
(2020) 03 CAT CK 0079

In the Central Administrative Tribunal

Case No : Original Application No. 1730 Of 2017

Pushp Lata Gupta

APPELLANT

Vs

Directorate Of Education And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Citation : (2020) 03 CAT CK 0079

Hon'ble Judges : Vijay Lakshmi, Member (J); Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : L. Ojha, Anuj Kumar Sharma

Final Decision : Dismissed

Judgement

Vijay Lakshmi, Member (J)

1. The applicant is a retired TGT, who is aggrieved by the order dated 14.8.2015 passed by respondent no.3 whereby her claim for granting Selection Scale to her with retrospective effect has been denied. She has also challenged the order dated 3.6.2016 passed by respondent no.2 by which her request for review of Departmental Screening Committee's report dated 30.7.2015 has been rejected.

2. We have heard Shri L. Ojha, learned counsel for the applicant, Shri Anuj Kumar Sharma, learned counsel for the respondents and have carefully gone through the records.

3. The brief facts, relevant for a correct adjudication of the controversy involved in this case, are that on 13.8.1974, the applicant was appointed to the post of TGT in the Directorate of Education in Delhi in the pre-revised entry scale of Rs.250-550. After completion of 12 years of service, she was granted Senior Scale of Rs.1640-2900. On 31.3.2008, she retired as TGT (S.Sc.) on attaining the age of superannuation. The grievance of the applicant is that despite the fact that she had completed 18 years of service, with effect from the date of her appointment/joining, i.e. 13.8.1974, she did not get the next higher grade,

namely Selection Scale, which was due to her by virtue of point No.4 of Circular/ Clarification dated 3.11.1987, which provides as under:-

"For those teachers who have already completed 18 years of service, the requirement of acquiring the qualification for the next higher grade may be waived. Those who have not completed 18 years of service as well as new entrants will be required to acquire the qualifications prescribed for the higher post before being considered for grant of selection-scale."

4. According to the applicant her claim for granting Selection Scale was rejected by the respondents due to lack of service training programme certificate which was an essential qualifications required for the grant of Selection Scale.

5. Learned counsel for the applicant has contended that as the applicant had already completed 18 years of service from the date of her initial joining, the requirement of acquiring the qualifications for the next higher financial upgradation, i.e. Selection Scale, should have been waived off as per the clarification cited above. However, when the applicant on 14.3.2013, submitted her representation to the respondent No.1, for grant of Selection Scale from retrospective effect as she had retired on 31.3.2008, she was informed by the Department, that as per Circular dated 12.11.2009, the requirement of "service training programme certificate", for grant of Selection Scale is relaxed only in respect of those retired Teachers, whose documents, as stated in the said circular, are not traceable. On the aforesaid ground, the prayer of the applicant for grant of Selection Scale, was rejected unanimously in the DPC meeting vide impugned order dated 14.8.2015. The applicant moved an application seeking review of the DPC which was also rejected by the respondents vide 2nd impugned order dated 3.6.2016.

6. The applicant has challenged the legality and correctness of both the aforesaid impugned orders on the ground that despite the fact that the case of the applicant is squarely covered by the Circular/clarification dated 3.11.1987 (Annexure 4), the representation and review application both were arbitrarily rejected by the respondents.

7. Learned counsel for the applicant has contended that the respondents have already issued a Corrigendum No.F.No.DE/3(2)/E-III/PLG/2014/128, dated 23.2.2015 (Copy whereof has been filed as Annexure No.14) modifying its circular no.9374 dated 1.5.2008 in pursuance of which only 18 years of service from the date of appointment was required. Hence, the respondents should have calculated 18 years of her service from the date of her initial appointment, but the respondents in order to deny the benefit of Selection Scale to the applicant, have calculated 18 years from the date of her getting the Senior Scale, i.e. after expiry of 12 years from the date of appointment arbitrarily and with malafide intention and had denied the Selection Scale to the applicant.

