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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 457 of 1994

Dated: ...3.1.1995

W. Franklin D/O Late J. Franklin
R/O 33/CD, Station Colony
Mughalsarai, Distt. Varanasi

.... Applicant.

By Advocate Shri S.K. Dey

Versus

Union of India & Ors.

.... Respondents.

By Advocate Shri G.P. Agarwal

C O R A M

Hon'ble Mr. T.L. Verma, Member-J
Hon'ble Mr. S. Dayal, Member-A

O R D E R

The applicant, a Teacher in Railway Mixed Primary school, Mughalsarai, has filed this application for a direction to the respondents to regularise her service as Head Mistress of the said school w.e.f. July.

2. The case of the applicant in short is that she was appointed as Assistant Mistress (English Medium) on 25.4.1962. She was given selection grade w.e.f. 1.1.1986. At the relevant time, she was working as Trained Graduate Teacher in the scale of pay of Rs. 1640-2900/- (RPS). She claims to have been promoted as posted as Head Mistress and transferred to Railway Mixed Primary school Jamalpur, Monghyer,

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Bihar. As she had some domestic problem, she declined the promotion.

3. The further case of the applicant is that Mrs. Larokar, Head Mistress Railway Mixed Primary School, Mughalsarai was empanelled in Class II service and transferred to Asansole. The applicant being the senior most Teacher, was allowed to take charge of the post of Head Mistress w.e.f. 13.7.1990 in the said school vide letter dated 3rd July, 1990 (Annexure A-1). She claims to have discharged her function as Head Mistress with credit to the satisfaction of all concerned. In the normal course, according to her she should have been regularised on the post of Principal because she fulfilled all eligible conditions. The respondents, it is said, instead of regularising her as Head Mistress, called Miss Nira Bhaduri, Assistant Teacher for suitability test for the post of Head Mistress of the said school vide letter dated 7.2.1994 (Annexure-A-2). ~~Apprehending~~
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The grievance of the applicant is that the respondents have called Miss Nira Bhaduri for suitability test by ignoring ~~her~~ her legitimate claim for appointment on the post of Head Mistress of the said school. Apprehending reversion, on the possible appointment of Miss Nira Bhaduri as Principal of Railway Mixed Primary School, the applicant has filed this application with a prayer that she be regularised on the post of Head Mistress.

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4. Promotion to Teachers' grade to the post of Head Mistress is governed by para 178 of the Indian Railway Establishment Manual (1989) and instructions issued by the Railway Board from time to time. According to the provisions of para 178 of the Indian Railway Establishment Manual read with Railway Boards letter No. E(P&A) 1-87/(S-5/PE-9 dated 4.10.1989 and item 6 of the Board's letter No. E9P&A) 1-87/PS-5/PE-9 dated 8.3.1990 minimum qualification for promotion to Trained Graduate Teacher/Head Mistress is Bachelor's degree from a recognised university and university degree/Diploma in teaching/Education. Admittedly, the applicant is I.A. and Junior Basic Trained. She, it is thus clear, does not possess requisite qualification for appointment as Head Mistress.

5. The learned counsel for the applicant submitted that at the time the applicant was appointed in 1962 the minimum qualification prescribed for the post of Head Mistress was Matric Trained. She was, it is stated, eligible for appointment as Head Mistress in terms of para 177 of the Indian Railway Establishment Code 1968 Edition. Not only that she was considered for such appointment in 1979 and 1983 as is apparent from letters (Annexure R-2 and R-3) to the Rejoinder Affidavit. It was submitted that a right for being considered for appointment on the post of Head Mistress had accrued to the applicant and the same cannot now be taken away by subsequently amending the provisions regarding recruitments. In support of this argument, the

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the learned counsel has placed reliance on the ~~amended~~ decision of the Supreme Court in P.D. Agarwal & Ors. Vrs. State of U.P. and Ors. reported in 1987 SCC (L&S) page 310 and the decision of the Tribunal rendered in O.A. No. 1169 of 1991. We have very carefully perused the decisions and we find that neither of the decision has any bearing on the facts of the case. In the case before us, Supreme Court question of seniority between direct recruit in substantial capacity against temporary posts and ~~seniority~~ similarly recruited but later on the basis of competitive examination was in issue. In the case before us this Tribunal the question in issue was whether the applicant was entitled to ~~be~~ be confirmed after relaxing rules. The decisions in the aforesaid cases, in our opinion, are of no help to the applicant.

