

IV 7
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO. 28 OF 1987.

Date of decision ... January 29, 1988.

SURINDER KAUR,
wife of Sri Surjit Singh, Higher Secondary Trained
Assistant Teacher in Primary School Ambaguda,
At & P.O. Ambaguda, Dist- Koraput.

... Applicant.

Versus

1. UNION OF INDIA,
Through The Secretary,
Ministry of Home Affairs,
Department of Home Affairs,
Rehabilitation Wing,
Mansingh Road, New Delhi- 110 011.

2. Chief Administrator ,
Dandakaranya Development Authority,
At/P.O- Koraput, Dist- Koraput, Orissa.

... Respondents.

M/s B.Pal, R.Behera, O.N.Ghose
and B.Baug, Advocates

... For Applicant.

Mr. A.B.Misra, Sr. Standing Counsel
(Central)

... For Respondents.

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 have been permitted 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 .
-

V

8

J U D G M E N T

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for grant of a higher scale of pay.

2. Shortly stated, the case of the applicant is that she is a Trained Matric Teacher serving under the Dandakaranya Development Authority and according to the applicant, she is entitled to pay a scale of Rs.330/- to Rs.560/- on the footing that she has received requisite qualification having passed the Higher Secondary Examination.

3. In their counter, the Respondents maintained that the applicant is not entitled to such a pay scale because under the Dandakaranya Development Authority, there is no post of Higher Secondary Trained Teacher and hence the applicant is not entitled to such a pay scale especially because she has been appointed as Trained Matric Teacher.

4. Mr. B.Pal, learned counsel for the applicant teachers serving under submitted that according to pay scale prescribed for the Ministry of Railways and Ministry of Defence, Trained Matric Teachers have been granted pay scale of Rs. 290/- to Rs.560/-. In case the Tribunal does not feel inclined or justifiable to grant a pay scale of Rs.330/- to Rs.560/-, the applicant is definitely entitled to a pay scale of Rs.290/- to Rs.560/- which should be granted in her favour. Mr. Pal relying upon Annexure-1 containing the recommendations of the Third Pay Commission in regard to a Trained Matric Teacher serving under the Ministry of Railway and Ministry of Defence contended that such teachers having been given scale of pay of Rs.290-560/-,

Per,

the same scale of ^{pay} /should be given to the ~~case of~~ Trained Matric Teachers who are serving under the Dandakaranya Development Authority especially because the Hon'ble High Court of Orissa and this Bench have awarded the pay scale prescribed for the Headmasters of M.E. Schools, Trained Graduate Teachers etc. keeping them in par with same category of teachers serving under the Ministry of Railways and Ministry of Defence. This argument of the learned counsel for the applicant was sought to be repudiated by the learned Sr. Standing Counsel Mr. A.B. Misra relying upon Annexure-R/1 to the effect that Trained Matric Teachers have been granted a pay scale of Rs.260/- to Rs.430/- which was raised from Rs.118/- to Rs.225/- and accordingly they were given the corresponding higher scale of pay i.e., Rs.260/- to Rs.330/-. Mr. Mishra also emphatically argued that there being no post of Trained Matric Teacher at the disposal of the Dandakaranya Development Authority, the application of the applicant should be straight way dismissed. It was further argued by Mr. Mishra that the previous pay scale of Trained Matric Teachers under the Ministry of Railways and Ministry of Defence was Rs.125/- to Rs.320/- which was **revised** to Rs.290/- to Rs.560/-.

In this connection, it should be noted that under Annexure-1/A, the Government of India in the Ministry of Home Affairs, sanctioned higher pay scale to untrained Matric Teachers and the pay scale was settled at Rs.260/- to Rs.400/-. There cannot be any dispute that a Trained Matric Teacher has to get a higher pay scale than an untrained Matric Teacher but it was submitted by the learned Sr. Standing Counsel that the Trained Matric Teacher's highest

scale has been fixed at Rs.430/-. We are not convinced with this argument because according to our opinion, the scale of pay of Rs.290/- to Rs.560/- is commensurate with qualification of a Trained Matric Teacher. Keeping all these aspects in view, the Hon'ble High Court of Orissa in the cases of other category of teacher came to the conclusion that they would be entitled to higher pay scale in par with the teachers serving under the Ministry of Railways and Ministry of Defence because their nature of duty were one and the same. It would be profitable to quote the observations of Their Lordships in the case of Subash Chandra Panda vrs. Union of India, reported in 1984 (Vol.58 C.L.T. 485. At page 488, observations of Their Lordships run thus :-

" The duties of the teachers in all the schools are nearly the same. In the absence of any material placed before us by the opp. parties to show that the duties and qualifications of the teachers of the High Schools of Dandakaranya Project are different from the duties of the teachers of High School run by the Railways and Defence, we are constrained to hold that their duties are the same".

