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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3414/2017

GOVT OF NCT OF DELHI AND ANR

..... Petitioners

Through: Ms. Vibha Mahajan Seth, Advocate.

versus

L.K. BAHL & ANR

..... Respondents

Through: Mr. Shiva Sambyal with Mr. Ujjwal Nagaich, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER
15.11.2019

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Dr. S. Muralidhar, J.:

1. The Government of NCT of Delhi ('GNCTD') and the Department of Training and Technical Education ('DTTE') have in this petition challenged an order dated 3rd March, 2016 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi, allowing OA No.4059 of 2014 filed by the Respondent No.1 with the directions to the Petitioners to extend to him the same benefits as granted to the Applicants in OA No.1501 of 2004 i.e. of counting the past service and regularising the appointment of Respondent No.1 as Lecturer in the Polytechnics run by the DTTE and to also grant the benefit under the Career Advancement Scheme ('CAS').

2. At the first hearing of the present petition, on 21st April, 2017 the following order was passed by this Court:

“The petitioners assail the order dated 03.03.2016 passed by the CAT in O.A. No.4059/2014. The Tribunal has allowed the said Original Application of respondent No. 1 and directed that he should be granted the same relief as granted to the applicants in O.A. No. 1501/2004 since he is similarly placed.

The issue raised before the Tribunal by the respondent was with regard to regularisation of his services from the date of his ad-hoc appointment, i.e. 12.12.1988. To that extent, we are not inclined to interfere with the impugned order.

Learned counsel for the petitioners has, however, submitted that the respondent No. 1 had not acquired the Masters degree, which is an essential qualification to place him in the Lecturer (Selection Grade Scale). In this regard, learned counsel for the petitioners has placed reliance on the judgment of the Gauhati High Court in Writ Petition No.578/2013, and in particular, on paragraphs 21 & 22 of the said decision.

We may observe that this aspect was not squarely raised before the Tribunal. However, the submission of learned counsel for the petitioners is that even while complying with the order of the Tribunal and treating the respondent No. 1 as appointed from 12.12.1988 while implementing the order of the Tribunal, the aforesaid aspect would have to be taken into account by the petitioners.

Limited to the aforesaid aspect, issue notice to the respondent No.1 returnable on 31.07.2017.

Dasti.”

3. Thus, it is seen that the limited question on which the present petition was entertained is the entitlement of Respondent No.1 to the Selection Grade

Scale.

4. It requires to be noted that by an order dated 17th July, 2017 it was directed that no coercive steps should be taken against the Petitioners by the CAT. At the hearing on 31st July, 2017, the Court was informed by counsel for Respondent No.1 that even before filing the present writ petition, the DTTE had issued an order dated 9th August, 2016 placing Respondent No.1 in the Selection Grade with effect from 28th May, 2006 and that arrears had already been paid to Respondent No.1. An additional affidavit was filed by the DTTE stating that the benefit of Selection Grade granted to Respondent No.1 by order dated 9th August, 2016 was kept in abeyance in terms of an order dated 17th May, 2017 passed by the competent authority.

5. Apart from filing a counter affidavit to the main petition, to which a rejoinder has been filed by the Petitioners, a reply has also been filed by Respondent No.1 to the additional affidavit of DTTE.

6. The facts in brief are that Respondent No.1 joined the DTTE as Demonstrator in the year 1972. He was promoted to the post of Lecturer (Ad Hoc) on 12th December, 1988. The services of Respondent No.1 were regularised by the Union Public Service Commission (Respondent No.2) by an order dated 28th May, 1990.

7. On 8th January, 1997 an order was issued by the DTTE on the topic of implementation of CAS for teachers in Government Polytechnics. Para (III) is relevant in this context and reads thus:

“III All the existing staff who are eligible for grant of revised scales/benefits of Career Advancement are exempted from application of revised qualifications vide AICTE circular dated 20.09.1989 and such qualifications shall be applicable to new entrants joining after 20.09.1989.”

