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O.A. No. 167 of 2009

C.R.Dwibedy ... Applicant

Versus

UOI & Ors. ... Respondents

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1. Order dated 13th November, 2009.

C O R A M

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

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THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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The brief history of the case is that the Applicant is a TGT in English, Kendriya Vidyalaya, Cuttack. He will be retiring on reaching the age of superannuation w.e.f. 31.10.2009. On the basis of the 4th Pay Commission recommendation, Respondents vide order dated 03.11.1987 introduced a flexible scheme for grant of two financial up-gradations in the service career of a Trained Graduate Teacher; one is after completion of 12 years known as Senior Scale and the other one is after 24 years known as Selection Scale in which it was made clear that in the event of non-promotion, due to non-availability of vacancy, after 24 years of service a TGT is entitled to second up-gradation to selection scale. It provides as under:

“For those teachers, who have already completed 18 years of service, the requirement of acquiring the qualification for the next higher grade may be waived. Those who have not completed 18 years of service as well as new entrants will be required to

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acquire the qualifications prescribed for the higher post before being considered for grant of selection scale."

His case is that after possessing the qualification of Degree in Bachelor of Arts on the subject of English, MIL (Oriya), Political Science & Sanskrit, from the Utkal University, pursuant to an advertisement issued by KVS, he was selected and appointed as a Trained Graduate Teacher (Humanities) in KVS and vide order dated 2nd July, 1973, he was posted as TGT (Humanities) at KV, Balasore in the pre-revised scale of pay of Rs.250-550/. While he was continuing as TGT (Humanities), he completed his Post Graduation in Sanskrit in the year 1977. A Trained Graduate Teacher is eligible for promotion to the post of PGT if he/she acquires the higher qualification of Master Degree. In other words, a TGT (Humanities) if acquires the Master Degree in the discipline of English, would be eligible for promotion to the post of PGT (English) and if he acquires MA in Sanskrit he will be eligible for promotion to PGT (Sanskrit) as has been done in the case of Shri B.Mishra, TGT (Sanskrit) - promoted to PGT (English) and Ms. Mohana Kumari, TGT (Bio) - promoted to PGT (English). Though the Applicant acquired MA in Sanskrit, he could not be promoted to the post of post of PGT (Sanskrit) due to non-availability of vacancy even till date. Therefore to avoid the hardship caused to him, in term of the policy decision, as the applicant has acquired the qualification prescribed for the higher post and has completed 24 years of

service without any promotion, his case was duly considered by the DPC and on the recommendation of the DPC, he was granted the selection scale up-grading his scale to Rs.7500-12000/- with effect from 01.01.1998 vide order under Anneure-A/5 dated 08.10.1999. After 11 (eleven) years of receipt of the selection scale that to say on the verge of his retirement, vide memorandum dated 17.02.2009 by way of post decisional hearing, he was called upon under Annexure-A/6 to explain as to why the selection scale granted to him shall not be withdrawn. Applicant submitted his reply vide under Annexure-A/7 dated 28.02.2009. But the reply of the applicant was rejected by holding that "reply not found satisfactory" and communicated vide memorandum under Annexure-A/8 dated 22.04.2009. Alleging withdrawal of financial upward scale of pay by rejecting the reply furnished by applicant was grossly in violation of *audi alterm partem* and thereby gross injustice caused in the decision making process of the matter, he has approached this Hon'ble Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 on the following grounds:

- (i) After the case was reviewed by the DPC held on 22.12.2008, issuance of notice amounts to violation of the principles of natural justice; as pre-decisional hearing cannot be compared with the post decisional hearing;



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- (ii) Applicant got the selection scale as per the instruction dated 03.11.1987 issued as a matter of policy providing that selection scale is to be granted to a teacher who has completed 24 years of service in particular grade provided he/she "....acquired the qualifications prescribed for the higher post before being considered for grant of selection scale." It does not specifically provide that one must acquire the qualification for higher post in the discipline in which he/she is continuing. Rather same thing has again been reiterated in letter dated 08.09.2005 (Annexure-A);
- (iii) The order of rejection dated 22.4.2009 is a non-speaking one and it does not show that the points raised by the applicant has been taken into consideration;
- (iv) Where the language used in a statute is clear and unambiguous, the question of taking recourse of any principle of interpretation would not arise. It is submitted that Master Degree is the essential qualification for being promoted to the post of PGT. Applicant acquired the qualification to be promoted to the post of PGT. He has not got any promotion during 12 years from the date of conferment of senior scale. Therefore, he was rightly given the benefit of Selection scale w.e.f. 1-1-1998 on the specific recommendation of the duly constituted Departmental Promotion Committee; which was also after being successful in the pre-requisite training provided in the rules;

