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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C.) No.5556/2007

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Date of Decision: 29.10.2009

MADHU BHATIA & ORS.

.... Petitioners

Through: Mr. A.K. Sharma, Advocate

Versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. V.S.R. Krishna and Mr. Jitendra
Kumar Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. | To be referred to the reporter or not? | No. |
| 3. | Whether the judgment should be reported in the Digest? | No. |

VIPIN SANGHI, J.

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1. By this writ petition filed under Article 226 of the Constitution of India, the petitioners impugned the order dated 15.05.2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1079/2006 and M.A. No.521/2007. By the impugned order, the Tribunal has dismissed the aforesaid Original Application filed by the petitioners. The claim of the petitioners in the Original Application was to seek direction for grant of revised pay scale of Rs.5000-8000/5500-

9000 w.e.f. 01.01.1996 i.e. upon the implementation of the Fifth Central Pay Commission Report with all consequential benefits.

2. The petitioners were appointed on ad hoc basis as Assistant Mistress i.e. primary school teachers for junior school in the scale of Rs.1400-2300 between 01.02.1990 and 03.08.1995 to serve in the Oak Grove School, Jharipani, Distt. Dehradun, Uttarakhand. The qualification requirement for the said post as advertised by the respondent was: (i) second class graduate; (ii) decree/diploma in education/teaching of four years, integrated two years post graduate course of regional college of education of NCERT.

3. On the implementation of the Fifth Central Pay Commission Report, w.e.f. 01.01.1996 the scales of pay of primary school teachers working in Railway schools all over India was revised as under:

	"Before 1.1.1996	After 1.1.1996
(i) Entry Scale	Rs.1200-2040	Rs.4500-7000
(ii) Senior Scale	Rs.1400-2600	Rs.5500-7000
(iii) Selection Grade	Rs.1640-2900	Rs.6500-10500"

4. The General Manager, Northern Railway, Baroda House, New Delhi recommended that the Assistant Mistress of the Oak Grove School be granted pay scale of Rs.5000-8000/5500-9000. This

proposal was sent to the Railway Board but the same was turned down by it. Consequently, the petitioners were granted revised pay scale of Rs.4500-7000.

5. The petitioners were dissatisfied with this decision of the Railway Board. Consequently, the petitioners preferred O.A. No.2042/2005, which was disposed off on 16.09.2005 with a direction to respondent No.2 to dispose off the petitioners' representation. The respondent's then passed an order dated 28.10.2005 rejecting the claim of the petitioners.

6. The petitioners then preferred O.A. No.1079/2005 which has been dismissed by the impugned order. The grievance of the petitioners was that historically the scales of pay at the primary school teachers/Assistant Mistresses appointed at Oak Grove School, which is a boarding school having small children, have been higher than the scales of pay granted to primary school teachers working in other railway schools. Even their educational qualifications are higher than the educational qualifications prescribed for primary school teachers in other railway schools. It was argued that by granting the same revised pay scale to the petitioners, as granted to other primary school teachers of the railways, the petitioners have been discriminated as unequals have been equated.

7. Before the Tribunal, the stand taken by the respondent was that the scales of pay of teachers in other schools of the railways were different from those prevalent in the Oak Grove School. To remove the discrepancy the new uniform scales had been implemented. Consequently, the Assistant Mistress of Oak Grove School, who earlier enjoyed a higher pay scale when compared to other primary school teachers of railways, were brought at par with all other similar ranked teachers. The respondents also contended that the higher grade earlier being enjoyed by Assistant Mistresses of Oak Grove School was a mistake which had occurred inadvertently and this mistake was corrected upon the implementation of the Fifth Central Pay Commission Report.

8. The Tribunal while rejecting the petitioners' Original Application took note of the fact that the Railway Board in its order dated 28.10.2005 had brought the higher pay scales given to the Assistant Mistresses of Oak Grove School exclusively, in line with those of other railway primary school teachers. The Tribunal observed that the said action had been taken by expert bodies, by taking an overall view within the railways and that the Tribunal would not sit in judgment over why the pay commission has acted in a particular manner. The submission of the petitioners that their qualifications, duties and responsibilities were different from the teachers in the same

category i.e. primary school teachers in other railway schools was also not gone into, as the petitioners were being paid special pay of Rs.200/- per month in recognition of the nature of their responsibility of handling young children in a boarding school environment.

9. Learned counsel for the petitioners submits that the qualification prescribed for the Assistant Mistress for the Oak Grove School were higher than those prescribed for Assistant Teachers/Primary School Teachers (PST) in other railway schools. At the time of their recruitment the petitioners were granted the higher pay scale of Rs.1400-2300 as compared to PST/Assistant Teachers recruited in other railway schools. The entry scale of primary school teachers in other railway schools prior to the implementation of the Fifth Pay Commission report was Rs.1200-2040, whereas the petitioners had been inducted in pay scale of Rs.1400-2300. Learned counsel for the petitioners submits that this distinction was in recognition of the fact that the nature of responsibilities of the petitioners was much higher when compared to the other primary school teachers in day schools of the railways. Learned counsel for the petitioners had referred to the Railway Services (Revised Pay) Rules 1997, wherein, in Annexure B, the revised pay scales of certain specified categories of staff have been enumerated. In respect of teaching staff (railway schools) the pre-existing pay scales and the

revised pay scales as provided by the Fifth Central Pay Commission Report have been prescribed and the same, in so far as they are relevant, read as follows:

