

WP.CT. 65 of 2021

(Union of India & Ors. Vs. Shri Gunadhar Santra)

Mr. Rabindranath Bag
Mr. Rohan Raj

..... For the petitioners

Mr. J. R. Das
Mr. S. Pachhal

..... For the respondent

The present writ petition has been preferred challenging an order dated 5th February, 2021 passed by the learned Tribunal in the original application being OA 350/391/2016. By the said order, the learned Tribunal was pleased to direct as follows:-

“In view of such, we direct the authority that the applicant be granted the benefit of senior scale either from the date it fell due i.e. in the year 1993 or from the date the applicant acquired training for the same, if a training was mandatory for the purpose. Let appropriate orders be issued within a period of 3 months. Based on such revision, his right to get selection grade upon completion of 24 years of service be granted, or revised if the same has already been granted from a later date.”

Records reveal that the applicant/respondent herein applied for appointment to the post of a Yoga Teacher under the Kendriya Vidyalaya Sangathan (hereinafter referred to as KVS) in response to an advertisement dated 17th January, 1981. He emerged to be successful in the selection process and was appointed to the post by a letter dated 4th September, 1981. Subsequent thereto, by

a memo dated 26th March, 2004 he was appointed in substantive capacity on and from 25th September, 1983. Thereafter, by a memo dated 30th January, 2012 he was appointed to the senior scale of pay on and from 9th June, 2011 after he completed his service course/ training in the year 2000. By the said memo one Mrs. Tapasi Das and one Mrs. J. Kharkongoi were granted such senior scale of pay on and from 4th February, 2009 and 16th February, 2008 respectively. In the midst thereof, by a memo dated 15th January, 2006 it was, *inter alia*, observed that as per the recommendation of the Chattopadhyay Commission and the existing provisions, every teacher is entitled for the senior scale on completion of 12 years' service in his/her present scale subject to the condition like satisfactory ACR and completion of 21 days in-service within six years just preceding the date on which he/she becomes due for senior/selection scale. By the said memo, the condition towards completion of 21 days in service course was also split up into four parts of within 12 days of theoretical training of one spell and three courses of 3-day duration class-room teaching/demonstration etc. spread over two to three years. Aggrieved by the denial of the authorities to grant the senior scale after completion of 12 years' service in the year 1993, the respondent approached the learned Tribunal.

Mr. Bag, learned advocate appearing for the petitioners being the Union of India, KVS and its functionaries submits that the learned Tribunal erred in law in observing that the petitioners have granted retrospective effect to the memo dated 9th June, 2011, which contained a decision towards dispensation of higher qualification for the grant of senior scale, while granting the senior scale to Mrs. Tapasi Das and Mrs. J. Kharkongoi with effect from 4th February, 2009 and 16th February, 2008 respectively.

He further contends that the respondent entered into service on 25th September, 1981 and was appointed in substantive capacity on 25th September, 1983. His promotion was due after 12 years of service subject to completion of in-service course/training. He completed such training in the year 2000 and as such, he would have been entitled to promotion 12 years after the year 2000. However, as the higher qualification was dispensed with by the memo dated 9th June, 2011, he was rightly granted promotion with effect from the date of dispensation of such requirement of higher qualification, i.e., from 9th June, 2011.

Mr. Das, learned advocate appearing for the respondent, however, denies and disputes the contention of the respondent and submits that the respondent was, in fact, entitled to senior scale of pay immediately after he completed 12 years of service and accordingly, the grant

of such senior scale with effect from 9th June, 2011 was assailed by him before the learned Tribunal.

He contends that the respondent completed the in-service course/training in the year 2000 but as such training is not compulsory, the respondent was entitled to senior scale after completion of 12 years' service more so when the memo dated 9th June, 2011 also dispensed with the requirement towards higher qualification.

He further argues that Mrs. Tapasi Das and Mrs. J. Kharkongoi did not complete such training within 12 years from their respective dates of entry into service. They were granted such senior scale after they completed the in-service course/training applying the provisions of the memo date 9th June, 2011 retrospectively but similar yardstick was not applied in case of the respondent and in the said conspectus, the learned Tribunal rightly held that the petitioners have practiced discrimination.

Heard the learned advocates and considered the materials on record.

The respondent was appointed in a particular scale of pay with a condition that he would be entitled to a senior scale of pay after completion of 12 years of service in the parent scale, subject to completion of training within six years. The respondent, however, completed such training in the year 2000 and accordingly, he became entitled to senior scale of pay at least with effect from the said year i.e., 2000. It is not a case that to get senior scale the

requirement was to enter into service with a training. In view thereof, the learned Tribunal rightly discounted the contention of the petitioners that the grant of senior scale ought to have been from the date of issuance of the memo dated 9th June, 2011 by which the requirement of such training of higher qualification was dispensed with.

In the said conspectus and as the memo dated 9th June, 2011 dispensed with the requirement towards higher qualification, the learned Tribunal, in our opinion, rightly directed the petitioners to grant the benefit of senior scale to the respondent either from the date it fell due i.e., in the year 1993 or from the date he acquired the same, if training was mandatory for the purpose and based on such revision to grant selection grade upon completion of 24 years of service or to revise if the same has already been granted from a later date.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the writ petition is dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)