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- (v) During 36 years of his service he was not given any promotion and the financial up-gradation granted to him has been withdrawn after 11 years without giving opportunity;
- (vi) Promotion is made to a higher post with higher pay whereas selection scale has higher pay but in the same post. Flexible scheme of selection scale is introduced only to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection scale to prevent stagnation on the maximum of the scale. Selection scale is, therefore, created in the interest of greater efficiency. It is on this ground the policy of up-gradation of pay during 12 and 24 years of service came into effect and the Applicant was one of the beneficiaries of the said policy decision. As such, the withdrawal of the benefit without affording opportunity of being heard as required by the applicant is highly illegal, arbitrary and against all canons of justice equity fair play and *audi alterm partem*;
- (vii) Recovery is also opposed to the sound principle of law decided by the Hon'ble Apex Court;
- (viii) if the proceedings of the DPC is called upon and is produced by the Respondents, it would be evident that the applicant has been discriminated in the matter of withdrawal of the benefits discriminatorily.

2. Respondents filed their counter stating therein that on the recommendation of the 4th Pay Commission, the



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provisions of payment of Senior/ Selection Scale for the teachers of the KVS have been introduced with effect from 01.01.1986 vide Circular N.F-5-180/86-UT-1 dated 12.8.1987 in which it was provided that teachers are entitled for grant of senior scale on completion of 12 years of service in the entry scale and selection scale is granted. On completion of 12 years of service in the senior scale restricted to 20% of the number of posts in the senior scale of the respective cadres and those who are in the pre-revised selection grade will be placed in selection scale. For getting the selection scale primary school teachers and trained graduate teachers are required to obtain higher qualifications. On review of the matter it was noticed that the higher scales were granted to some of the teachers though they do not fulfill the required conditions. Accordingly, in compliance of the natural justice notice was issued asking the teachers who would be affected in the event of withdrawal of the benefits wrongly or erroneously conferred to them. On receipt of the reply the matter was placed before the duly constituted DPC meeting held on 22.12.2008. The DPC recommended for withdrawal of selection scale already given to PGTs/TGT/PRT who have not retired upto 22.12.2008 on the ground that they do not fulfill the conditions of having qualification to be promoted to next higher post. It has further been stated that according to the clarification under Annexure-A/3 dated 3.11.1987 relaxation of requirement of acquiring the

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qualification for the next higher grade for grant of selection scale was a one time relaxation to those teachers who have already completed 18 years of service on or before 01.01.1986. As the Applicant did not fulfill the conditions stipulated in the instructions nor came under the relaxation provision, after considering his representation the benefit conferred on him was rightly withdrawn.

3. Applicant by filing rejoinder disputed some of the stand taken in the counter filed by the Respondents. It has been stated by him that erroneous grant of benefit no doubt can be reviewed but certainly not justified in the case of the Applicant as he has complied with the conditions stipulated in the Rules. It has been stated that the conditions for grant of the selection scale was acquiring the prescribed qualification for next higher post. But the Respondents have done gross discrimination in confining their decision to withdraw the benefits only from the teachers who have not retired as on 22.12.2008. Further contention of the Applicant is that the show cause notice issued to him was not a show cause in strict sense as the same was issued after taking a firm decision to withdraw the benefits and as such, the action of the Respondents was in gross violation of principles of natural justice. His specific stand in the rejoinder is that he has acquired the qualification for higher post i.e. Post Graduate Degree and as such fulfilled the conditions laid down

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in the circular. Hence withdrawal of the benefits after long lapse of time by making an artificial division among similarly placed employees without giving proper consideration to the reply submitted by him is nothing but colourable exercise of power. Hence, he has reiterated his prayer made in the OA.

