

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 125/2003

Wednesday, this the 30th day of November, 2005

C O R A M :

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

R. Sadashivan Nair,
Head Master (Retired),
Government J.B. School (North),
P.O. Agatti Island,
Union Territory of Lakshadweep,
Now residing at 'SRUTHI',
KP XI/155-B, Dumpsters Lane,
N.C.C. Nagar, P.O. Peroorkada,
Trivandrum : 695 005.

... **Applicant.**

(By Advocate P.V. Mohanan)

v e r s u s

1. Union of India represented by
The Secretary,
Ministry of Human Resources,
Department Secondary and Higher
Education, A-2, W/4, Curzon Road,
Baracks, New Delhi - 1.

2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti - 682 555

3. M.V. Sayeed Koya,
Headmaster,
Government J.B. School (Centre),
P.O. Amini Island : 682 552
Union Territory of Lakshadweep.

... **Respondents.**

(By Advocates Mr. S. Radhakrishnan for R2 and Mr. V.D.Balakrishna Kartha for R3)



O R D E R
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant in this O.A. commenced his services as Primary School Teacher (Matric Trained Teacher) on 3.11.1962 and the respondent No. 3 joined the services as Primary Teacher with effect from 11.8.1966. In the final seniority list of Primary School Teachers, the applicant and the respondent No. 3 figured at serial Nos. 78 and 96 respectively. In the list of confirmed Primary School Teachers (Matric Trained Teachers) dated 26.3.1981, the applicant was placed at No. 25 with date of confirmation as 5.5.1967 and the third respondent at No. 42 with date of confirmation as 8.12.1976. The applicant and the third respondent were granted Senior Scale of Rs. 1400-2600 with effect from 1.1.1986 after completion of 12 years. The applicant was promoted as Head Master (JBS) on ad hoc basis in the scale of Rs. 1400-2600 on 3.10.1994. The third respondent was also offered the promotion post, but he refused to accept the same as the scale of pay of both the Primary School Teacher (Senior) and the Headmaster (JBS) are similar. While officiating the said post continuously, the applicant was posted as Headmaster on regular basis vide A/1 proceedings dated 18.6.1998. By the same order, the third respondent was also promoted as Headmaster in the scale of Rs.5500-9000. Vide Notification dated 12.8.1987, Ministry of Human Resources revised the pay scale of Primary School Teachers and Trained Graduate Teachers etc. and accordingly, the Primary School Teachers would be given Senior Scale (Rs. 1400-2600) after 12 years and Selection Scale (1640-2900) after 12 years in Senior Scale. Again in April, 2002, the Government revised the pay scales



(Senior Scale and Selection Scale) of Primary School Teachers to Rs. 5500-9000 (Senior Scale) and Rs. 6500-10500 (Selection Scale). The applicant having commenced qualifying service on 3.11.1962, had completed 24 years of service on 3.11.1986 and he was promoted as Headmaster provisionally on 3.10.1994 only, i.e., after completion of 32 years of qualifying service. It was contended that he was eligible to be granted selection scale of Rs. 1640-2900 in the year 1986 as per the Government of India Notification dated 12.8.1987. He made representations, but nothing was heard. Vide order dated 11.5.2000, the applicant was granted selection scale of Rs. 5500-9000 (later revised as 6500-10500) with effect from 1.1.1998. The applicant was retired on superannuation on 30.4.2002. The third respondent who is continuing in the post of Headmaster was granted selection scale of Rs. 1640-2900 vide order dated 6.1.1999 (A/2) with retrospective effect from 1.1.1990. The contention of the applicant is that he is senior to the third respondent in the category of Primary Teacher. He was also granted promotion as Headmaster earlier than the third respondent. By irregular granting of selection scale to third respondent retrospectively, an anomalous situation arose leading to reduction of basic pay of the applicant. The anomaly in the fixation of pay is to be rectified by stepping up the pay of the applicant to the level of pay drawn by the third respondent under provisions contained in F.R. 27 and 22. Aggrieved by non-action on the part of the respondents, the applicant has filed this O.A. seeking the following reliefs:

(i) To direct the respondents to grant selection scale (1640-

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2900) to the applicant on completion of 24 years of service by taking note of the commencement of service from 3.11.1962.

