

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11706 OF 2015
ALONGWITH
CIVIL APPLICATION NO.3127 OF 2015
IN
WRIT PETITION NO.11706 OF 2015**

Mrs. Sheila Rajan,	)	
Age: 62 yrs. Occ. Retired	)	
R/at: Prakash Park, B-9,	)	
147, Lulla Nagar, Pune 411040	)	Petitioner.

V/s

1. Union of India,	)
Through the then Secretary,	)
Mr. Pradeep Kumar,	)
Satarkta Bhavan, A-Block,	)
GPO Complex, INA,	)
New Delhi, 23	)
	)
2. Lt. General H.L. Kakria,	)
Director General Armed Forces	)
Medical Services, Ministry of	)
Defense, "M" Block, New Delhi	)
	)
3. A.V.M.G.S. Joneja,	)
The Commandant, Armed Forces	)
Medical College, Solapur Road,	)
Pune.	)
	)
4 Lt. General D.P. Vats	)
The Commandant, Armed Forces	)
Medical College	)
(Till 30/04/2011) and presently	)
Chairman Haryana Public Service	)

Commission, Bays 1 – 10, Block)
B, Sector 4, Panchkula,)
Haryana 134112)Respondents.

ALONGWITH
CIVIL APPLICATION NO.3128 OF 2015
IN
CIVIL APPLICATION NO.3127 OF 2015
IN
WRIT PETITION NO. 11706 OF 2015

Union of India & Others Applicants.

V/s

Mrs Sheila RajanRespondent.

Mrs. Sheila Rajan, Petitioner in person, present.

Mr. S.R. Rajguru a/w Mr. Rui Rodrigues, Mr. Jaydeep Deo for
Respondent Nos. 1 to 3 in Writ Petition No.11706 of 2015 and for the
Applicants in Civil Application No.3128 of 2015

**CORAM: V.M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE : 29th September, 2016

ORAL JUDGMENT : (Per V.M. Kanade, J.)

1. Heard the Petitioner who is appearing in person and Mr. Rajguru, the learned Counsel appearing on behalf of the Respondents.

2. Petitioner is challenging the order dated 23/02/2015 passed by Respondent No.2, rejecting the claim of the Petitioner for upgradation

of her post from Group 'C' to Group 'B'. This Petition has a chequered history and before deciding the said issue, it will be necessary to narrate the facts of the case.

3. The facts would reveal that Petitioner who had rendered meritorious service for the benefit of children of Army Personnel by working as Speech Therapist & Audiologist and who was also rendering every other help, was made to run from pillar to post on number of occasions and it appears that as a result of the Petitioner's attempt to get justice by moving the Court, she was penalized on more than one occasion. In fact, the Petitioner had to approach the Central Administrative Tribunal ("CAT") atleast on three occasions and she had approached the High Court on more than two occasions and the Supreme Court once. Apart from that, she had to file Contempt Petition since the orders passed by this Court were not complied with in time and practically the Petitioner had no other option but to appear in person since she was unable to pay fees of the lawyer. We had asked her whether this Court should appoint a lawyer for her from the Legal Aid Panel but she declined to accept this offer because she felt that she would be in a better position to put up her case before this Court.

4. Brief facts are as under:-

5. Petitioner was appointed on 15/11/1971 in the post of Speech

Therapist which was a Group 'C' post. Though she was appointed as Speech Therapist, she did additional work in addition to the work which was allotted to her and she also worked as Audiologist and did other work in the hospital whenever she was called upon to do so.

6. Taking into consideration the efforts taken by the Petitioner, A.K. Banerjee Colonel i/c Administration made a recommendation for upgradation of the post of Speech Therapist. In the said letter of recommendation, he has mentioned that the post is designated as Group 'C' in the pay-scale of Rs 470-15-530-EB-20-650-25-750. He has mentioned that at the relevant time, the duties of Speech Therapist were mainly rehabilitation of the speech handicapped and deaf children of service personnel and civilians but he has noted that that in addition to these duties, the Speech Therapist has been given the following work:-

“(a) To take lectures and give practical training to the para medical personnel for whom course is being run to train the Nursing Assistants in Speech Therapy and Hearing for a period of six months, Two such courses are run in a year.

(b) Has been associated with the AFMRC Research Projects as co-worker and co-opted co-worker.

(c) Active participation for various tests of auditory functions for the thesis pertaining to deafness of the post

graduate courses in ENT being run by the Department.”

He has further given justification for upgradation of the post by mentioning that in spite of heavy schedule of duties the grade of Speech Therapist in the College is lower than the Speech Therapists grade in UPSC, though the incumbent was carrying on this additional work. He therefore made the following recommendation:-

“RECOMMENDATION :-

In view of the additional commitments and also due to the fact that the Speech Therapists are having higher grade in other institutions, it is recommended that the grade of speech Therapist of this college be revised to bring it at par with those in other institutions.”

