

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.351 of 1987

Date of decision : May 26, 1989.

Juran Ch.Biswas, son of late Biswanath Biswas,
Asst. Teacher, Kalimela High School, D.N.K.
Project, P.O.Kalimela, Dist.Koraput.

... Applicant.

Versus

1. Union of India, represented through Secretary, Department of Labour and Rehabilitation, Central Secretariat, New Delhi.
2. The Chief Administrator, Dandakaranya Development Authority, At/P.O.Koraput, Dist.Koraput, Orissa.

... Respondents.

For the applicant M/s.Ashok Mohanty,
Sashi Das,
Sisir Das, Advocates.

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

AND

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 ? *yes*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P. ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays that he should be given the pay scale of Rs. 290-560/- from 1.1.1973 and corresponding pay scale of Rs. 1400-2600/- from 1.1.1986.

2. Shortly stated, the case of the applicant is that he is a trained Matriculate and on appointment joined as an Assistant Teacher on 5.5.1967 in the Primary School at Malkangiri under the Dandakaranya Development Authority. After the 3rd Pay Commission Report was accepted by the Government of India, pay scale of Rs. 330-560/- not having been given to the applicant, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the claim of the applicant is not only barred by limitation but such claim being baseless and frivolous,
 The case being devoid of merit ^{and} is liable to be dismissed.

4. We have heard Mr. Ashok Mohanty, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) at some length. It was submitted by Mr. Mohanty, learned counsel for the applicant that according to the pay scale prescribed for teachers serving in the Ministries of Railways and Defence, the trained Matric teachers having been granted the pay scale of Rs. 290-560/- the applicant is at least entitled to the same pay scale if not Rs. 330-560/-, but the applicant is entitled to pay scale of Rs. 330-560/- according to the recommendations of the 3rd Pay Commission. The Hon'ble High Court of

Orissa and this Bench in several cases in the past have awarded the pay scale prescribed for the Headmasters of M.E.Schools , Trained Graduate Teachers etc. keeping them in par with the same category of teachers serving in the Ministries of Railways and Defence. In this connection, it should also be noted that 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-260-400/-. There cannot be any dispute that a Trained Matric teacher has to get a higher scale of pay than an untrained Matric teachers but it was submitted by learned Senior Standing Counsel(Central) 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.290-560/- 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 teachers came to the conclusion that they would be entitled to higher pay scale in par with the teachers serving under the Minstry of Railways and Ministry of Defence because their nature of duties were one and the same. It would be profitable to quote the observations of Their Lordships in the case of *Subash Chandra Panda v. Union of India*, reported in 1984 (vol.58) C.L.T. 485. At page 488, the observations of Their Lordships run thus :

" The duties of the teachers in all the schools are nerally 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 Dandakarna- nya 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 respondents and the onus not having been discharged by the respondents, Their Lordships held that the nature of duties were the same. We have also taken the very same view in several cases in the past. In the present case, learned Senior Standing Counsel (Central) vehemently urged before us that the nature and duties between the two categories of teachers in two different organisations are never the same. A bald statement will not suffice without proof of the same. We have also accepted the view of the Hon'ble High Court of Orissa in several other cases. To add to all these, the Central Government have accepted the observations of Their Lordships in the aforesaid judgment and in pursuance thereto the Central Government have issued sanction orders accordingly in the higher scale of pay. In such circumstances, we are unable to accept the aforesaid argument advanced by learned Senior Standing Counsel (Central).

5. Next contention of learned Senior Standing Counsel (Central) was that the case is barred by limitation under Article 7 of the Limitation Act and to support his contention learned Senior Standing Counsel (Central) relied upon a judgment reported in AIR 1962 SC 8 (Madhab Laxman

Vaikuntha v. State of Mysore). We have already expressed our opinion in regard to this aspect in our judgment delivered in many cases in the past and we have said that Hon'ble High Court of Gauhati in a judgment reported in AIR 1974 Gauhati 101 (State of Assam v. Gopal Krishna Mehera) after having taken notice of the judgment of the Hon'ble Supreme Court (AIR 1962 SC 8) have distinguished the same and have held that unless the claim is settled, the three years limitation will not operate. With respect we agree with the view of the Gauhati High Court and therefore we find no merit in the aforesaid argument of learned Senior Standing Counsel (Central) .

6. In Original Application No. 34 of 1986, judgment of which was delivered on 29th January, 1988 we have already held that the trained Matric teachers are entitled to pay scale of Rs. 290-560/- with effect from 1.1.1973/ date from which they actually discharged their duties as such (whichever is later). We do not find any justifiable reason to take a contrary view in this matter. Therefore, we hold that the applicant is entitled to a pay scale of Rs. 290-560/- with effect from 1.1.1973 or from the date when he actually discharged his duties as such (whichever is later) and the entire arrear emoluments including the corresponding revised pay, if any, be paid to the applicant within three months from the date of receipt of a copy of this judgment.

7. Thus, this application is accordingly disposed of

leaving the parties to bear their own costs.

Keya Sarangi
..... 26.5.89
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 *& free*

Brahmal
..... 26.5.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 26, 1989/Sarangi.

