

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application Nos.100, 115, 117 & 151 of 1986.

Date of decision : February 25, 1988.

In O.A.100 of 1986 Kiran Chandra Mondal,
Headmaster, Middle English School,
Jamarunda-II, Umerkote, District-Koraput.
... Applicant.

In O.A.115 of 1986. Biswanath Mandal, aged about
44 years, son of late Purna Chandra
Mandal, Headmaster, M.E.School,
posted at Kalimela High School,
P.O.Kalimela, District-Koraput.
... Applicant

In O.A.117 of 1986 Nirmal Kumar Nayak, aged about 47 years,
son of late Manmohan Nayak, presently
working as Zonal Inspector of Schools,
Dandakaranya Project, resident of
Malkangiri, District- Koraput.
... Applicant.

In O.A.151 of 1986 Sri Satish Chandra Biswas, son of
late Purna Chandra Biswas, presently
working at M.V.79 High School, P.O.
Lachhipeta, District- Koraput. ... Applicant.

Versus

In all the cases : 1. Union of India, through the
Secretary, Ministry of Home
Affairs, Department of Home
Affairs, Rehabilitation Wing,
Jaisalmer House, Mansingh Road,
New Delhi-110011.

2. Chief Administrator,
Dandakaranya Development Authority,
At & P.O.Koraput,
District-Koraput, Orissa.
... Respondents.

In O.A.100 of 1986. For the applicant ... M/s. Deepak Misra,
R.N. Naik &
R. Mohapatra, Advocates.

In O.A.115 of 1986 .For the applicant ... M/s. B. Pal,
D.B. Das, Advocates.

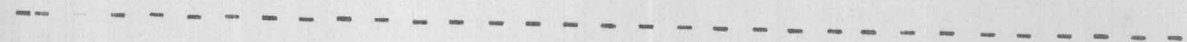
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|--------------------|---------------------|-----|---|
| In O.A.117 of 1986 | For the applicant | ... | M/s. Deepak Misra & Rajen Mohapatra, Advocates. |
| In O.A.151 of 1986 | For the applicant | ... | M/s. B. Pal, B. Baug, and S.C. Parija, Advocates. |
| In all the cases | For the respondents | ... | Mr. A.B. Mishra, Senior Standing Counsel (Central). |

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)



1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.



J U D G M E N T

K.P.ACHARYA, MEMBER (J)

Though the applicants are different in the cases mentioned above yet, relief claimed by the applicants in all these cases being practically and substantially the same, this common judgment would govern all the cases mentioned above.

2. In Original Application Nos. 100, 115 and 151 of 1986 the applicants were initially appointed as Assistant Teachers under Dandakaranya Development Project and in course of time they were appointed as Headmasters of different Middle English Schools. After working as such for some time, the applicants have been treated as Trained Graduate Teachers and they have been deprived of the posts of Headmasters of M.E. Schools. In all these three cases the applicants not only claim the pay scale of Rs. 550-900/- but they also claim that depriving the applicants of the posts of Headmasters of M.E. Schools is against all canons of justice, equity and fairplay and this act on the part of the competent authority is violative of the fundamental rights as it amounts to demotion and therefore, without attracting the provisions contained in Article 311(2) of the Constitution, such order of demotion should be held to be illegal, unjust and improper.

3. In Original Application No. 117 of 1986, the applicant was initially appointed as an Assistant Teacher and in course of time he was also appointed to the post of Headmaster of M.E. School and later he was promoted to the post of Zonal Inspector carrying a pay scale of Rs. 425-700/-. The applicant claims that not only he is entitled to a pay scale of Rs. 550-900/- during his period of incumbency as Headmaster, M.E. School but

his maximum pay scale in the post of Zonal Inspector should be fixed at a point more than Rs.900/-.

4. In their counter, the respondents maintained that the claim of the applicants is baseless, frivolous and barred by limitation. It is further maintained by the respondents that it should not be construed that the applicants have been demoted from the post of Headmaster of M.E.School because the posts of Headmasters of M.E.Schools/Trained Graduate Teachers and Sub-Inspector of Schools were interchangeable and after the Rules for recruitment to the post of Headmaster came into operation carrying a higher scale of pay, there was desegregation of the posts of Headmasters of M.E.Schools and appointments are bound to be made according to the seniority of different incumbents in the post of Trained Graduate Teachers.