4. Heard Mr. Ojha, Learned Counsel for the Applicant and Mr. Tripathy, Learned Counsel appearing for the KVS and perused the materials placed on record. Besides reiterating the factual aspects of the matter, it has been contended by Learned Counsel for the Applicant that according to the Respondents action to withdraw the benefits erroneously granted to many teachers including the Applicant was taken when it was noticed that the benefit given to Mr. Kaurppaiyan was not in accordance with the Recruitment Rules which came into effect w.e.f. 5.7.2001 whereas the benefit had accrued to the applicant in accordance with the Recruitment Rules in existence prior to 2001 as would be evident from Annexure-A/5. Not only the applicant but also many other similarly situated teachers were granted the benefits according to the rules/instructions in existence at the time of their eligibility and this was not disputed by the Respondents in their counter filed in this case. His next contention is that on examination of the pleadings of the applicant vis-à-vis the reply furnished by the Respondents it would be evident that there has been gross

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injustice/miscarriage of justice caused to the Applicant in the decision making process of the matter because it has not been disputed by the Respondents that a TGT (San) having acquired the higher qualification in English has been promoted to the post of PGT (English) and as such withdrawal of the benefit from the applicant after such long lapse of time is nothing but a discriminatory action of the Respondents. In support of his contention that one is entitled to the benefit as per the rules prevailing at the time of his entitlement he has relied on the decision of the Hon'ble Apex Court in the case of **Y.V.Rangiah v Union of India and others**, and that there should be no recovery when the money is paid to an employee not for his fault but for the fault of the Respondents, he has relied on the decision of the Hon'ble Apex Court in the case of **Paras Nath Singh v State of Bihar and Others**, (2009) 2 SCC (L&S) 198. Accordingly he sincerely prayed for quashing the impugned order Annexure-A/8 dated 22.4.2009. On the other hand, Learned Counsel for the Respondents vehemently opposed the contention of the applicant by stating that as the applicant did not fulfill the condition of acquiring the higher qualification nor even the years of service he was not entitled to the selection scale and as the same was erroneously paid to him Respondents have every right to rectify the mistake at any point of time and hence there was nothing wrong in passing the impugned order which needs no interference by this Tribunal.

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5. In course of hearing it was brought to our notice that before this Bench of the Tribunal similar matter came up for consideration earlier in OA No.733 of 2006 and this Tribunal disposed of the matter with some observation on 29th August, 2008. On perusal of the aforesaid order it is noticed that this Tribunal while upholding the withdrawal of the pay scale granted to the said applicant quashed the order so far as recovery of the amount is concerned. Relevant portion of the aforesaid order reads as under:

“6. Admittedly, the granting of Selection Grade to the applicant, who had completed 12 years of service, was on the basis of the recommendations of the DPC. Even if the order of Government relied on by the Counsel for the Respondents is in force, it is dated 3.11.1987 and the same was also considered by the DPC while granting the Selection Grade to the Applicant and the Selection Grade was granted in favour of the applicant with effect from 1.4.1995 as per Annexure-A/2 Office Order dated 98.10.1999. If so, the present order now passed by the Respondents for recovering the amount is unjustifiable. Apart from that the attention of this Tribunal has been invited to the judgment of Apex Court in Sahib Ram's case cited supra and in the above judgment, the Apex Court has taken the view that once a financial benefit has been granted, it is not proper to cancel the same after the lapse of years. In the light of the above law laid down by the Apex Court, we hold that the Respondents were not justified in issuing the impugned order (Annexure-A/3) which is accordingly quashed.

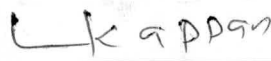
6. We also see that the issues involved and answered by this Tribunal in earlier OA are exactly the same and similar to this case. Although Learned Counsel for the applicant was trying to convince us that the issues involved in that case are

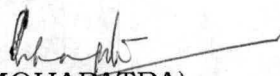
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different and distinct from the issues involved in this case, we found no such material to agree with such argument of the Learned Counsel for the Applicant. Precedents are to be followed by the Tribunal is the law approved by the Hon'ble Apex Court in the case of **SI Rooplal and others vs. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644. Hence by applying the aforesaid dicta of the Hon'ble Apex Court in the case of SI Rooplal (supra) we are not inclined to interfere in the decision of withdrawing the benefit of higher pay scale from the Applicant. We, however, hold the recovery of the differential amount paid till date from the Applicant is untenable in view of the earlier decision of this Tribunal supported by the decision of the Hon'ble Apex Court in the cases **Shyambabu Verma v UOI**, 1994 (2) SCC 521; **Babulal Jain v State of MP and Others**, 2007 SCC (L&S) 422 and **Paras Nath Singh v State of Bihar and others**, (2009) 2 SCC (L&S) 198. The Respondents are also directed that by the impugned order if at all any recovery has been made from the applicant the same shall be returned to the Applicant forthwith.

7. In the result, this OA stands allowed to the extent indicated above. No costs.


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)