
(2014) 09 DEL CK 0114
In the Delhi High Court
Case No : W.P.(C.) No. 6166/2013

Nirmal Kanta

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0114

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Puneet Verma, Advocate for the Appellant; Arun Bhardwaj, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 12.03.2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (for short, "the Tribunal") in O.A. No. 1313/2011 whereby the petitioner's application was dismissed by the Tribunal. The petitioner had raised her grievance before the Tribunal that she has not been placed in the correct pay scale, which had been granted to other similarly placed employees.

2. The case of the petitioner was that she was initially appointed as a part time Craft Teacher on ad hoc basis on a consolidated salary vide order dated 24.03.1987. Vide orders dated 09.03.1988, she was deemed to have been appointed with effect from 13.10.1987 as a full time teacher at Rs. 950/- in the pay scale of Rs.950-20-1150-EB-25-1500 plus usual allowances including HRA, and was posted in the Social Education Department against one of the five posts of Craft Teachers sanctioned for absorption of part time Craft Teachers vide Resolution No. 6 dated 13.10.1987 of the respondent-New Delhi Municipal Committee. The petitioner claimed that she possessed the requisite qualifications for such appointment. The petitioner claimed that she was not aware that others

had been appointed to the post of Craft Teacher in the higher pay scale of Rs. 1200-2040, instead of pay scale offered to her i.e. Rs. 950-1500.

3. The petitioner preferred the aforesaid original application with the plea that she had recently learnt that others similarly situated were granted the higher pay scale of Rs. 1200-2040. She raised a query under the Right to Information Act (RTI Act) and the information furnished confirmed that position. Under the RTI Act, she obtained the resolution passed by the respondent sanctioning five posts of Craft Teachers and the recruitment rules for Senior Social Education Teachers in Social Education Department, as per which, the pay scale for such posts was determined at Rs. 1200-2040 under the Fourth Central Pay Commission (CPC) report. The petitioner states that she was promoted to the post of Senior Social Education Teacher in the pay scale of Rs. 4000-6000 along with five other persons who were already working as Senior Social Education Teachers on ad hoc basis in pursuance to an order of April, 2008. As aforesaid, the petitioner claimed that she became aware of her being granted a lower pay scale of Rs. 4000- 6000 instead of Rs. 4500-6500-granted to other employees, when the benefit of the ACP scheme was granted by the respondent. The petitioner represented against the same on 01.01.2010. Thereafter she obtained information under the RTI Act and preferred the original application. The petitioner sought the higher pay scale on the principle of equal pay for equal work.

4. The petition was opposed by the respondent. In their counter reply, the respondent raised the issue of the application being barred by limitation since she had been placed in the pay scale of Rs.950-1500 on 09.03.1988, whereas the original application was preferred only in the year 2011. On merits, the respondent stated that there are two different posts of craft teachers, namely, Junior Social Education Teachers in the pay scale of Rs. 950-1500, and Senior Social Education Teachers in the pay scale of Rs. 1200-2040. Since the petitioner was appointed and was working as a Junior Craft Teacher, she was correctly placed in the pay scale of Rs. 950-1500. The respondent also contended that apart from making general averments, no specific details of other employees who were allegedly drawing the pay in the higher pay scale of Rs. 1200-2040 were pleaded. The respondent categorically denied that any person in the employment of the respondent, who had joined in the same post as the applicant, was ever placed in the higher pay scale. The respondent also stated that prior to 1981 itself, there were two pay scales of craft teachers as per the recruitment rules and that the junior scale was Rs. 950-1500. The respondent also stated that when the new recruitment rules were framed, the nomenclature of the Craft Teacher was changed to that of Social Education Teachers but the posts remained the same, with the same nature of duties in two levels of posts with different nomenclature i.e. the Junior Social Education Teacher and Senior Social Education Teacher in the pay scales of Rs.950-1500 and Rs. 1200- 2040 respectively vide recruitment rules framed in 1991. The corresponding pay scales for the pay scales of Rs. 950-1500 and Rs. 1200-2040 (under the Fourth CPC) as fixed under the Fifth and Sixth CPCs were also disclosed by the respondents.

5. The Tribunal considered the issues arising in the matter at length and dismissed the same on the ground of limitation and laches by observing that the petitioner never questioned the initial fixation of her salary in 1988 till the year 2010. She had not questioned the seniority of the five people shown above her as in April, 2008 who were promoted as Senior Social Education Teachers on ad hoc basis prior to her. The Tribunal placed reliance on the judgments of the Supreme Court in Ex. Capt. Harish Uppal Vs. Union of India (UOI) and Others, wherein the Supreme Court had held that delay defeats equity and courts should help those who are vigilant, and not those who are indolent. Reliance was also placed on Ratan Chandra Sammanta and others Vs. Union of India and others, wherein the Supreme Court had held that delay deprives the person of the remedy available in law. A person who has lost his remedy by lapse of time, loses his right as well. The Tribunal held that the petitioner had been sleeping over her rights and did not agitate against the alleged discrimination at the first available opportunity in the year 1988 or even in April, 2008 when five other persons were granted promotion on ad hoc basis as Senior Social Education Teachers and the petitioner was left out.

6. Even on merits, the Tribunal did not find any substance in the petitioner's claim. The Tribunal held that the petitioner had not brought on record the relevant facts to show as to how the exercise of option allowed to her under Fundamental Rule 22 (I)(a)(1) in April, 2008, had impacted the salary which was being paid to her. In this background, the Tribunal dismissed the original application.

7. Learned counsel for the petitioner submits that on account of delay and laches, the petitioner may not be entitled to arrears of pay for a period beyond three years, however, the petitioner is entitled to notional fixation of pay from 1987 onwards in the pay scale of Rs. 1200-2040. Learned counsel for the petitioner has also submitted that others similarly situated persons who were appointed at the same time as the petitioner were granted the higher pay scale of Rs. 1200-2040 and the petitioner was discriminated.

8. On a query by the Court, learned counsel for the petitioner has not been able to satisfy this Court that the petitioner had produced any cogent or relevant material in support of her submissions. The petitioner was initially appointed as a part time Craft Teacher. Subsequently, on 09.03.1988, she was appointed as a Full Time Craft Teacher in the pay scale of Rs.950-20- 1150-EB-25-1500 against one of the five posts of Craft Teachers sanctioned in the regular scale vide Resolution No. 6 dated 13.10.1987. There is nothing to show that initially she was appointed as a Senior Craft Teacher. The petitioner has herself produced the recruitment rules for the post of Senior Social Education Teacher which show that the said post is a promotional post from the post of Junior Social Education Teacher with 10 years experience in the grade of Rs. 950-1500. Delay and laches in a case like the present would be fatal to the claim of the applicant. This is for the reason that after such length of time, the respondent would be

severally handicapped in defending the claim of the applicant particularly when the claim is founded upon the mere ipse dixit of the claimant and is not supported by any documentary evidence. It is clear that the petitioner did not raise any such grievance with regard to her alleged wrong fixation of pay in 1987-88, and raised a grievance for the first time only in the year 2010. We are of the view that the Tribunal was right in rejecting the petitioner's original application both on limitation as well as on merits. Consequently, we dismiss the present writ petition.