

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : GOA.

T.R.95/87 & T.R.98/87.

T.R.95/87.

Thomas Fernandes and others ... Applicants.
versus

1. Director of Education,
Government of Goa, Daman & Diu,
Panaji, Goa.
2. Under Secretary of Education,
Secretariat, Goa.
3. Francisco M.Ribeiro,
Laboratory Assistant
Government Higher Secondary
School, Panaji, Goa.
4. S.N.Viaya,
Laboratory Assistant,
Laboratory Assistant,
Government Higher Secondary School,
Diu.
5. The Union of India ... Respondents.

T.R.98/87.

1. Uday S.Nagvekar,
2. Millan Nagvekar
3. Prakash L.Khokar
Laboratory Assistants
in the College of Engineering
at Farmagudi, Goa. ... Applicants.
versus

1. The Principal,
College of Engineering,
Farmagudi, Goa.
2. The Director of Technical Education,
having his office at Directorate of
Education, Panaji, Goa.
3. The Union of India, through the
Administrator of Goa, Daman and Diu
at Cabo Raj Niwas, Dona Paula, Goa.

.... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.
The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicants - Shri J.S.Rebello, Advocate

For the respondents - Shri H.R.Bharue, Advocate.

Date of hearing - 9.7.90

Date of Order - 11.7.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

These two cases were heard together and
are being disposed of by a common order as issue
involved is the same.

2

2. T.R.95/87 relates to Writ Petition No.216/85, and T.R.98/87 relates to Writ Petition No.237/85, in the High Court of Bombay, ~~and~~ Goa Bench, which have been received on transfer.

3. All these applicants are Laboratory Assistants. The applicants in TR 95/87 are Laboratory Assistants of High Schools and Higher Secondary Schools. The applicants in TR 98/87 are Laboratory Assistants in the College of Engineering.

4. The applicants in TR 95/87 were appointed during the period 1975-1981. They were appointed on the scale of pay of Rs. 260-430/- . Their grievance is that the scale of pay ought to have been Rs. 290-500/-, which was later revised to Rs. 330-530/- in the year 1983. The applicants in TR 98/87 who were appointed in 1981 on the scale of pay of Rs. 260-430/- have also alleged the same grievance.

5. It is alleged that respondents 3 and 4 in TR 95/87 who are also Laboratory Assistants in Government Higher Secondary Schools have been given the correct scale of pay.

6. The applicants pray for a direction ~~and~~ for revision of their starting pay and to give them the benefit of the subsequent revisions of pay.

7. In TR 95/87, the Director of Education has filed the reply, while in TR 98/87 the Principal, College of Engineering has filed the reply. In TR 95/87, it is contended that the scales of pay for all Laboratory Assistants is not the same. It is stated that as per the Recruitment Rules published in 1966, the scale of pay of Laboratory Assistants was Rs.110-200/- which was revised to Rs. 260-430.00, which scale has been allowed to the applicants. As regards the respondents 3 and 4

in TR 95/87, it is pointed out that the 3rd respondent was recruited prior to Liberation and the 4th respondent was appointed against an existing vacancy which carried the scale of pay of Rs. 125-300/- . It was on that account that their scale of pay was revised to Rs. 290-500/- and which was further revised to Rs. 330-530/- . The claim in the application is resisted on the ground that since the applicants were appointed on the scale of pay of Rs. 260-430/- it is not open to them to claim the higher scale of pay.

8. In TR 98/87, the contention is that the appointment of the three applicants therein was not on the basis of the Recruitment Rules, but was done pursuant to the newly created posts in the scale of pay of Rs. 260-430.00 by the orders dated 17.6.1980 and 14.1.1981. It is contended that there are two categories of Laboratory Assistants :(1) on the scale of pay of Rs. 260-430.00 and (2) on the scale of pay of Rs. 290-500/- . On these premise, the prayer of the applicants in TR 98/87 is opposed.

9. Both the applications have also been resisted on the ground of laches.

10. We have heard counsel on ~~the~~ either side and have gone through the records.

11. The Goa Government, Education Department (Non-Gazetted Non-Ministerial Posts) Recruitment Rules, 1966, for short, the Rules, published on 27.3.1966

governed the appointment of the applicants in TR 95/87. The said Rules provide for only a single category of Laboratory Assistants on the scale of pay of Rs. 110-200/-, which scale was revised to Rs. 125-300/- with effect from 27.5.1970, as per the order dated 10/13th August, 1971 (Exhibit-B). By the orders contained in the communication dated 27.6.1977, the scale of pay of Laboratory Assistants in the Higher Secondary Schools was fixed at Rs. 290-500/- ^{recommendation of the} which, as a result of the Pay Commission, was revised to Rs. 330-530.00.

