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18

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.275 of 1987.

Date of decision : August 27, 1990.

Trilochan Choudhury ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. Deepak Misra,
Anil Deo, Advocates.

For the respondents ... Mr. Caneswar Rath,
Standing Counsel (Central)

C O R A M :

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, 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

N. SENGUPTA, MEMBER (J) Initially the applicant claimed quashing of adverse entries in his A.C.R. and for a direction to the respondents to promote him but by the application for amendment he gave up those two reliefs and has confined his relief practically to one i.e. to grant pre-revised pay scale of Rs. 330-560/-.

Ans. 18

2. That the applicant was appointed as an Assistant Teacher at M.V.90, Primary School, Kalimela is undisputed. It is also undisputed that for some time the applicant

the applicant worked in Kalimela High School as an Asst. Teacher. It is admitted that the teachers are divided into different categories, three of which are Trained Matric, Untrained Graduate and Trained Graduate, each succeeding one carrying a pay scale higher than its preceding one. The applicant's case is that he got an appointment as an Assistant Teacher on 19.2.1973 in M.V.37 Primary School, then he went to different Parimary and M.E. Schools. The applicant had graduated in 1971, in 1982 he acquired B.Ed. qualification. He has alleged that he was teaching in higher classes and at times functioned as Headmaster of M.E. Schools but he was not given the pay of an Untrained Grdaute Teacher for which reason he had to file a writ petition numbered as O.J.C. No.1523 of 1985 in the High Court of Orissa, which subsequently stood transferred to this Tribunal and was registered as Transferred Application No.46 of 1986. This Tribunal in deciding the Transferred Application directed that out of the period that the applicant taught at M.V.66 M.E. School i.e. from 3.8.1977 to 28.6.1982, the applicant was to be adjusted against available posts of Untrained Graduate Teacher and Trained Matric Teacher. After the order by this Tribunal in the aforesaid transferred Application, Respondent No.4 treated the applicant as Untrained Graduate Teacher from 3.8.1977 to 8.12.1978 and from 28.6.1982 to 22.10.1986, for the rest of the period i.e. from 9.12.1978 to 27.6.1982 and from 23.10.1986 onwards, the applicant was treated as Trained Matric Teacher in the pre-revised scale of pay of Rs.260-430/-.

No. 2/218

12
20

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The applicant feels aggrieved by this fitment and that is why he has asked for the reliefs of fixation of his pay in the revised scale-of pay for ~~senior~~ ^{untrained Graduate} Teachers.

According to the applicant, a post of Untrained Graduate Teacher was sanctioned in 1975. Therefore, a post of Untrained Graduate Teacher was available for the applicant to be appointed. He has averred that infact Untrained Graduate Teachers were appointed during these periods and as such, the respondents in substance violated the directions of this Tribunal given in T.A. referred to above. Making these allegations, the applicant has prayed for fixation of his pay as Untrained Graduate Teacher both in the pre-revised scales of pay as well as in the scale of pay recommended by the 4th Pay Commission read with Circular No.F 6/180-80UTK in the Ministry of Human Resources and Development dated 12.8.1987.

3. The case of the respondents is that the pay of the applicant has been fixed in accordance with the directions given by this Tribunal in T.A. 46 of 1986. As about the applicant's averments relating to his officiation as Untrained Graduate Teacher it is the case of the respondents that he worked as Untrained Graduate Teacher from 3.8.1977 to 8.12.1978, as Trained Matric Teacher from 9.12.1978 to 27.6.1982, and again as Untrained Graduate Teacher on ad hoc basis from 28.6.1982 to 22.10.1986 and thereafter as Trained Matric Teacher. During the period from 3.8.1977 to 28.6.1982 only one post of Untrained Graduate Teacher was sanctioned with effect from 9.12.1978 and that post was occupied by Shri B.B.Biswas who was

*Ans. wth
22.8.90*

13

senior to the applicant. During the incumbency of Shri B.B.Biswas, the applicant was to continue as a Trained Matric Teacher there being no other post of Untrained Graduate Teacher, therefore, he cannot have any grievance. It is the further case of the respondents that the applicant was never promoted either as a Higher Secondary Trained Teacher nor as an Untrained Graduate Teacher, however he was allowed to officiate on an ad hoc basis for a temporary vacancy in the post of Untrained Graduate Teacher and that did not confer any right on the applicant. About the applicability of the circular dated 12.8.1987 it is the case of the respondents that that circular has no application to the schools in which he served, the applicability of that circular being confined to Schools in Union Territories mentioned in that circular.

4. We have heard Mr.Deepak Misra, learned counsel for the applicant and Mr.Ganeswar Rath, learned Standing Counsel(Central) for the respondents. So far as the circular dated 12.8.1987 is concerned not much thought is necessary to say that the applicant cannot rely on that circular which hasbeen made Annexure-2 to the application. On reading the annexure, it would be clear that revised scales of pay which the Government accepted on the recommendation of Prof. D.P.Chattopadhyay were for school teachers of Union Territories except Chandigarh and there can be no doubt that none of the areas covered by the Dandakaranya Development Project was a Union T-erritory.

Ans 27/8

5. As has been indicated above, the respondents have

14

not much disputed the allegations of the applicant regarding his teaching in some higher classes but all that they have contended is that so long as Shri B.B. Biswas, a senior to the applicant, was holding the lone post of Untrained Graduate Teacher, the applicant cannot hold that post and that is why he had to continue as a Trained Matric Teacher. The applicant has not disputed the fact of B.B. Biswas being senior to him, all that he has contended is that if B.B. Biswas ~~did~~ not teach Oriya in the higher classes and he (the applicant) was teaching Oriya in the higher classes with all sincerity, he was entitled to the claims as an Untrained Graduate Teacher. When no post is available it is not possible on the part of this Tribunal to direct payment of emoluments attached to that post. In that view of the matter we are unable to accede to the prayer of the applicant that he should be deemed to have ~~contained~~ ^{continued} as an Untrained Graduate Teacher even though he might have graduated himself. The payment of emoluments does not depend entirely on the qualification of the incumbent but depends on the post he holds. In T.A. 46 of 1986 an indication about this was given when this Tribunal directed payment of emoluments according to the availability of posts.

6. In view of the circumstances stated above, the application fails and is rejected but however without costs.

Dated 27.8.90
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Vice-Chairman

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
August 27, 1990/Sarangi



Member (Judicial)
27.8.90