

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

LIBRARY

O.A. 351/0002/2015

Date of Order: 21.4.2021.



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Mayarani Roy,
wife of Shri Sanjeet Roy,
working as Craft Instructor
G.S.S. School, Wimberlygunj
South Andaman.

.....Applicant

Vrs.

1. Union of India through the Secretary,
Government of India,
Ministry of Human Resources Development,
Shastri Bhawan, New Delhi – 110001.
2. The Lt. Governor,
A & N Islands,
Raj Niwas, Port Blair – 744101.
3. The Secretary-cum-Director (Education),
A & N Administration,
Port Blair – 744103.
4. The Principal,
Govt. Senior Secondary School,
Wimberlygunj – 744206,
South Andaman.

..... Respondents.

For the Applicant(s): Mr. P.C.Das, Ms. T.Maity, Counsel

For the Respondent(s): Mr. R.Halder, Counsel

ORDER

Bidisha Banerjee, Member (J):

Heard Ld. Counsels for the parties.



2. This is the fourth journey of the applicant to this Tribunal. In this O.A. she has sought for the following relief:

"8. a) To quash and/or set aside the impugned office order No. 3039 dated 02.07.2014 being Annexure A-16 of this original application whereby and whereunder the claim of the present application for service during the period from 1990 to 2001 has been rejected on the ground that your applicant cannot make such claim at this stage which is a frivolous ground. Since it is a case of pay and allowance, no limitation will be applicable in respect of that.

b) To pass an appropriate order directing upon the respondents to consider the representations dated 23/09/2013 and 30/01/2014 in respect of arrears of pay for the period during which your applicant had worked as full time Craft Instructor, in the Gov.sr.Secondary School Sabari Junction at Rangat w.e.f. 1990 to June 2001 and to give all consequential benefits in light of the order of the Hon'ble Supreme Court dated 04/07/2013 being Annexure A-13 & A-14 of this O.A.

c) To pass an appropriate order directing upon the respondent authority to give the appropriate scale of pay in the scale of Rs. 9300-34800 (revised) as per the 6th Central Pay Commission with effect from 01.01.2006 along with Grade Pay of Rs. 4200 along with all consequential benefits in terms of the representation dated 13.10.2014 being Annexure A-17 of this original application to the post of Craft Instructor."

3. The issue that fell for consideration in the present O.A. was the entitlement of applicant to arrears of pay from 1990 to 2001 as a full time Craft Instructor. We noted that her second application, numbered O.A. 34 (AN)/2008, was disposed of with the following order: (extracted to the extent found relevant and germane to the present issue with supplied

emphasis for clarity)



"The applicant in this OA is working as a Craft Instructor in the Government SSS School Sabari Junction, Andaman & Nicobar Islands. She was originally appointed on part time basis on a consolidated monthly remuneration of Rs. 250 vide order dated 12.11.1990. The part time appointment was extended from time to time and the remuneration was increased to Rs. 800 per month in 1993. In the year 1999 the applicant filed an OA No. 151/AN/99 seeking regular appointment as Craft Instructor. On the basis of the directions issued by this Tribunal the DPC recommended her regular appointment and she was given regular appointment as a Craft Instructor in relaxation of age limit in the pay scale of Rs. 4500-7000 plus usual allowances. The regular appointment was done by order dated 26th June 2001. Thereafter the applicant made a series of representations seeking arrears of pay between 1990 and 2001 on the ground that her services were actually used on a full time basis by the Principal of the School. These representations were made on 16.6.2003, 9.11.2004 and 30.9.2005. The applicant is relying on a certificate dated 14.10.1998 issued by the Principal of the school stating that she is performing her duties from 9 AM to 3 PM on all working days due to the non-posting of a regular craft instructor. Failing to get a favourable response from the authorities, the applicant filed OA No.123/AN/2007 which was disposed of by the Tribunal with a direction to the respondents to look into the matter and take a decision on the representation dated 30.9.2005. In accordance with the said direction the respondents considered and rejected the representation seeking full pay and allowances for the period of part time employment. The rejection order was issued on 29th November 2007 (Annexure-A8). Aggrieved by the rejection of her representation, the applicant has filed this OA seeking the following relief:

- a) To pass an appropriate order directing upon the respondent authority to quash and set aside the impugned order No. 4764 dt 29.11.2007 vide Annexure-A-8 of this OA.
- b) To pass an appropriate order directing upon the respondents authority to release the arrears of pay for the period during which your applicant had worked as full time Craft Instructor in the Govt. Sr. Secondary School, Sabari Junction at Rangat wef 1990 to June 2001 and to give all consequential benefits accordingly.
- c) To consider the representations dated 16.06.03, 09.11.2004 and 30.9.2005 & 17.12.2007 vide Annexure A-6 & A-10 of the OA regarding grant of arrears of pay w.e.f. 1990 to 2001.
- d) Cost

e) Any other appropriate relief or reliefs as your Lordships may deem fit and proper."

