NVS as the same has not been extended to Samiti by the Ministry of HRD till date. Hence, there has been no illegality in withdrawal of Selection Scales in respect of the applicant on account of non-possession of relevant higher qualification.

7. The last sentence of the paragraph 6 above seems to prove that the respondents have filed the reply statement without examination as a copy and paste job as, in this case, it is not the claim of the applicant that the Selection Scale is withdrawn, but that she has not been given it by the due time ie. with effect from 01.09.2016. Hence, it looks like the respondents have just filed the same standard reply as was done in the earlier matter, pertaining to O.A.No.180/627/2016. Further, it is significant that the reply statement has not dealt with the findings of this Tribunal in that O.A and whether the matter has been agitated further by the respondents.

8. The applicant has filed a rejoinder in which she has reiterated that all the contentions raised in the reply statement was dealt with in O.A.No.18/627/2016 which resulted in Annexure A-5 judgment. The NVS has accepted the Annexure A-5 judgment and have also acted upon it. Thus, NVS is bound by the findings and directions in Annexure A-5. The applicant in Annexure A-5 order was also a MCT, just like her. Hence, being similarly situated and also eligible, she is entitled to be extended with the benefit of Annexure A-5 order of this Tribunal.

9. We have heard Shri.Vishnu.S.Chempazhanthiyil, learned counsel for the applicant and learned counsel for the respondents. We are in complete agreement with the order passed by this Tribunal in O.A.No.180/627/2016, especially, with the views and observations that have been brought out earlier in that matter at paragraph 4. The applicant in this case is exactly similar to the applicant in that O.A, even to the extent that, she too is a Music Teacher in the very same school. Hence, there is no question that she too is entitled to get the Selection Scale with effect from the due date of 01.09.2016 as prayed for. Learned counsel for the applicant during argument has also brought to our notice O.A.No.180/00846/2017 filed by another MCT Shri.Sambhu Nampoothiri, SUPW Teacher, wherein, this Tribunal allowed similar contentions. The teacher in that O.A though not a Music Teacher but a SUPW teacher at JNV, Alappuzha was aggrieved by withdrawal of Selection Scale already granted to him and recovery for the excess pay drawn. This Tribunal after considering the matter had allowed the O.A and quashed the orders withdrawing the Selection Scale granted to him. The Tribunal was guided by the observations/findings in O.A.No.180/627/2016.

10. In the light of the above, we allow the O.A to the extent of reliefs sought at sl.nos.1, 2 & 4 of the relief array. Regarding the relief sought at sl.no.3, where order of the Tribunal is sought to direct the respondents to extend the benefit of Annexure A-2, which is the order in the matter of grant of Selection Scale to MCTs of KVS to all the MCTs in JNV, we feel that it is not for us to grant this relief in the course of our adjudicating this matter.

In the matter of the relief at sl.no.3, we only direct the appropriate authority in the NVS to look at the issue in its totality and consider in light of various court orders and directions of the Apex Court to avoid unnecessary litigation to grant the benefit of Selection Scale to the MCTs in the NVS, as has been done to the MCTs in KVS. They could be guided by the fact that both these institutions are under the same Ministry and hence it could be considered unfair for different qualifications/criteria to exist for these two categories of institutions. In addition, it may also be relevant that in some of these categories, it may not be possible to identify the higher qualification that is required to be obtained. They may examine whether it would be also required, considering that the philosophy behind the grant of Senior Scale and Selection Scale to the MCTs is entirely different, essentially being to reduce the impact of stagnation in a particular scale for the teachers, just like the MACP for non-teaching staff.

11. With these observations, the O.A is allowed to the extent indicated above. There shall be no order as to costs.

(Dated this the 26th day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

asp

List of Annexures in O.A.No.180/00776/2018

- 1. Annexure A-1** – A copy of the Communication F.No.3-22/JNVA/Pers/13-14/496 dated 28.09.2013 issued by the Principal, JNV, Chennithala, Alappuzha.
 - 2. Annexure A-2** – A copy of the Communication No.F.18-3/92-KVS(Admn.I)/Vol.II dated 09.06.2011 issued by the Deputy Commissioner, KVS.
 - 3. Annexure A-3** – A copy of the Order No.F.No.1-171/NVS(HR)/(Estt.II)/2014 dated 18.03.2014 issued by the 3rd respondent (relevant portion).
 - 4. Annexure A-4** – A copy of the Order No.F.No.2-20/JNVK/2016-17 dated 23/28.06.2016 issued by the Principal, JNV Kollam.
 - 5. Annexure A-5** – A copy of the order dated 04.08.2017 in O.A.No.180/00627/2016 of the Hon'ble Tribunal.
 - 6. Annexure A-6** – A copy of the representation dated 03.08.2018 to the 2nd respondent.
 - 7. Annexure R-1(a)** – A copy of the Circular F.No.2-119/99-NVS(Estt.) dated 06.11.2000.
 - 8. Annexure R-1(b)** – A copy of the Circular F.No.2-119/99-NVS(Estt.) dated 31.05.2002.
 - 9. Annexure R-1(c)** – A copy of the Office Order F.No.1-171/NVS(HR)/(Estt.II)/2014 dated 18.03.2014.
 - 10. Annexure R-1(d)** – A copy of the Circular F.No.1-171/NVS(HR)/(Estt.II)/2015 dated 18.06.2015.
 - 11. Annexure R-1(e)** – A copy of the Circular No.F.18-3/92-KVS(Admn-1/Vol.II) dated 09.06.2011.
-