2025:AHC:200805-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 6079 of 2025

Uma Kant Pandey

…..Petitioner(s)

Versus

Union of India and 3 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Amardeo Singh
Counsel for Respondent(s)	:	A.S.G.I., Agam Narain Roy

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. This writ petition has been filed challenging the order dated 18.10.2023 whereby the petitioner's Original Application (O.A.) No. 1626 of 2010 has been dismissed by the Central Administrative Tribunal, Allahabad Bench, Allahabad ('the Tribunal'). The said O.A. was filed claiming relief that the respondents be directed to pay to the petitioner salary in the pay-scale of Rs. 6500-10500 admissible to the post of Head Master (Junior Wing) for the period w.e.f. 01.12.2004 to 06.03.2008 alongwith arrears thereof with interest.

2. Brief facts are that the petitioner was admittedly working as a Trained Graduate Teacher (‘T.G.T.’) in regular and substantive capacity under respondent No. 4, i.e. Principal, East Central Railway Inter College, Mughalsarai, District Chandauli, in the pay-scale of Rs.5500-9000. On account of superannuation of Head Master (Junior Wing) which was to occur on 30.11.2004, the petitioner was instructed to work as ‘Teacher Incharge’ by an order dated 03.11.2004. He worked as such upto 06.03.2008, whereafter the regular incumbent joined the post of Head Master.

3. The petitioner raised grievance regarding non-payment of higher pay-scale of Rs. 6500-10500 admissible to the post of Head Master (Junior Wing). On the one hand, no action was taken on the representation filed by the petitioner, on the other hand, he was issued a charge sheet dated 12/13.08.2005 on the allegation that he had failed to maintain absolute integrity towards his duties as Head Master (Junior Wing).

4. The petitioner challenged the disciplinary proceedings by way of departmental appeal. The Appellate Authority allowed the appeal vide order dated 22.12.2005 and absolved him of the charges. Even thereafter, non-consideration of his request for a higher pay-scale for the period he had discharged his duties as Head Master, led the petitioner to file the O.A.

5. The claim for higher salary raised by the petitioner was opposed by the respondents before the Tribunal, mainly on the ground that the petitioner was never promoted on the post of Head Master (Junior Wing) and that there was no departmental rule or statutory provision whereby the petitioner could be held entitled to the salary admissible to the Head Master.

6. The Tribunal, after considering the case of the parties, dismissed the O.A. by accepting the defence raised by the respondents that no rule or provision had been brought on record to support the claim raised by the petitioner and that the office order dated 03.11.2004 indicated that the petitioner would work as 'Teacher Incharge' till the posting of permanent incumbent and that the said order did not speak anything regarding pay re-fixation or grant of any additional allowance to the petitioner consequent to his work on the said post. Hence this writ petition.

7. Learned counsel for the petitioner has made submissions that once the petitioner, by order dated 03.11.2004, was directed to take over charge from Head Master and then work as Teacher Incharge till posting of permanent incumbent on the said post on account of retirement of erstwhile Head Master and when, admittedly, he took over the charge and continued to work as such w.e.f. 01.12.2004 to 06.03.2008, denial of salary to the post of Head Master was unjustified. It is further submitted that in the departmental proceedings based upon the charge sheet issued to the petitioner, he was addressed as Head Master (Junior Wing) and, therefore, the department cannot contest the claim on the ground that the petitioner was never promoted as Head Master.

8. Placing reliance on the judgement of Hon'ble Supreme Court in the case of **Selvaraj vs. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291** and co-ordinate Bench judgement of this Court in the case of **Secretary U.P. Basic Education Board and others vs. Tripurari Dubey and others, 2025 Supreme (All) 2412,** submission has been made that since the petitioner has worked on the higher post in an officiating capacity, though he may not be a regular

promotee, he would be entitled to get salary for the higher post on which he had worked in such officiating capacity. It is, therefore, prayed that the Tribunal's order be set aside and reliefs claimed by the petitioner before the Tribunal be granted.