2] The Respondents have contested the OA. In the reply filed by them, it is contended that the applicant was appointed on part time basis for a period of two hours only. The part time engagement commences from the re-opening of school after vacation till the closure of the academic year. The person who is engaged for two hours a day cannot be treated as having been engaged for full time.

XXX

XXX

XXX

4] The issue for consideration in this OA is whether the applicant was entitled to full pay and allowances admissible to the post of Craft Instructor during the period 1991 to 2001. The first order by which she was appointed on part time basis is dated 12.11.1990 (Annexure-A2). It reads as follows:

"Order No. 2498

The Director of Education, Andaman and Nicobar Island is pleased to engage of Miss Maya Rani, D/o Jagabandu Roy, R/o Rampur Middle Andaman as Part time Craft Instructor on a consolidated pay of Rs. 250/- (Rupees two hundred and fifty only) per month with effect from 19th October, 1990. She is posted to Senior Secondary School, Rangat.

Her engagement as Part Time Craft Instructor is only upto 30th April, 1991. Her services to be terminated at any time before 30th April, 1991 without any notice. Her duty hours in the School will be fixed by the principal, Senior Secondary School, Rangat."

XXX

XXX

XXX

The subsequent appointment order on file dated 8th September 1993 reads as follows:

"Order No. 3025

The Director of Education, Andaman and Nicobar Island hereby orders the engagement of the candidates mentioned in the annexure to this order as Part Time Craft Instructor on consolidated pay of Rs. 800/- (Rupees eight hundred only) with effect from the date they are working on re-opening of the School mentioned against each in the Annexure.

Their engagement as Part Time Craft Instructor is only up to the closure of School for Summer Vacation 1994 after the current academic session 1992-93. Their engagement are liable to be terminated at any time before the above mentioned stipulated time without any notice."

XXX

XXX

XXX



18

5] The appointment orders extracted above clearly shows that she was appointed on part time basis and on a consolidated monthly remuneration. The applicant has not produced any documentary evidence to show she was appointed on full time basis before 2001. The only documentary proof produced in support of her claim for full pay and allowances is a certificate issued by the Principal dated 14.10.1998. xx xx xx. The certificate issued by the Principal reads as follows:

"Certified that Smt. Maya Rani Roy is working as a Craft Instructor (Part Time) in this Institution since 1990. She is performing her duties from 9.00 AM to 3.00 PM on all working days of this Institution due to non posting of regular C.I."

xxx

xxx

xxx

7] There is nothing in the record to show that the Principal is competent to extend the working hours of a teacher appointed by the Directorate for a specified number of hours. The respondents have stated in their reply that the Principal is not authorised to increase the number of hours. The order dated 8th September 1993 actually stipulates that such part time teachers are not to be engaged for more than two hours in any case. It is also to be noted that the applicant never protested about her services being used for more than two hours till her regular appointment. So far full ten years she did not want to even inform the higher authorities who appointed her that she is actually working on full time basis. In that view of the matter and after carefully considering all the evidences made available to us, we are of the considered opinion that the applicant's claim for full pay and allowances for the period from 1991 to 2001 cannot be sustained on any legally valid grounds.

8] For the reasons stated above, the OA is dismissed. No costs."

4. The aforesaid order dated 02.07.2008 was assailed in WPCT 305/2008 wherein the Hon'ble High Court passed the following order:
(extracted as found relevant with emphasis added)

"xxx

xxx

xxx

The records of the Tribunal in OA No. 151/AN/1999 were called for by us in order to effectively disposed of this matter.

OA No. 151/AN/1999 is an application made by the writ petitioner which culminated in an order dated 13.2.2000

by which the authority was directed to consider the prayer of the writ petitioner for absorption and to pass appropriate order. It is on the basis of this order that the writ petitioner was ultimately absorbed as a regular Craft Instructor.

Subsequent thereto she applied seeking back wages on the plea that she might have been engaged as a part-time Craft Instructor but she worked in the school for the full time. Therefore, full salary was payable. The authority was directed to consider her representation which was duly considered and rejected. That rejection was challenged before the learned Tribunal and the learned Tribunal has also rejected the same.

Aggrieved by that rejection, the present writ petition was filed.

The issues which fall for determination are:

- (a) Whether the principal by acting contrary to the orders issued by the authority can bind them? And
- (b) Whether the petitioner did, in fact, discharge full time duty for the benefit of the students in the concerned school?

We shall consider the issues in the order the same have been framed.