8. In this context, it is required to be noted that the guidelines of the All India Council for Technical Education (‘AICTE’) for CAS for Lecturers in Polytechnics, issued on 20th September, 1989 provided for senior scale of Rs.3000-5000 for a Lecturer after the completion of 8 years of regular service in the grade of Lecturer (Rs.700-1300, before 1st January, 1986, and Rs.2200-4000 after 4th Central Pay Commission [‘CPC’]). It provided for selection grade of Rs.3700-5700 on completion of 8 years service in the senior scale. Selection grade was to be given through a process of selection by selection committee, set up by the appointing authority. Even under the circular dated 20th September, 1989 revised qualifications i.e. a Master’s degree, and experience were prescribed for the posts of Lecturer, Senior Lecturer, Lecturer (Selection Grade) and Principal. It is in this context that the above order dated 8th January, 1997 exempting ‘existing staff’ from application of the revised qualifications so prescribed, becomes significant. This is also reflected in a further clarificatory circular of 10th September, 1993, where in para (v) of the note below sub-clause (2) of clause II it was provided thus:

“(v) The revised scales of pay circulated by the AICTE vide circular dated 20.09.89 are applicable with effect from 1.1.86 to all the existing teaching staff such as Principal, Heads of Department, Senior Lecturers and Lecturers who were appointed by the Competent authority. All the existing staff who are eligible for grant of revised scales/benefits of Career

Advancement, are exempted from the application of revised qualifications of AICTE circular dated 20.09.98 and such qualifications shall be applicable to new entrants recruited after 20.09.1989. (emphasis added).”

9. It is admitted by the DTTE that its order dated 8th January, 1997 was in fact based on the aforementioned circular dated 10th September, 1993 of the AICTE.

10. Following the recommendations of the 5th CPC, the AICTE brought out fresh guidelines in 1999 which were circulated on 30th December, 1999. The following were the terms of clause 8.3 of these guidelines:

“A Senior Lecturer / Lecturer (Senior Scale) who has a Master's degree and 5 years experience as senior Lecturer of Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.”

11. The AICTE on 10th September, 2003 issued ‘clarification’ on certain issues pertaining to pay scales and service condition for teachers of degree/diploma level technical institutions. It was clarified that the teachers who have been recruited prior to 1st January, 1996 should be governed by the existing RRs. In other words, it was decided to relax the requirement of a Master’s degree qualification in case of teachers recruited prior to 1st January, 1996 for the purposes of considering them for the CAS.

12. Respondent No.1 retired on 13th November, 2009. The admitted position is that he did not have a Master’s degree qualification. However, it is the

case of Respondent No.1 that in terms of the above clarifications issued by the AICTE, since he was appointed as Lecturer on 12th December, 1988 and was also regularised from that date, he was not required to possess a Master's degree qualification for being eligible to be granted the Senior Selection Grade.

13. It is also the case of Respondent No.1 that many of those appointed along with him as Lecturer (Ad Hoc) by the same order dated 12th December, 1988, and who did not have a Master's degree, were nevertheless granted selection grade.

14. In the counter-affidavit filed on behalf of Respondent No.1 it is stated that in terms of information obtained by him under the Right to Information Act, 2005 ('RTI Act') from the DTTE, it was plain that it had granted selection grade to 6 persons with effect from 12th December, 1988 without insisting on the revised qualification in terms of the AICTE guidelines. A copy of the letter dated 20th July, 2017 sent to him by the DTTE pursuant to his application under the RTI Act has been enclosed as Annexure 'A' to his counter-affidavit.

15. On 10th July, 2015 another order issued by the DTTE (Annexure 'A3') showed that the DTTE had granted selection grade with effect from 12th December, 2004 (i.e. on completion of 16 years of service after regular appointment) to 6 employees; it implemented the decision of the CAT in OA No.3696 of 2012 (*Ashok Kumar Chopra v. GNCTD*) and OA No.2291 of 2012 (*R.K. Bhagi v. GNCTD*). In both cases the DTTE did not insist on the

persons having to possess a Master's degree.

16. Respondent No.1 has also referred to the cases of Mr. Ashok Kr. Chopra, Mr. D.N.K. Gauri and Mr. Virendra Anand, whose pay was fixed as on 1st January, 2006 at Rs. 27010 + Rs. 8000 equal to Rs. 35010.

