

A DIRECTOR OF ELEMENTARY EDUCATION, ODISHA & ORS.

v.

PRAMOD KUMAR SAHOO

(Civil Appeal No. 7577 of 2019)

B SEPTEMBER 26, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Service Law:

Pay scale – Appointment of respondent having intermediate

- C *qualification against pay-scale of Untrained Matric Teacher – Claimed pay-scale available to Trained Matric Teacher – Counsel for the State conceded before the Administrative Tribunal that Teachers having intermediate qualification were entitled to the pay-scale available to Trained Matric Teachers – On the basis of the concession, the Tribunal allowed the case of the teacher – High Court affirmed the order of Tribunal – The respondent-teacher, in absence of training, cannot be said to be a Trained Matric Teacher entitled for pay-scale meant for such teachers – The distinction between Trained Matric Teacher and Untrained Matric Teacher was not appreciated by courts below – The concession by State Counsel was a concession in law and contrary to Statutory Rules, hence, not binding on the State – There cannot be any estoppel against law – Concession – Estoppel – Orissa Revised Scales of Pay Rules, 1989 [as amended by Orissa Revised Scales of Pay (Amendment) Rules, 1990].*
- D *Concession, the Tribunal allowed the case of the teacher – High Court affirmed the order of Tribunal – The respondent-teacher, in absence of training, cannot be said to be a Trained Matric Teacher entitled for pay-scale meant for such teachers – The distinction between Trained Matric Teacher and Untrained Matric Teacher was not appreciated by courts below – The concession by State Counsel was a concession in law and contrary to Statutory Rules, hence, not binding on the State – There cannot be any estoppel against law – Concession – Estoppel – Orissa Revised Scales of Pay Rules, 1989 [as amended by Orissa Revised Scales of Pay (Amendment) Rules, 1990].*
- E *Concession, the Tribunal allowed the case of the teacher – High Court affirmed the order of Tribunal – The respondent-teacher, in absence of training, cannot be said to be a Trained Matric Teacher entitled for pay-scale meant for such teachers – The distinction between Trained Matric Teacher and Untrained Matric Teacher was not appreciated by courts below – The concession by State Counsel was a concession in law and contrary to Statutory Rules, hence, not binding on the State – There cannot be any estoppel against law – Concession – Estoppel – Orissa Revised Scales of Pay Rules, 1989 [as amended by Orissa Revised Scales of Pay (Amendment) Rules, 1990].*
- F *Allowing the appeal, the Court*

HELD: 1. The Trained Matric Teacher is the one who has been trained for the purposes of teaching. In the absence of such training, the respondent cannot be said to be a Trained

- G **Matric Teacher entitled to the pay scale meant for such teachers. The classification based upon educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification is a valid classification. The distinction between Trained Matric Teacher and Untrained Matric Teacher has not been appreciated by the Tribunal and the same error**
- H

was committed by the High Court as well. Therefore, the order passed by the Tribunal as affirmed by the High Court is not sustainable in law. [Paras 10, 12 and 14] [742-F; 743-A-B-F] A

Shyam Babu Verma & Ors. v. Union of India & Ors.
(1994) 2 SCC 521 : [1994] 1 SCR 700 ; M.P. Rural
Agriculture Extension Officers Association v. State of
M.P. & Anr. (2004) 4 SCC 646 : [2004] 3 SCR 821 –
relied on. B

2. The concession given by the State Counsel before the Tribunal was a concession in law and contrary to the statutory rules. Such concession is not binding on the State for the reason that there cannot be any estoppel against law. The rules provide for a specific Grade of Pay, therefore, the concession given by the State Counsel before the Tribunal is not binding on the appellant. [Para 11] [742-G] C

Himalayan Coop. Group Housing Society v. Balwan Singh & Ors. (2015) 7 SCC 373 : [2015] 4 SCR 616 – referred to. D

| <u>Case Law Reference</u> | | |
|---------------------------|-------------|---------|
| [2015] 4 SCR 616 | referred to | Para 8 |
| [1994] 1 SCR 700 | relied on | Para 12 |
| [2004] 3 SCR 821 | relied on | Para 13 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7577 F
of 2019.

From the Judgment and Order dated 03.03.2016 by the High Court of Orissa at Cuttack in W.P.(C) No. 21130 of 2015. G

Shibashish Misra and S. Debabrat A Reddy, Advs. for the Appellants.

Bharat Sangal, Sr.Adv., Vidushi Garg, Nagarkatti Kartik Uday, Ms. Laimon Rani Boro, Ms. Babita Kushwaha, Advs. for the Respondent. H

A The Judgment of the Court was delivered by
HEMANT GUPTA, J.

B 1. The challenge in the present appeal is to an order passed by the High Court of Orissa on March 3, 2016 whereby, the writ petition filed by the appellant challenging the order passed by the Odisha Administrative Tribunal¹ on February 19, 2010 remained unsuccessful. The Tribunal has directed the appellant to grant pay scale of Trained Intermediate Arts Teacher i.e. Rs.1080/- - Rs.1800/-.

C 2. The respondent was appointed under the Rehabilitation Assistance Scheme bearing order dated August 06, 1988 after death of his father Basanta Kumar Sahoo. He joined on August 10, 1988 as Primary School Teacher in pursuance of the said order in the pay scale of Rs.780/- - Rs.1140/- with D.A. as admissible. The respondent has intermediate qualification at that time and had appeared for B.A. examination when he was appointed as Primary School Teacher against the Matric Teachers Certificate Post. The said pay scale is payable to Untrained Teachers having Matric qualification, whereas pay scale of Rs.840/- - Rs.1240/- is the pay scale granted to Trained Matric Teachers.