OA No. 151/AN/1999 which is an application made by the writ petitioner before the learned Tribunal contains a number of annexures. The order dated 12.11.1990 passed by the Assistant Director (Administration) goes to show that the writ petitioner was engaged as a part-time Craft Instructor for the period commencing from 19.10.1990 to 30.4.1991 at a consolidated payment of Rs. 250/- and that the engagement could be terminated at any time. The order also provides that her duty hours would be fixed by the Principal.

By an order dated 23.5.1991 her engagement was extended for the period between 1.5.1991 and 31.5.1992. By a subsequent order dated 13.9.1991, the period of engagement of the writ petitioner was extended upto summer vacation for the year 1992. The order dated 13.9.1991 also contains the following stipulation:

"They may be engaged in any three period in a day and the time table should be granted so that the SUPW classes are held in the afternoon hours or morning hours continuously. They should not be engaged for more than two hours in any case."

By an order dated 8.11.1992 her engagement was extended till 31.3.1993. Similarly from time to time her engagement was extended and it is on that basis she continued to render service from time to time.

We already have noticed that the Principal was directed to fix her duty hours. This delegation of power was required because the Principal of the school only knew the suitable hours for the benefit of the students. The Principal obviously was bound to act within the authority delegated to him. It was not open to the Principal to act in excess of the authority delegated to him.

Assuming for the sake of argument that the Principal directed the writ petitioner to work as a full time Craft Instructor and she acted on that basis even then she cannot deny that she knew that such direction was in excess of authority delegated to the Principal. Therefore, both the Principal and the writ petitioner acted without authority and knowledge of the Department.

XXX

XXX

XXX

We are, therefore, firmly of the opinion, that the issue must be answered in the negative.

In so far as the second issue is concerned, there is no evidence before us to show that the petitioner did, in fact, discharge her duty as a full time Craft Instructor expect for the certificate dated 14.10.1998 allegedly issued by the Principal.

XXX

XXX

XXX

Nowhere in the petition has the name of the Principal, who allegedly issued the certificate, been disclosed. We have enquired of Mr. Prasanth, learned advocate appearing for the writ petitioner as to the name of the Principal, but he has unable to tell us the name of the said Principal. He also admitted that the name of the Principal has not been disclosed.

These things we have indicated in order to show that the certificate relied upon by the writ petitioner is a suspicious document.

XXX

XXX

XXX

The writ petitioner was obviously in possession of all such routines which she has failed to produce. Therefore, the only inference which can be drawn under Section 114(g) of the Evidence Act is that "That evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it". Therefore, the second issue is also answered in negative.

Both the issues are, thus, disposed of.

The writ petition is altogether without any merit and is, therefore, dismissed."

The applicant moved the Hon'ble Apex Court. Her Special Leave to Appeal (Civil) CC 10981-10982/2013 from the judgment and order dated 19.03.2009 in WPCT No. 305/2008 was dismissed on the ground of delay with a direction that if the petitioner got any further grievance and she has not been given the entire salary in the post of Craft Inspector, it is open to her to move the appropriate authority.



Emboldened thereby, the applicant once again prayed before the Secretary (Education) and the Director of Education, Andaman & Nicobar Administration, for grant of arrears of pay for the period during which she worked as full-time Craft Instructor in the Government Senior Secondary School, Sabari Junction at Rangat with effect from 1990 to June 2001 with all consequential benefits.

5. We have noted that the applicant moved this Tribunal in O.A. 42/2014. Pursuant thereto the authorities issued their order dated 02.07.2014 (Annexure-A/16), which has been challenged in the present O.A.

The said order has elaborately dealt with her claim referring to the various judicial orders as enumerated supra. It is extracted as under:

"AND WHEREAS, the applicant was neither raised any voice nor made any claim for the wages during the period from 1991 to till she was appointed on regular basis in the year 2001. As stated in the earlier speaking order vide No. 4764 dated 29-11-2007, her grievances were re-examined and it is state that now at this stage the claim of the applicant cannot be entertained under the rules.

AND NOW THEREFORE, in view of the reason stated above the request of the applicant cannot be considered for payment of arrears.

This is being issued in obedience of the solemn Judgment and order dated 25-3-2014."

6. Ld. Counsel for the applicant would vociferously contend that in view of the liberty granted by Hon'ble Apex Court, her claim could not be treated as a belated one.





7. We have perused the records.

As enumerated supra, it is evident that the applicant's claim was meticulously examined by this Tribunal in earlier rounds, as also by the Hon'ble High Court, and found as not tenable, not on the ground of delay but on merit.

8. The applicant, having failed to produce any scrap of paper to substantiate the fact that she worked full time between 1990 to 2001. We are afraid no direction to release her dues can be issued.

As such, the O.A. is dismissed. No costs.


(Dr. Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)

RK