

(1987) 05 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Appeal No. 1530 of 1983

M.D. Attrey

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 12-05-1987

Acts Referred:

Citation : (1987) 32 DLT 59(2) : (1987) 13 DRJ 192

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : D.P. Gupta and Y.R. Sharma, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The petitioner was working as an Assistant Teacher under respondent No. 3, namely, Rohtagi A.V. Secondary School, Delhi. He joined the School on 17th July, 1950. The School is an aided school and the Government gives 95% of the grant.

(2) In the writ petition it has been contended that a post of Head Master in the Primary Branch of the School was created by the Education Department in the scale of Rs. 440-25-750 with effect from 1st August, 1981. It is averred that though the Education Department had nominated D.P.C. for selection to the said post of Head Master, the needful had not been done and the selection had not been made. The averment of the petitioner is that he was the senior-most Assistant Teacher who was eligible to be selected to the post of Head Master.

(3) The second grievance of the petitioner was that he was eligible for the grant of selection grade to the post of Assistant Teacher in the scale of Rs. 530-20-630 with effect from 1st February, 1978. In this connection it was alleged that the Education Department has granted this but despite representations the payment was not being made.

(4) Another prayer in the writ petition was that 18 days pay had been illegally deducted from the salary of the petitioner and the respondent-School should be

asked to pay the same. Particulars of the deductions so made are contained in the writ petition.

(5) The last contention of the petitioner in the writ petition was that on the recommendations of the Third Pay Commission Report, the salary of the teachers was revised to the scale of Rs. 330-560. It is stated that the petitioner was senior to one Shri Raj Kishore who was also working in the same school, but in the revised scale of 330-560 the salary of Raj Kishore was fixed at Rs. 485 per month while the salary of the petitioner was fixed at Rs. 440. The petitioner claims salary at the rate of Rs. 485 per month with effect from 1-1-1973 instead of salary at the rate of 440 per month.

(6) After the filing of the writ petition, the petitioner retired in September, 1984. It is, however, admitted that during the pendency of this writ petition the petitioner has been allowed salary for 18 days, which had been deducted earlier and in addition thereto he has also been given the selection grade. These two reliefs have become infructuous.

(7) The petitioner has filed C.M. No. 891 of 1984 in which it has been contended that while paying him the salary for the month of October-September, 1983, the respondent-School has deducted salary payable to the petitioner for the period from 14th May, 1983 to 16th August, 1983. The salary for this period is alleged to have been deducted on the ground that the petitioner was absent and did not attend the school. According to the petitioner he was present in the school and he was not: allowed to mark his presence in the school register which was being maintained on the first floor but his presence could be verified from the attendance register of the class which was being taken by the petitioner. The petitioner has prayed that this Court should pass appropriate orders directing the release of the salary for this period.

(8) Taking up the petitioner's first contention with regard to his appointment as the Head Master, in my opinion no relief can be granted to the petitioner on this account. It is not in dispute that till today no one has been appointed as the Head Master of the School. Merely because a post has been created it does not give a right to a person, who may be eligible to be appointed as a Head Master, to ask for a writ of mandamus for directing the school to appoint a Head Master. This is more so when the petitioner has already retired and cannot be appointed to the said post. The right of the petitioner was only to be considered for the post of Head Master if the post was to be filled. This right of the petitioner has not been violated as the post has not been filled.

(9) The next contention of the petitioner was with regard to fixation of his salary with effect from 1st January, 1973. In order to appreciate this contention, it is necessary to note a material fact. Shri Raj Kishore joined as a Mahajani teacher in the said School in the year 1943. He was put in the scale of Rs. 55-3-85. The petitioner joined as an Assistant Teacher on 17th July, 1950. He was also appointed in the pay scale of Rs. 55-3-85. His first pay was fixed at Rs. 55. It is

obvious that at the time when the petitioner joined service he was getting lesser pay than Raj Kishore who has been appointed as a Mahajani teacher in the same scale of 55-3-85, 7 years earlier. With effect from 3rd December, 1963 Raj Kishore was appointed as an Assistant Teacher. His pay as Assistant Teacher was fixed higher than the petitioner. This is because both of them were in the same scale of pay but Raj Kishore had served in that scale for a longer period. Obviously because of his initial increments which he had earned, he was drawing higher salary than that which was being drawn by the petitioner.

