

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**ORIGINAL APPLICATION NO.060/00565/2016 &  
M.A. No. 060/00327/2017**

**Chandigarh, this the 22<sup>nd</sup> day of March, 2018**

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Mrs. Achila Dogra, age 60 ½ years, w/o Sh. M.P. Dogra, retired Principal of Post Graduate Government College for Girls, Sector 11, Chandigarh, R/o House No. 668, Phase VI, Mohali (Punjab) (Group 'A')

**....Applicant**

**(Argued by:** Mr. Barjesh Mittal, Advocate)

**VERSUS**

1. UT Chandigarh Administration Chandigarh, UT Civil Secretariat, Deluxe Building, Sector 9 D Chandigarh through its Advisor to Administrator.
2. Education Secretary, Chandigarh Administration, Deluxe Building, UT Civil Secretariat, Sector 9 D, Chandigarh.
3. Director, Higher Education, (Colleges), Chandigarh Administration, Chandigarh, Sector 9-D, Chandigarh.

**....Respondents**

**(Argued by:** Mr. Aseem Rai, Advocate)

**ORDER (Oral)  
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The contour of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant Original Application (O.A.), and expositied from the record, is that applicant Ms. Achila Dogra (since retired) was appointed as Lecturer in Economics, and she joined as such on 01.09.1982 in Govt. College for Girls, Sector 19, Chandigarh. Her services were stated to have been regularized as Lecturer w.e.f. 05.07.1983, vide memo dated 25.01.1996. Even her pay scale was revised, from time to time, as per the relevant notifications.

2. The case set up by the applicant, in brief, insofar as relevant, is that while she was working in Govt. College Sector 46, Chandigarh, she was transferred to Govt. College for Girls, Sector 11, Chandigarh, to look after the work of Principal, in her own pay scale with immediate effect, vide order dated 07.10.2009 (Annexure A-3). Consequently, she joined on 07.10.2009, as officiating Principal in Govt. College, Sector 11, Chandigarh, and continued as such till 31.10.2015, when she retired from service, after attaining the age of superannuation, after getting two years' extension in service.

3. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claimed that as she performed duties of Acting Principal of Govt. College, Sector 11, Chandigarh from 07.10.2009 to 31.10.2015, so she is entitled to the pay scale of Principal, but the respondents did not grant the same despite repeated requests/representations. The action of the respondents was stated to be discriminatory, arbitrary and illegal. On the strength of the aforesaid grounds, the applicant claimed the difference of her salary and that of the regular Principal, w.e.f. 07.10.2009 to 31.10.2015, along with the interest, in the manner, indicated hereinabove.

4. On the contrary, the respondents have refuted the claim of the applicant, and filed written statement, wherein it was inter-alia pleaded that as per the relevant statutory rules, a candidate must possess the degree of Ph.D, for the post of Principal. The applicant and other Lecturers, filed two OAs bearing No. 998/CH/2009 and 898/CH/2009, challenging the recruitment rules. The same were

disposed of, vide order dated 12.10.2010 (Annexure R-2), by this Tribunal.

5. The applicant and other similarly situated Lecturers did not feel satisfied and challenged the pointed order of the Tribunal, by way of CWP No. 22302 of 2010, which was dismissed, vide order dated 25.02.2012 (Annexure R-3), by the Hon'ble High Court, which in substance, is as under:-