At the relevant time, the posts of Speech Therapist in Safdarjung Hospital, New Delhi and Rajkumari Amrit Kaur College of Nursing, New Delhi were getting higher pay and therefore the recommendation was made to bring the post of the Petitioner on par with the said posts in the said two Institutions. A letter was written dated 15/11/1981 to the Commandant, Armed Forces Medical College, in which the Defense Ministry made several queries viz:

“(a) Whether the similar posts exists in other department of the Central Govt. If

so, give details regarding Pay Scale, entry qualification, experience required for appointment, charter of duties etc.

(b) Similar information in respect of Speech Therapist in AFMC PUNE.

(c) Financial effect of the proposal.

(d) How this effect will be set off by showing matching savings.”

Nothing happened on the recommendation made by Respondent No.3 up to 1988-89 and Respondent No.2 informed the Petitioner that there was a ban on upgradation and creation of posts and therefore it was not possible to grant her upgradation from Group 'C' to Group 'B'.

7. Petitioner therefore approached the CAT by filing OA No.299 of 1990, seeking upgradation of her post from Group 'C' to Group 'B' from 1971 to 1976 and from 1976 onwards to Group 'A' post. Before the matter could be heard, strangely, Respondents passed an order of compulsory retirement against the Petitioner on 04/03/1992. When the matter was to come up for hearing before the Tribunal on 02/04/1992, before passing of the order of compulsory retirement, it appears that the Petitioner was further punished for approaching the Court and her two increments were reduced. When the matter came up before the Tribunal, the Tribunal was of the view that since there was a ban on upgradation and creation of new posts, as and when the ban was lifted, case of the Petitioner should be considered. Petitioner

came to know that the statement made before the Tribunal that there was ban on upgradation was incorrect and therefore she wrote a letter to the Ministry of Defense, asking them to produce the letter showing the imposition of ban on upgradation. When the Petitioner realized that the statement made was incorrect, she filed Contempt Petition No.162 of 1993 in O.A. No.299 of 1990. In the Contempt Petition, Tribunal granted liberty to the Petitioner to file fresh OA. She again approached the Tribunal by filing OA No.705 of 1994. The Tribunal, however, dismissed the said OA by holding that the OA was barred by principle of constructive *res judicata*.

8. This order was challenged by the Petitioner by filing Writ Petition No.5789 of 2000 which came for hearing before the Division Bench (Coram: Bilal Nazki & V.K. Tahilramani, JJ.) and the said Division Bench by its order dated 10/07/2009 directed the authorities to consider the issue of upgradation and set aside the order of compulsory retirement which was passed against the Petitioner.

9. Against the said order passed by the Division Bench of this Court, authorities approached the Apex Court by filing three SLPs; one against the order of setting aside compulsory retirement, second on the point of upgradation and third regarding restoration of two increments of the Petitioner which were reduced. SLP on the point of upgradation was dismissed on facts and merits. So far as the SLP on the point of compulsory retirement is concerned, that SLP was

dismissed and the order passed by the High Court was confirmed. So far as the third SLP is concerned regarding reduction of two increments, that was dismissed as infructuous on the ground that the issue was pending before the CAT.

10. Again, when Division Bench of this Court in Writ Petition No.5789 of 2000 had passed an order of setting aside compulsory retirement which was passed against the Petitioner and directed the Respondents to re-instate her before she attained the age of superannuation, this order was also not complied with and on the ground that certified copies were not produced by the Petitioner, the order was not implemented. She attained the age of superannuation on 31/07/2009. However, in the Contempt Petition No.14 of 2012 in Writ Petition No.1085 of 1998 filed by the Petitioner, this Court was pleased to direct the Respondents that they should re-instate the Petitioner and they should show that the Petitioner is re-instated before she attained the age of superannuation. This was done only after the show-cause notices were issued by this Court against Respondent Nos. 1 to 3 asking them to show cause why action under the Contempt of Courts Act should not be taken against them.

11. Petitioner then again filed Contempt Petition, alleging that the Respondents have not considered her case of upgradation and, therefore Division Bench of this Court (Coram: S.J. Vazifdar & Mrs. Mridula Bhatkar, JJ) directed the Respondents to again reconsider her

case for up-gradation. Even before the said Division Bench, it was urged that in view of the Notification which was issued, question of upgradation did not arise. However, Division Bench did not accept the said contention and directed the Respondents to reconsider the case of the Petitioner for upgradation. Thereafter, they came out with a case that the case of upgradation was rejected. When the matter came before the next Bench, it was noted that, in fact, the said order had been passed in June, 2011 i.e. even before the direction was given by the Division Bench (Coram: S.J. Vazifdar & Mrs. Mridula Bhatkar, JJ) and therefore a false plea had been taken by the Respondents that they had complied with the order passed by the Division Bench. This Court therefore gave a fresh opportunity to the Respondents to again reconsider the case of the Petitioner for upgradation in the light of the directions given by this Court and thereafter the impugned order dated 23/02/2015 was passed by Respondent No.2.

12. We permitted the Petitioner to convert the Contempt Petition into Writ Petition and also permitted her to challenge the last order which was passed by Respondent No.2.

13. We have heard the Petitioner who is appearing in person and the learned Counsel appearing on behalf of the Respondents.