17. Mr. Shiva Sambyal, learned counsel for Respondent No.1, points out that an order was issued by the GNCTD on 17th May, 2017, by way of implementation of the impugned order of the CAT whereby his services were regularized with effect from 12th December, 1988 instead of 28th May, 1990. The senior scale granted to him was advanced from 28th May, 1998 to 12th December, 1996 on completion of 8 years of service. He accordingly submits that once his services as Lecturer have been regularised on 12th December, 1988 and senior scale has also been granted on completion of 8 years with effect from 12th December, 1996, there is no reason to deny him the selection grade on completion of 16 years with effect from 12th December, 2004.

18. Mr. Sambyal also points out that DTTE did not disclose to this Court that it had granted selection grade to other employees who had not even approached to CAT like Mr. V. K. Sarin and Mr. Heera Singh. He states that on 13th July, 2016 the DTTE granted selection grade to 21 more teachers copies of which have been obtained by Respondent No.1 under the RTI. In particular, he refers to the following paragraph in the minutes dated 4th November, 2015 as under:

“It has been decided that the teachers who have been recruited

prior to 01.01.1996 should be governed by the existing RRs. So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturers i.e. from Lecturer to Senior Grade and from Senior grade to Selection grade ...”

19. Mr. Sambyal points out how the DTTE divided the lecturers, who were to be considered for grant of selection grade into the categories, one of which of those lecturers appointed prior to 1st January, 1996. In this context, the minutes recorded, as under:

“further AICTE vide letter dated 10.09.2003 clarified that the teachers who have been recruited prior to 01.01.1996 should be governed by the existing RRs. So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturers i.e. from Lecturer to Senior Grade and from Senior grade to Selection grade and also for those who were promoted before the implementation of revised AICTE pay scales and service conditions.”

20. Thus, DTTE applied the same clarification of the AICTE and granted selection grade to diploma holders like Savita Sharma, Virender Kumar, Heera Singh and V. K. Sarin, none of whom possessed a Master’s degree and this fact was noted by the committee in a separate column.

21. Respondent No.1 has placed on record a copy of the decision dated 30th April, 2010 of the CAT in OA Nos.1586 of 2009, 1587 of 2009 and 1669 of 2009. One of the issues is discussed in the said judgment was whether Lecturers in Polytechnics under GNCTD, who were appointed on or before 19th September, 1989, would be eligible for being granted selection grade

without having a revised academic qualification prescribed by the AICTE's circular dated 28th September, 1989. The CAT concluded, after referring to the above circulars, that the Applicant before it would be eligible for grant of selection grade after 8 years of regular service in the senior scale or after the completion of 16 years of service. The said order of the CAT was challenged in this Court in W.P.(C) No.21435-436/2005, in which the GNCTD stated on affidavit that it had decided to implement the orders of the CAT within three months.

22. Mr. Sambyal submits that 20 other employees were given the same benefit, even when they had not approached the CAT. It is pointed out that in all of the other cases, including OA Nos. 1501/2004 (*Usha Anand v. GNCTD*) and OA No.2291/2012, the GNCTD never raised the issue of the revised qualifications, as relevant for the grant of selection grade to those appointed prior to 1st January, 1996.

23. In response to the above submissions, it is submitted by Ms. Vibha Mahajan Seth, learned counsel for the Petitioners, that the judgment of the High Court of Assam in W.P.(C) No.578/2013 (*Sri Bhabesh Goswami v. State of Assam*) clearly holds that the clarification dated 10th September, 2003 of the AICTE would not obviate the necessity of a Lecturer (Senior Scale) possessing a Master's Degree for being granted the selection grade.

24. The Court has perused the said judgment of the learned Single Judge of the Guwahati High Court in *Sri Bhabesh Goswami (supra)* carefully. It first comes to the conclusion, and perhaps incorrectly, that Clause 5 of the 1999

AICTE Guidelines would not come to the aid of those seeking selection grade. It also notes that under clause 8.3 the requirement for movement under the CAS is a Master's degree. Para 21 of the said judgment reads as under:

