

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 612 of 2007

FRIDAY, this the 1ST day of MAY, 2009

CORAM:

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K NORRJEHAN, ADMINISTRATIVE MEMBER**

K.P. Kasmikoya,
S/o. A.P. Attakoya,
Laboratory Assistant,
Government Senior Secondary School, Kalpeni,
Residing at Kunhipuvakkade House, Kalpeni,
Union Territory of Lakshadweep : 682 555 ... Applicant.

(By Advocate Mr. R. Sreeraj)

versus

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Director of Education,
Union Territory of Lakshadweep,
Kavaratti.
3. Union of India represented by its
Secretary to Government of India,
Ministry of Human Resources Development,
Department of Secondary & Higher Education,
Ground Floor, B-Wing, Shastri Bhavan,
New Delhi. ... Respondents.

(By Advocate Mr. S. Radhakrishnan (R1 & 2) and
Mr. TPM Ibrahim Khan, SCGSC (R3))

The Original Application having been heard on 30.03.2009, this Tribunal on 1-5-2009 delivered the following:

O R D E R
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER

The short synopsis added to the application brings out succinctly the exact grievance of the applicant and the same is as under: -

"Applicant, a Laboratory Assistant, is aggrieved by the inaction on the part of the respondents in granting him the senior scale which was due to him on completion of 12 years service. To make matters worse, the respondents subjected him to a discriminatory treatment by granting senior scale to his juniors while his innumerable representations seeking justice gathered dust in the offices of the 1st and 2nd respondents. Hence this O.A."

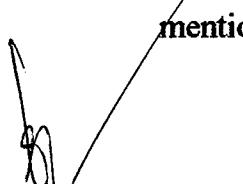
2. Now, the facts capsule as culled out from the O.A.: The applicant commenced his service at MG College, Androth on 5th March 1988 in the erstwhile scale of pay of Rs 1200 – 2040 as a Laboratory Assistant. The said pay scale is identical to that of Primary Teacher. This scale underwent a revision as per order dated 01-04-1998 as Rs 4,500 – 7,000/-. Apart from identical pay scale, equation with primary teachers could be established from the fact that teaching allowance is available both to the primary teachers as well as laboratory assistants, vide para 3 of Annexure A-1 order dated 12th April 1990, Medical allowance, vide para2 of Annexure A-2, three tier pay scales vide Annexure A-3 and A-4. In fact vide Annexure A-4 as many as 9 Laboratory Assistants have been granted senior scale and the same include at least two juniors to the applicant. The applicant thus, penned Annexure A-5 to



A-7 representations to respondent requesting for parity in pay scale so as to avoid hostile discrimination. Likewise, representations have been made to the 2nd respondent, vide Annexure A-9 to A-12. The Director of Education i.e. the 2nd respondent had sought clarification from the 3rd respondent in this regard, vide Annexure A-13. Annexure A-14 is a reply in negation by the 3rd respondent, which states, "*I am directed to refer to your letter No. 55/28/96-Edm/AC dated 6-9-2004 on the above subject and to say that the matter was considered in this Ministry and it is clarified that Laboratory Assistants are not eligible for three tier pay scales as applicable to teachers.*". Hence this O.A. seeking the following reliefs has been filed:-

- (a) To quash Annexure A-14.
- (b) To declare that the applicant is entitled to get the senior scale of Rs 5500 – 9000w.e.f. 5-3-2000 and to direct the respondents to grant him the senior scale of Rs 5500 – 9000 w.e.f. 5-3-2000 with all consequential benefits like arrears and interest.
- (c) Such other relief as may be prayed for and this Tribunal may deem fit to grant.
- (d) Grant cost of this O.A.