12. It was admitted at the time of hearing that with effect from 1.10.1987, the scale of pay of Laboratory Assistants working in the schools and in the Engineering College has been fixed at Rs. 1200-2040.00 and that these applicants have also been fixed in that scale of pay. As such, the request of the counsel of the applicants was that from the respective dates of the appointment of these applicants till 30.9.1987 they may be fixed in the scale of pay of Rs. 290-500.00 and the corresponding revised scale of pay of Rs. 330-530.00 and the monetary benefits allowed. This request of the counsel of the applicants was opposed by the counsel of the respondents mainly on two grounds ~~Firstly~~ ^{Firstly, it} was submitted that there is laches as these applicants have been appointed during the period 1975-1981 in the scale of pay of Rs. 260-430.00 and as such, as the Writ Petitions have been filed only in the year 1987, the relief cannot be allowed. Counsel of the applicants submitted that the applicants have been pursuing the matter by submitting representations from

l

the year 1978 onwards. Assuming that they were doing so, since the representations were not admittedly considered favourably, the applicants were bound to approach the Court within a reasonable period and hence there is force in the contention of the respondents that there is laches on the part of the applicants. It may be noted that in the orders of appointment issued to these applicants it was specifically stated that the appointment is on the scale of pay of Rs. 260-430.00 and hence, if they had a grievance that they had not been fitted in the proper scale of pay of Rs. 290-500.00, the cause of action very much arose when the appointment orders were issued. However, as it is a continuing cause of action since the applicants are continuing to work as Laboratory Assistants, the Writ Petitions cannot be dismissed on the ground of laches. The sustainability of the claim at least from the date of filing of the Writ Petition deserves examination.

13. The second submission of counsel for respondents was that these officials form a class in themselves. This submission does not deserve acceptance. So far as the Laboratory Assistants of the Schools are concerned, the Recruitment Rules provide for only a single scale of pay of Rs. 110-200/- which was revised to Rs. 125-300/- and later to Rs. 290-500.00. Admittedly, the respondents 3 and 4 in TR 95/87, discharging the same duties of Laboratory Assistants in schools, were fixed on the scale of pay of Rs. 290-500.00. The distinction that is sought to be made in the reply so far as respondents 3 and 4 are concerned, cannot be accepted. It may be that the 3rd respondent was recruited prior to Liberation and the 4th respondent was appointed against an existing vacancy of Rs. 125-300/-. When the Recruitment Rules contemplate only a single category of Laboratory Assistants, on the scale of pay of Rs. 110-200.00, which was revised to Rs. 125-300.00 and then to Rs. 290-500.00, there is

absolutely no justification for not allowing that scale of pay to the applicants. No case for any classification among the Laboratory Assistants working in the schools has been made out.

14. As regards the Laboratory Assistants working in the College of Engineering also, the position is the same. There is no material on record to hold that amongst such Laboratory Assistants a classification was intended to be made based on their ~~functions~~ ^{qualifications} and duties. Admittedly, the Recruitment Rules contemplate only a single class of Laboratory Assistants on the scale of pay of Rs. 290-500.00. The solitary ground on which the respondents seek to maintain the distinction is that by the orders dated 17.6.1980 and 4.1.1981 additional posts of Laboratory Assistants were created on the scale of pay of Rs. 260-430.00, and since the applicants in TR 98/87 were appointed against those posts, they cannot claim the scale of pay of Rs. 290-500.00. It was submitted by the counsel of the respondents that it is within the competence of the Government to create posts in different scales of pay. The submission is unexceptionable. At the same time, so long as no valid reason is established for creation of the additional posts of Laboratory Assistants on a lower scale of pay, when the persons appointed against the additional posts are also required to have the same qualifications and to discharge the same duties as the Laboratory Assistants who are already appointed on a higher scale of pay, such classification cannot be said to be reasonable.

15. It has also to be highlighted that it was evidently on the ground that all the Laboratory Assistants

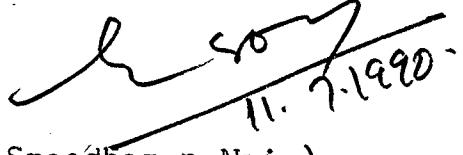
form a single class and are legally entitled to the same scale of pay ^{like} with effect from 1.10.87, ~~and~~ all of them have been fixed in the scale of pay of Rs. 1200-2040.00.

16. In the circumstances, we hold that these applicants are entitled to the scale of pay of Rs. 290-500.00, with the benefit of the subsequent revisions in the said pay scale, from the period commencing from 16.9.1985, ^{the date of filing the writ petition,} in the case of the applicants in TR 95/87, and 30.10.1985 as regards the applicants in TR 98/87, till 30.9.1987. We direct the respondents 1,2 and 5 in TR 95/87, and the respondents ~~in~~ 1,2 and 3 in TR 98/87 to revise the scale of pay of these applicants accordingly and to grant them arrears on that account. This shall be done within a period of three months from the date of receipt of copy of this order.

17. The applications are allowed as above.


(M.Y. Priolkar)

Member(Admn)


(G. Sreedharan Nair)

Vice Chairman.

SP Singh/
10.7.90.