9. On the other hand, learned counsel for the respondents, referring to the defence taken in counter affidavit, has made submissions that the petitioner was merely directed to work as Teacher Incharge and as per Rule 1313(FR 22) of the Indian Railway Establishment Code (IREC) Vol-I, only an employee who is formally appointed to officiate on a higher post gets the pay of that post. Further submission has been made that the duties discharged by the petitioner during his tenure as Teacher Incharge were routine in nature and such an arrangement was made as a temporary stop-gap measure which would not confer entitlement to get higher scale of pay.

10. Learned counsel for the respondents has further relied upon the Railway Board's instructions dated 05.06.1991 so as to contend that as per instructions dated 646 and 648(e), No Dual Charge Allowances should be paid to the railway servant, who is appointed to hold current charge or the routine duties to an additional post and that no special pay should normally be granted to a railway servant, who is required to hold additional charge of a post which was not filled up before. Based upon these submissions, order passed by the Tribunal has been defended.

11. We have heard learned counsel for the parties and have perused the material available on record.

12. It is not in dispute that on account of Head Master, namely, Mohd. Rashid, having superannuated w.e.f. 30.11.2004, the petitioner, who was working as Trained Graduate Teacher, was asked vide office order dated 03.11.2004, to take over the charge from the Head Master and work as Teacher Incharge till posting of a permanent incumbent. For a ready reference, order dated 03.11.2004 is reproduced hereunder:-

> **"Office Order**
>
> The competent authority has passed the following order which will have with it immediate effect:
>
> **Sri U K Pandey, T.G. Teacher/Railway Inter College/ Mughalsarai will take over the charge from Hd. Master henceforth and he will work as teacher incharge till posting of Permanent incumbent of Hd. Master vice Sri Mohd. Rashid, Hd. Master superannuating w.e.f. 30.11.2004."**

13. The petitioner's working as Teacher Incharge w.e.f. 01.12.2004 to 06.03.2008 is not a fact in dispute. The dispute raised is only as regards interpretation of the office order dated 03.11.2004 *vis-a-vis* the status which the petitioner enjoyed during the period of working w.e.f. 01.12.2004 to 06.03.2008.

14. A significant aspect which stands borne out from the record is that when the petitioner was subjected to departmental proceedings, in an office memorandum dated 12.08.2005, his designation was clearly indicated as 'Head Master' (Junior Wing)' and he was asked to submit representation against the action proposed to be taken by the respondents. The nature of charges levelled against the petitioner is also significant and, for the sake of convenience, the same are being reproduced as under:-

> "**Allegation against Sri U.K. Pandey Hd. Master Jr. wing Railway Inter College/MGS**
>
> During surprise check of Class Vth/ A it was found, unmanned on 4.8.05 in the period, although all the 16 teachers were available.
>
> No routine was prepared to teach the children of (V) A in the 3rd period i.e. from 08.30 hrs to 9.15 hrs.
>
> Not only this, the Attendance Register of Class VII B was also found blank on 2.8.2005.
>
> The routine was not given to students of each class although considerable time has been passed from the date of start of session 2005-06. All the class teachers explanation may be obtained.
>
> By doing so you have failed to maintain absolute integrity towards your duty and acted as an unbecoming of a Railway Servant under Railway Service Contract Rule 3.1(i)(iii) of RS Rule-1966."

15. Though no punishment was awarded to the petitioner in the departmental proceedings, as stands reflected from an order dated 22.12.2005 issued by the Appellate Authority mentioning that the petitioner should improve his conduct, what is significant to observe in relation to the departmental proceedings is that right from initiation of the same till the appeal of the petitioner was allowed, he was continuously referred as Head Master/Principal of Junior Wing. Therefore, it cannot be said that the respondents did not treat the petitioner's working in the capacity of Head Master/Principal of Junior Wing. So far as the submissions made on behalf of the respondents that activities done by the petitioner w.e.f. 01.12.2004 to 06.03.2008 were only of routine nature, the charges/allegations levelled against the petitioner, as noted above, clearly indicate that the same cannot be treated as a routine work. Rather the same were associated with the duties of a person, who was working as a full fledged Head of the institution and not

merely in the capacity of a Teacher Incharge. Words ‘Teacher Incharge’, as a matter of fact, are being sought to be read by the respondents in the manner these words suit to them and not in the correct perspective reflected from the facts and circumstances of the present case.

