

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3284 of 2021

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Smt. Poonam, aged 59 years, female, Wife of Shri Manjoj Kumar Choudhary
Resident of Village- Rahua Apuchha, P.S.- Masahari, District- Muzaffarpur, at
present posted as PRT, IInd Shift, Kendriya Vidyalaya, Muzaffarpur

... .. Petitioner/s

Versus

1. The Union of India through the Commissioner, KVS (HQ), New Delhi - 110602
2. Assistant Commissioner (Regional Office), P.O.- Lohia Nagar, Kankarbagh Patna - 80020
3. Deputy Commissioner (Regional Office), P.O.- Lohia Nagar, Kankarbagh Patna - 800020
4. Audit and Accounts Officer, KVS (RO) Patna
5. Principal, Kendriya Vidyalaya, Muzaffarpur Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Kumar, Adv.
For the UOI	:	Mr. Kumar Ravish, ASG
For the Resp. No. 2 to 5 :	:	Mr. Gopal Krishna Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date : 20-07-2021

Heard learned counsel for the petitioner and learned
counsel for the respondents through video conference.

2. The present writ petition has been filed for the
following reliefs as formulated by the petitioner-

*“a) To set aside the order dated 15.05.2019
passed in O.A./050/00148/2016 by CAT, Patna
Bench, Patna whereby and whereunder the Hon’ble
CAT was pleased to decline the genuine grievance of
petitioner merely on limitation to Quash/set aside the
order No. F28036/ (Grievance) 2015-KVS P.S./11968*



dated 12/15.01.2016 by which the respondents rejected the request of the petitioner dated 29.11.2006 for pay fixation on the basis of option given 01.01.2006 in place of 01.11.2005 on promotion from the date of next increment in view of the order passed in O.A. No. 568/2011 (Nandjee Singh V/S VOI) dated 12.03.2015 which is not only similar but also promoted on the same notification.

b) To direct the respondents to fix the pay scale on the option given i.e. 01.01.2006 and to consequential benefit.”

3. The short facts according to the petitioner, a Teacher in the Kendriya Vidyalaya, are that on the recommendation of Departmental Promotion Committee held on 04.08.2006, 12 PGTS, 39 TGTS, 23PRTS including petitioner and 15 other categories of teachers were appointed/promoted to senior scale from the date mentioned against each of them respectively. The petitioner as PRT Sr. scale Rs. 5500-175-9000/- was appointed from 01.11.2005 vide letter dated 29.08.2006. The option clause was however not incorporated in the order of promotion dated 29.8.2006, despite which the petitioner vide her letter dated 29.11.2006 sent her option for fixation of pay after grant of senior scale from 01.01.2006. By office order dated 22.02.2007, the petitioner's pay was fixed in senior scale which was less by Rs. 175/- than the old scale as on 01.01.2006. In the case of one Sunita Kumari who was junior to the petitioner in the same notification,



the pay was fixed in senior scale at Rs.6025/- as on 01.01.2006. The petitioner filed two representations dated 26.07.2007 and 24.09.2010. Ultimately, the request of the petitioner was rejected by the Deputy Commissioner (Respondent no.3) by letter dated 12/15.01.2016 on the ground that the petitioner had not exercised her option in time. Against the rejection order, the petitioner filed O.A. No. 050/00148/2016 on 11.02.2016 but the same was dismissed by the Central Administrative Tribunal in limine on grounds of inordinate delay in approaching the Tribunal. It was observed, inter alia, that even though the petitioner's pay was fixed in the year 2007, the same was not assailed for several years and the petitioner acted as a fence-sitter until the decision of the Tribunal in O.A. No. 568/2011 dated 12.3.2015 deciding the case of another similarly affected person. The Tribunal was of the view that the order dated 12/15.01.2016 impugned before it did not create a new cause of action and, accordingly, held that the O.A. was barred by limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Learned counsel for the petitioner submits that the Tribunal has erred in dismissing the petitioner's O.A. on grounds of alleged delay and bar of limitation. It is submitted that as a matter of fact, option was required to be incorporated in the



promotion order dated 29.8.2006 which was however not done. Despite that, the petitioner soon thereafter filed her option on 29.11.2006 which was however subsequently denied for no fault of her own. It is submitted that her claim was finally rejected by letter dated 12.01.2016 which was impugned before the Tribunal by filing the O.A. on 11.02.2016 which was admitted on 12.02.2016 and notice issued. It is therefore submitted that there was no delay in filing the O.A. and ought not to have been dismissed in limine by the Tribunal, especially in view of its own decision dated 12.03.2015 passed in O.A. No. 568/2011, that delay in filing the option when the option was not sought in the promotion order could not be rejected as time barred.

5. Learned counsel for the respondent appeared and has been heard. It is submitted that the petitioner has belatedly filed her option on 29.11.2006 in respect of the promotion order dated 29.8.2016 and hence the same has rightly not been entertained. It is further submitted that the petitioner approached the Tribunal after considerable delay which was rightly not condoned.

6. Having heard the parties and on consideration of the materials on record, we find merit in the writ petition. It is not in dispute that the option was not incorporated in the promotion order dated 29.08.2016. The question of delay in filing the option could



not, therefore, arise. It is also admitted that the petitioner filed her option on 29.11.2006. The Tribunal itself noticed its earlier order passed in O.A. No. 568/2011 dated 12.03.2015, expressing the view that delayed filing of option when such option was not sought in the promotion order could not be rejected as time barred. Moreover, the petitioner was communicated the reason for denial of her claim, namely, that she had not submitted her option within time, vide letter dated 12/15.01.2016 which was the subject matter of challenge in her O.A. No. 050/00148/2016 which cannot be said to be delayed.

7. We are of the view that the petitioner is entitled for fixation of her pay in senior scale in accordance with her option exercised on 29.11.2006. Accordingly, the impugned order of the Tribunal dated 15.05.2019 passed in O.A./050/00148/2016 as well as the order dated 12/15.01.2016 passed by the Deputy Commissioner (respondent no.3) are set aside with a direction to the Deputy Commissioner (Regional Office), Patna (respondent no.3) to dispose of the matter in accordance with law and after grant of an opportunity of hearing to the petitioner, expeditiously and in any event preferably within a period of twelve weeks from the date of receipt/production of a copy of this judgment. To



facilitate disposal, the petitioner shall furnish his mobile number and email ID to the respondent no. 3 within a week from today.

8. It is made clear that in view of the ongoing Covid-19 pandemic, any correspondence between the parties may be made through e-mail and the petitioner shall be at liberty to request for hearing through video conference.

9. The writ petition stands allowed to the extent indicated above.

(Vikash Jain, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2021
Transmission Date	