"Sl. No.	Post	Present Scale	Revised Scale
11.2	Teaching Staff (Railway Schools)		
(a)	Primary School Teacher		
(i)	Entry Scale	1200-30-1560-2040	4500-125-7000
(ii)	Senior Scale	1400-40-1600-50-2300-60-2600	5500-150-8000
(iii)	Selection Scale	1640-60-2600-75-2900	5500-175-9000
(b)	Trained Graduate Teacher/Head Master, Primary School		
(i)	Entry Scale	1400-40-1600-50-2300-60-2600	5500-175-9000
(ii)			"

10. Learned counsel for the petitioners submits that the petitioners, though recruited as primary school teachers were given the entry scale of TGT/Headmaster Primary School. Consequently, the revised pay scale of the petitioners, upon implementation of the Fifth Central Pay Commission Report should be Rs.5500-8000/Rs.5500-9000 and not Rs.4500-7000.

11. On the other hand, learned counsel for the respondent submits that it is not within the jurisdiction of this Court to fix the pay

of the petitioners, as fixation of pay and determination of parity in duties is the function of the Executive. In support of this submission, learned counsel for the respondent has placed reliance on ***State of Haryana & Anr. V. Haryana Civil Secretarial Personal Staff Association*** (2002) 6 SCC 72 and ***Union of India & Anr. V. P.V. Hariharan & Anr.*** (1997) 3 SCC 568.

12. Learned counsel for the respondent argues that unless a clear case of hostile discrimination is made out, there should be no judicial interference with the pay scale fixed by the Government on the recommendation of the Pay Commission. Learned counsel for the respondent has also drawn our attention to Annexure-A to the aforesaid Rules. He submits that two different scales falling within scale No.S-8 have been merged into one revised scale under the Fifth Central Pay Commission Report. The relevant entry of Annexure-A reads as follows:

"Sl. No.	Scale No.	Present Scale (Rs.)	Revised Scale (Rs.)
8.	S-8	(a) 1,350-30-1,440-40-1,800-50-2,200 (b) 1,400-40-1,800-50-2,300"	4,500-125-7,000"
9.	S-9	(a) 1,400-40-1,600-50-2,300-60-2,600 (b) 1,600-50, 2,300-60-2,600	5,000-150-8,000"

13. He submits that the pay scale of Rs.1400-2300 earlier fell within scale No.S-8, whereas the pay scale of Rs.1400-2600 fell within the scale No.S-9. The petitioners are seeking to mislead this Court by claiming that they had been granted the senior scale upon their entry, as the senior scale of the Primary School Teachers is Rs.1400-2600 and not as Rs.1400-2300 as granted to the petitioners on their entry as Primary School Teachers/Assistant Mistresses.

14. Having heard learned counsels of the parties, we are of the view that there is no merit in this petition and the same deserves to be dismissed. The prescription of higher qualification for the posts of Assistant Mistress at the Oak Grove School in our view is of no relevance to determine the revised pay scales to which the petitioners would be entitled upon the implementation of the Fifth Central Pay Commission Report. The petitioners were recruited as Assistant Mistresses, which is the post of a Primary School Teacher. Merely because they may have possessed the qualification which is otherwise prescribed for a Trained Graduate Teacher (TGT), does not entitle them to claim the same pay scale as is prescribed for a TGT. The pay scale granted to the petitioners upon their entry was Rs.1400-2300. Assuming for the sake of arguments that the same was consciously granted by the respondent and that the same was not a mere error,

inasmuch as, the said position continued for many years. This also would not make the subsequent action of the respondent illegal nor would entitle the petitioner to claim the scale of TGT.

15. The revised pay scale granted under the Fifth Central Pay Commission Report to the Primary School Teachers have been reproduced above. The entry scale in the pre-revised scale was Rs.1200-2040. The petitioners were, however, granted the pre-revised entry scale of Rs.1400-2300. The senior scale of Primary School Teachers was Rs.1400-2600. The petitioners, admittedly, were not given the pre-revised senior scale, as they were given the scale of Rs.1400-2300. Therefore, the endeavour of the petitioners to seek refixation in the pay scale of Rs.5500-8000, which is the revised pay scale for the Primary School Teachers in the pre-revised senior scale of Rs.1400-2600, could not be granted.

16. The real grievance of the petitioners appears to be that earlier the Primary School Teachers at Oak Grove School were receiving higher pay scales when compared to other Primary School Teachers of the railways working at other schools. Now, after implementation of the Fifth Central Pay Commission Report that distinction no longer survives and the Primary School Teachers of other railway schools have also been granted the same pay scales as the petitioners. This grievance of the petitioners, in our view, is not justified for two

reasons. Firstly, it is not that the pay scales of the petitioners have been reduced. The pay scales now granted to the petitioners i.e. Rs.4500-7000 is also an upward revision from the earlier granted pay scale of Rs.1400-2300. Secondly, in recognition of the special duties performed by the petitioners they are being paid special pay of Rs.200/-.

17. In our view, the Tribunal has correctly concluded that it is not for the Courts to interfere with aspects relating to revision/fixation of pay scales, as it is primarily the function of the Executive. The Courts would not interfere with such an exercise conducted by the Executive unless it is seen to be discriminatory or patently illegal. In our view, the petitioners have failed to make out a case of illegality or hostile discrimination. We find no error in the order passed by the Tribunal. The same does not call for interference by us in writ jurisdiction.

18. Dismissed. Parties to bear their own costs.

(VIPIN SANGHI)
JUDGE

(ANIL KUMAR)
JUDGE

OCTOBER 29, 2009
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