“After considering the submissions made by learned counsel for the parties, we do not find any force in the contention of learned counsel for the petitioners that prescribing Ph.D. qualification as essential qualification for promotion to the post of Principal is arbitrary, illegal and discriminatory, being violative of Articles 14 and 16 of the Constitution of India. We are of the view that the Ph.D. qualification for the post of Principal, either for direct recruitment or by promotion, cannot be said to be unrelated to the duties and functions of the post of Principal. In order to maintain high standard of education in the Art and Science Colleges in Chandigarh, the requirement of Ph.D. qualification for the post of Principal cannot be said to be unreasonable. It is well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and the Tribunals can neither prescribe the mode of selection and minimum qualification nor encroach upon the power of the concerned authority so long as the qualification prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post. This principle has been laid down by the Hon'ble Supreme Court in *J. Rangaswamy Vs. Government of Andhra Pradesh and others* (1990) 1 SCC 288 and *P.U. Joshi and others Vs. Accountant General, Ahmedabad and Others*, (2003) 2 SCC 632. In *Usha Khetarpal's case* (supra), the Hon'ble Supreme Court, while upholding the qualification of Ph.D. for the post of Principal by direct recruitment, has held that the Chandigarh Administration has power to prescribe such essential criteria/qualification as it considers to be necessary and reasonable. It has also been observed that the requirement of Ph.D. qualification for the post of Principal is essential to maintain the high standard of education. Once the Ph.D. qualification has been held to be essential to maintain the high standard, then it makes no difference whether the recruitment to the said post is made by direct recruitment or by promotion. In both the methods of recruitment, in our opinion, requirement of Ph.D. qualification for holding the post of Principal is essential. Prescribing of different qualifications for both the method of recruitment, in our view, will result into anomalous situation. A Lecturer/Assistant Professor who does not possess Ph.D. qualification, cannot be said to be in better situation to perform the duties and functions of the post of Principal and to maintain high standard of education in the Colleges. Now, after the revision of pay scales and with the introduction of Career Advance Scheme, on the recommendation of the UGC the time bound scales have been given to the Lecturers of the Colleges/University. The UGC has also prescribed the essential qualifications for various posts, including the post of Principal. Keeping in view the same, the rule-making authority has prescribed Ph.D. as the essential qualification in the cases of promotion to the post of Principal. In this situation, it cannot be said that there is stagnation in the cadre of Lecturers. Thus, we do not find

any illegality or arbitrariness in prescribing Ph.D degree as the essential qualification for promotion to the post of Principal.”

6. That means, since the applicant was not holding a degree of Ph.D, so she was not eligible/qualified to be appointed and therefore, is not entitled to the regular pay scale of Principal. However, she continued working in view of order of status quo dated 11.05.2012 of the Hon’ble Apex Court.

7. According to the respondents, otherwise also, the applicant was only transferred to Govt. College for Girls, Sector 11, Chandigarh to look after the work of Principal in her own pay scale vide order dated 07.10.2009 (Annexure A-3). She did not raise any sort of protest against the said assignment, at that point of time. On the other end, she herself willingly accepted the terms and conditions, contained therein. Now after a lapse of 7 years, she cannot turn around and challenge the officiating arrangement. In all, the respondents claim that the applicant is not at all entitled to the regular pay scale of the Principal, as claimed by her. Instead of reproducing the entire contents of the written statement, and to avoid the possibility of repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of their action, the respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal.

8. Controverting the allegations of the pleadings of the respondents, and reiterating the grounds, contained in the O.A., the applicant filed the rejoinder. That is how we are seized of the matter.

9. Having heard learned counsel for the parties, having gone through the record, with their valuable help, and after considering the entire matter, we are of the firm view that there is no merit and the instant O.A. deserves to be dismissed, for the reasons, mentioned herein below.

10. What cannot possibly be disputed here is that the applicant was transferred from Govt. College Sector 46, Chandigarh to Govt. College for Girls, Sector 11, Chandigarh to look after the work of Principal in her own pay scale with immediate effect, subject to the condition that she will not claim any benefit for the post of Principal, vide order dated 07.10.2009 (Annexure A-3), which reads as under:-

“Mrs. Achila Dogra, Lecturer in Economics (Looking after the work of Dean College, Instructions), Government College, Sector 46, Chandigarh is hereby transferred to Government College for Girls, Sector 11, Chandigarh to look after the work of Principal in her own pay scale with immediate effect, subject to the condition that she will not claim any benefit for the post of Principal.”

11. Meaning thereby, the applicant was asked to look after the work of Principal in her own pay scale, with a clear stipulation, contained therein, that she will not claim any benefit for the post of Principal. Moreover, as she did not fulfil the requisite qualification of Ph.D, essential for the post of Principal, so she was not otherwise eligible to regular pay scale of Principal. In that eventuality, she is not at all entitled for the benefit of regular pay scale of the post of Principal, at this belated stage. This matter is no more *res integra* and is now well settled.