(10) Immediately before 1st January, 1973 the salary which was being drawn by Raj Kishore was higher than the salary which was being paid to the petitioner. With effect from 1-1-1973 the salary of both the petitioner and Raj Kishore was fixed in the scale of 330-560. In view of the salary which was being drawn by them in the revised scale, the salary of Raj Kishore with effect from 1-1-1973 was fixed at Rs. 485 and that of the petitioner at Rs. 440.

(11) Merely because the petitioner was senior to Raj Kishore as an Assistant Teacher can be no ground for fixing petitioner's salary at Rs. 485. Equal pay for equal work does not mean that the actual salary which is paid to different teachers in the same scale must be identical. The principle of equal pay for equal work postulates fixation of salary of persons doing identical work in same or identical scales of pay. The point at which the salary of individual persons may be fixed will vary depending upon the length of service put in by those employees. In the present case, in view of the fact that Raj Kishore had put in larger number of years in service with the school than the petitioner and as he was drawing higher salary than the petitioner, Therefore, his pay was fixed at Rs. 485 while the petitioner's pay was fixed at Rs. 440 with effect from 1st January, 1973.

(12) Learned counsel for the petitioner has sought to place reliance on Central Civil Services (Revised Pay) Rules, 1973, and in particular on the following note:

"WHERE in the fixation of pay under Clause (b) of paragraph (A) or paragraph (B), the pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1973 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scales as that of the junior".

The bare perusal of the said note shows that the same has no application to the facts of the present case. That note would have applied if prior to 1st January, 1973 the petitioner was drawing higher salary than Raj Kishore but after 1-1-1973 the salary of Raj Kishore was fixed at a point higher than that of the petitioner. In the present case, as already noted, the salary which was being paid to the petitioner was lower than the salary which was being received by Raj Kishore. The salary which was fixed in the revised scale of 330-560 had to be at the corresponding point. The corresponding point came to 485 for Raj Kishore and 440 for the petitioner. There is no provision of law which can help the

petitioner in getting his salary fixed at Rs. 485 with effect from 1-1-1973. There is, Therefore, no merit in this contention of the petitioner.

(13) Coming to the last point, namely, the deduction of salary made for the period from 14th May, 1983 to 16th August, 1983, I find that there is merit in the submission of the petitioner. As directed the respondents produced in Court the attendance register of the class which was being taken by the petitioner. The perusal of the said register discloses that on 14th May, 1983 the petitioner had taken attendance. This shows the presence of the petitioner in the said School. Merely because the petitioner did not sign the attendance register meant for the Teachers can be no reason for disbelieving his contention that he attended the school regularly. After 14th May, 1983 the summer vacations started. I am not prepared to disbelieve the further averment of the petitioner that after the summer vacations he attended the school and took the classes. In my opinion, the respondent-School was not justified in deducting the salary of the petitioner for the period from 14th May, 1983 to 16th August, 1983. The petitioner was not absent during this period

(14) There are two other days for which the salary of the petitioner has been deducted i.e. 13th and 14th September, 1984. The attendance register of the class shows that the petitioner attended the school on those two days. The petitioner would, Therefore, be entitled to receive salary for these 2 days as well.

(15) For the aforesaid reasons, the writ petition is partly allowed. A writ of mandamus is issued directing the respondents to pay to the petitioner salary for the period from 14th May, 1983 to 16th August, 1983 as well as for 13th and 14th September, 1984. The payment of this salary should be made: within two months from today. Parties to bear their own costs.