

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 12TH DAY OF NOVEMBER 2019 / 21ST KARTHIKA, 1941

OP (CAT).No.3831 OF 2013(Z)

AGAINST THE ORDER IN OA NO.308/2012 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/S:

K.JAYAKUMAR, AGED 40 YEARS,
S/O.LATE P.KESAVAN ACHARI,
TRAINED GRADUATE TEACHER DRAWING,
RAILWAY HIGHER SECONDARY SCHOOL, RAILWAY COLONY,
PALAKKAD, RESIDING AT RAILWAY QUARTERS NO.415-D,
NORTH RAILWAY COLONY, HEMAMBIKA NAGAR,
PALAKKAD-678009.

BY ADVS.
SRI.T.C.GOVINDA SWAMY
SMT.KALA T.GOPI
SMT.T.N.SREEKALA

RESPONDENT/S:

- 1 THE GENERAL MANAGER, SOUTHERN RAILWAY
PARK TOWN, CHENNAI-600603.
- 2 THE CHIEF PERSONNEL OFFICER
SOUTHERN RAILWAY, PARK TOWN, CHENNAI-600603.
- 3 THE SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, PALAKKAD-678002.
- 4 THE DIVISIONAL RAILWAY MANAGER
SOUTHERN RAILWAY, PALAKKAD-678002.

5 THE HEADMASTER
RAILWAY HIGHER SECONDARY SCHOOL,
RAILWAY COLONY, PALAKKAD-678002.

R1 BY ADV. SRI.V.K.MOHAMMED YOUSUF, SC, RAILWAYS
R1-5 BY SRI.K.SHRI HARI RAO, SC, RAILWAYS
R1-4 BY SRI.V.K.MOHAMMED YOUSUF, SC, RAILWAYS

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 12.11.2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

K. Vinod Chandran, J.

The petitioner challenged the order of the Tribunal, which rejected his claim for being treated as a Graduate Teacher [Drawing] in the Railway Higher Secondary School at Palakkad and to pay him the emoluments due to that post. The Tribunal found that he was appointed as a Grade-IV Teacher in the year 2002 and the present claim was raised in the year 2012. Annexure-A1 appointment order was referred to find that the appointment was as Teacher Grade-IV [Drawing] in a scale of pay of Rs.4,500-7,000/-, which had been accepted by the petitioner long back. The Tribunal found that there is no mistake in the appointment order and there was no ground for revision of scale of pay to that of a Grade-I Teacher.

2. The petitioner admittedly was appointed as per Annexure-A1 on 03.06.2002. The additional

reply statement filed by the official respondents dated 18.10.2012 also indicates that his appointment in Railway Mixed High School [for brevity, 'the RMHS'] at Jolarpet was due to shrinkage of Primary Malayalam Medium and no requirement for existing Drawing Teacher at Railway School, Palakkad. He was accommodated in the vacancy of Drawing Teacher in the RMHS in the Chennai Division. The petitioner having so accepted the appointment in a vacancy with the salary as prescribed, he cannot now turn around and claim that his appointment be deemed to be one as a Grade-I Teacher. The petitioner also was drawing the very same scale of pay when he was transferred to Palakkad.

3. The first claim of the petitioner is that there is no Primary Teacher [Drawing] in the Railway Schools, as is revealed from Annexure-A5 which enumerates the categorisation of posts in Technical Training Schools and Basic Training Centre. There is only a Music Teacher [Primary] and

no Drawing Teacher as such, is the contention. We cannot agree with the petitioner even looking at Annexure-A5, since there is shown a post of 'Primary School Teacher' in the very same scale even as per Annexure A-5. The scale of pay shown is also the very same of Rs.4,500-7,000/-, to which scale the petitioner was appointed as per Annexure-A1.