This is an observation of Their Lordships applicable to all category of teachers serving in the ^{Ministries of} Railways and Defence on one side and the teachers serving under Dandakaranya Development Authority. Whether the duties are same or not, Their Lordships threw the onus ^{of proof} on the Opp. Parties and the onus not having been discharged by the respondents, Their Lordships held that the nature and duties were the same.

We have also taken the very same view in several other

cases, in the past, while disposing off those cases. In the present case, learned Sr. Standing Counsel vehemently urged before us that the nature of duties between the two category of teachers in the two different organisations are never the same. Besides, the averments in the counter in this regard no tangible evidence was placed before us to differentiate the nature of duties between the two categories of teachers except that in Annexure-R/2 it has been stated by the concerned Ministry that the duties and responsibilities and the grade from which the promotions are made would be relevant and prima facie the duties of the teaching staff are not comparable to those of similar categories in the Ministry of Railways and Defence. This may be the view of the concerned Ministry but the judge made laws have over-ruled the observations made by the executive authorities. We have also accepted this view of the Hon'ble High Court of Orissa in several other cases in which this Bench has passed judgments giving a higher scale of pay to different categories of teachers keeping them in par with the teachers of the Ministry of Railways and Defence. The observation of the Ministry contained in Annexure-R/2 is dated 21.8.1974 which is long prior to the observations of Their Lordships in the aforesaid judgment. To add to all this, the Central Government has accepted the observations of Their Lordships in the aforesaid judgment and in pursuant thereto, the Central Government have issued sanction orders accordingly in the higher scale of pay. In such circumstances, we are unable to accept the argument advanced by the learned Sr. Standing Counsel.

Learned Sr. Standing Counsel also urged before us that the case is barred by limitation under Article 7 of the Limitation Act and Section 21 of the Administrative Tribunals Act, 1985 and in order to substantiate his contention, learned Sr. Standing Counsel has relied upon the judgment of the Supreme Court, reported in AIR 1962 S.C.8 (Madhab Laxman Vaikuntha v. State of Mysore). We do not feel inclined to deal with this point in detail because we have already dealt with this matter in detail in our judgment passed in O.A.Nos. 82,83 and 101 of 1986 holding that the principles laid down by Their Lordships in the judgment reported in A.I.R. 1962 S.C.8 have no application to the facts of the present case because the amount due to the petitioner on her claim has not yet been settled and therefore the restrictions imposed under Article 7 of the Limitation Act would have no application to this case. It is attractive only when the dues have been settled. In that context, we have agreed with the views of the Hon'ble Judges of the Gauhati High Court and in their judgment observations of Their Lordships of the Supreme Court referred to above have been taken into consideration. Judgment of Gauhati High Court is reported in AIR 1974 Gauhati 10 (State of Assam v. Gopal Krishna Mehera). Having agreed with the views of Hon'ble High Court of Gauhati, we find that the principles relating to Article 7 of the Limitation Act enunciated in the case of Madhab Laxman Vaikuntha (supra) are clearly distinguishable from the facts of the present case; hence not applicable. In such circumstances, we find no merit in the aforesaid contention of the learned Senior Standing Counsel.

has

5. Taking into consideration the aforesaid facts and circumstances and in view of the discussions made above, we hold that the applicant is entitled to pay scale of Rs.290/- to Rs.560/- with effect from 1.1.1973 or the date from which **she** actually discharged her duties as such (whichever is later) and the arrear emoluments due to the applicant be paid to her within four months from the date of receipt of a copy of this judgment.

6. Thus, the application is accordingly disposed of leaving the parties to bear their own costs .

[Signature]
 29.1.88
 Member (Judicial)
 29.1.1988

B.R. PATEL, VICE CHAIRMAN, *g agree.*



[Signature]
 29.1.88
 Vice Chairman.
 29.1.1988

Central Administrative Tribunal,
 Cuttack Bench.
 January 29, 1988/Roy, SPA.