- (ii) To direct the respondent No.1 and 2 to fix the basic pay of the applicant at higher stage by stepping up the pay of the applicant upto the level of the pay of the junior, namely 3rd respondent and to grant all consequential benefits.
- (iii) To direct the respondents to revise the pension of the applicant after revising the pay.
- (iv) To direct the respondents to consider and dispose of Annexure A-4 and A-5 in accordance with law.

2. The official respondents have filed a detailed reply statement contending that the applicant was given selection grade on 11.5.2000. The third respondent was awarded selection grade with effect from 1.7.1984 since he belonged to Scheduled Tribe Community. The Constitution guarantees protection to persons belonging to the Scheduled Tribe in services. The department has awarded selection grade to 46 Primary School Teachers. Out of this, 11 posts were reserved post. The third respondent happened to be 10th among the local Scheduled Tribe Primary Teachers. This Tribunal in OA No. 132/88 directed the respondents to consider the request of the third respondent on the basis of the fact that the vacancy of the Scheduled Tribe to which he is entitled had arisen on 1.1.1978. But the department did not grant the said benefit to him. Aggrieved, again he filed another O.A. No. 499/92 which was allowed by this Tribunal declaring that the third respondent is entitled to get selection grade in the post of Primary Teacher against the Scheduled Tribe vacancy which existed as on 1.1.1978. The said judgement (R/1) was rendered taking into account the fact that



11 posts of Selection Grade Primary School Teachers were reserved for Scheduled Tribe and also on account of the fact that he was at serial No. 10 in the seniority list likely to get the Scheduled Tribe quota vacancy with effect from 1.1.1978. Therefore, there is no anomaly. On the representation of the applicant, the comments (R/2) was sent by the Administration as sought by the Ministry. Though the applicant is senior to the third respondent, he is not entitled to get the benefit extended to the Scheduled Tribe.

3. The third respondent has also filed separate reply statement contending that the appointment to selection grade is treated as promotion on the basis of seniority subject to fitness. Therefore, the principle of reservation for Scheduled Castes and Scheduled Tribes are made applicable to appointment to selection grade. As per O.M. Dated 27.11.1972, there shall be 15% reservation for SC and 7 1/2 for ST in posts filled by promotion on the basis of seniority subject to fitness. Besides, 40 point roster to determine the number of reserved vacancies in a year should be followed separately on the lines of the roster prescribed vide Ministry of Home Affairs, O.M. No. 1-11-69-Pet.(SCT) dated 20th April, 1970. As per the said O.M., points 1, 8, 14, 22, 28 and 36 are reserved for SC and points 4, 17 and 31 are reserved for ST. The third respondent contended that either by 3 year Rule or by 1 year Rule, he is entitled to the vacancy which arose on 1.1.1978 for getting promoted for the selection posts. He further submitted that as per Brochure (page 91) on reservation for SC and ST in services issued by the Government of India, the principles of zone of consideration is not applicable to



promotion by seniority subject to fitness. Vide Order R3(1) dated 21.2.1990 in OA No. K-132/88, this Court granted the benefit to the respondent No.3 in terms of the reservation policy. For that reason, the applicant cannot claim benefit on par with the 3rd respondent.

4. The applicant has filed rejoinder reiterating the contentions made in the OA and further adding that the reservation to the post in the cadre can only be 221/2 percentage for SC and ST. The exchange of reservation of Scheduled Caste to Scheduled Tribe was stopped from 1977 onwards. As such 2 or 3 posts would be earmarked for Scheduled Tribe Candidates in a 40 point roster of reservation. These aspects were not considered while Annexure R1 order was rendered. There cannot be reservation for fitment in selection grade since it is not a promotion post. The applicant being senior, is entitled to get his pay stepped up under F.R. 27 to avoid anomaly of irregular fixation of pay.

5. Shri P.V. Mohanan, learned counsel appeared for the applicant, Shri S. Radhakrishnan, learned counsel appeared for the respondent No. 2 and Shri V.D. Balakrishna Kartha, learned counsel appeared for the respondent No.3.