6. In addition to the above, it is well settled that no employee has right to promotion but he has a right to be considered for promotion according to rules. Chances of promotion are not condition of service are therefore, and/defeasible. In this view of the matter, so long a Matric Trained Teacher was eligible for appointment as Head Mistress the applicant was eligible for consideration and she was in fact considered for such appointment. That, however, did not create indefeasible right to be considered or appointed as Head Mistress. She has, therefore, to satisfy the requirements for being eligible for appointment as Head Mistress according to the amended rules. As the applicant is not a graduate of a recognised ~~university~~

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University she is not eligible for being considered for appointment as Head Mistress.

7. It was next argued that for selection post three times of the number of vacancies are called for selection but in instant case only Miss Mira Bhaduri was called, ~~hence~~ hence, the selection is arbitrary. The learned counsel for the respondents states that Miss Bhaduri alone was within the zone of consideration and as such she alone was called for selection test. We find nothing wrong in this. That apart, the right question the appointment in our opinion vests only on those who were within the ~~so~~ ~~zone~~ zone of consideration and were not considered. The applicant, for the reasons stated above, in our opinion, has no cause of action for this application.

8. Learned counsel for the applicant further urged that the applicant is senior to Miss Bhaduri as Assistant Teacher and drawing pay in scale of Rs. 1640-2900/- (RP). The applicant will have to work under her junior if Miss Bhaduri is appointed Head Mistress, in scale 1400-2600/-. In reply, the learned counsel for the respondents, submitted that though the applicant is drawing pay in scale Rs. 1640-2900/- Selection Grade of Asst. Mistress which is higher than the basic grade 1400-2600/- but this does not give seniority over the Head Mistress. The applicant will remain an Assistant Mistress notwithstanding her grade and will have to work under the Head Mistress.

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9. Coming to the argument of the learned counsel for the applicant, the regard being had to 32 years satisfactory service as Assistant Teacher the applicant deserves appointment as Head Mistress even by relaxing rules in terms of para 114 of the Indian Railway Establishment Manual. The relevant provision is extracted below for convenience of reference;

Power to relax or modify rules:-

The General Manager or the Chief Administrative Officer, may, in special circumstances and for reasons to be recorded in writing, relax or modify these rules ~~in~~ ~~the~~ ~~xxxx~~ in specific individual cases. They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis. Railway Board's prior approval is however, required to long term or permanent alternation of the rules.

This power should be exercised by the General Manager or his Chief Personnel Officer, or the Chief Administrative Officer Personally, but it shall not be otherwise redelegated.

From the perusal of the provisions quoted above, it is more than clear that it is the exclusive discretion of the competent authority to take decision in favour of relaxing rule or otherwise for reasons to ~~the~~ be recorded. The case of the applicant was in fact recommended by D.R.M. Mughalsarai by his letter dated 1.3.1991 (Annexure-5) for her regular appointment by relaxing the qualification required. The competent authority, however, does not appear to have accepted the recommendation. The representation dated 4.3.1994 filed by the applicant for promotion to the post of Head Mistress has also not be considered favourably.

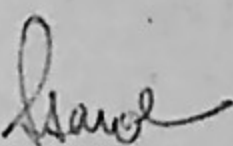
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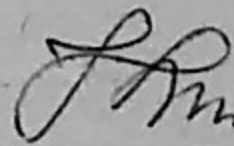
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The fact that the competent authority did not consider it necessary to make a departure from the provision regarding minimum qualification prescribed for appointment as Head Mistress does not render the action of the competent authority not to relax the rule open to challenge. The decision of the competent authority, therefore, cannot be said to be arbitrary.

10. The applicant, who is otherwise qualified has been selected by a duly constituted selection committee. In the facts and circumstances of the case, we find no fault in the selection of respondent No. 3 for appointment as Head Mistress of the Railway Mixed Primary (English Medium) school, Tundla.

In the result, we find this application devoid of merit and dismiss the same. There will be no order as to costs.


Member-A


Member-J

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Section XI
SUPREME COURT OF INDIA
NEW DELHI.
DATED:- 04/11/95

From:-
The Registrar
Supreme Court of India.
NEW DELHI.

To Dy.
The Registrar
High Court of U.P.
Central Administrative Tribunal
Allahabad U.P.

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No .11682 /95

(Petition under Article 136(1) of the constitution of India from

the Judgment and Order dated 03/01/95

of the High Court of Judicature at U.P.

in O.A. 457/94

W. FRANKLIN

... PETITIONER(S)

... RESPONDENT(S)

- vs -

UNION OF INDIA & ors

Sir,

I am directed to inform you that the petition above mentioned
filed in the Supreme Court was dismissed
by the Court on 11/07/95

Yours faithfully

For Registrar

COPY TO
MR. DEBASIS MISRA (Adv)

Shri Amit Sanyal
For upple
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