

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.542/2001

Monday this the 1st day of July, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Lalitha Ravindran,
U.D.C(Retired),
Kendriya Vidhyalaya
Ernakulam
Residing at : Vol Cottage,
Ponnurunni P.O.
Kochi - 682 019.

Applicant

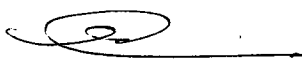
[By Advocate Mr.N.N.Sugunapalan]

Vs.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
19, Institutional Area, Shahee Jeet Singh Marg,
New Delhi - 110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai Region,
IIT Campus,
Chennai
3. Indian Council for Agricultural Research,
Krishi Bhawan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001 represented by its
Director.
4. Union of India represented by
the Secretary,
Ministry of Human Resources Development,
New Delhi.
5. The Director,
Directorate of Cocoa, Arecanut and Spices Development
(Ministry of Agriculture)
Department of Agriculture and Co-operation,
Calicut - n 673 005. Respondents

[By Advocate Mr. Thottathil B Radhakrishnan, (R1&2)
Mr.C.N.Radhakrishnan, (R3)
Ms.Rajeswari. A (R4)]

The application having been heard on 21.06.2002, the
Tribunal on 1st July, 2002 delivered the following:



O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant initially appointed as Lower Division Clerk in the Indian Central Arecanut Research Station at Vittal in Karnataka on 26.9.1993. She continued in the said establishment about 9 months and thereafter she was transferred to the Indian Central Arecanut Committee, Kozhikode on 3.3.1964 and she had served in Kozhikode from 5.3.1964 to 10.11.1964. Thereafter she was transferred to Ernakulam to the Central Spices and Cashewnut Committee where she served from 11.11.1964 to 11.10.1965. She submitted in the O.A that those three institutions were under ICAR. Exhibit A-1 to A-3 are the relevant entries in the Service Book concerning the above particulars.

2. The applicant got the selection as LDC in the Kendriya Vidyalaya Sangathan and she was sponsored by the Indian Central Spices and Cashewnut Committee and was appointed on 11.10.1965 without any break of service. As per policy of the government the Committee was abolished and the Committee sponsored the employees to join other departments. Therefore, for all purpose of service benefit the applicant was entitled to treat the service from 25.9.1963 onwards as qualifying service. She was granted increments from 25.9.1963 while she was serving in Kendriya Vidyalaya. Applicant retired from Kendriya Vidyalaya on 30.9.1997 and as per the existing rules, the benefit of pension should be calculated for the entire period of service rendered by her under ICAR. AS per the rules, the service pension will have to be granted by mutually adjusting the liability depending upon the length of service rendered by the



pensioner. It was the legitimate duty of the department to finalise the applicant's pension by contributing the proportionate share to the department from where the applicant finally retired and pay the same as pension benefits. Since the previous service rendered in the ICAR were not reckoned inspite of repeated requests made by the applicant. The correspondence between the ICAR and Kendriya Vidyalaya will show that there is some misunderstanding. Annexure A-4 dated 24.10.1996 is one such reason in which ICAR requested the 2nd respondent the details of information regarding the name of organisation, its location, date of joining, post held, place of posting, place where transferred etc. Applicant furnished the details on 15.11.1996 which is Annexure A-5.A-6 dated 8.11.1996 will show that only service rendered by her in the Sangathan was not considered. Aggrieved by the inaction of the respondents, the applicant moved before this Tribunal by filing OA 148/2000 which was disposed of by this Tribunal vide order dated 18.7.2000 which is Annexure A-7. Respondents issued reply on 20.9.2000 which is Annexure A-8. The applicant's counsel thereafter on 6.10.2000 sent a notice which is Annexure A-8 for which no reply was received. Applicant preferred RA 12/2001 before this Tribunal and for technical reason the RA was withdrawn. Hence the applicant has filed this Original Application under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

- (a) Issue a writ mandamus or any other appropriate writ, order or direction directing the respondents to grant pension taking into account the service tendered by the applicant from 25.9.63 to 11.10.1965.