12. An identical question came to be decided by Hon'ble Apex Court in case of **A. Francis Vs. The Management of Metropolitan Transport Corporation Ltd., Tamil Nadu**, Civil

Appeal NO. 7692 of 2014 decided on 13.08.2014. Having considered the similar matter, it was ruled as under in (para 8) by Hon'ble Apex Court:

"8. The order dated 28th February, 2001, by which the appellant was allowed to discharge duties in the post of Assistant Manager had made it clear that the appellant would not be entitled to claim any benefit there from including higher salary and further that he would continue to draw his salary in the post of Assistant Labour Welfare Officer. If the above was an express term of the order allowing him to discharge duties in the higher post, it is difficult to see as to how the said condition can be overlooked or ignored. The decision of this Court in Secretary-cum-Chief Engineer, Chandigarh (supra) was rendered in a situation where the incumbent was promoted on ad hoc basis to the higher post. The aforesaid decision is also distinguishable inasmuch as there was no specific condition in the promotion order which debarred the incumbent from the salary of the higher post. Such a condition was incorporated in an undertaking taken from the employee which was held by this Court to be contrary to public policy."

Again, the same view was reiterated in O.A. No. 060/00295/2014 titled as **Dr. A.S. Sethi Vs. Union of India & Others**, decided on 23.01.2017, by this Tribunal.

13. Sequel, it is not a matter of dispute that the applicant voluntarily joined and continued looking after the duties of Principal, in view of status quo order dated 11.05.2012, of the Hon'ble Apex Court. Ultimately, she had retired on 31.10.2015, from service, on attaining the age of superannuation. She duly accepted the terms and conditions that she will perform the duties of Principal, in her own pay scale and that she will not claim any benefit, for the post of Principal, contained in the order dated 07.10.2009 (Annexure A-3) and now she is claiming the pay scale of the post of Principal, after lapse of seven years of taking officiating charge of Principal on 07.10.2009. She cannot legally be permitted to claim such pay at this belated stage. Section 3 of the Limitation Act, 1963 postulates that subject to the provisions contained in section 4 to 24 (inclusive), every suit instituted, appeal



preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Similarly, Section 21 of the Administrative Tribunals Act, 1985 posits that a Tribunal shall not admit an application, in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within 1 year from the date on which such final order has been made. No doubt this Tribunal has the power to condone the delay, if applicant satisfies sufficient cause for not making application within such period, which is missing in this case.

14. Admittedly, the cause of action to claim the regular pay scale of Principal accrued to her on 07.10.2009, when she was transferred to look after the charge of Principal, vide letter dated 07.10.2009 (Annexure A-3). No ground, much less, cogent to entertain the claim, after such unexplained inordinate delay, is made out. It is now well settled proposition of law that the condonation of delay is not a mere formality but such prayers have to be considered as contemplated in Section 5 of the Limitation Act and not otherwise, in view of law laid down by the Hon'ble Apex Court in the cases of **Union of India & Others Vs. M.K. Sarkar** 2009 AIR (SCW) 761 and **D.C.S. Negi Vs. U.O.I. & Others**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.03.2011. Each day's delay has to be explained by the applicant, in a reasonable manner, which is totally lacking in the present case. If, such vague applications are allowed, then there will be no end to it.

15. Likewise, ex facie, the contention of learned counsel, that the applicant is also entitled to the same relief on the basis of parity

with other similarly situated person and the delay of 7 years would not come in her way to deny the same benefit, is not only devoid of merits, but misplaced as well. A similar question of delay came to be decided by Hon'ble Apex Court in case of **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Others** (2015) 1 SCC 347 wherein it was ruled that principle of parity is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reasons that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim the benefit which were granted to the similarly situated persons. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

16. Therefore, thus seen from any angle, the applicant is not, at all, entitled to any relief, at this belated stage, in the obtaining circumstances of the case.

17. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid prismatic reasons, as there is no merit, so the instant O.A. is hereby dismissed as such. However, the parties are left to bear their own costs.

**(P. GOPINATH)  
MEMBER (A)**

**(JUSTICE M.S. SULLAR)  
MEMBER (J)**

**Dated: 22.03.2018**

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