

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 251/2003

Monday this the 5th day of December 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PAR-ACKEN, JUDICIAL MEMBER**

N.C. Soudhamini
Dance Teacher (Classical) (Retd.)
Govt. SB High School (Girls)
Androth ..Applicant

By Advocate M/s Sukumaran & Usha

Vs.

- 1 The Administrator
Union Territory of Lakshadweep
Kavarathi.
- 2 Union of India rep. By
Secretary to Govt. of India
Ministry of Home Affairs (ALN)
New Delhi.Respondents.

By Advocate Mr. P.R. Ramachandra Menon for R-1

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-2

OR D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein was appointed as a part-time dance/ music teacher in the Government High School, Kalpeni, in a post created by the respondents and joined service on 6.3.1972. In the year 1985, the respondents created five full-time posts of dance teachers (classical) in the Education department of the Union Territory of Lakshadweep. The method of recruitment for the posts of dance teacher was by absorption/recruitment from candidates already serving under the administration on a part-time basis with at least four years service failing which by direct recruitment. She possessed all the requisite qualifications mentioned in the Recruitment Rules for holding the post. The applicant had approached this Tribunal by filing OA 1 05/1989 with a prayer to absorb the applicant in one among the 5 regular posts of dance teachers. This Tribunal directed to consider the applicants for absorption against the newly created posts if they are found eligible. This order was confirmed by the Honourable Supreme Court in SLP. Even after the Supreme

Court's decision the respondents implemented the order only on the threat of the Contempt Petition. Ultimately the respondents appointed the applicant as a dance teacher with effect from 11.7. 1990 by the appointment order dated 23.3.1993. The applicant retired from service on 31.3.2000. As on the date of retirement she had completed nine years eight months and 20 days full-time service, according to the respondents this is short of 10 days for claiming minimum pension. Further representations for grant of pension and service gratuity taking into account the DA is still pending with the respondents. Aggrieved by this inaction of the respondents in not sanctioning and disbursing her retirement benefits she has approached the Tribunal in this application.

2 According to the applicant she was eligible to be appointed as a full-time dance teacher in one among the two posts with effect from 1.8.1985 onwards. The date of the Tribunal's order at least should have been taken as the starting point for the applicants' regular service. If 20.4.1990 is taken as the beginning of the regular service she will have minimum qualifying service of nine years and nine months, instead the respondents have taken the date before which the Tribunal orders had to be complied with as the date of her regular appointment. This is highly arbitrary and illegal. The period of part-time service rendered by the applicant will come within the definition of qualifying service as stipulated under Rule 13 and 14 of the CCS Pension Rules since the duties and pay of the post are regulated by the Government. At least half the period of the part-time service should be counted as qualifying service to make up the total qualifying service of the applicant to 18 years 10 months and 23 days. She has prayed for the following relief:

"(a)to direct the respondent to count the half period of service of the applicant as Dance Teacher from 6.3.1972 to 10.7.1990 as qualifying service under Rule 13 & 14 of CCS (Pension) Rules and to add that period also along with her period of service from 11.7.1990 to 31.3.2000 for the purpose of determining the pension due to the applicant.

(b)to direct the respondent to sanction and disburse the pension payable to the applicant taking 18 years 10 months and 23 days as the qualifying service of the applicant under Rule 13 & 14 of the CCS Pension Rules.

(c)to direct the respondent to sanction and disburse gratuity due to the applicant taking into account the applicant's qualifying service as 18 years 10 months and 23 days.

(d) to direct the respondent to add the DA also as part of the 'Emoluments' for the purpose of fixing the gratuity amount due to the applicant as stipulated in the Govt. of India's decision No. 4 under Rules 33 of the CCS (Pension) Rules.

(e) to direct the respondent to disburse the monetary value of the 'Earned Leave' which was available in the applicant's credit as on the date of her retirement, without any further delay".

3 The respondents have filed a reply statement denying the averments of the applicant stating that none of the reliefs prayed for are liable to be granted in view of the actual facts and circumstances of the case. Annexure2 order was issued appointing the applicant with effect from 11.7.1990 that is the date on which action should have been completed as directed in Annexure-1 judgment. The applicant having fully accepted the order at that point of time cannot now turn around and seek for antedating her promotion as prayed for in the representation which was for the first time made only on 3.2000 and there is no rule or order or provision to grant pensionary benefits to the applicant by counting half of the part-time service. On the other hand the orders on the subject specifically say that service rendered on a part-time basis cannot be treated as qualifying service. She has been paid retirement gratuity taking into account the quantum of Dearness allowance due on the date of retirement and also service gratuity at the rate of half months emoluments for every completed six monthly period of qualifying service According to the respondents the calculations made for payment of retirement and service gratuity are correct and in accordance with the orders on the subject.

4 We heard the Learned counsels on both sides and per-used the material on record. The Counsel for the applicant argued that that under rule 13 and 14 of the CCS Pension Rules, temporary service, can be counted as qualifying service and under the Government of India's decision number 2 under the above rules, service paid from contingencies also can be counted for the purpose of pension. On the same analogy she argued that the part-time service of the applicant should also be taken into account. Further it was argued that it was only due to the interpretation given by the respondents to the tribunal orders that her appointment was predicated to 11.7.1990 and if she had been given the date of judgment viz 20.4.90 she would have a minimum of nine years and nine months thus qualifying for pension .The Counsel for the respondents refuted this contention stating that she had not challenged the appointment order dated 11.7.19 90 and cannot now question that after 13 years. More over Government of India's decision referred to by the applicants counsel relates to only service in a job involving whole time employment and there is no rule

recognising part-time service for the purpose of pension. Therefore the applicant does not have any legally enforceable cause of action.

5 The Counsel for the applicant conceded that the applicant had not challenged the appointment order in the year 1993 appointing her with retrospective effect from 11.7.1990. But she had not realised the difficulties which would arise at the time of retirement due to the prescription of this date, the applicant not being educated and not well versed in service rules being only a dance teacher. It was further pointed out that the applicant deserved sympathetic consideration keeping these factors in view and as she was short of only 10 days for becoming eligible for pension.

6 Having heard both sides, and perused the rule provisions, we are in agreement with the stand of the respondents that the applicant has no legally enforceable right to claim pension. It is no doubt true that Rules do not provide for recognizing part-time service as qualifying for pension. But looking into the facts as admitted on both sides the respondents could have at the time of regularising her appointment made it effective from the date of judgment which is the normal procedure rather than from a date which formed the outer limit for implementation of the judgment. If the normal course was adopted the applicant would not have fallen short of 10 days. We think that this is a marginal case which requires to be considered with sympathy as it has caused undue hardship to an employee who has put in continuous service in the department from 1972 onwards. We find that the respondents are empowered to relax the rules if it causes undue hardship. Rule 88 of the CCS Pension Rules reads as under:

"88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.

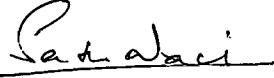
7 We are therefore of the view that such a direction would be sufficient to the respondents in the interest of justice to consider the case of the applicant for relaxation

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under the above Rule 88 of the CCS Pension Rules to enable her to complete the minimum service of 10 years to qualify for pension. The OA is disposed of accordingly. No costs.

Dated the 5th day of December, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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