- (b) Issue a writ mandamus or any other appropriate writ, order or direction directing the respondents to pay 18% interest for the delayed payment of pension.
- (c) Award exemplary costs to the applicant.
- (d) Grant such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3. The 2nd respondent for himself and on behalf of 1st respondent have filed a brief reply statement in which that have contended that OA is not maintainable against these respondents either in law or on facts and further stated that :

"Kendriya Vidyalaya Sangathan is an autonomous body registered under Societies Registration Act of 1980. As per Annexure A-5, it is not for either among respondents 1 or 2 to take a decision in the matter. At any rate, even in view of the contentions of the applicant, it is not for respondents 1 or 2 to answer the claim of the applicant. As is apparent, these respondents were not liable for any of the reliefs claimed in the OA. None of the grounds raised by the applicant is sustainable either in law or on facts as against respondents 1 & 2. The OA, it is humbly submitted, is only to be dismissed, in so far as it is as against respondents 1 & 2."


4. The 3rd respondent had filed a reply statement stating that the earlier representation have been directed to be considered by the 5th respondent namely the Director, Directorate of Cocoa, Calicut and 3rd respondent could not consider the same as the representation was not available on his records. The claim of the applicant that the applicant was working as Clerk under Central Arecanut Research Station with effect from 25.9.1963 to 11.10.1965 could not be verified because the said Station was abolished in 1965. Eventhough earnest efforts were made to locate the old files and relevant documents relating to service rendered by the applicant, was



not successful. Therefore, the 3rd respondents is unable to confirm or to deny the contents of Annexure A-1 service record and also A-2 and A-3 leave accounts. It is a matter of record and verification of facts. Only on perusal of the documents with respondent No.2, this can be confirmed. It is further submitted that applicant has resigned from service in order to join Kendriya Vidyalaya, it would entail forfeiture of earlier service from 15.9.1963 to 11.10.1965.

5. The applicant has filed rejoinder stating that she had no occasion to resign from the job and joined the Kendriya Vidyalaya without any break in service. In fact it was a transfer and re-posted to Kendriya Vidyalaya, Ernakulam. The letters dated 23.9.1965 and 29.10.65 which are self explanatory to prove her case which are placed as Annexure A-10 and A-11.

6. We have heard the counsel for the respective parties and perused the evidence on record and given due consideration for the pleadings, arguments and materials which is brought on file. The learned counsel for applicant submitted that the pensionary benefit is not a bounty and as such she is entitled for the benefit. In-action on the part of 3rd respondent is unjustifiable. The applicant is to be granted full pension for the period rendered by her from 25.9.1963 to 11.10.1965. She is loosing substantial amount of pension. Since the service rendered under the 1st respondent is reckoned, she will be entitled for full pension. She is also entitled to 18% interest for the delayed payment. Learned counsel for respondents submitted that in the absence of the documents they

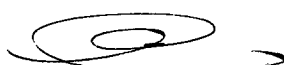


are not in a position to admit the claim and therefore either they can deny or agree with the claim of the applicant. He also submitted that the documents produced by the applicant is to be **proved**. At this stage, this Tribunal felt and ordered that the Service Book (3 volumes), leave account and personal file pertaining to the applicant for the service rendered by her and kept in the Kendriya Vidyalaya Sangathan is summoned and we have perused the same. All the counsel appearing for the parties helped the Tribunal on going through the records. On perusal of the records it is very clear that the applicants engagement in the Kendriya Vidyalaya is not a fresh engagement but in continuation of her earlier engagement and absorption to the post. Her salary was fixed and granted on the basis of calculating the earlier service rendered in ICAR. The observation in Page No.9 of the Service Book is as follows :-

" Reposted for duty from Spices and Cashewnut Committee, ICAR, Ernakulam with effect from the forenoon of 11.10.1965. "

7. In the past employment records it is recorded that she came on transfer to the Kendriya Vidyalaya. A correspondence that the applicant made which is available on the record, it is seen that she has written several requests to reckon the past service from 1963 to 1965 at Indian Central Spice and Cashewnut Committee for pension etc. (Page Nos. 519, 518, 517 etc.) In page 16 of the Personal file a correspondence No.4(11)/64 dated 13.10.1965 written by ICAR to the District Collector shows as follows :

" Sub:- Kumari P.K.Lalitha - appointment under the Central School.



