

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 99 of 1991

~~OA NO~~

DATE OF DECISION 08.03.1995.

Smt. Manjulaben J. pathak Petitioner

Mr. M.M.Xavier Advocate for the Petitioner (s)

Versus

Union of India & Others Respondent

Mr. R.M. Vin. Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V.Radhakrishnan Member (A)

The Hon'ble Mr. Dr. R.K.Saxena Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yours

Smt. Manjulaben J.Pathak,

THROUGH THE HEIRS:

1. Shri Jayantilal S.Pathak,
2. Shri Deepakkumar J.Pathak,
3. Shri Haritkumar J.Pathak
4. Shri Umeshkumar J.Pathak

' Jayman' Plot No.9,
Railway Housing Society,
Near Popat Colony,

BHAVNAGAR PARA 364003.

Applicant

(Advocate: Mr.M.M.Xavier)

Versus:

1. The Union of India owning and representing W.Rly., through its General Manager, Copy to be served to The Chief Personnel Officer, Western Rly., Churchgate, Bombay.
2. The President, Rly.Schools, and the Divisional Personnel Officer, W.Rly.Bhavnagar Division, Bhavnagar Para.

Respondents

(Advocate: Mr.R.M.Vin)

J u d g e m e n t

O.A. No.99 of 1991.

Date: 08.03.1995.

Per: Hon'ble Mr. V.Radhakrishnan: Member(A)

Heard Mr. M.M.Xavier and Mr.R.M.Vin Learned Counsels for the applicant and the Respondents respectively.

Applicant joined Railway service on 19.11.1963 and was working as Teacher in the scale of Rs.330-560(R). During the time of the application, the applicant died and the heirs and the legal representatives of the deceased applicant were brought.



on record. The contention of the applicant is that she worked as a teacher in the middle school for the period 15.6.65 to 8.11.65 and 8.1.69 to 17.11.84 and she was therefore entitled for higher salary in the scale of Rs.440-750(R). In support of the contention, the applicant has quoted provisions of rule 127 of Indian Railway Establishment Manual Annexure A1. According to this rule different basic scales have been prescribed for teachers teaching in 6th and 7th standard and they have to be paid higher basic scale. Applicant has produced a certificate that she worked as Assistant Teacher in the relevant period given by the Head Master Ann.A2. She has quoted the example, of teachers teaching classes in 6th and 7th standard getting higher basic scale and argues that there cannot be any discrimination between them working in different schools. She therefore claims higher officiating pay for the period she was teaching in standard 6th and 7th. The applicant had earlier filed along with 3 others an application for similar higher pay. The application was disposed of by directions to the Respondents to examine the representation of the applicants and decide the same by a speaking order. By speaking order dt. 21.8.90, Ann.A-5, the claim of the applicant was rejected. The applicant has now come challenging the speaking order and claims the following reliefs:-

a) Your Lordships be pleased to declare that the impugned speaking order No.ED/SCH/895/2 Vol.IV, Ann.A/5, is illegal, and void and is therefore, quashed and set aside.

b)



6) Your Lordships be pleased to declare that the applicant is entitled for the officiating pay for the period she worked in class VI & VII in terms of rule 177 of the Indian Railway Establishment Manual and on the principles of Equal Pay for Equal work done "with all the consequential benefits accruing thereof."

c) Your Lordships be pleased to allow the application with cost.

d) Your Lordships be pleased to grant such other relief which may be considered just and proper in the circumstances of the case.

Respondents have filed reply. The first contention of the Respondents is that the scale of Rs.440-750(R) is given to the teacher only after they pass the selection test. They further contend that education is a state subject in the Railway Schools are governed by the Education Acts and the School in which the applicant was working is also governed by the Education Act of Gujarat State, according to which there are no middle and primary classes and classes upto VII standard are treated as Primary classes. School teachers working in Primary schools are authorised to have pay scales of Rs.330-560(R) as Assistant Teachers. Applicant is an asst. teacher in the primary School. In order to become eligible for promotion as Junior Teachers, applicant had to pass a selection test. She had not passed any tests. In so far as other schools are concerned, they are located in different states and in each state respective laws apply in respect of schools. As such they have prayed for rejection of the applicant's claim.

Applicant has filed the rejoinder. She



has stated that the school in which she was working enjoys independent status and rules framed by Railway Board are applicable to the school and all the schools run by the Railways. She has denied the State Government rules applied to the Railway Schools.

Pay scales in Railway Schools are laid down by Railway Board under different from State Government pay scales. She has particularly referred to IREM rule No.177 which talks about pay scales of teachers in railway schools.

Further, the Railway School was a Middle School at the relevant time until it was merged with Primary School w.e.f. 9.8.85. Regarding selection test, she stated that as she had worked in the higher post she cannot be denied the higher pay scale. Therefore, she has prayed for grant of higher scale.

During the arguments, Mr.Xavier Learned Advocate for the applicant pointed out that as per certificates issued by the Head Master of the Railway School Ann.A-3 it was clear that the applicant had worked from 15.6.65 to 8.11.65 again from 8.12.69 to 17.11.84 as Asst. Teacher in Middle School. Hence he vehemently contended that Asst.Teacher in a Middle School means a school having standard 6 and 7. According to the IREM Rule No.177, new Rule 178, a trained graduate teacher is supposed to be paid a scale of Rs.1400-2600 which is higher than the scale of Rs.1200-2040 which is a scale for Primary School Teacher and according to the same rule a trained graduate teacher

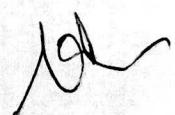
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means those persons who teach classes 6 to 10.

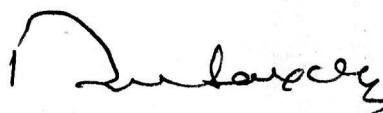
Accordingly the applicant having taught in standard 6 & 7 is eligible for the higher scale and she having worked in the higher classes she should be paid higher pay scale.

Mr. Vin for respondents on the other hand contended that the school in which the applicant was working being located in Bhavnagar is governed by the Education Act of the Gujarat Government. Accordingly, there are no middle schools and education upto 7th class is imparted in Primary Schools. The teachers working in Primary Schools are authorised to have pay scale of Rs.330-560(R) only as Asst. Teacher. They are appointed in Primary Schools. In order to get promotion to Junior Teachers the next higher grade they have to pass selection test. He also stated that the applicant cannot compare with other schools in different states where the respective Education Act for the State will apply. In view of this, he prayed for rejection of the applicant's O.A.

It is seen that the applicant has not produced any order appointing her as a teacher in Standard 6 or 7. She has only produced a certificate from the Head Master that she worked as Asst. Teacher Railway Middle School, Bhavnagar for the respective periods. As already pointed out by the respondents, the Gujarat State Education Act treats education up to 7th standard as of primary standard. Hence,



even assuming that applicant had taught in standard 6 and 7, she cannot claim higher pay as these classes come under category of primary standard only. Moreover, applicant has not produced any proof of having passed any selection test for appointment to higher grade. Under the circumstances, the applicant has not established her claim for higher pay as Secondary School Teacher and hence the application being devoid of any merit is dismissed. However, there will be no order to costs.


(Dr.R.K.Saxena)
Member(J)


(V.Radhakrishnan)
Member(A)

2 House Members

2 Partials

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