5. As regards Original Application No.117 of 1986, it is further maintained by the respondents that the maximum scale of pay prescribed by the Third Pay Commission being Rs.700/-, this Bench cannot give any relief to the applicant as prayed for.

6. We have heard Mr.Deepak Misra, learned counsel for the applicant in O.A.100 of 1986 and O.A.117 of 1986 and we have also heard Mr.B.Pal, learned counsel for the applicant in O.A.115 of 1986 and O.A.151 of 1986 and learned Senior Standing Counsel (Central), Mr.A.B.Mishra in all the above mentioned cases for the respondents.

7. In Original Application Nos.100,115 and 151 of 1986, admittedly the applicants had worked as Headmasters of

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different M.E.Schools. This aspect could be succinctly disposed of entitling the applicants the scale of pay of Rs.550-900/- because in several cases of similar nature the Hon'ble High Court of Orissa, in the past, ordered issuance of a writ entitling the Headmasters of M.E.Schools the scale of pay of Rs.550-900/-because the Ministries of Railways and Defence had allowed such a pay scale to the Headmasters of M.E.Schools and since the Central Government had not placed before the High Court any material to indicate the nature and duties of Headmasters of M.E.Schools under the Dandakaranya Project ^{being} was different from the nature and duties of such category of teachers working under the Ministries of Railways and Defence and in pursuance thereof the Central Government had passed necessary sanction orders entitling the Headmasters of M.E.Schools the scale of pay of Rs.550-900/-. Cases of similar nature also came up before this Bench and having agreed with the view expressed by the Hon'ble High Court of Orissa this Bench had also allowed the prayers of those teachers entitling them the pay scale of Rs.550-900/-. At a belated stage, in Original Application Nos.82, 83 and 101 of 1986 and in several other cases learned Senior Standing Counsel (Central) had urged before us that Article 7 of the Limitation Act would create a bar for the applicants to obtain such a declaration as their claims ⁱⁿ are barred by limitation and ⁱⁿ support of his contention, learned Senior Standing Counsel (Central) had relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1962 SC 8 (Madhab Laxman Vaikuntha v. State of Mysore) ^{but} we have expressed our opinion in detail in those cases disposed of on December 24, 1987 holding that the principles laid down by Their Lordships

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of the Hon'ble Supreme Court in the case of Madhab Laxman Vaikuntha were clearly distinguishable so far as these Original applications are concerned because we held that article 7 of the Limitation Act would be attractive and would be operative only when a claim or dues of a particular employee has been settled and has accrued in his favour. The period of limitation contemplated under Article 7 of the Limitation Act could be applicable from the date when such amount is settled or accrues in favour of the claimant. We would adopt the same reasonings in the present cases agreeing with the view expressed by the Hon'ble High Court Gauhati in a judgment reported in AIR 1974 Gauhati 10 (State of Assam v. Gopal Krishna Mehera). The reasonings to the above effect given in those judgments apply mutatis mutandis to the present cases and we find no reason to make a departure from the view expressed in those cases mentioned above. In such circumstances, we find no merit in the aforesaid contention of learned Senior Standing Counsel (Central) and we further find that the applicants in all the three cases mentioned above are entitled to a pay scale of Rs.550-900/- with effect from 1.1.1973 or from the date from which they served as Headmasters of M.E.Schools till they relinquished their duties from the said nature of post (whichever is latter). Accordingly, we would direct that the pay scale of Rs.550-900/- be paid to the applicants from the date indicated above till they worked as such.