4. The next contention raised by the learned Counsel for the petitioner is that though he was appointed as Grade-IV Teacher, he had been all along teaching classes in the High School, were a Trained Graduate Teacher alone can take classes. The contention advanced is of equal pay for equal work. We notice Union of India v. Tarit Ranjan Das [(2003) 11 SCC 658], wherein the principle of equal pay for equal work was authoritatively spoken upon specifically based on various decisions of the Hon'ble Supreme Court. It was held that the principle of equal pay for equal work cannot be used in the abstract and the person, who asserts that he

is entitled to that benefit has to establish it. The petitioner, but for his assertion that he was engaged in the secondary classes in the High School, has not produced anything to establish that. The contention of the learned Counsel is only that the averments have not been specifically denied by the respondent. The original application before the Tribunal, which exercises the supplementary role of the High Court, is based on the averments made on affidavit, which have to be established by documents produced along with the affidavit. The principle that unless the person, who institutes a litigation, establishes a claim, the claim cannot be allowed merely on the basis of the respondent having not denied the averments in the plaint equally applies to such proceedings. The burden of proof essentially is of the petitioner and the onus shifts only after the burden is discharged.

5. We fully agree with the Tribunal that there is no case for revision of the pay scale,

especially when the appointment was to a lesser Grade with a lesser pay scale, which also was far earlier in the year 2002.

We dismiss the original petition with no order as to costs.

Sd/-

K. VINOD CHANDRAN,
JUDGE.

Sd/-

V.G. ARUN,
JUDGE.

sp/13/11/19

//True Copy//

P.A. To Judge

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	TRUE COPY OF THE OFFICE ORDER NO.M/P (ADMN) 57/2002 DATED 03/06/2002.
ANNEXURE A2	TRUE COPY OF THE RELEVANT PAGE OF IREM RULES 178 SHOWING THE HIERARCHY OF TEACHERS AND AY SCALES IN THE RAILWAY SCHOOLS.
ANNEXURE A3	TRUE COPY OF THE RELEVANT PAGE OF IREM SHOWING QUALIFICATION PRESCRIBED FOR TEACHERS IN RAILWAY SCHOOLS.
ANNEXURE A4	TRUE COPY OF THE TRUE EXTRACT OF RAILWAY BOARD LETTER NO.E(P&A) 1-2001/PS 5/PE DATED 04/09/2009.
ANNEXURE A5	TRUE COPY OF REPLACEMENT SCALES INTRODUCED AS PER THE RAILWAY SERVANTS REVISED PAY RULES 1997.
ANNEXURE A6	TRUE COPY OF THE REPRESENTATION DATED 18/09/2008.
ANNEXURE A6 (A)	TRUE COPY OF THE REPRESENTATION DATED 23/09/2011.
ANNEXURE A6 (B)	TRUE COPY OF THE REPRESENTATION DATED 23/09/2011.
ANNEXURE R1	TRUE COPY OF THE LETTER DATED 05/03/1999 OF APO/WELFARE TO SR. PERSONNEL OFFICER/R.
ANNEXURE R2	TRUE COPY OF THE LETTER DATED 05/04/2000.
ANNEXURE R3	TRUE COPY OF SENIORITY LIST.
ANNEXURE R4	TRUE COPY OF RAILWAY BOARD LETTER DATED 09/08/2010.
EXHIBIT P1	TRUE COPY OF THE ORDER IN O.A.308/2012 DATED 14.09,.2013 RENDERED BY THE HON'BLE CAT,ERNAKULAM BENCH.

- EXHIBIT P2 TRUE COPY OF THE O.A.308/2012 DATED 17TH AUGUST 2011 PRESENTED BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH.
- EXHIBIT P3 TRUE COPY OF THE REPLY STATEMENT FILED BY THE OFFICIAL RESPONDENTS IN O.A.308/2012 DATED 09.07.2012
- EXHIBIT P4 TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT DATED 4TH SEPTEMBER, 2012 IN O.A.308/2012.
- EXHIBIT P5 TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE 3RD RESPONDENT DATED 18.10.2012 IN O.A.308/2012.
- EXHIBIT P6 TRUE COPY OF THE AMENDMENT TO THE RECRUITMENT RULES AS PUBLISHED IN RBE NO.152/2002 DATED 04.09.2012.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R1 PHOTOCOPY OF THE LETTER FOR THE SELECTION FOR THE POST OF TEACHER GRADE IV DATED 05/03/1999.
- EXHIBIT R2 PHOTOCOPY OF THE NOTIFICATION DATED 05/04/2000.