I write to say that Kumari P.K.Lalitha, Lower Division Clerk of this office, has accepted the post of Lower Division Clerk in the Central School, Ernakulam offered to her in your letter No.SC/Appts/1/65, dated the 28th September/1st October 1965 and that she was relieved of her duties in this office with effect from the forenoon of the 11th October, 1965. Kumari Lalitha has already been medically examined and her character and antecedents have also been verified and found satisfactory. She was drawing pay of Rs.116/- in the scale of Rs.110-180 at the time of her relief and was due an increment in the above scale on 26th September, 1966. She had also taken the oath of allegiance as required under the rules. A copy of letter No.1-7/65-Reorgn dated 30th August, 1965 from the Government of India, Ministry of Food and Agriculture (Department of Agriculture), Indian Council of Agricultural Research, regarding fixation of pay of staff of the Central Commodity Committees, is enclosed for your information. "

8. In another letter dated 17.9.1965, the Government of India, Ministry of Education has written to Central School stating that :

" As a result of the decision of the Government of India to abolish the Indian Central Arecanut Committee, the Indian Central Coconut Committee and the Indian Central Spices and Cashewnut Committee, the clerks and Class IV employees working in these Committees, are likely to be rendered surplus with effect from the 1st October, 1965. and it is understood that some of these persons have applied for posts of Clerks and Peons at the Central Schools opened recently at Kozhikode and at Ernakulam. The Government of India, Ministry of Food and Agriculture (Department of Agriculture) has requested to recommend you in making appointments to clerical posts and to the post of Peons in Central School. Preference may be given to the employees of these Committees, who applied for these posts, provided they are otherwise suitable for the post."

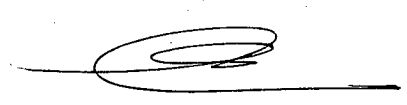
9. In yet another letter dated 30.9.1965 of Ministry of Food and Agriculture shows as follows :-

"Sub:- Central School - recruitment to the posts of LDC/Peon




I invite a reference to the letter No.F.12/16/65-CSU dated 17th September, 1965, from the Under Secretary, Ministry of Education (Central School Unit), New Delhi addressed to you regarding the recruitment to the posts of LDC and Peon under the Central School, Ernakulam, and write to say that Kumari P.K.Lalitha of this office has already appeared for the interview on 27th September, 1965 at the Central School, Ernakulam for the post of Lower Division Clerk. The case of Kumari P.K.Lalitha as also of Shri M.K.Rajan, who has applied for the post of Peon, may kindly be considered sympathetically."

10. Therefore, it is very clear that the employees including the applicant who were working in the Indian Central Commodity Committee obtained employment in government and other organisations reckoning the service that they have rendered in the earlier post and the applicant accordingly joined the Vidhyalaya. The above letters will show that the applicant has good occasion or reason to join the Sangathan but only because the Committee has been proposed to be abolished by the Government of India, the employees has become surplus and absorbed in the other government, quasi-governmental institutions including the Central School. Therefore, on perusal of the records brought before us it is clear that the applicant is not a fresh employee but was continuing the employment and we hold that the present employment is in continuation of ^{earlier} employment and she is entitled to reckon the services for the pensionary benefit. In the circumstances, the Original Application is to be allowed. In this context, our attention is brought to the notice of various decisions of the Apex Court under subject of Pension. One of the latest decision in Subrata Sen & Others Vs. Union of India & Others (2002 (1) SLJ SC 110 Part I, Vol.79) the Apex Court made it clear that the pension is not a bounty or a grace or ex-gratia payment. It is duty of the government to pay pension because the pension is a payment for the past service.