“21. Clause 8.3 of the notification dated 30.12.1999, amongst others, requires a Master's Degree in respect of Senior Lecturer/Lecturer (Senior Scale) for movement under CAS. It is to be noted that First Class Bachelor's Degree is an educational qualification prescribed for Lecturer under notification dated 30.12.1999, but such a Lecturer does not become entitled to be moved as Lecturer (Selection Grade) under CAS in terms of Clause 8.3 unless he/she has a Master's Degree apart from other requirements. Therefore, for placement at Lecturer (Selection Grade) under CAS, the entry level qualification as per existing recruitment rules prior to 01.01.1996 will not suffice. The arguments advanced by Mr. Choudhury that for movement to Lecturer (Selection Grade) for Lecturers recruited prior to 01.01.1996, the only requirement is length of service as Lecturer (Senior Scale), does not commend for acceptance, because the AICTE notification dated 30.12.1999 read with the notification dated 10.09.2003, on which the petitioners rely on, only gives relaxation in entry level qualification for the purpose of consideration under CAS. Therefore, unless a Lecturer (Senior Scale) has a Master's Degree, he/she will not be eligible for consideration under CAS. It is noticed that some of the petitioners in WP(C) 578/2013 had obtained Master's Degree after they were appointed as Lecturer.”

25. The Court notes that the said judgment of the Guwahati High Court misconstrues the actual decision of the AICTE to the extent of holding that the notification provided for ‘relaxation in entry level qualification for the purposes of consideration under CAS.’ It actually applies to all teachers recruited prior to 1st January, 1996 as well as to those ‘who were promoted

before the implementation of the revised AICTE pay scales and service condition.’ In other words, it does not mean that a Lecturer (Senior Scale) cannot be granted the selection grade unless he has a Master’s degree. There is no occasion for such a narrow construction to be placed on the circular. This becomes particularly clear when viewed in the context of the earlier relaxation in terms of exempting the applicability of the 1989 guidelines, in respect of which clarification was issued on 10th September, 1993 to the effect of exempting the existing incumbents of having to possess the revised qualification. Consequently, this Court is not persuaded that the judgment of the learned Single Judge of the Guwahati High Court in **Bhabesh Goswami** (*supra*) lays down the correct position in law.

26. On the other hand, learned counsel for the Respondent has placed reliance on the judgment of this Court dated 6th August, 2010 in W.P. (C) 10640 of 2009 (**Govt. of NCT of Delhi v. Suresh Chand Vashist**), where in the context of the requirement of educational qualifications for Librarians and Physical Education Personnel, the same AICTE guidelines for CAS were applied along with the clarifications issued by the AICTE and it was held that those already appointed prior to 1st January, 1996 would not have to acquire the revised qualifications to be eligible for the CAS.

27. To the same effect is the decision dated 20th October, 2015 of the learned Single Judge of the Rajasthan High Court in S.B. Civil W.P. No.897 of 2013 (**Arti Bhargava v. State of Rajasthan**), which was upheld by the Division Bench of that Court by a judgment dated 28th February, 2018 in D.B. Special Appeal Writ No.221 of 2016 (**State of Rajasthan v. Arti Bhargava**). This

judgment in fact goes a step further in holding that the revised guidelines could not have the retrospective effect of taking away any rights of the employees who became members of the service in terms of the existing rules. Indeed, the Court is of the view that the decision of this Court in ***Suresh Chand Vashist*** (*supra*) and that of the Rajasthan High Court in ***Arti Bhargava*** (*supra*) support the case of Respondent No.1.

28. Further, with the Petitioners having granted the selection grade to many of the batchmates of Respondent No.1 who were promoted along with him on 12th December 1988, and even to those junior to him without insisting on the post-graduate degree qualification there appears to be no good reason to subject him to discrimination on that score.

29. The upshot of the above discussion is that the impugned order of the CAT dated 3rd March, 2016, insofar as it requires the Petitioners to grant Respondent No.1 the benefits granted to all others in terms of the CAT's order in OA No.1501 of 2004 'with all consequential benefits' does not call for any interference.

30. In particular, it is directed that there would be no occasion to deny Respondent No.1 the benefit of the CAS. The order granting him the selection grade will no longer, therefore, be kept in abeyance. Any further consequential benefits that are owed to Respondent No.1 will also not be denied to him, thus obviating the need for him having to litigate for those benefits.

31. The petition is accordingly dismissed but in the circumstances with no orders as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 15, 2019
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