8. It has been further contended that the applicant had already intimated the respondents vide her letter dated 2.8.1997, that she had attended the training

programme/Seminar on 1st and 2nd day and then she fell ill. As she was advised to take bed rest, she could not attend the rest of the Seminar. After a gap of 15 or 20 days, she went to join the 2nd batch of Seminar, however, due to lack of sufficient number of candidates, 2nd batch of Seminar was cancelled. Under these circumstances, it was undertaken by the applicant, vide letter dated 2.8.1997, that in future if any Seminar takes place, she would attend the same.

9. On the aforesaid grounds, it has been prayed that the OA be allowed and the order dated 14.8.2015 passed by the respondent no.3 denying Selection Scale on the basis of report of the DPC held on 30.4.2015 and also the order dated 3.6.2016 rejecting the review application of the applicant, be quashed.

10. Learned counsel for the applicant in support of his contentions, has placed reliance on a judgment of Hon'ble Apex Court rendered in the case of K. Vasudevan vs. Mohan N. Mali and others, reported in (2002) 10 SCC 117. Reliance has also been placed on two judgments of the Hon'ble Delhi High Court rendered in the cases of Govt. of NCT of Delhi and others vs. Kishan Lal and another (W.P.(C) No.11682/2009 decided on 30.8.2010 and Shri Raj Kumar Gaur vs. Directorate of Education and another (W.P. (C) No.6689/2003 decided on 16.1.2017 and also one of this Tribunal in the case of Shri Kishan Lal vs. Govt. of NCT of Delhi and others (OA 617/2005 decided on 20.4.2009).

11. The respondents have filed counter reply denying altogether any malafide intention or arbitrariness, while passing the impugned order. It has been contended that Point (iv) of MHRD circular dated 12.8.1987 clearly provides that "Every teacher would be required to participate in an in-service training programme of at least THREE WEEKS duration before he/she crosses an EB or is promoted to Senior Scale or Selection Scale, i.e. once in every six years; provided that where arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time."

12. In this regard, our attention has been drawn to the summary of In-service training programme attended by the applicant, retired TGT, which is as under:-

* The applicant has joined her service on 13.08.1974 as TGT in the pay scale of Rs.440-750.

* She was granted Senior Scale w.e.f. 13.08.1986 and was in Senior Scale without any regular promotion till her retirement.

* First Six years, she has attended only 10 days in-service training programme during 1987 to 1993 (from date of MHRD circular issued on 12.08.1987).

* Second Six years duration from 1994-1999, she has attended only 07 days in-service training programme.

* Third part of Six years duration from 2000 to 2005, she has attended only 20+7 days (in two sessions) in-service Training Programme.

* Fourth part of Six years duration from 2006 to 2008 (till retirement, i.e. 31.03.2008), she has attended 07 days only.

Learned counsel for the respondent has contended that in view of the above, it cannot be said that the applicant has fulfilled the requisite condition of service training programme.

13. Learned counsel for the respondents has next contended that grant of Selection Scale after completion of 18 years of service by relaxing the other conditions\qualifications is to be read with the other conditions mentioned in MHRD, Govt. of India, Circular dated 12.8.1987, which clearly provides that:-

"While Senior Scale will be granted after 12 years to Trained Graduate Teachers, the Selection Scale will be granted after 12 years service in the Senior Scale of the respective cadre and attainment of qualifications laid down for PGTs. These pay scales will be applicable with effect from 01.01.1986."

14. Learned counsel for the respondents has further contended that the clarification dated 3.11.1987 issued by MHRD with reference to Circular dated 12.8.1987 is self-explanatory that the above said condition is applicable only to those who have already completed 18 years of service on or prior to 1.1.1986, as mentioned in MHRD, Govt. of India, circular dated 12.8.1987 as clarified by the Directorate vide its Circular dated 1.5.2008. It is next contended that in so far as the reasons given by the applicant for not attending the Seminar/training sessions are concerned, the applicant had not filed any material evidence in respect of the explanation given by her in her representation for not attending the seminar. In view of the above circumstances, the applicant's request/representation for grant of Selection Scale has been rightly rejected by the DPC.

