

Reserved on 15.2.2018

Central Administrative Tribunal, Allahabad Bench,

Allahabad

Original Application No. 330/00885/2018

This the 16th day of March, 2017

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Mr. Gokul Chandra Pati, Member (A)

Smt. Manjula Malaviya retired PET w/o Sri Rajani Kant Malaviya Advocate High Court Allahabad Seat No.54, Near Chamber 14 Presently resident Village- Gopipur, P.O.Gyanpur, District Sant Ravidas Nagar, Bhadohi.

Applicant

By Advocate: **Sri R.K. Malaviya**

Versus

1. Union of India through Secretary, Ministry of Human Resources Development, Shastri Bhawan, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Deputy Commissioner, Administrative Kendriya Vidyalaya Sangathan 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
4. Joint Commissioner, Kendriya Vidyalaya Sangathan 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
5. Assistant Commissioner (ADMN) Kendriya Vidyalaya Sangathan 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
6. Deputy Commissioner, Kendriya Vidyalaya Sangathan, BHU, Campus, Varanasi.
7. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Sec. J, Regional Office, Aliganj.

8. Principal Kendriya Vidyalaya Sangathan, Phulpur, Allahabad.

Respondents

By Advocate: **Sri L.P.Tiwari and Sri D.P.Singh**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has preferred this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- i) Issue a writ order or direction in the nature of certiorari by quashing the order dated 28.12.2016 annexed as Annexure A-1 to this OA.
- ii) Issue a writ order or direction in the nature of mandamus directing the respondents to allow the selection scale in favour of the applicant from the date of qualifying the selection scale due from 29th September, 2005 and 10% interest over same.
- iii) Issue any other writ order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- iv) Award cost of the application to the applicant.

2. The brief facts emerging from the O.A. are that the applicant joined her duty as PET in Kendriya Vidyalaya (in short K.V.) IFFCO, Phulpur, Allahabad on 28.9.1981 in TGT grade and completed 12 years service. Thereafter, she has completed 12 years in senior scale on 28th September,

2005 and having all the qualification for selection scale from 29th September, 2005.

2.1 The applicant was retired on 31.8.2007 but the department have not allowed her selection scale till now.

2.2 Applicant applied for her claim several times but Assistant Commissioner vide letter dated 11th March, 2011 (Annexure A-2) informed that all the teachers have not granted Selection Scale who were retired after 1.1.1998.

2.3 When it came to know about the circular dated 13.3.2014 issued by the Department, applicant at once applied for her claim before respondent No. 6 who summoned all the service particulars of the applicant vide his letter dated 1.3.2016 and forwarded for sanctioning selection scale to the applicant before Deputy Commissioner (ADM), New Delhi vide letter dated 4.8.2016 (Annexure A-3).

2.4 As per letter dated 13.3.2014 (Annexure A-5), there is no limit that Selection Scale will be sanctioned to only 20% teachers.

2.5 Department have selected only some teachers on 1.1.2009 in which the Department was interested

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant had already been retired from service after

reaching the age of superannuation in the year 2007. Therefore, his claim for granting selection scale w.e.f.1.1.2009 is totally misconceived.

3.1 It is further submitted that after completion of 12 years of regular service from the date of grant of senior scale, a teacher qualifies for grant of selection scale provided they have attended 21 days in service course within a period of six years from the date it is due and the annual appraisal report of the teacher concerned is above or equivalent to benchmark. Besides the above, only 20% of the cadre i.e. in the present case 20% of the TGT (P&HE) would be granted selection scale. Applicant's case did not cover under the above criteria as applicant retired in the year 2007 before coming into consideration zone for grant of selection scale from 1.1.2009 due to 20% limit. Hence her case was not earlier forwarded by the concerned Regional Office.

3.2 It is further submitted that in response to the legal notice dated 25.10.2016, KVS Head Quarter, New Delhi vide letter dated 28.12.2016 informed the applicant that as she retired in the year 2007 before coming into zone of consideration for grant of selection scale from 1.1.2009 due to 20% limit, hence she was not eligible for grant of selection scale.

3. Rejoinder reply is filed by the counsel for applicant through which he has reiterated the facts as stated in the O.A.

4. Heard the learned counsel for applicant Sri R.K.Malaviya and learned counsel for respondents Sri L.P. Tiwari and Sri D.P. Singh.

5. On the date of final hearing , learned counsel for both the parties were directed to file written submission. Respondents were also directed to file circular relied upon stating therein the limit of 20% for grant of selection scale.