8. After the Hon'ble High Court of Orissa and this Bench gave declarations in the aforesaid terms in favour of the claimants as Headmasters of M.E.Schools, the Rules for

recruitment to the posts of Headmasters, M.E. Schools came into force having been enacted by the Central Government and thereafter the posts of Headmasters of M.E. Schools were desegregated from the posts of Trained Graduate Teachers and Sub-Inspectors of Schools. Consequently, recruitment to the posts of Headmasters of M.E. Schools were made in compliance with the said Rules according to seniority and in consequence thereof the applicants in the aforesaid original applications not having come within the consideration zone as per the Rules, the concerned authorities had no other option but to post them as Trained Graduate Teachers for which the applicants have a grievance and the prayer of the applicants is that the action taken by the competent authority in posting them as Trained Graduate Teachers should be declared to be illegal, and the respondents should be commanded to allow the applicants to continue in the posts of Headmasters of M.E. Schools. After hearing learned counsel for both sides in these cases, we are of opinion that the prayer of the applicants to the above effect cannot be allowed. Because the scale of pay of Headmasters of M.E. Schools, being higher than the scale of pay of Trained Graduate Teachers, Government framed Rules for recruitment to such posts and there was no dispute before us that appointments to such nature of posts are to be made according to seniority. In such circumstances, we are of opinion, that the prayer of the applicants to the above effect cannot be allowed and incidentally we may state that we had taken the very same view in Original application No.104 of 1986 (K.K.Haldar versus Union of India) judgment of which was delivered on December 24, 1987. We find no justifiable reason to make a departure from the view taken in the case K.K.Haldar (supra) and therefore, we do not find

^{any}
no merit in the prayer made by the applicants in the aforesaid case to the above effect and therefore, such prayer stands dismissed.

9. As regards Original Application No.117 of 1986 is concerned the prayer of the applicant is two-fold namely, to give a declaration in his favour that he is entitled to scale of pay of Rs.550-900/- having served as Headmaster, M.E.School and after his promotion to the post of Zonal Inspector carrying a pay scale of Rs.425-700/-, the respondents should be commanded to give the applicant the pay scale more than Rs.900/- so that there can be no detriments to the interest of the applicant so far as his financial claims are concerned.

10. In their counter the respondents maintained that the applicant is not entitled to the relief claimed because of the objections raised on behalf of the respondents so far as the higher pay scale of Rs.550-900/- payable to the Headmasters of M.E.Schools are concerned and in addition to the above it is maintained on behalf of the respondents that the scale of pay for the Zonal Inspector having been fixed at Rs.425-700/- by the Third Pay Commission, this Bench cannot possibly give a higher scale of pay than what has been prescribed by the Third Pay Commission and accepted by the Central Government.

11. In this case, we have heard Mr. Deepak Misra, learned counsel for the applicant and learned Senior Standing Counsel (Central), Mr. A. B. Mishra appearing for the respondents.

12. As regards the prayer No.1 of the present applicant, we do hereby give a declaration that he is entitled to Rs.550-900 from 1.1.1973 or from the date from which he worked as such till

he was relieved from such post (whichever is latter) because of the reasonings given in the cases bearing Nos.O.A.100, 115 and 151 of 1986. Those need no repetition.

13. As regards the second prayer made by the applicant after giving our anxious consideration to the arguments advanced at the Bar we are of opinion that this Bench cannot give a declaration in favour of the applicant entitling him to a higher pay scale than recommended by the Third Pay Commission and accepted by the Central Government. It was strenuously urged by Mr. Deepak Misra that having got a promotional post, the pay scale of the applicant would be considerably reduced and his financial emoluments would be seriously affected. It may be so, which in the circumstances, may be unfortunate. But we cannot help the situation. This very same view we have also taken in Transferred Application No.26 of 1987 (P.P. Katari v. Union of India and others) judgment of which was delivered on 25th September, 1987. We find no justifiable reason to make a departure from the view taken in the said case so far as the present case is concerned. In such circumstances, we find no merit in the second prayer of the applicant which stands dismissed.

14. In conclusion we may say that the above mentioned cases, i.e. Original Application Nos.100,115,117 and 151 of 1986 stand partly allowed. We further direct that the financial emoluments to which the applicants in the above mentioned cases would be entitled to as per the reasonings and directions given above, should be paid to the applicants within three months from the date of receipt of a copy of this

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judgment. Parties to bear their own costs.

[Signature]
25.2.88
.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

[Signature]
25.2.
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 25, 1988/Saranghi.

