

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.344/2007

Dated the 27th day of February, 2008

CORAM :

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

K.B.Mohanakumari Amma
Retd. Physical Education Teacher,
Jawahar Navodaya Vidyalaya
Now residing at "Kamala Luxmi",
Chalingal, Haripuram P.O.,
Kanhagad, Kasargod District.

... Applicant

By Advocate Mr.K.Shri Hari Rao

V/s

- 1 The Principal,
Jawahar Navodaya Vidyalaya,
Navodaya Nagar, PO Periya, Kasaragod
- 2 The Deputy Commissioner,
Navodaya Vidyalaya Samithi
Southern Zone, Hyderabad
- 3 The Commissioner
Navodaya Vidyalaya Samithi
New Delhi
- 4 Union of India represented by
Secretary, Ministry of Human
Resource Development,
Department of Education, New Delhi ... Respondents.

By Advocate Mr.M.K.Damodaran (R 1-3)
Mr.TPM Ibrahim Khan SCGSC (R 4)

The application having been heard on 27.2.2008 the Tribunal on the same day delivered the following :

(ORDER)

Hon'ble Mrs.Sathi Nair, Vice Chairman

The applicant is a Physical Education Teacher from State Aided School on deputation on 21.12.1987 in Jawahar Navodaya Vidyalaya who retired from service on 31.10.2003. Her grievance is that she has not been granted pension and gratuity even though she has submitted all the documents in time.

2 The respondents have filed a reply stating that service under Navodaya Vidyalaya Samiti is not a pensionable service. With regard to her prayer for disbursement of gratuity, they have submitted that the Navodaya Vidyalaya Samiti as per decision taken by the Executive Committee at its meeting held on 9.8.2001 has adopted the Payment of Gratuity Act, 1972 for its employees with effect from 3rd April, 1997. As per the circular instruction, the Deputy Director of the concerned Regional Office was appointed as the Controlling Authority for implementation of the provisions of the Payment of Gratuity Act, 1972 in respect of teaching and non-teaching staff of the respective Region up to the level of Vice Principals. However, the eligibility of Gratuity under the Payment of Gratuity Act, 1972 to teachers was considered by the Honourable Supreme Court in the decision in Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and Others, (2004) 1 SCC 755 and Supreme Court held that teachers do not answer the description of employees, skilled, semi-skilled or unskilled or any other employment specified in Section 2 (e) of the Payment of Gratuity Act, 1972, and declared that since teachers are clearly not intended to be covered by the definition of employee under the Payment of Gratuity Act, 1972, they are not entitled to gratuity under the Payment of Gratuity Act, 1972. Following the said decision, the Committed

vide Annexure R 1(B) dated 31.3.2004 has taken a decision not to release any gratuity to the Teachers, Vice Principals and Principals until the matter is considered in consultation with Ministry of HRD.

3 In these circumstances, the gratuity could not be released to the applicant as per her qualifying service.

4 I have heard counsel for both the parties.

5 The above position is also confirmed by the counsel for applicant. It is clear that the payment of gratuity has been withheld only because of the judgment of the Supreme Court in the matter. However, he submits that the decision of the Supreme Court came into effect only in January, 2004 and the applicant retired on 31.10.2003, and gratuity could have been paid.

6 It is evident from the above that the payment of gratuity could not be made to the applicant only because of the legal tangle resulting from the judgment of Hon. Supreme Court. The respondents have submitted that the matter is under consideration of the Samiti in consultation with the Ministry of HRD to amend the Act and it is for the legislature to take cognizance of the situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for granting protection to teachers as stated by the Supreme Court. In that view of the matter only R-1(b) has been issued. pending the final decision in the matter, the release of gratuity to Teachers, Vice Principals and Principals be kept in abeyance. Therefore, at this stage, this Court cannot give any direction as prayed for to respondents as the matter will have to be decided by the Samiti in consultation with the Ministry and a decision has to be taken by the legislature.

7 In the circumstances, I, in the interest of justice, would only direct the applicant to make a fresh representation to the fourth respondent through the

second respondent who has been declared as the Competent Authority for Gratuity purpose. It is hoped that steps will be taken by the respondents at the earliest to bring in appropriate legislation to grant protection to the category of Teachers and also redress the grievance of the applicant. The OA is disposed of with the above directions.

Sathi Nair

(SATHI NAIR)
VICE CHAIRMAN

abp