6. We have heard learned counsel for the parties. They took us through various pleadings, material and evidence placed on record. Learned counsel for the applicant submitted that as per Annexure A/7 dated 12.8.1987 and A/8 dated 3.11.1987 issued by the Ministry of Human Resource Development, the senior

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scale will be granted after 12 years to Primary Teachers and the selection scale will be granted after 12 years of service in the senior scale of the respective cadre. Therefore, the applicant will be entitled to the benefit as per the said directives. Learned counsel for the applicant further argued that, the applicant being senior to the third respondent, is entitled to get his pay stepped up under F.R. 27 to the level of his junior. Learned counsel for the official respondents, on the other hand, persuasively argued that the aforesaid O.Ms A/7 and A/8 do not ipso facto grant the benefit of upgradation automatically after 12 and 24 years respectively, which is in fact, subject to DPC and other considerations. Further, they argued that the applicant cannot be granted the benefit to that of his junior, 3rd respondent, since he obtained the said benefit in view of a Court order and by a fortuitous circumstances, which will not be available to the applicant. Learned counsel appearing for the 3rd respondent contended that the appointment to selection grade is treated as promotion on the basis of seniority subject to fitness. Therefore, the principle of reservation for Scheduled Castes and Scheduled Tribes are made applicable to appointment to selection grade. It was further contended that he was given the benefit as per the orders of this Tribunal dated 19.1.1994 [R3(3)]. The applicant has suppressed this material fact before this Tribunal. In this view of the matter, the applicant is not entitled to any relief.

7. We have given due consideration to the arguments advanced by the learned counsel for the parties and have gone through the material placed on record.

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8. Admittedly, the applicant is senior to the respondent No. 3. It is the case of the applicant that the third respondent who started his services as Primary School Teacher with effect from 11.8.1966, was granted selection grade after completion of 24 years of service. The granting of selection scale is in accordance with seniority subject to fitness. The 3rd respondent who was junior to the applicant was accepted promotion as Headmaster much later ought not to have been granted selection scale retrospectively with effect from 1.1.1990. At the same time, the applicant who is senior to the third respondent has been granted selection scale with effect from 1.1.1998. This has created anomalous situation. There is a difference in basic pay of Rs. 1000/- since 1.1.1996. In Rule 8 of CCS (RP) Rules, 1997, it is stipulated that vide paragraph 2 of Government of India's decision 27, below FR 22, stepping up of pay of the senior to the level of junior is to be made with date of next increment of junior. The applicant made so many representations, which were lying unrepplied. As per A/2 order, the third respondent was granted selection scale of Rs. 1640-2900 (pre-revised) with effect from 1.1.1990. The DPC was also constituted for the said purpose. The applicant was given the selection scale only with effect from 1.1.1998, which is incorrect and violative of Articles 14 and 16 of the Constitution.

9. The applicant is mainly relying on A/7 and A/8 Notifications dated 12.8.1987 and 3.11.1987 respectively in support of his claim. We have gone through the said notifications whereby it was decided by the Government to revise the pay scales of School Teachers as per the recommendations of



Chathopadhyaya Committee with effect from 1.1.1986 granting senior scale after 12 years of initial service and a selection scale after completion of 12 years in senior scale. As per A/7, the revised pay scales will be admissible subject to the following conditions:

"(i) While senior scale will be granted after 12 years to Primary School Teachers, Trained Graduate Teachers/Headmasters of Middle Schools, the selection scale will be granted after 12 years of service in the senior scale of the respective cadre. For the Vice Principals/Headmasters of the Secondary Schools, there will be only senior scale after 12 years and no selection scale.

(ii) The number of posts in the selection scale for Primary School Teacher, Trained Graduate Teacher/Headmasters of Primary School, Post Graduate Teacher / Headmasters of Middle School will be restricted to 20% of the number of posts in the senior scale of the respective cadre.

(iii) The senior scale and selection scale will be given after screening regarding their satisfactory performance by an appropriate DPC."

10. It is quite evident that the selection grade will be granted after 12 years of service in the senior scale of the respective cadre. In other words, the respondents would argue that after placing the applicant in the senior scale, he has to complete 12 years or at the time of implementation of the Scheme, i.e. From 1.1.1986, one employee has to complete another 12 years for consideration of granting selection scale. It means, if an employee had put in 24 years of service at the time of introduction of the Scheme as on 1.1.1986, according to respondents' counsel, one has to be waited for another 12 years for getting the benefit. On reading of A/7 Notification, we find that, that was not the intention