6. Learned counsel for respondents filed written submission along with circular dated 12th August, 1987 (forwarded through letter dated 3rd November, 1987) issued by Ministry of Human Resources Development, Department of Education, New Delhi.

7. In the written submission, it is stated that para 3 of the circular provides certain condition for granting for senior scale and selection scale.

a) Para 3(i) - Selection will be granted after 12 years service in the senior scale of the respective cadre;

b) Para 3(ii) - Number of posts in the selection scale would be restricted to 20% of the number of posts in the senior scale of the respective cadre.

c) Para 3(iii) - Senior Scale and Selection will be given after screening their satisfactory performance by a DPC.

7.1 It is further submitted that applicant case die not come under the above criteria as applicant retired in the year 2007 before coming into the zone of consideration for grant of selection scale from 1.1.2009 due to 20% limit.

7.2 It is further submitted that circular dated 13.3.2014 is not applicable in the case of applicant. The said circular is applicable to the teachers who completed 12 years service in senior scale w.e.f. 1.1.2009 to 31.3.2014, whereas the applicant completed 12 years of service in senior scale on 29.8.2005 as per statement made in para 4.1 of the O.A.

7.3 It is further submitted that O.A. is highly time barred as the applicant retired in 2007 and the present O.A. is filed in 2017 claiming benefit of grant of selection scale w.e.f. 28.9.2005.

8. In spite of order of this Tribunal dated 15.2.2018, learned counsel for applicant has not filed any written submission.

9. Counsel for applicant reiterated the facts as stated by him in the Original Application and submitted that as soon as it has come to the knowledge of the applicant about the circular dated 13.3.2014 issued by the Department, she at once applied for her claim before respondent No. 6 who submitted all the service particulars of the applicant for

sanctioning selection scale to the applicant by taking a sympathetic consideration. The case of the applicant was rejected by the respondents only on the ground that name and service particulars of the applicant was not forwarded by the concerned school to the Department and the applicant cannot be said to be at fault and as such she is entitled for grant of selection scale. Counsel for applicant drew our attention towards circular dated 13.3.2014 which clearly provides that selection scale have already been granted to the teachers prior to 2008 and in order to sanction Selection Scale from 1.1.2009 to 31.3.2014 certain information from the school concerned was sought. Further respondents have sent the application of the applicant dated 25.2.2016 to the Department vide letter dated 1.3.2016 but the respondents have not taken any decision on the said letter. Thereafter, applicant filed a legal notice and in reply to the same, the respondents have sent reply dated 28.12.2016 by which the applicant was not found eligible for grant of selection scale. The applicant has challenged the said order by means of the present O.A.

10. Counsel for respondents filed Written arguments and have reiterated the facts as stated by him in his counter reply. Counsel for respondents further submitted that the Original Application is highly time barred as the applicant

has retired in the year 2007 and she is now claiming for selection scale w.e.f. 2005. She has sent legal notice dated 25.10.2016 for the same and the same was replied by the respondents vide letter dated 28.12.2016 which is challenged by the applicant through this O.A. in the year 2017.

11. So far as limitation is concerned, as per the conduct of the applicant, she is not entitled for any relief on the ground of delay and laches. However, the contention of the applicant cannot be ruled out on the ground that non-grant of selection scale will affect her pension, which is payable to the applicant month to month basis and thus after grant of selection scale, fixation of her salary will certainly increase and accordingly her pension will also increase. As such her case cannot be thrown out on the ground of limitation alone, though the applicant is definitely sleeping over for her right for more than 12 years. However, we are now considering the case of the applicant on merit.

12. The counsel for respondents has filed the Master circular dated 12.8.1987 along with the written arguments, which provides the criteria of grant of selection scale. Respondents have clarified in their written arguments that condition of granting the selection scale /senior scale are enumerated in para 3 of the circular which has already

been quoted in the paragraph 7 of this judgment and from bare perusal of these conditions, it is clear that the grant of selection scale is not the automatic procedure. There are certain conditions for granting selection scale like number of posts which are restricted to 20% of the number of posts in the senior scale of respective cadre. From the Master circular dated 13.3.2014, the respondents have clarified that upto 2008, selection scale has already been granted. Since the applicant has already retired in 2007, the circular dated 13.3.2014 will not be applicable in the case of the applicant. The applicant has failed to demonstrate that applicant is entitled for selection scale and that applicant falls within 20% restricted vacancy during the relevant period and as such she is not entitled for any relief as claimed for. Respondents have rightly rejected the claim of the applicant. Accordingly, O.A. lacks merit and deserves to be dismissed.

13. O.A. is accordingly dismissed. No order as to costs.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Member (J)

HLS/-