15. We have considered the rival submissions advanced by both the parties.

16. It is noteworthy that the applicant has not filed any rejoinder and the order sheet dated 27.10.2017 clearly shows that she has stated that she does not wish to file any rejoinder.

17. The impugned order dated 14.8.2015 is accompanied by the report of the Departmental Screening Committee dated 30.7.2015. A perusal of the aforesaid report shows that Departmental Screening Committee has first mentioned in detail the entire Scheme of "Senior Scale" and "Selection Scale" to Government schools Teachers and then it has considered the claim of the applicant for grant of Selection Scale.

18. The Scheme of Senior Scale and Selection Scale to Govt. schools Teachers is reproduced below for a ready reference:-

"S. No.

Category of School Teachers

Revised Pay Scales

1.

Primary School Teachers

1200-30-1380-EB-30-1560- EB-1800-EB-40-2040

(i). Senior Scale

(After 12 years)

1400-40-1600-50-1650-EB50-1950-EB-50-2250-EB-50- 2300-60-2600

(ii). Selection Scale

(After 12 years in Senior Scale and attainment of Qualifications laid for TGTs)

1640-60-2000-EB-60-2360- 60-2600-75-2750-EB-75-2900

2.

Trained Graduate Teacher/

Head Masters of Primary Schools

1400-40-1600-50-1650-EB50-1950-EB-50-2250-EB-50- 2300-60-2600

(i). Senior Scale

(After 12 years)

1640-60-2000-EB-60-2360- 60-2600-75-2750-EB-75-2900

(ii). Selection Scale (After 12 years in Senior Scale and attainment of Qualifications laid for PGTs)

2000-60-2300-75-2375-EB75-3200-100-3300-EB-3500

19. Learned counsel for the applicant has vehemently argued that circular/ clarification dated 3.11.1987, Circular No.9374 dated 1.5.2008 and its Corrigendum dated 23.02.2015 have been wrongly interpreted by the respondents and it should have been interpreted in accordance with simple meaning which it is conveying that the teachers who have already completed 18 years of service may be exempted from the requirement of in-house training and higher qualifications. To the contrary, the respondents have interpreted it in terms that those teachers who have completed 18 years of service in Senior Scale, will be exempted from the requirement of acquiring the qualifications.

20. We are not convinced with the aforesaid arguments advance by the learned counsel for the applicant. The Corrigendum dated 23.02.2015 clearly stipulates as under:-

"The other contents in the above said circular will remain unchanged."

The circular dated 1.5.2008, a copy whereof has been filed as Annexure A12 by the applicant herself, is relevant which is reproduced below:-

"It has been come to the notice that a large number of serving/retired teachers are approaching the Heads of School without knowing that they are not eligible for grant of Selection Scale. In order to avoid unnecessary hardship to any one and also to ensure that no eligible teacher is left out from this benefit, a press notice for wide publicity through newspapers have been issued. The eligibility conditions for grant of Selection Scale in terms of Govt. of India, Ministry of Human Resource Development O.M. No.F.5-180/86-UT. 1 dated 12.8.1987 and subsequent clarifications issued on the subject are reiterated here below for proper knowledge of all the concerned.

1. The teacher should have completed 12 years service in the Senior Scale/Old Selection Grade on a post without any regular promotion.
2. In case of those teachers who were granted old Selection Grade prior to 1st January 1986, 12 years are to be counted from the date of grant of Selection Grade.
3. Teacher should have participated in-service training programme of at least three weeks duration once in every six years.
4. For all categories of teachers, it is necessary to possess qualification laid down for next post, except those who have already completed 18 years of service as on 01/01/86. In other words, for waiver of the condition of qualification, it is necessary that the teacher should have joined the service by 31st December 1967.
5. No teacher who became eligible for Selection scale after 8th August 1999 will be considered as the Selection Scale scheme since the scheme has already been replaced by the ACP Scheme w.e.f. 9th August 1999.

