

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 181 of 1992.

DATE OF DECISION 01-04-1993

P.Premalatha devi _____ Applicant (s)

Mrs. VP Seemanthini _____ Advocate for the Applicant (s)

Versus

Union of India rep. by Secre- Respondent (s)
tary, Ministry of Education & Culture and others

Mr. NN Sugunapalan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman
and

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Mr.A.V.Haridasan, Judicial Member)

This application by a Nursery Trained Teacher

Government Nursery School under the Union Territory

of Lakshadweep is in fact in sequence to an earlier

litigation between the parties in T.A.No.201/87. When

selection grade was given to several classes of employees under the Administration by order dated 26.11.71

(Annexure.A) it appears that the Nursery Trained Teachers and 5 other categories were left out. However, the

Government issued an order on 16.4.86 (Annexure-C)

extending the benefit of selection grade to these

classes which were excluded in the earlier order. The

applicant comes within the class which was excluded by

the first Government order. The applicant, therefore filed a Writ Petition No.5880/85 before the Hon'ble High Court of Kerala for getting the benefit of selection grade retrospectively with effect from 5.9.71 with all consequential benefits. Though the application was contested by the department, the Tribunal to which the case was transferred renumbered as T.A. 201/87 allowed the prayer of the applicant with a declaration that she is entitled for selection grade with effect from 5.9.71 and directed fixation of pay accordingly restricting the monetary benefit only prospectively.

2. In purported implementation of the judgment in that T.A. the impugned order at Annexure-G dated 15.12.90 was issued by the respondents. The applicant is item No.2 mentioned in this order. It is seen from the impugned order that she was granted selection grade only w.e.f. 31.1.80. It appears that her pay was fixed on the basis that she became eligible for the selection grade w.e.f. 31.1.80 and that she had been paid arrears from 1986 onwards. Aggrieved by the order claiming that the applicant should have been granted selection grade w.e.f. 5.9.71 on the basis of the relevant Government order regarding grant of selection grade and also in tune with the directions contained in the judgment of this Tribunal in T.A.201/87, the

applicant has filed this application for a declaration that the impugned order at Annexure-G to the extent it denies to her the benefit of selection grade from 5.9.71 is null and void being violative of equality provisions contained in Articles 14 and 16 of the Constitution and for a direction to the respondents to grant her selection grade w.e.f 5.9.71 with consequential benefits and to pay her the entire arrears calculated from that date.

3. The respondents contend that the applicant is not entitled to get selection grade w.e.f. 5.9.71 for the reason that as per the provisions of O.M. dated 13.2.80 for being eligible to get the selection grade one should have completed either 14 years of service or have run the 3/4th span of pay scale in the cadre. It has also been contended that one Smt. Savithri who is senior to the applicant in service was granted selection grade only w.e.f. 7.11.78 and that to grant the applicant selection grade w.e.f. an earlier date would not only be arbitrary but also would throw open a floodgate of litigation. The respondents have further contended that in view of the directions in the order in TA.201/87 that the applicant would be eligible for monetary benefits only prospectively, the claim for arrears from 5.9.71 is unsustainable.

4. On a careful consideration of the materials placed on record and on hearing the arguments of the learned counsel on either side, we are of the view that the controversy has been narrow down considerably as almost all the questions have been answered by a conclusive order between the parties. As far as the applicant's eligibility to get selection grade from 5.9.71 is concerned, this Tribunal had in its judgment in TA 201/87 in clear and unambiguous terms declared that she is entitled to get selection grade w.e.f. 5.9.71. This order has become final since the respondents have not deemed it necessary to challenge the same before the Hon'ble Supreme Court in SLP. A petition for clarification had been dismissed and a review thereon has also been dismissed. Therefore the respondents who are bound to obey the directions in TA 201/87 cannot be heard to contend against that direction. Further the trumpcard of the respondents to ward against the claim of the applicant for selection grade from 1971 onwards is the O.M. dated 132.80. But it has been found that the applicant is eligible to be granted selection grade w.e.f. 5.9.1971 and therefore any order issued subsequent to that would not and should not affect that right of the applicant. No order or instruction has been brought to

our notice issued earlier than 5.9.1971 which would lay down that to be eligible for grant of selection grade one should have length of service of 14 years or should have rendered service 3/4th of the span in the time scale. On that score also we do not find any merit in the contention of the respondents that the applicant is not eligible to get selection grade w.e.f. 5.9.71. The fact that one Smt. Savithri who is said to be senior to the applicant was granted selection grade only in the year 1978 alone cannot be heldoute as a ground to deny the selection grade to the applicant w.e.f. 5.9.71, if she is otherwise eligible. Her eligibility as stated earlier had been declared in the order of the Tribunal in TA 201/87.

5. Coming to the question of arrears of pay and allowances based on the fixation of pay granting selection grade w.e.f. 5.9.71 this question also has been finally settled in the order in TA 201/87 which is binding not only on the respondents but also on the applicant. The Tribunal has on appreciation of the entire facts and circumstances held that the monetary benefits flowing out of the grant of selection grade with retrospective effect would flow only prospectively from the date of judgment. Therefore we are of the view that the applicant is not entitled to any arrears prior to 9.6.89 the date of the order in TA 201/87.

6. In the result the application is allowed in part. We declare that the applicant is entitled to be granted selection grade w.e.f. 5.9.71 and quash the impugned order at Annexure-G to the extent it denies her the benefit. The respondents are directed to fix the pay of the applicant granting her selection grade w.e.f. 5.9.71 and to give her arrears resulting from the fixation consequent thereon w.e.f. 9.6.89, the date on which the judgment was delivered in TA 201/87. In disbursing arrears the respondents are at liberty to make adjustments with whatever has been paid hitherto as arrears. The above direction should be carried out issuing necessary orders and making payments within a period of two months from the date of communication of a copy of this order. There is no order as to costs.



(A.V.Haridasan)
Judicial Member



7.4.93
(S.P.Mukerji)
Vice Chairman

01-04-93

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