

(2016) 03 RAJ CK 0129

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14328 of 2010

Miss. Sunita Chopra

APPELLANT

Vs

Kendriya Vidyalaya Sangathan

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 RLW 2223 : (2016) 3 WLC 391

Hon'ble Judges : Mr. Satish Kumar Mittal, CJ. and Mr. Mohammad Rafiq, J.

Bench : Division Bench

Advocate : Shri Rajendra Vaish, Advocate, for the Petitioners; Shri Krishna Verma, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Mohammad Rafiq, J.—This writ petition filed by two writ petitioners namely; Miss Sunita Chopra and Mrs. Renu Vaish seeks to challenge the judgement passed by Central Administrative Tribunal dated 16.09.2009, by which the Original Application filed by the petitioners has been dismissed and also the order dated 28.10.2009, by which the petition seeking review of the aforesaid judgement was dismissed. Petitioners have also assailed validity of the order dated 19.05.2005, which was challenged by them before the Tribunal with the prayer that the same be declared illegal to the extent of providing benefit of senior scale to the petitioners from the year 1991 and the respondents be directed to modify the same taking into consideration the date of appointment of the petitioners as 07.09.1987 and 01.10.1986 respectively and provide them the benefit of ACP from 07.09.1999 and 01.10.1998 respectively and accordingly fix them in the higher pay scale and also grant arrears thereof.

Petitioners applied for appointment as Trained Graduate Teacher in the subject of English and Biology respectively. They were interviewed by a Selection Committee. On the recommendation of the said Committee, petitioner no. 1-Miss Sunita Chopra was appointed vide appointment letter dated 26.08.1987 and

petitioner no. 2-Mrs. Renu Vaish by appointment order dated 30.09.1986. According to petitioners, the respondents by order dated 26.04.1994 (Annexure-3) issued the order of their substantive appointment immediately on completion of period of two years from the date of their initial appointment. The respondent by their order dated 21.12.1993 on completion of statutory 21 days in service course by the petitioners, allowed them to cross the efficiency bar.

2. Shri Rajendra Vaish, learned counsel for the petitioners argued that even otherwise, initial appointment of the petitioners itself was substantive in nature because the same was made after inviting applications from open market and making the petitioners to compete with thousands other candidates and on the basis of recommendation of the Selection Committee. These appointments thus regular in nature for all practical purposes, petitioners ought to be granted benefit of senior scale on completion of twelve years from the date of initial appointment. Admittedly, it is argued that since the petitioner no. 1-Sunita Chopra made substantive by order dated 26.04.1994 with effect from 7.9.1989 and petitioner no. 2-Renu Vaish was confirmed with effect from 01.10.1988, they ought to be granted the benefit of senior scale at least from the date of completion of twelve years, counting from the aforesaid dates. The Tribunal has erred in law in dismissing the Original Application filed by the petitioners by wrongly relying on the judgements of Supreme Court in Punjab State Electricity Board and ors. v. Jagjiwan Ram and ors.-(2009) 1 SCC (L&S) 769, State of Punjab v. Ishar Singh-(2002) 10 SCC 674, State of Punjab v. Gurdeep Kumar Uppal-2004 SCC (L&S) 444 and State of Haryana v. Haryana Veterinary and AHIS Assn.-(2000) 8 SCC 4. Those judgements have no application to the facts of the present case. Learned counsel submitted that controversy raised in this matter is squarely covered by the earlier division bench judgement of this Court in Kendriya Vidyalaya Sangathan and ors. v. Gajendra Singh, D.B. Civil Writ Petition No. 5803/2001 dated 27.10.2009, copy of which is placed on record at Annexure-6. In that judgement, the division bench held that period of service even rendered on trial basis, which counted for probation, has to be also taken as part of substantive service conferring the eligibility of experience of five years on the employee concerned. The same analogy should apply for the purpose of grant of senior scale to petitioners.

