

17

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1690 OF 2003

New Delhi, this the 15th day of September, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Puran Singh Khatkar,
R/o B-18, Sarai Pipalthala Extn.,
Adrash Nagar, Delhi-33.

...Applicant

(By Advocate: Shri Yogesh Sharma)

versus

1. Union of India through the Secretary,
Ministry of Human Resources & Development,
Govt. of India, New Delhi.
2. Under Secretary to the Govt. of India,
Ministry of Human Resource Development
Education, B-Wing, Ground Floor, Shastri Bhawan,
New Delhi.
3. The Secretary (Education),
Govt. of NCT of Delhi,
Old Sectt., Delhi.

....Respondents

(By Advocates : Shri Mohit Madan for Mrs.Avnish Ahlawat for respondent No.3
Shri R.P. Aggarwal with Shri Ravinder Sharma for respondents
No.1 and 2)

ORDER

SHRI SHANKER RAJU, MEMBER (J):-

Applicant has impugned respondents' order dated 30.12.2002 and has sought the benefit of higher scale of pay of Rs.6500-10500 w.e.f.1.1.1996 till 30.12.2002 with arrears and consequential benefits including retrial dues.

2. Applicant, who was promoted on 28.11.1989 as Assistant Social Education Officer (hereinafter referred to as "ASEO"), has sought for quashing of order dated 28.10.1997 and grant of revised pay scale of Rs.6500-10500 w.e.f. 1.1.1996 in OA No.2598/2001.

3. This Court by an order dated 10.5.2002 in OA 2598/2001 has made the following observations:-

"5. From Annexures A-1 and A-2 it is established that ASEO and Assistant District Inspector had been drawing the same scale as PGTs w.e.f. 21.12.1967. They have continued to draw

identical pay scales till the recommendations of Fifth CPC were offered w.e.f. 1997. Annexure A-3 dated 11.12.1997 clearly establishes that posts of ASEOs and PGTs are equivalent and interchangeable and have been drawing the same scales of pay during the Third and Fourth CPCs till 31.12.1995. However, vide Annexure A-9 dated 28.10.1997, as a result of Government of India notification dated 30.9.1997 applicant was granted the pay scale of Rs.5500-9000 as ASEO which is inferior to the scale of PGT which was placed in the pay scale of Rs.6500-10500 as per Annexure A-10. Learned counsel of respondents stated that applicant's post has not been equated with the teaching posts vide memo dated 5.6.1998 issued by Director (UT), Government of India, Ministry of Human Resources Development (Department of Education). We find that whereas applicant's post of ASEO had been equated and placed in the scales of PGT from time to time since 1967 as per Annexure A-2, which were Presidential orders, respondents are now relying on order dated 5.6.1998 issued by a Director in denying the equation of ASEO with the post of PGT on the basis of certain instructions of Ministry of Finance. Learned counsel of applicants relied on *Vijay Singh Rao v. State of Haryana & Anr.*, 1986 (1) SLR 455 (Punjab & Haryana High Court) holding that instructions issued by finance department have no legal and binding force. These are only administrative in nature. In our view, Annexure A-2 dated 29.6.1972 were Presidential orders whereby the post of ASEO was equated with the post of PGT and accorded the same scale of pay right from 1967 to 1995. Presidential orders will certainly have precedence over the orders issued by a Director of the Department of Education without obtaining Presidential orders for supersession of the earlier orders and denying equation of the post of ASEO with PGT.

6. From the above discussion, it is established that the post of ASEO has been equated with and enjoying the same scale of pay as that of PGT since 1967. The posts are also interchangeable and act as feeder categories under the recruitment rules for promotion to the post of Vice Principal.

7. Having regard to the reasons recorded and discussion made above, we quash and set aside the order dated 28.10.1997 (Annexure A-9) qua the post of ASEO and direct respondents to re-consider the claims of applicant for equation of his post and pay scale with that of PGT w.e.f. 1.1.1996. In the event of an adverse decision to revise the scale of pay of the post of ASEO has had equation and partly of scale with the post of PGT since 1967 as per the decision of the President. Respondents are directed to complete the above exercise within a period of three months from the date of communication of these orders."

4. Contempt Petition No.361/2002 filed by the applicant was dismissed on 24.2.2003 and taking cognizance of the fact that Minister of HRD, representative of President has passed an order, liberty was given to the applicant to approach in appropriate original proceedings.

5. Learned counsel for the applicant states that finding of the Tribunal in earlier case (*supra*) that the post of ASEO and PGT are interchangeable and equated, the respondents are estopped from taking a different stand that teaching

has not been a part of ASEO as such the two posts are not comparable. It is also stated that vide letter dated 2.12.1970, the respondents through the concerned authority in Delhi Administration has equated the post of ASEO with PGT. It is also stated that the same has been implemented till the recommendations of the Fourth Central Pay Commission (CPC). The applicant being ASEO had continued to have parity with PGT.

6. Shri Yogesh Sharma, learned counsel for the applicant contends that Presidential order now passed on 30.12.2002 has only prospective effect and the applicant's post which was interchangeable, in the absence of any recommendation of Fifth CPC, has to be treated at par in the matter of pay scale and grant of replacement scale vide letter dated 28.11.1997 is violative of principles of equality enshrined under Article 14 of the Constitution of India.