14. The facts disclose a very sorry state of affairs and we are pained to note that the Respondents, instead of issuing a letter of

appreciation for the work done by the Petitioner, have chosen to punish her merely because she approached the Court against inaction on the part of Respondents. It is a matter of record that Respondent No.3 had made the recommendation for her upgradation. However, on the false pretext that there was a ban on upgradation and creation of post, her application was not considered and the same stand was taken before the Tribunal. Petitioner, therefore, was constrained again to approach the Tribunal by filing Contempt Petition. The Tribunal again asked her to file a fresh Petition on the ground that there was fresh cause of action. In between, she had to undergo a third ordeal of again filing fresh Petition because, in the meantime, her two increments were reduced and an order of compulsory retirement was also passed. Though she did not succeed before the Tribunal, this Court granted her some relief and again asked the Respondents to consider her case for upgradation. This again has not been considered favourably.

15. Apart from merits of the case, we find that the approach of the Respondents in considering the grievance of the Officer working with them is totally unreasonable. Instead of settling the dispute at their level, they have chosen to litigate before various forums right up to the Supreme Court. The matter travelled between Tribunal, High Court and Supreme Court on several occasions. It has to be remembered that the employee who works for the employer and, in this case, for children of army men who are physically handicapped

and who have to be given speech therapy and audio therapy, instead of considering her grievance in a sympathetic manner and giving a pat on the back of such a good working officer, Respondents have chosen to humiliate and punish her in every conceivable manner. The matter could have been resolved at the earliest if her application was considered properly at the right stage. The employee who is forced to adopt legal proceedings to protect his right and is made to run from court to court, obviously will not carry good impression not only about judicial system but also would have serious misgivings about his employer who has treated him or her in most unfair manner. Be that as it may, we are, in fact, concerned with the issue as to whether any interference is called for with the impugned order passed by Respondent No.2.

16. From the narration of the facts which are mentioned hereinabove, it appears that there was some dispute as to whether the Petitioner had asked for upgradation of pay-scale or upgradation of the post. The second issue is whether upgradation of the post can be done contrary to the recommendations made by the Pay Commission and thirdly whether the Petitioner was entitled to claim higher post on the basis of equal pay for equal work.

17. Respondent No.2, after narration of facts which are mentioned by us, has then considered the issue on merits and has observed that so far as upgradation of post is concerned, that cannot be done unless

it is sanctioned by the Pay Commission. According to Mr. Rajguru, the learned Counsel appearing on behalf of Respondents, this upgradation took place only in 2006 and therefore upgradation was granted to the Petitioner from that date, whereas, on the other hand, according to the Petitioner who is appearing in person, her post has not been upgraded by the Sixth Pay Commission and her post has been shown as Group 'C' post and not Group 'B' post.

18. In our view, so far as the issue of upgradation is concerned, it is quite well settled that only the Pay Commission alone has a right to upgrade a particular post and Respondents cannot do the same as it has far-reaching financial and other repercussions. The case of the Petitioner is that her post in her College was not getting the same pay-scale which was granted to the same post in Safdarjung Hospital, New Delhi and Rajkumari Amrit Kaur College of Nursing, New Delhi and therefore she is seeking the upgradation on the same level.

19. In our view, Respondent No.2 has rightly held that upgradation cannot be granted by the Ministry of Defense but has to be approved by the Pay Commission and this was done in 2006. We therefore do not find any substance in the submissions made by the Petitioner who is appearing in person and therefore we are not inclined to interfere with the order passed by Respondent No.2. However, we are of the view that looking to the trials and tribulations suffered by the Petitioner in this case and unreasonable approach of the Respondents

in handling the case of the Petitioner, we would like to award some compensation in favour of the Petitioner.

20. From the narration of facts, it is apparent that Respondents have on several occasions failed to comply with the directions given by this Court and have adopted revengeful attitude against the Petitioner. Respondents chose to retire the Petitioner compulsorily when, in fact, her OA was pending before the Tribunal and the matter was subjudice. She was compulsorily retired on 04/03/1992 when her case was fixed for hearing on 02/04/1992 before the Tribunal. Similarly, she was punished and her two increments were reduced when she decided to approach the Tribunal. This clearly reflects the approach of the Respondents in dealing with the claim made by the Petitioner. An employee has every right to take recourse to the remedies which are available to him by approaching the legal forum for settlement of dispute. We find that on many occasions, such an action is considered as affront to the higher authorities and such employees are harassed and troubled merely because they have approached the Court. We express our extreme dissatisfaction over the conduct of the Respondents in this particular case and we are of the view that prima facie they have committed contempt of this Court, though we do not propose to take any action under the provisions of the Contempt of Courts Act. However, we propose to award compensation to the Petitioner and we direct the Respondents to pay compensation to the Petitioner in the sum of Rs 5 lakhs within a

period of eight weeks from today. Respondents have paid arrears to the Petitioner after she was re-instated. These arrears have been paid from 1992 to 2009. However, Respondents have not paid any interest to the Petitioner on these arrears. We also direct the Respondents to pay the Petitioner interest @ 9% per annum on these arrears from 1992 to 2009.

21. With the above directions, Petition is disposed of. Since Writ Petition itself is disposed of Civil Applications taken out therein do not survive and they are also disposed of accordingly.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)