Right to get pension is a fundamental rule of any service person and a pensioner does not sever relation with the employer. Therefore, we have no doubt that the applicant in this case is entitled to get pension reckoning her service from 1963 onwards for the purpose of calculating the pension. The denial of such benefit by the respondents, whomsoever is most unfortunate despite the fact that she has been taken in the employment. When the question comes, who has to pay the pension, respondent No. 1 & 2, the Kendriya Vidhyalaya, they are not liable to pay any pension to the disputed period of service. Respondent No.3 stated that though the said Committee functioned under the Respondent No.3, it has been non-existing and therefore liability should not be put on the 3rd respondent. At this distant period of time from 25.9.63 to 11.10.65 on perusal of the records it is clear that she has got continuous service without any break and it is brought out through the records that it was the abolishment of the Institute, which constrained her to join the Central School. The fact that the institute is abolished and the employees repatriated does not mean that such a institution has no liability to pay pension to the repatriated employees. One of the contentions raised by respondents 1 & 2 is that the 3rd respondent had not made the pro rate contribution to the pension to the respondents 1 & 2 and therefore it could not be disbursed by respondents 1 & 2. It is seen from the records that the applicant is persuading respondents 1 & 2 as well as respondents 3 & 5 seeking steps to reckon the disputed period



for pensionary benefit. The service details are available on the records brought to our notice and there is no excuse in saying that respondents 1 & 2 could not find out the same and not get pro rata contribution. This is a step which respondents 1 & 2 should have taken when the pension is disbursed to the applicant. The contention of the learned counsel for applicant that applicant has been given great hardship since she is denied the full pension for want of reckoning the disputed period for pensionary benefit has force. In the circumstances, the respondents cannot wash their responsibilities for the payment of pension to the applicant by accusing each other and shedding out all the responsibilities. It is the duty of the employer under whom the employee worked last to find out all the details and grant the pensionary benefit without fail. The 5th respondent was directed by this Tribunal vide order dated 18.7.2000 in O.A 748/2000 and to dispose of and consider Annexure A-5 representation dated 15.11.96 and pass appropriate orders. It was agreed to by the then counsel for 5th respondent and raised no objection in adopting such a action. But while disposing off that representation Annexure A-8 and also Annexure A-4 dated 24.10.96 by the 5th respondent appears to be in a very casual nature without applying the mind. We are not happy with Annexure A-8 order by the 5th respondent and the 5th respondent should have taken earnest effort to redress the grievance of the applicant, which is not done. Had they taken some interest and furnished the details as directed by this Court, the matter could have been settled by now. Therefore, we hold that the



5th respondent had not disposed of the representation with true spirit by which this court ordered to dispose of the same. In this case we find that respondents 1 & 2 have failed in their responsibilities by denying the benefit by evasive reasons which cannot be justified. Therefore, we are of the opinion that the applicant is entitled to get pension from 25.9.63 to 11.10.65 for the service rendered by her in the ICAR for her continuous service. We direct respondents 1 & 2 to re-calculate her pensionary benefit reckoning the service and take immediate steps to pay the pensionary benefits to the applicant. For no reasons the pensionary benefit of the applicant should not be denied or delayed further.

11. In the conspectus of facts and circumstances, we direct respondents 1 & 2 to disburse the full pension reckoning the above period to the applicant. This benefit may be made available to the applicant within four months from the date of receipt of this order failing which respondents 1 & 2 will be held liable to pay interest also at the rate of 12% from the date of default (i.e from the expiry of 4 months mentioned above). We allow this Original Application as above. In the circumstance, we also direct the 1st and 2nd respondents to pay cost of Rs.1,000/- to the applicant for their failure in not helping in settling the claim.

The original application is allowed as above.

Dated the 1st July, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

VS

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Service Book of the applicant.
2. A-2: True copy of Leave Account dated nil.
3. A-3: True copy of New Leave rules, 1957 dated nil.
4. A-4: True copy of the letter No.F.37-2/95-Estt. dated 24.10.96 issued by the 5th respondent.
5. A-5: True copy of the representation submitted by the applicant to 5th respondent dated 15.11.1996.
6. A-6: True copy of letter No.IV/FR/96-97 dated 8.11.96 submitted by the applicant to the 5th respondent.
7. A-7: True copy of order dated 18.7.2000 in OA No.748/2000.
8. A-8: True copy of the reply dated 20.9.2000 issued by the 5th respondent.
9. A-9: True copy of the letter dated 6.10.2000 sent by the applicant's counsel to the 3rd respondent.
10. A-10: True copy of the letter No.CS/1/17/65 dt.23.9.1965 issued by the respondent.
11. A-11: True copy of the letter No.CS/Per/9(13)/65 dated 29.10.65 issued by the respondent.

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