

ASul

Central Administrative Tribunal
Mumbai Bench

1. OA No.556/98

2. OA No.572/98

Mumbai this the 28th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl)

OA No.556/98

Smt. Mariamma Thomas,
R/o Govt. quarter No.28,
Type-III-A, Near Govt. High
School, Silvassa-396 230.

-Applicant

OA No.572/98

Ms. Aditi K. Maula,
R/o Govt. Housing Complex,
Block A/5, 2nd Floor,
Silvassa.

-Applicant

(By Advocate Shri G.S. Walia)

-Versus-

1. Administrator,
UT of Dadra & Nagar Haveli,
Silvassa - 396 230.

2. Director,
Department of Education,
UT of Dadra & Nagar Haveli,
Dadra & Nagar Haveli,
Silvassa.

3. Collector,
UT of Dadra & Nagar Haveli,
Silvassa - 396 230.

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER

Mr. Shanker Raju, Member (J):

As the issues involved in these OAs are identical, founded on the same facts and question of law, they are being disposed of by this common order.

2. Applicant in OA-556/98 was appointed as Assistant Teacher (Commerce) on 23.7.80. She was not qualified and was untrained graduate and was appointed in the High School. She subsequently acquired post graduate qualification and was subsequently regularised as Assistant Teacher w.e.f.

23.7.80, by an order dated 22.9.89 and further promoted on ad hoc basis as PGT in the pay scale of Rs.1640-2900 by an order dated 19.3.93. The grievance of the applicant is that despite she has been utilized to work as PGT and Teaching Commerce subject to the 11th and 12th standards she has been denied salary of the post of and was being paid in the lower post, despite making representation nothing fruitful has come out. It is stated that in 1989 36 posts of Senior Secondary Teachers with post graduate qualification were sanctioned by the Ministry of Human Resource Development but the regular posting orders have been issued in August, 1997. The delay on the part of the respondents is unexplained and the applicant is entitled for the salary of PGT, w.e.f. 23.7.80 to 18.3.93. The denial of pay scale is arbitrary and is violative of Articles 14 and 16 of the Constitution of India.

3. In OA-572/98 applicant was appointed as Commerce Teacher in the High School on 25.8.83 and was regularised as Assistant Teacher w.e.f. 1.9.83. She was utilized to work as a PGT. Subsequently her services as PGT were regularised by an order dated 1.8.97. She has a similar grievance as that of applicant in OA-556/98. She claims salary in the pay scale of PGT, i.e., Rs.1640-2900 w.e.f. 1.9.83 to 31.7.97 along with arrears.

4. In the aforesaid OAs the contention of the learned counsel Shri Walia is that having worked as PGTs applicants are entitled for the salary of that grade. It is also stated that the certificates have been issued by the respective Principals of the school, certifying their working as PGT for the aforesaid period. By placing reliance on a decision of the Apex Court in Jaswant Singh v. Punjab

Poultry Field Staff Association and Others, 2002 SCC (L&S) 116 it is stated that if a person has worked on a higher post despite not qualified, he is entitled for the salary attached to the post and having acquired qualification of the post and sanction of the posts by the respondents in 1989 they are entitled at least from the date of acquiring qualification as well as in the alternative from the date of the sanction of the posts the salary of the period for which they had been utilized by the respondents as PGTs. Applicants allege hostile discrimination in violation of Articles 14 and 16 of the Constitution of India and stated that no valid reasons have been accorded by denying the salary attached to the post to the applicants.

5. In their reply, respondents strongly rebutted the claim of the applicants and at the outset stated that their claim is hopelessly barred by limitation and suffers from delay and laches as the relief has been claimed from 1980 and 1983 respectively and the applications having been filed in 1998 are absolutely barred by limitation.