3. Learned counsel for the petitioners argued that the Tribunal neither in the impugned order while dismissing the Original Application, nor in the judgement dismissing the review petition has appreciated the incongruity in the stand of the respondent that while the petitioners are being made substantive with effect from 07.09.1989 and 01.10.1988, the period of twelve years for grant of senior scale is being counted from the date of their qualifying the B.Ed. examination. Learned counsel referred to the appointment order of the petitioners at Annexure-1 and Annexure-2 and submitted that bare perusal of the appointment orders would show that the nature of appointment of the petitioners was substantive and not adhoc/temporary.

4. Per contra, Shri Krishna Verma, learned counsel for the respondents opposed the writ petition and submitted that the appointment orders of the petitioners would bear it out that their appointment was not on substantive basis. They were appointed on trial basis against temporary vacancies on an initial pay of Rs. 1400 subject to deductions. The appointment was subject to various conditions including condition no. 4(iv), which provided that in the event of his/her completing the training course satisfactory in the first attempt, he/she will be appointed as regular TGT(English) on probation for two years and condition no. 4(v) was that the seniority in the grade of TGT on his/her regular appointment will be counted from the date of announcing the result of teacher's training/degree diploma examination if he/she passes in the first attempt. He/she will be confirmed in his/her turn subject to his/her continued efficiency and good conduct. Condition no. 4(vi) specifically provides that in the event of his/her not passing the teachers training course in the first attempt he/she will not be eligible for being appointed in the grade of Rs. 1400/- in the Sangathan, even on further trial basis and will have no claim whatsoever on the Sangathan.

5. Shri Krishna Verma, learned counsel for the respondents further submitted that the argument, which the petitioner is raising before this Court that the period of twelve years should be counted from the date of their substantive appointment indicated in the order dated 26.04.1994 was not raised before the Tribunal either in the Original Application or even in review petition, therefore, cannot be allowed to be raised for the first time before this Court. The division bench judgement in Kendriya Vidyalaya Sangathan, supra is distinguishable on facts as therein the employee concerned had prayed for a direction to treat him eligible for promotion having experience of five years by counting probation period of two years. Learned counsel for perusal of the Court has cited the scheme of Kendriya Vidyalaya Sangathan, JNU Campus, New Delhi dated 15.02.1989 for grant of benefit of senior scale, according to which the senior scale could be granted to teachers after completion of 12 years or more service in the basic scale. Such basic scale would be granted only if the petitioners qualified the B.Ed. Examination. Learned counsel for the respondents in support of his arguments relied on the judgements of Supreme Court in State of Rajasthan and ors. v. Jagdish Narain Chaturvedi-(2009) 12 SCC 49, State of Punjab and ors. v. Gurdeep Kumar Uppal and ors.-(2003) 11 SCC 732 and State of Punjab and ors. v. Ishar Singh and ors.-(2002) 10 SCC 674.

6. We have given our anxious consideration to the rival submissions made by learned counsel for the parties and perused the material on record.

7. Perusal of the impugned order passed by the Tribunal indicates that the Tribunal was conscious of the fact that ad hoc/trial service rendered by the applicants could not be counted for the purpose of grant of senior scale even though this service could be counted for the purpose of taking into consideration the probation period of two years. The Tribunal in arriving at that conclusion was guided by condition nos. 4(i), 4(iv), 4(v) and 4(vi) of the appointment orders,

which reads as under:

(4) (i) He/She would be "On trial" initially for a period of two years.

(iv) In the event of his/her completing the training course satisfactory in the first attempt, he/she will be appointed as regular TGT(English)/(CBZ) on probation for two years. Satisfactory service during the trial period will count towards the two years `probation period`."

(v) The seniority in the grade of TGT on his/her regular appointment will count from the date of announcing the result of teacher's training/degree diploma examination if he/she passes in the first attempt. He/she will be confirmed in his/her turn subject to his/her continued efficiency and good conduct.

(vi) In the event of his/her not passing the teachers training course in the first attempt he/she will not be eligible for being appointed in the grade of Rs. 1400/440-750 in the Sangathan, even on further trial basis and will have no claim whatsoever on the Sangathan."

