

13.11.2024
(D/L-1)
Ct. No.4
(Naba)

W.P.C.T. 30 of 2016

**The Dy. Commissioner, Kendriya Vidyalaya
Sanghathan Kolkata Region & Ors.
Vs.
Shri Hare Ram Jha & Anr.**

Mr. Rabindranath Bag
... for the Petitioners.

1. The writ petitioner was the respondent before the Tribunal. The applicant therein had approached the Court seeking a direction for grant of senior scale of pay with effect from 10.10.2007 that is the date on which he acquired 12 years being the requisite length of service for grant of such scale. The same has been allowed by the Central Administrative Tribunal (CAT) along with consequential relief of difference of pay and arrears which were to be paid within a period of two months from the date of order passed by the CAT. The order of the CAT dated 27.07.2015 passed in O.A. No. 250 of 2014 is assailed by the Union of India in the present proceedings.
2. The learned Counsel for the Sanghathan, Mr. Bag submits with reference to a letter dated 12.08.1987, regarding revision of pay scale of school teachers that the CAT should have

considered Paragraph 3(iv) of the said letter which reads as follows:-

“Every teacher would be required to participate in and in service training programme of at least three weeks duration before he/she crosses an EB or is promoted to Senior scale or Selection Scale, i.e., once in every six years; provided that where arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time.”

3. He submits that the 21 days’ training is another pre-requisite for the grant of senior scale, which the petitioner did not possess and therefore, the direction of the CAT allowing him the senior scale with effect from the date he had acquired only one of the qualifications, namely, 12 years of service is unsustainable.
4. We have considered the said submission, the letter of the Union of India dated 12.08.1987 which has been handed over to us, copy of which be kept on record, as also the order passed by the learned Administrative Tribunal on 27.07.2015.
5. It is apparent from the materials placed before this Court that apart from the 12 years’ length of service, a person is also required to acquire the 21 days’ training for grant of senior scale. The letter

dated 12.08.1987, handed over by the learned Counsel for the Sanghathan, however, shows that in the event such training is not conducted, there is a discretion vested in the authority to exempt the said requirement appropriately. In this connection, we would observe that when such a discretion vested in the authority and when there is a lach on the part of the authority in conducting that training programme within the 12 years length of service such discretion ought normally to be exercised in favour of the employee unless circumstances otherwise so warrant.

6. Having observed so, we also refer to the order passed by the Administrative Tribunal wherein a communication dated 20.01.2010, issued by the Assistant Commissioner (Admn.) has been quoted. The said communication was 'Annexure R-1' to the reply filed by the present petitioner before the Tribunal which reads as follows:-

"I am to refer to your letter No.F22058/2009/RO(JBP)/14338 dated 06.11.2009 on the subject cited above and to say that the clarifications on the issue have already been issued by KVS (Hqrs.) Admn.I Section vide circular No. 18-3/92-KVS(Admn.I) dated 02.06.2004 (copy enclosed). However, from the letter referred above, it appears that the Regional Office has not organized the 09 days workshop in

three parts before completion of 12 years of service by the teachers. In such cases the senior scale shall be granted by the DPC retrospectively, i.e. after completion of 12 yrs of service as the fault does not lies with the teachers.”

7. Apparently, the discretion to exempt has been communicated in favour of the petitioner by the said Annexure which has also been referred to and relied upon by the learned Tribunal for grant of senior scale to the petitioner from the date he completed 12 years length of service. We find no infirmity in such grant having regard to the fact that the communication (Annexure R-1) is apparently an exercise of discretion conferred under the letter of the Union of India dated 12.08.1987, relevant extract of which has been quoted above.
8. We, therefore, do not find any reason to interfere with the order passed by the learned Tribunal.
9. The Writ Petition is dismissed.
10. There shall be no order as to costs.
11. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Md. Shabbar Rashidi, J.)