The cases for grant of Selection Scale are to be submitted to the District offices by the Heads of Schools up to 30th May 2008 on Performa (Annexure) and the District officers will process each and every case strictly in accordance to eligibility and submit the same after compiling category wise, i.e., post - male/female, SC/ST/General to the ACP Cell latest by 13th June 2008.

The last date for submission of claim for grant of Selection Scale to the HOS has been extended to 15th May, 2008 and no claim shall be entertained thereafter. And, if any case/litigation matter comes to the notice of the headquarter after 13th June 2008 for claiming Selection Scale, the concerned Dy. Director of Education by name will be held responsible.

This issues in continuation of earlier instruction on the above cited subject vide this Cell letter dated 10/03/2008 and 18/03/2008 and with the prior approval of the competent authority."

21. A bare perusal of the aforesaid circular clearly reflects that 18 years of service should have been completed on 1.1.1986 in order to waive the condition of higher qualification. The applicant was initially appointed in the year 1974.

Counting from the year 1974, 18 years of her service was to be completed in the year 1992, therefore, she did not fulfill the requirement on 1.1.1986. Admittedly, she had also failed to complete the mandatory training programmes/seminars.

22. With regard to the eligibility of the applicant, the DPC after considering her service, record found as under:-

(i) Smt. Pushp Lata Gupta was appointed to the post of TGT in the entry scale of Rs.250-550 (Pre-revised) on 13.08.1974.

(ii) After completion of 12 years of service, she was granted senior scale of Rs.1640-2900.

(iii) She was retired from Govt. Service on 31.03.2008 on attaining the age of superannuation.

(iv) While she was in service she had not acquired the required qualification for grant of next financial up-gradation, i.e. Selection Scale after completion of 12 years of service.

(v) Thereafter, Smt. Pushp Lata Gupta has submitted a representation to the HOD on 14.02.2013 for grant of selection scale.

(vi) As Smt. Pushp Lata Gupta was granted Senior scale on 13.08.1986, she is not eligible for selection scale after completion of 18 years (13.08.2004) in Senior Scale, as all the previous schemes/ stipulations were ceased since the scheme has already been replaced by the ACP Scheme w.e.f. 09.08.1999.

(vii) Smt. Pushp Lata Gupta, TGT was granted Sr. Scale w.e.f. 13.08.1986 and was in Senior Scale without any regular promotion till her retirement. When she was eligible for grant of selection scale on dated 13.08.2004 (after completion of 18 year service in the Senior scale) the scheme has already been replaced by the ACP Scheme w.e.f. 09.08.1999.

(viii) She did not fulfil the eligibility condition of in-service training programme laid down in MHRD OM dated 12.08.1987.

Finally, after evaluation of complete facts of the case and service particulars as mentioned in respective Annexure-I, the Departmental Screening Committee has decided unanimously that Smt. Pushpa Lata Gupta, retired TGT (S.Sc) is not eligible for grant of Selection Scale.

23. The report of the DPC clearly reveals that DSC has considered the claim of the applicant in detail. It is noteworthy that the applicant has not filed even any rejoinder in rebuttal of aforesaid contentions, mentioned in the counter reply filed by the respondents. In absence of any rejoinder, the respondents claim has remained uncontroverted.

24. Judgment rendered by Hon'ble Apex Court in the case of K. Vasudevan (supra) is not applicable to the present case, as the facts are entirely different. Instead in the aforesaid case of K. Vasudevan, the Hon'ble Apex Court has held

that when there was no challenge to the circular, it was not permissible for the High Court to examine the validity of the circular itself. In the case in hand too, the applicant has not challenged the legality of any circular quoted by the respondents in their counter affidavit. Further the decisions rendered by the Hon'ble Delhi High Court as well as of this Tribunal, as mentioned in para 9 above, relied upon by the applicant in support of her claim, are also not applicable to the instant case because facts and circumstances are entirely different.

25. In view of the above discussion, we do not find any merit in any of the contentions raised by the applicant. The OA appears to be devoid of any merit and is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.