E 3. The Orissa Revised Scales of Pay (Amendment) Rules, 1990 were published by the Government of Odisha on September 12, 1990 amending the Orissa Revised Scales of Pay Rules, 1989. The aforesaid Amendment Rules of 1990 laid down a separate scale of pay for all posts of Trained Matric Teachers and non-Trained Matric Teachers. The relevant clause reads as under:-

F “6. In the said Rules, in the First Schedule,

(i) For the scale of pay appearing against Sl. No. 2 in Col. (4) under the heading “Revised Scales of Pay”, the following scale of pay shall be substituted, namely;-

G “Rs. 775-12-871-E.B.-14-1025”.

(ii) For the scale of pay appearing against Sl. No. 6 in Col. (4) under the heading “Revised Scales of Pay”, the following scale of pay shall be substituted namely:-

H ¹ for short ‘the Tribunal’

(a) Rs. 975-25—1, 150-E.B.-30-1,660 (For all posts except A Trained Matric Teachers)"

4. Thereafter, a corrigendum was issued on August 27, 1992 stating the scales of pay for the Untrained Intermediate Teacher and Trained Matric Teacher. The said corrigendum reads as under:

| Sl. No. | Name of Post | Existing Scale of Pay 1985 | Revised Scale of Pay |
|---------|--------------------------------|----------------------------|----------------------|
| 5(i) | Untrained Intermediate Teacher | 840-1240 | 975-1660 |
| (ii) | Trained Matric Teacher | 840-1240 | 1080-1800 |

5. The respondent claimed that he is entitled to pay scale of Rs.840/- - Rs.1240/- from the very day of his appointment and pay scale of Rs. 1080-1800 after Orissa Revised Scales of Pay Rules, 1989 as amended in the year 1990. Since the said pay scale was not granted to him, he invoked the jurisdiction of the Tribunal when he filed O.A. No.831(C) of 1998. The basis of argument is that he is intermediate and, thus, he is to be treated as a Trained Teacher which will entitle him to the pay scale of Rs.1080/- - Rs.1800/-.

6. Before the learned Tribunal, the counsel for the appellant conceded that the Teachers having intermediate qualification are entitled to the scale of pay as is available to Trained Matric Teachers. On the basis of such concession, the learned Tribunal allowed the Original Application on February 19, 2010.

7. The appellant filed an application, *inter alia*, on the ground that wrong submission was made by the counsel for the appellant. Such application was dismissed on the ground that the remedy of the appellant was either by filing an application of review or modification but since such application has been filed after two years of the order having been passed by the Tribunal, the same was dismissed on the ground of laches as well as there is no error apparent on the face of the order. Thereafter, the appellant filed the review petition which was dismissed on January 22, 2015. It is thereafter the writ petition was filed which was dismissed vide the order impugned in the present appeal.

8. Learned counsel for the appellant submitted that the separate pay scales are provided for Untrained Matric Teachers (Rs.975-25-1, 150-E.B.-30-1,660) and for Trained Matric Teachers (Rs.1,080-30-1,440-EB-30-1,800). Merely because the respondent is intermediate, that

- A is higher qualification than the Matric, does not make him a Trained Teacher. Therefore, the concession given by the State counsel is erroneous concession in law and, does not bind the appellant. Reference was made to ***Himalayan Coop. Group Housing Society v. Balwan Singh & Ors.***² wherein, this Court held as under:
- B “32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions....”
- C
- D

- E (Emphasis supplied)
- F 9. On the other hand, it is argued that since the respondent is possessing higher qualification and is now graduate, therefore, he is entitled to the pay scale meant for Trained Matric Teachers and that State is bound by the concession given by its counsel before the Tribunal.
- G 10. We have heard learned counsel for the parties and find that the distinction between Trained Matric Teacher and Untrained Matric Teacher has not been appreciated by the Tribunal and the same error was committed by the High Court as well.
- H 11. The concession given by the learned State Counsel before the Tribunal was a concession in law and contrary to the statutory rules. Such concession is not binding on the State for the reason that there cannot be any estoppel against law. The rules provide for a specific Grade of Pay, therefore, the concession given by the learned State Counsel before the Tribunal is not binding on the appellant.
- I
- J
- K
- L
- M
- N
- O
- P
- Q
- R
- S
- T
- U
- V
- W
- X
- Y
- Z

H ² (2015) 7 SCC 373

12. The Trained Matric Teacher is the one who has been trained for the purposes of teaching. In the absence of such training, the respondent cannot be said to be a Trained Matric Teacher entitled to the pay scale meant for such teachers. The classification based upon educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification is a valid classification. It has been so held in *Shyam Babu Verma & Ors. v. Union of India & Ors.*³, wherein this Court held as under:

“9. ... The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of ‘equal pay for equal work’ should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of ‘equal pay for equal work’ to them....”

13. The said decision has been quoted by another Bench of this Court in *M.P. Rural Agriculture Extension Officers Association v. State of M.P. & Anr.*⁴, wherein this Court held as under:

“22. Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant of pay has been upheld by the Constitution Bench of this Court in *P. Narasinga Rao* [AIR 1968 SC 349:(1968) 1 SCR 407].”

14. Therefore, we find that the order passed by the Tribunal as affirmed by the High Court is not sustainable in law. Consequently, the appeal is allowed. The Original Application filed by the respondent is dismissed.

15. Vide order dated July 14, 2017, the appellant has deposited Rs.25,000/- with the Registry towards litigation expenses. The respondent is permitted to withdraw the said amount.

Kalpana K. Tripathy

Appeal allowed.

³(1994) 2 SCC 521

⁴(2004) 4 SCC 646