3. Respondents have contested the O.A. According to them, though the pay scales of Lab Assistants are at par with the Primary School teachers it does not mean that they are eligible for three tier pay scales. As regards grant of senior scale to 9 Laboratory Assistants, the stand of the respondents is, "The MHRD by their order dated 12-08-1987 awarded teachers and analogous categories mentioned in the above order the senior scale. The proposals for awarding

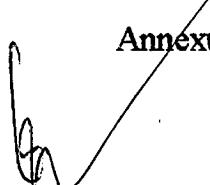


senior scale to Lab Assistants, prior to the receipt of the clarification letter from 3rd respondent dated 18-11-2004 were considered for awarding senior scale whereas the proposals received after clarification were not considered. ”

4. Counsel for the applicant submitted that all through the Lab. Assistants have been treated at par with Primary Teachers. As such, there is no justifiable reason to say that there is no parity at present. Again, grant of senior scale to 9 persons who include juniors to the applicant on the ground that proposals were received in respect of them prior to clarification and denial of the same to similarly situated is highly discriminatory. He has further stated that the monosyllable order at Annexure A-14 does not indicate that the matter has been considered fully. It is a rejection order for rejection sake.

5. Counsel for the respondents submitted that the U.T. has sought for clarification but the Union of India stated that Lab. Assistants cannot be equated with Primary Teachers.

6. Arguments were heard and documents perused. It is trite that the functions of a Lab. Assistant include assisting the teachers and help the students in practical classes, impart instructions to the students in practical classes and perform demonstration work including preparation of the lesson units in the practical classes. ‘Teaching allowance’ by its very appellation means allowance for teaching. If this teaching allowance is granted to the Lab. Assistants, vide Annexure A-1 order dated 12th April, 1990, it confirms that the respondents are



satisfied that the Lab. Assistants are also performing the duties of a teacher. Of course, medical allowance could be irrespective of whether one functions as a teacher or not but when teaching allowance is granted to Lab. Assistants, certainly, parity or comparable nature of job, or equation with teachers is confirmed. Vide order dated 25th February 2003, annexed to the counter (Annexure R-4), clarification has been given to the effect that revised scale of pay as communicated vide letter dated 04-04-2002 shall also be applicable to miscellaneous categories of teachers such as "Music teachers, Drawing teachers, Art teachers, Craft teachers, Vocational Guidance Instructors, Physical Education Teachers, Language Teachers, Librarians or other categories of teachers carrying equivalent scale of pay as that of Primary Teachers before the issue of order dated 4-4-2002" The above term is not exhaustive but inclusive as it gives only illustrations of various categories of teachers. The term "such as" confirms the same. Again, the above clarification gives a latitude to include '*other categories of teachers*' carrying equivalent scale of pay as that of Primary Teachers before the issue of order dated 4-4-2002. As stated earlier, the job of Lab. Assistant includes teaching as well. As such, the category Lab. Assistant falls within the group of '*other categories of teachers*'. Further, it would be curious to note that librarians have been included in the list of teachers. And it is common knowledge that librarians do not give any effective teaching, though he assists the teachers and students in making available the books in the library. If Librarians could be brought within the category of teachers, there is no reason as to why Lab. Assistants could not be brought within that fold, especially, when right from 1-1-1986, at par with primary

teachers, the lab. Assistants have been afforded teaching allowance. There is no dispute that in so far as pay scale is concerned, prior to 4-4-2002, the lab. Assistants have been enjoying corresponding pay scale as that of primary teachers. Hence, the order dated 25th February 2003 does include lab. Assistants as well. It is declared accordingly.

7. Viewed from another point of view that hostile discrimination has been meted to the applicant inasmuch as his juniors have been granted the higher pay scale, the case of the applicant deserves to be allowed. Hostile discrimination is anathema to equality clause of the Constitution.

8. In view of the above, the **O.A. succeeds**. It is declared that the applicant is entitled to the same benefits as given to the other Lab. Assistants who are juniors to the applicant. Respondents are directed to pass suitable orders, granting higher pay scale of Rs 5,500 – 9,000 (or corresponding pre-revised pay) to the applicant on his completion of 12 years of service i.e. w.e.f. 5.3.1990 and pay the arrears of pay and allowances to the applicant. No interest is awarded though claimed as the denial by the respondent so far is due to a genuine doubt and not a deliberate attempt to deny the benefits to the applicant.

9. This order shall be complied with, within a period of four months from the date of communication of this order.



10. Under the circumstances, there shall be no order as to costs.

(Dated, the 1st May, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.