6. On merits, it is contended that the applicants were untrained graduates and only appointed as Assistant Teachers (Commerce) High School and not Higher Secondary^{ar} School though they have acquired higher qualification subsequently but mere acquiring the same does not automatically grant them higher pay scale. It is denied that the applicants have been entirely utilized and made to work as PGTs and also stated that in absence of any post of PGT in the unrevised pay scale of Rs.550-900 they are not entitled for the salary of PGT. It is stated that on their promotion as ad hoc PGTs they have been accorded the salary in the pay scale of Rs.1640-2900 and were subsequently

regularised. It is further stated that the ad hoc promotions of the applicants were extended from time to time till they are regularised.

7. It is further stated that 36 posts of PGT were sanctioned for higher secondary schools on 10.4.89 and promotion was given on 1.8.97 and in the meantime there is no unconscionable delay as no sooner the sanction was accorded the matter was taken up for framing of the recruitment rules with the Government of India and UPSC. The matter being an administrative remained under correspondence and ultimately after the approval of the UPSC to the recruitment rules ad hoc promotions were given to applicants and salary was started for the post of PGT. As such no prejudice has been caused to them. It is also stated that as the certificates tendered by the Principals of respective school certifying the working of the applicants for the disputed period as PGTs, the same have not been made part of the application and the same have not been issued by the respondents, to which no opportunity to controvert has been accorded to the respondents. As such these documents cannot be taken into consideration.

8. Lastly, it is stated that the contention in reply by the respondent is deemed to have been accepted, as no rejoinder has been filed by the applicants.

9. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as the question of limitation is concerned, the cause of action had arisen to the applicants in the year 1980 and 1983 itself when they had been allegedly utilized as PGTs. Their claim for seeking pay and allowance attached to the

higher post of PGT after a period of more than 10 years without any reasonable explanation of delay and without filing an MP for condonation of delay cannot be entertained and as per Section 21 of the Administrative Tribunals Act, 1985 and the decision of the Apex Court in S.S. Rathore v. State of M.P., AIR 1990 SC 10 the aforesaid OAs are clearly barred by limitation and suffers from the vice of delay and laches. The OAs are liable to be rejected on this ground alone.

10. However, on merits as well, mere acquiring educational qualification for a post would not entitle the applicants to grant of the pay scale attached to that post. No post of PGT existed and after the posts were sanctioned in 1989 process was initiated to finalise the recruitment rules which was completed in 1997 and accordingly the applicants have been regularised. However, applicants have been accorded ad hoc promotion pending finalisation of the rules and had been paid the pay and allowances of PGT. The delay in finalisation of the recruitment rules was on administrative exigencies as the internal correspondence with UPSC and the Govt. of India for finalisation of the recruitment rules consumed the time. As such, respondents cannot be faulted on that account.

11. In so ^{far} as the claim of the applicants that having utilized them as PGTs we are of the considered view that applicants as per their appointment letters have been appointed as Assistant Teachers (Commerce) of High Schools and not in the Higher Secondary Schools. Though the respondents in their reply stated that they were utilized to work as PGTs but simultaneously they have denied that they were factually utilised and worked as PGTs as no post

existed in the unrevised pay scale of Rs.550-900. Applicants have no indefeasible right to be either promoted or paid the pay and allowances. The resort of the learned counsel for the applicants on the decision of the Apex Court in Jaswant Singh's case (supra) would be of no avail to applicants as the facts and circumstances are distinguishable. There it was not disputed that the posts existed and despite their being not qualified they had been allowed to work against the higher post for which they were accorded the pay and allowances. As admittedly the posts were not in existence, applicants cannot derive any benefit out of the aforesaid ratio.

12. Applicants have been paid the salary of the Assistant Teacher High School since their appointments and after being put on ad hoc basis were paid the salary of PGT. No infirmity has forthcome to warrant our interference with the action of the respondents.

13. In the result and having regard to the reasons recorded above, we do not find any merit in these OAs... They are accordingly dismissed. No costs.

14. Let a copy of this order be placed in the case file of OA No.572/98 also.

Member (J)

"San."

Member (A)