of Rule Making Authority. However, it was further made clear in clause (ii) above that the number of posts in the selection scale for Primary School Teacher, Trained Graduate Teacher/Headmasters of Primary School, Post Graduate Teacher/Headmasters of Middle School will be restricted to 20% of the number of posts in the senior scale of the respective cadre. The clause (iii) stipulates that the senior scale and selection scale will be given after screening regarding their satisfactory performance by an appropriate DPC. If this measure is adopted, definitely the third respondent will be placed above the applicant. In the case of restriction of number of posts to 20% invariably the reservation and roster point are to be followed and in that case also, the third respondent would definitely be marched over the applicant. Besides, in A/8, which is a clarificatory letter issued to A/7, at item (ii) it was clarified that "those who have completed 12 or more years of service will be placed in the senior scale as revised subject to screening by the DPC as stipulated in para 3 (iii) of the Government Orders dated 12.8.87. Those not found fit by the DPC will be placed in the ordinary scale. The selection grade scale as per recommendation of the 4th Central Pay Commission is the same as the senior scale in the new pay scales. Therefore, those who are already in the pre-revised selection grade (recommended by the 4th Central Pay Commission) will be placed in the senior scale. Since they were screened for suitability for the earlier selection grade, no fresh screening through the DPC will be required in their cases." As per the clarification above, the DPC is a must and those who are already in the pre-revised selection grade will be placed in the senior scale. The records reveal that the third respondent has



already been in the pre-revised selection grade as per the orders of this Tribunal cited supra. Therefore, the applicant's contention that the orders A/7 and A/8 have to be interpreted in such a way that merely on completion of the required years of service, automatically the teachers should be placed on higher grade, cannot be accepted since the A/7 notification makes it clear that the number of posts will be restricted to 20% in the Senior Scale of the respective cadres and also as per the recommendation of the DPC.

11. The next limb of the argument of the applicant is that he is entitled to stepping up of pay as per the Government of India decision 27, below FR 22. F.R. 22 (decision 27) provides that stepping up of pay of the senior to the level of junior is to be made with date of next increment of junior. But that Rule also stipulates that if the junior had achieved the benefit of higher pay scale by continuous officiation or by virtue of any Court order, the senior cannot claim the said benefit. It can only be achieved during the ordinary course of service and not in an extra-ordinary circumstances. The third respondent, an ST candidate, who is admittedly junior to the applicant, had filed O.A. No. 499/92 and vide order dated 19.1.1994 [R3(3)], this Court after elaborate discussion on the question of granting reservation to him for the benefit of selection grade, declared that he is entitled to be considered for selection grade in the post of Primary Teacher against the S.T. vacancy which existed as on 1.1.1978. The applicant cannot claim this benefit since he does not hail from S.T. Community. In pursuance of the said order of this Tribunal, R3(4) order dated 26.7.94 has been



issued granting the said benefit to the third respondent under FR 22 (a) (ii) and the earlier order dated 27.5.1991 was modified. The benefit was given retrospectively with effect from 1.1.1978 and the arrears resulting from the fixation consequent thereon was also granted to him.

12. Learned counsel for the applicant took us through the decision reported in AIR 2004 SC 1249, State of Tripura and Others vs. K.K. Roy, to canvass for a position that the roster point will not apply in upgradation process. He further argued that it is not the promotion. The said decision is not exactly on the point of upgradation and application of reservation rules. In the said decision, Apex Court was dealing with a case of ACP Scheme where there were no promotional avenues.

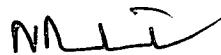
13. Since the order in OA No. 499/92 had become final on upholding the same by Hon'ble Supreme Court, that issue cannot be reopened again at this point of time. The present applicant has filed this O.A. on 17.2.2003, i.e., much after his retirement (30.4.2002). It is also profitable to quote the decision reported in (1997) 7 SCC 690, Union of India vs. Swaminathan & Ors., which deals with FR 22 (1) (a). In the said decision, Hon'ble Supreme Court declared that the seniority is not the only one criteria in stepping of the pay of the junior to that of the senior. The ad hoc officiating or regular service rendered by the junior in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone. We are of the view that the said dictum is



equally applicable in a case where the junior was promoted by virtue of a Court order and drawn higher pay scale well before the senior was granted the same on the basis of reservation/roster point. This fortuitous circumstances cannot be considered as an anomaly requiring the stepping up of the pay of the applicant..

14. In the conspectus of the facts and circumstances of the case and the legal position discussed above, we are of the considered view that the applicant is not entitled to any relief as claimed in the O.A. Therefore, the O.A. being bereft of any merit is dismissed. In the circumstances, no order as to costs.

(Dated, the 30th November, 2005)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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