

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.814 OF 2013

DISTRICT : NASHIK

Smt. Vijaya Anandrao Patil.)
Age : 45 yrs, Occu.: Govt. Service,)
Address : Adivasi Colony, Peth Road,)
Nashik.)...**Applicant**

Versus

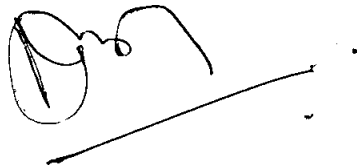
1. The State of Maharashtra.)
Through the Addl. Commissioner,)
Tribal Development, Nashik,)
Adivasi Bhavan, Kalika Road,)
Nashik - 422 002.)
2. The Project Officer.)
Integrated Tribal Development)
Project, Nashik, Adivasi Bhavan,)
Nashik - 422 002.)...**Respondents**

Shri C.T. Chandratre, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

PER : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 22.07.2016

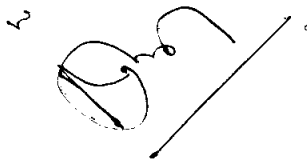


JUDGMENT

1. The Applicant a degree holder Primary Teacher having got the higher pay scale after quite a strenuous struggle by the order dated 31st May, 2010 (Exh. 'A-11', Page 76 of the paper book (PB)) seeks by way of this Original Application (OA) under Section 19 of the Administrative Tribunal Act, 1985 (Act), the benefit thereof from 10.07.1995 or any other date on which her junior was given the higher pay scale and also the arrears of pay and allowances. In that sense, this action can be called as one for deemed date.

2. I have perused the record and proceedings and heard Shri C.T. Chandratre, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

3. The Applicant holds the qualifications of SSC, DEd, Deemed BA which is so by virtue of a G.R. dated 1st November, 1971 (A-2 Colle., Page 22 of the P.B.) she cleared the hindi examination from Bambai Hindi Vidyapeeth. She has also done her B.Ed. She is, therefore, B.A.B.Ed.



4. By an order of 6.3.1987 (Page 26 to 28 of the P.B.), the Deputy Director, Tribal Development appointed the Applicant as a Primary Teacher as usual on temporary basis. Her services were regularized by the same authority by the order dated 30.01.1992 (Exh. 'A-2' Colle., Page 29 of the P.B.).

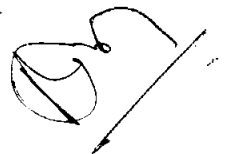
5. At Exh. 'A-3' (Page 32 of the P.B.) is a G.R. dated 14th November, 1979 issued by the Department of Education, Employment and Youth Services. It aimed at betterment of standard 5 to 7 in the Primary School (It is in Marathi). It is a five page instrument. Its object was to remove the disparity about the Teachers and other facilities in the said standards (5th to 7th) of the Schools that were linked with middle School and the Primary Schools run by the local self Government (स्थानिक स्वराज्य संस्थांनी चालविलेल्या प्राथमिक शाळा). There was a difference in the matter of staffing pattern and other facilities in the two streams. It was necessary to bring the Primary Schools at par with the Secondary School. The details in that behalf were set out. Therefore, it was decided that wherever in the Secondary Schools run by the local self Government had an opening for four or more Teachers, 25% of them will be filled up by graduate Teachers of Primary School. That would be done step by step year-wise such Teachers (25%) would



obviously get the pay scale of Secondary Teachers even while teaching 5th to 7th standards and they would be drawn by way of transfer from wherever they were working. Such appointments from the Primary School Teachers would be made according to seniority. The qualifications for such 25% category are prescribed. Suffice to say that the Applicant fulfilled the requirement in that behalf (B.A.B.Ed.).

6. From pages 37 to 66 of the Paper Book (Exh. A-4 colly.) there are lists of the Primary Teachers who were given higher pay scales on various dates during 10.12.1996 and 17.06.2002. Their numbers along with the dates in brackets are as follows, 42 (10.12.1996), 18(13.12.1996), 42 (23.06.1998), 20 (09.10.1998), 19 (20.02.1999). Shri D.D. Deore's name is at Sr.No.7 of this list of 19. To complete the narration 14 primary teachers got higher pay scale in the list dated 21st July, 2000, 08 in the list dated 12.12.2001 and 04 in the list of 17.06.2002.

7. The name of the Applicant did not figure in any of the lists. It was not there even after the list which Mr. D.D. Deore's name figured in. In fact the names of 38 Primary Teachers figured after Shri D.D. Deore. It may be usefully recalled that the rule of seniority had to be



followed in giving higher pay scale to the Primary School Teachers. Now, the Applicant protested vide Exh.'A-5' (page 67 of the Paper Book) dated 27.12.2004. She addressed that communication to Additional Commissioner Tribal Development Department. She gave out a comparative chart of the service details of herself and Shri D.D. Deore. Both of them belonged to OBC category. Both were primary school teachers from 14.03.1987, trained (Applicant) and 11.06.1986 untrained (Mr. Deore). The Applicant passed D.Ed in April, 1986 and Mr. Deore in October, 1994. She passed B.A. on 15.12.1992 and he on 20.6.1993. She therefore claimed seniority over Shri Deore.

