



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF FEBRUARY, 2024

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO.3674 OF 2022 (S-KSAT)

BETWEEN:

...PETITIONER

(BY SRI. VIGNESHWAR. S. SHASTRI, ADVOCATE FOR
SRI. GURURAJ. R., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
PRIMARY AND SECONDARY EDUCATION,
M.S. BUILDING, BENGALURU - 560 001.
2. COMMISSIONER OF PUBLIC INSTRUCTIONS
FOR PRIMARY EDUCATION,
NEW PUBLIC OFFICE, NRAPATUNGA ROAD,
BENGALURU - 560 001.
3. THE DEPUTY DIRECTOR (ADMINISTRATION),
DEPARTMENT OF PUBLIC INSTRUCTION,
UDUPI, UDUPI DISTRICT - 576 226.





4. BLOCK EDUCATIONAL OFFICER,
PUBLIC EDUCATION DEPARTMENT,
KUNDAPURA ZONE, KUNDAPURA,
UDUPI DISTRICT – 576 231.

5. ACCOUNTANT GENERAL (A AND E),
KARNATAKA, BENGALURU,
P.B.NO.5329/5369,
PARK HOUSE ROAD,
BENGALURU - 560 001,
BY ITS SENIOR ACCOUNTS OFFICER.

...RESPONDENTS

(BY SRI. KHAMROZ KHAN, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, QUASHING ORDER DATED 19/01/2022 PASSED BY HON'BLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BENGALURU IN APPLICATION NO.597/2021 AS PER ANNEXURE-C TO THE WRIT PETITION AND ENDORSEMENT DATED 27/10/2020 IN NO.Bi2/SHAA.MAA.KA.VE.BHA./20-21 ISSUED BY THE RESPONDENT NO.3 AUTHORITY AS PER ANNEXURE-14 TO THE APPLICATION NO.597/2021 BY DECLARING THAT PETITIONER IS ENTITLED FOR KANNADA LANGUAGE INCREMENT AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, **KRISHNA S. DIXIT. J.**, MADE THE FOLLOWING:



ORDER

Petitioner, a pensioner is essentially grieving against the denial of one solitary increment which avails to all civil servants who have studied in Kannada Medium upto SSLC with Kannada as one of subjects in the syllabus.

2. Learned Sr.Advocate appearing for the petitioner argues that the petitioner having put in a very long service has retired on attaining the age of superannuation; she ought to have been accorded one Kannada Language Examination Increment because of the academic qualification; not extending such a benefit singularly to the petitioner is discriminatory and therefore violative of Article 14 of the Constitution; the money payable as salary & emoluments are a property of the employee and therefore not paying amounts to violation of constitutional guarantee under Article 300A, vide **K.T PLANTATION vs. STATE OF KARNATAKA, (2011) 9 SCC 1.** He also places reliance on a Co-ordinate Bench decision of this court in W.P.No.13242/2021 (S-KSAT) between STATE &



OTHERS vs. P. SHOBHA & ANOTHER, disposed off vide order dated 23.10.2021 wherein certain observations are made about the entitlement of similarly circumstanced litigants being granted such increments.

3. After service of notice, the respondents have entered appearance through the learned AGA, who vehemently opposes the petition making submission in justification of the Tribunal's order dated 19.01.2022 whereby petitioner's Application No.597/2021 has been negated. Secondly, he seeks dismissal of the petition on the ground of delay & laches, petitioner having already retired from service on 31.10.2019. Lastly, he disputes the invocability of the Co-ordinate Bench decision *supra*.

4. Having heard the learned counsel for the parties and having perused the Petition papers, we are inclined to grant indulgence in the matter as under and for the following reasons:

A. Petitioner worked as a regular employee during the period between 24.09.1980 and 31.10.2019 with



spotless Service Record. She demitted office on attaining the age of superannuation and now she is drawing pension. Admittedly, she has studied upto SSLC in Kannada Medium and Kannada happened to be one of the subjects in the syllabus. There is no dispute that such employees need not pass Kannada Language Examination, which others have to, for availing said increment. Said benefit has been accorded by the Tribunal to similar circumstanced persons in Application Nos. 11022/2016 c/w 1881/2019 & 2754/2019 that were disposed off by a common order dated 22.08.2019. One such order was put in challenge in W.P.No.13242/2021 (S-KSAT) between STATE OF KARNATAKA vs. SMT. P.SHOBHA disposed off on 23.10.2021 negating the challenge. Therefore what applies to goose should apply to gander on the principle of parity enacted in Article 14 of the Constitution of India.

B. It is not in dispute that petitioner was working as School Maatha earlier and after the abolition of said cadre vide Government Order dated 22.03.1999, she was re-



posted Pre-primary Teacher which post she was initially appointed to on 24.09.1980. She demitted this post on 31.10.2019 on attaining the age of superannuation. Thus she has put in nearly three decades of spotless service. The condition subject to which such employees were re-deployed as Pre-primary Teachers has been pooh-poohed by the Co-ordinate Bench in Shobha's case *supra*. Therefore learned AGA cannot much bank upon it to contend that the employees are bound by the same and as a consequence they cannot be granted any increment.