7. In the aforesaid conspectus, it is stated that w.e.f. 1.1.1996 till 30.12.2002, i.e., the date when the applicant retired, thereof he is entitled to the revised pay scale at par with PGT and computation of pension on the basis.

8. On the other hand, respondents counsel Shri R.P. Aggarwal, learned counsel for the respondents no.1 and 2 as well as Shri Mohit Madan, learned proxy counsel for Mrs. Avnish Ahlawant, learned counsel for the respondent No.3 have vehemently opposed the contention raised by the applicant. According to them, the directions issued by the Tribunal were only for consideration of the matter and it has been specifically observed that in case of adverse order passed not to revise the scale of pay of ASEO, Presidential order has to be sought, in the light of the fact that presidential order can be superceded by another presidential order. In the aforesaid backdrop, it is stated that once the presidential order has been passed, it has an implied effect in retrospect and the present OA is barred by the principle of res judicata.

9. Shri R.P. Aggarwal further states that in the light of the decision of the Apex Court in the case of Union of India Vs. P.V. Hariharan, 1997 SCC (L&S) 838, it is not open for the Tribunal to sit as an appellate authority over the recommendation of the expert body like Pay Commission. In the absence of any

29

(4)

credible material as to interchangeability of ASEO and PGT, the claim of the applicant has rightly been rejected.

10. We have carefully considered the rival contentions of the parties and perused the material available on record.

11. It is trite law that in the matter of pay scale only expert bodies are competent to make recommendations and the Government to approve it. Equal pay for equal work and parity in pay scale can be a subject matter of interference in a judicial review if the hostile discrimination under Articles 14 and 16 of the Constitution of India is made out.

12. It is also not disputed that till Fourth CPC, applicant was treated in the matter of pay scale at par with PGT. It is also not in dispute that till 30.12.2002 when the presidential order came as regards recommendation of pay scale of equivalent post, the post of ASEO has been equated with PGT. In Fifth CPC, there were no recommendations of higher pay scale to the ASEO as this category was not considered. However, PGTs have been given a recommendation to be placed in the pay scale of Rs.6500-10500 as per the qualification, discharge of duties and other modalities attached to the post.

13. In the earlier OA, the Tribunal was of the view that since 1967 in the light of the presidential order, the parity has been drawn between the post of ASEO and PGT insofar as pay scales are concerned. In the present case, any executive instruction(s) or order(s), i.e., impugned order 28.10.1997 whereby the applicant was placed in the pay scale of Rs.5500-9000 as a replacement scale, the presidential order(s) will have precedence over the order issued by the executive. However, a finding has also been arrived at that the post is interchangeable and the post of ASEO is a feeder cadre post for promotion to the post of Vice Principal. In this view of the matter, the order placing the applicant in the lower pay scale was set aside with a direction to the respondents to re-consider the claim and in the light of any adverse decision regarding revision of pay scale, presidential order should have been obtained.

14. In our considered view, the present litigation, which is founded on the cause of action, i.e., presidential order of 30.12.2002, cannot be ousted on the

h

principle of res judicata. The condition precedent for its applicability is attainment of finality of the issue between the parties. As in Contempt Petition, referred to above, liberty has been given to the applicant to raise his grievance and the fact that the issue raised is applicability of presidential order in retrospect is res integra. The objection is overruled.

15. The presidential order unless specifies cannot be extended in retrospect. The presidential order is something which has a higher footing than an executive instruction. The executive instructions cannot be applied retrospectively. Accordingly, the earlier decision of the president, which was in vogue till 29.12.2002 has been overridden by the impugned order dated 30.12.2002. The claim of the applicant is for grant of higher scale of Rs.6500-10500 on comparison with the post of PGT, as regards interchangeability is concerned, the same has been laid at rest by the earlier decision, any contrary observation would amount to sitting over as an appellate authority over the finding of the coordinate Bench. Moreover, we find that respondents' own order dated 2.12.1970 has clearly placed the ASEOs equivalent to PGTs as regards transferability is concerned.

16. As regards recommendations of Fifth CPC are concerned, we find that higher scale has been granted under para 55.29 to the PGTs. The cadre of ASEO itself is a dying cadre and the same has been abolished with the retirement of the applicant, no specific recommendation has been made with regard to this cadre. However, the fact that the applicant was being treated at par in the matter of pay scale upto Fourth CPC and there has been orders to its interchangeability with PGT. The presidential order would not be in effect retrospectively. Accordingly, we are of the concerned view that in the matter of pay scale though expert bodies are recommandary body but yet discrimination which offends Articles 14 and 16 of the Constitution of India cannot be overlooked. Once the applicant has been treated at par without any recommendations of Third and Fourth CPCs regarding interchangeability and equated with PGT. He is also entitled to the pay scale till issue of presidential order on 30.12.2002. We do not find either any intelligible

differentia or reasonable nexus in the action of the respondents with the object sought to be achieved in depriving of the applicant of higher scale of PGT.

17. In the result, for the aforesaid reasons, we partly allow this OA and direct the respondents to reconsider the claim of the applicant for grant of pay scale of Rs.6500-10500 from 1.1.1996 till 30.12.2002, the applicant shall be entitled as a consequence arrears of pay and also revision of retrial dues. The process should be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V.K. Majotra
(V.K. MAJOTRA) 15.9.04
VICE CHAIRMAN (A)

/ravi/