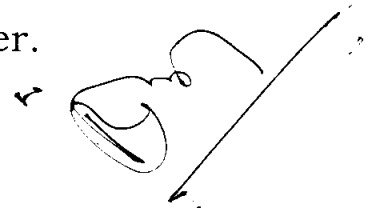
8. The Applicant was in constant correspondence seeking redressal and in fact, she started becoming restive and "threatened" that she would self immolate. Ultimately, as already mentioned she got the higher pay scale by the order dated 31.05.2010. The scope of the surviving issue has already been crystallized and delineated.

9. The entitlement of the Applicant to relief is self evident subject to there being any real substance in Respondent's case.

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10. The Respondents have pointed out that in asking for the relief from 1995 the Applicant wants to set the clock back by 18 years. Now, the impugned order really is of 21.11.2012 while this O.A. was filed in June, 2013. No vice of bar of limitation is there. Further, the Applicant was constantly in correspondence till she came to her wits end and threatened to set herself afire. It was not till then that the Respondents saw reason and yielded. This objection is, therefore, rejected.

11. The next point urged by the Respondents is that it is not an instance of promotion. In that connection the G.R. of 14.11.1979 is referred to. Now, it will be a pointless academic exercise to distinguish between promotion and higher pay scale. The simple questions to ask would be as to whether or not it is by virtue of the G.R. of 14.11.1979 and entitlement of the concerned employee. The answer must be in a resounding affirmative. If that be so and if despite coming true on the anvil of that G.R. (14.11.1979), the Applicant was denied her dues, is she helpless? The answer is a resounding negative. She is quite entitled to relief. But, I must also make it clear that the net result produced by promotion as well as higher pay will be in effect the same viz. benefit and appreciation in the matter of service condition during the career.



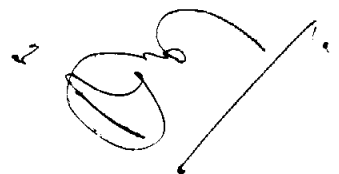
12. Before we take up the other aspects of the case of the Respondents, it needs to be noted that the Teachers so similarly placed as the Applicant are being sent as a Warden which in Marathi has been called, "गृहपाल (महिला)". Now, according to the Respondents, this was a temporary adjustment/arrangement and if somebody below the Applicant were sent to that post, it did not tantamount to violating the seniority of the Applicant in any manner whatsoever. Such orders were issued in case of the Applicant also, but they were what has been described as, "for the time being". The claim of the Applicant in that behalf as far as the seniority is concerned is, therefore, denied. Some adverse comments had been made on the performance of the Applicant while she was working as a Warden in Tribal Girls Hostel, Nashik. But I do not think it is quite germane hereto because granting all latitude to the Respondents, if the alleged lack of proper performance constituted any breach of discipline, action could have been taken against the Applicant. In a somewhat carelessly worded Para 15 of the Affidavit-in-reply, it is pleaded that since no illegality or wrong was committed by the Respondents, this Tribunal has no jurisdiction to entertain or try this OA. Beyond what I have already said, I wish to add nothing more.



13. The Applicant has more than once agitated issue of delay. The averments about the Applicant's educational qualification and career details are admitted in Para 18. Their own interpretation to the G.R. of 14.11.1979 has been made in Para 20. A reference has been made to the correspondence, the letters of the Applicant are assailed and Respondents letters have been acclaimed.

14. Now, the above discussion would make it very clear that the effect created by the case of the Applicant is not at all diluted by the Respondents in any manner whatsoever. I have already held in Para 11 above that the Applicant is quite entitled to relief herein sought. The relief of deemed date cannot be refused to her only because as perceived by the Respondents, it is not a case of promotion because I have already discussed that it is nevertheless a case of higher pay. If the entitlement to higher pay was from any date earlier than 31st May, 2010 she obviously will be entitled to the relief.

15. Shri Chandratre, the learned Advocate for the Applicant relied upon **Mohd. Ahmed Vs. Nizam Sugar Factor and others, 2005 SCC (L & S) 62.** The facts were different in that matter. However, basically, it was a case of a senior employee who suffered in the sense that a lady



next to him was given promotion and in the meanwhile, he retired. It was held by Their Lordships accepting the order of Hon'ble Single Bench of the High Court that he could not be deprived of the difference of salary. **Om Prakash and others Vs. Dil Bahar and others, (2006) 9 SCC 695** was a matter arising out of Land Acquisition Act and the claim for payment thereunder.

16. The upshot is that the Applicant is entitled to the relief but it will have to be appropriately moulded. It is not very clear as to who amongst her juniors and how many of them had in fact, scored over her although a broad idea will be available from the discussion of the case of Shri D.D. Deore in Para 7 hereinabove. The Respondents will, however, have to ascertain the position and grant appropriate relief to the Applicant for which if need be as and by way of adherence to the principles of natural justice, the Applicant may be heard.

17. It is held and declared that the Applicant is entitled to the benefit of higher pay scale from the date on which her junior for the first time got that benefit. The Respondents shall act in accordance with the directions contained in the preceding Paragraph and complete the exercise within three months from today and as a result

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thereof, if the Applicant is found entitled to the arrears, the same be paid to her within a further period of two months thereafter in accordance with law laid down by the Hon'ble Supreme Court in **Mohd. Ahmed** (supra). The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
22.07.2016

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22.7.16

Mumbai

Date : 22.07.2016

Dictation taken by :

S.K. Wamanse.