C. The contention of learned AGA that what the Tribunal had done was not according the increment but only interdicting recovery of money wrongly paid on account of unlawful grant of KLE increment, is bit difficult to accept. The order of the Tribunal, as already mentioned above had quashed recovery of any amount, is true. However, when the matter was carried by the Government in Shobha's case *supra*, the Co-ordinate Bench observed as under:



"8. Firstly, it is not in dispute that the respondents studied Kannada as First Language in SSLC, i.e. studied in Kannada Medium, and were exempted from passing Kannada Language Examination as per Karnataka Civil Services (Kannada Language) Examination Rules, 1974 and as such they were eligible for one additional KLE increment. The Order dated 22nd March, 1999 would indicate that due to the proposal submitted by the Department of Education and after verification of the proposal, the Government has decided to depute School Matas/Mothers, to Government Primary Schools, however, they will not be entitled for any privilege/benefits available to the Primary School Teachers and there will be no change in their Grades and Service Rules. Interpreting that the phrase "not entitled to additional privileges/benefits" figured in the said Government Order dated 22nd March, 1999 would not preclude the stake holders seeking increment for having passed the Kannada Language Examination subsequent to abolition of School Matas/Mothers, representations were filed. On considering such representations made by the erstwhile School Matas/Mothers, the clarification dated 06th February, 2013 has been issued by the Government, which is the basis for the Accountant General to raise objections for having extended one additional KLE increment to the respondents herein.



9. At the outset, the interpretation/clarification given by the Government in the Circular dated 06th February, 2013 is vague and baseless. No reasons, much less valid reasons, are assigned for giving clarification that the Primary School Teachers are not entitled for one additional KLE increment, moreover the said clarification is not absolute denial, but would indicate that the said clarification is excluding the Government order dated 22nd March, 1999. As could be seen, the Circular dated 06th February, 2013 is not in the nature of clarification but creates more ambiguity with respect to the Government order dated 22nd March, 1999. Be that as it may, having complied with the order passed by the Tribunal in the earlier round of litigation which has reached finality, merely placing reliance on the clarification dated 06th February, 2013, the recovery proceedings initiated by the authorities based on the objection raised by the Accountant General, is fully perverse and untenable. Sanction of one additional KLE increment is not an additional privilege/benefit extended to the Primary School Teachers.”

D. AS TO DELAY & LACHES:

(a) Petitioner lady served the institution as a regular employee from 24.09.1980 to 31.10.2019 and she has been superannuated, is not in dispute. We have seen above, the benefit of one KLE increment being given to



similarly circumstanced employees in other identical institutions. The Tribunal decided the dispute relating to increment in Application No.9334/2015 vide order dated 16.11.2017. The petitioner who was in the verge of retirement got her claim rejected by the Department on 27.10.2020 i.e., soon after her retirement. She had approached the Tribunal in Application No.597/2021. The Co-ordinate Bench decided Shobha's case only on 23.10.2021. Even State's SLP No.1668/2022 came to be rejected on 18.02.2022. Therefore it cannot be said that petitioner was a speculative litigant. She was fighting for her legitimate right to get the increment which is her property in the light of Article 300A of the Constitution.

(b) Above being said, there is some force in the submission of learned AGA that Court should not ordinarily grant relief in stale claims. Law does not come to the aid of sleepy & tardy, is true. However, it is notable that our Constitution does not prescribe any limitation period for tapping the Writ Jurisdiction, the doctrine of delay &



latches being a judicial invention to turn down belated claims. This doctrine *per se* cannot defeat a legitimate right of a citizen, when no third party rights are created, since it does not operate as a Thumb Rule. After all, the State pensioners have to be handled with soft gloves, with sympathy & smile.

(c) Added to the above, the value of KLE increment is only Rs.2,900/-. It is just nothing in these days when bread is costlier than blood. Equity can be worked out by confining claim of the petitioner to three years preceding the KAT Application that was filed in February 2021. In other words, she cannot claim anything three years anterior to February 2018, and thus the claim for the previous period, she has to forego. The arrears on the basis of this increment need to be paid to the petitioner and further her pension and terminal benefits have to be re-fixed reckoning the increment, as having fallen due in February 2018.

(d) It has been a settled position of law of writs that a legitimate claim of a citizen cannot be defeated by the



State only by pleading technical grounds. The Apex Court in **NIRANJANLALL AGARWALLA vs. UNION OF INDIA –AIR 1969 SC 23** has observed as under: *"It does not behove the State to contest a good claim on the off-chance of success on some unsubstantiated technical plea"*. We cannot be oblivious to the fact that who is before the Writ Court is a poor lady who has served the State for about three decades on not much attractive salary; she did it in a very humble post namely Pre-primary School Teacher; may be she has shaped the fate of many children as 'School Maatha' in the Government School. She has retired from service and drawing not much pretty pension. The evening of life poses age related difficulties which may be arguably mitigated with the aid of money. Denying any relief in its entirety would do great injustice to the pensioner. **Justice Oliver Wendell Holmes** of U.S. Supreme Court, a century ago had said in **DAVIS vs. MILLS, 194 U.S. 451 (1904)**: *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories..."*.



In the above circumstances, this Writ petition is allowed in part; a Writ of Certiorari issues quashing the Tribunal's order dated 19.01.2022; a Writ of mandamus issues to Respondent Nos. 2 & 3 to sanction one Kannada Language Examination Increment to the petitioner w.e.f. February 2018 and pay the arrears of incremental value and further to re-fix and pay pension & all terminal benefits including arrears, to the Petitioner within an outer limit of three months, failing which the delay would carry interest at the rate of 2% *per mensem* which the Government after payment can recover the same personally from the official/s responsible for brooking the same.

Now, no costs.

Sd/-
JUDGE

Sd/-
JUDGE