8. The Tribunal in view of all the above conditions, held that the appointment of the petitioners was on trial basis for a period of two years, even though in the event of successful completion of trial period of two years, this period is counted towards probation. As per condition no. (iv), supra, a candidate would be appointed as regular TGT (English)/(CBZ), in the event of his/her completing the training course satisfactory in the first attempt. Not only this, condition no.(v) also provides that the seniority in the grade of TGT on regular appointment will be counted from the date of announcing the result of teacher's training/degree diploma examination if the candidate passes in the first attempt. Condition no. (vi) has provided that in the event of his/her not passing the teachers training course in the first attempt he/she will not be eligible for being appointed in the grade of Rs. 1400/440-750 in the Sangathan.

9. Thus, it is evidently clear that the condition precedent for grant of appointment in the grade of TGT and also for the purpose of counting seniority of service, was qualifying Teacher Training Course/B.Ed. Examination. Kendriya Vidyalaya Sangathan has in this behalf issued the Circular dated 15.02.1989, condition no. (ii) of which reads as under:

"(ii) Senior scale may be granted to teachers after completion of 12 years or more service in the basic scale. However, this is to be effective from 1.1.1986."

10. It would be evident from the above that senior scale may be granted after completing 12 years or more service in the basic scale. As per condition no. 4(vi) of the appointment orders of the petitioners if such candidate fails to pass the Teachers Training Course/B.Ed. in the first attempt, he/she will not be entitled to be appointed in the grade of Rs. 1400/440-750 even on further trial basis and will have no claim whatsoever. In other words, appointment in the grade of Rs. 1400/440-750 on regular basis would be made only when a candidate qualifies the Teachers Training Course/B.Ed. Examination. Even condition no. (v) also

makes it clear that seniority in the grade of TGT on regular appointment will be counted from the date of announcement of the result of teacher's training/degree diploma examination if candidate passes in the first attempt.

11. This is therefore peculiar to the service of the Kendriya Vidhyalaya Sangathan that even though initial service of the Teacher appointed on trial basis, may count towards probation, but he is not considered regular and does not count towards seniority till he/she passes the Teacher Training Examination/B.Ed. Examination. In other words, he/she is deemed to be regular/regularised in service only upon his/her qualifying the Teacher Training Examination/B.Ed. Examination. The cited judgement of Kendriya Vidyalaya Sangathan, supra does not throw any light on the question with which we are concerned in the present case. It rather deals with the question of eligibility of promotion from TGT to PGT where for experience of five years for the lower post is required. The division bench held that the period of probation spent on trial basis could be counted towards requisite experience of five years for the purpose of eligibility of promotion.

12. The Supreme Court in Ishar Singh, supra has held that inclusion of ad hoc services in reckoning the length of service would not be permissible for grant of selection grade. The Supreme Court in Gurdeep Kumar Uppal, supra has also held that only regular service should be counted towards seniority. The Supreme Court in Jagdish Narain Chaturvedi, supra while reversing the judgement of Larger Bench of this Court has also taken the view that so long as the person appointed on ad hoc, daily wages and work-charged basis, is not borne on the cadre in service, such service cannot be counted for the purpose of grant of selection scale. Since the selection grade is granted in lieu of promotion, promotion has to be amongst persons, who are borne on a regular cadre in service. Ad hoc, daily wages or work charged basis, prior to being borne on a cadre in service, does not count for the purpose of determining eligibility for promotion. The Supreme Court held that initial appointment might have been against a post but appointment being on ad hoc, daily wages and work-charged basis, persons so appointed were not borne on a cadre until their regularisation. In the present case also the initial appointment of the petitioners on trial basis was made against temporary post and as per conditions of appointment, it could be treated as regular only in the event of petitioners' completing the training course satisfactorily in first attempt. Petitioners acquired the B.Ed. qualification on 20.06.1991 and 14.05.1991 respectively and then their service was regularised from the date of announcement of B.Ed. degree and accordingly they were entitled to grant of senior scale from the date of completion of 12 years therefrom i.e. with effect from 20.06.2003 and 14.05.2003, which is when they were granted benefit of such senior scale.

13. We therefore do not find any infirmity in the view taken by the Tribunal in the impugned order.

14. The writ petition, being devoid of merits, is hereby dismissed.