16. Further, the period for which the petitioner has claimed relief of salary is 3 years 4 months and the indications made in the office order dated 03.11.2004 clearly reflect that the respondents intended to take work from the petitioner till posting of a permanent incumbent as Head Master and, therefore, it cannot be accepted that the nature of charge given to the petitioner as well as his working on the post was, in any manner, below those that are associated with the post of Head Master. The School could not have functional for a period of over three years, if the petitioner had only done the routine work. Therefore, the working of the petitioner for such a long period of 3 years 4 months can safely be said to be in officiating capacity and not in any other capacity as suggested by the respondents.

17. Reference to certain office memoranda or administrative instructions made in the counter affidavit without annexing the same, is a strange approach adopted by the respondents and, even otherwise, instructions 646 and 648(e), as referred in paragraph 11 of the counter affidavit, only indicate that no special pay should **‘normally’** be granted to a railway servant who is required to hold an additional charge of a post **‘which was not filled up before’** and that No Dual Charge Allowances is admissible for discharge of **'routine duties'** of an additional post. The present case is not the one where the petitioner was given additional charge of a post

‘which was not filled up before’, rather it is a case where the post of Head Master had fallen vacant on account of his superannuation. Further, the duties performed by the petitioner were not of 'routine nature' as aleardy discussed above. Therefore, defence of the respondents based upon the instructions 646 and 648(e) has no substance in the facts of the present case.

18. Hon’ble Supreme Court, in somewhat identical circumstances in the case of **Selvaraj** (supra) has held as under:-

> ".....Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. **Consequently, on the principle quantum merit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee.** This limited relief is required to be given to of the appellant only on this ground."

19. Co-ordinate Bench of this Court also, in the case of **Tripurari Dubey** (supra), has dealt with somewhat identical circumstances and held that Head Master’s salary ought not to be denied to the Assistant Teachers where they were regularly performing work of higher post of Head Master for the last several years.

20. The Hon’ble Supreme Court, in **Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma, 1998 (5) SCC 87,** has held that if a person is promoted to the higher post or put to

officiate on that post or a stop-gap arrangement is made to place him on the higher post, denial of salary to him for a higher post would be contrary to law and also against public policy and even any contract or agreement containing such a stipulation would be unenforceable in law in view of Section 23 of the Contract Act.

21. In view of above discussion, we are of the considered opinion that the Tribunal has not thoroughly examined the record of proceedings and has cursorily dismissed the O.A. on the ground that no rule or provision was shown indicating entitlement of the petitioner to get a salary for Head Master. Accordingly, order dated 18.12.2023 cannot be sustained and the petitioner is held entitled to get the reliefs claimed by him before the Tribunal.

22. As the petitioner has already received salary for the period w.e.f. 01.12.2004 to 06.03.2008 admissible to the post of Trained Graduate Teacher, he is found entitled to receive difference amount of salary admissible for the post of Head Master and Trained Graduate Teacher.

23. Consequently, the writ petition is **allowed**.

24. The order dated 18.12.2023 passed by the Tribunal in O.A. No. 1626 of 2010 is hereby **set aside**. Resultantly, the O.A. is also allowed and the respondents are directed to pay salary to the petitioner in the pay-scale of Rs. 6500-10500 for the period w.e.f. 01.12.2004 to 06.03.2008 after adjusting the salary he has already received as Trained Graduate Teacher. He shall also be paid simple interest on the difference of pay at the rate of 6% per annum from the date of filing the O.A., i.e. 11.10.2010 till the date on which actual payment is made to him. The entire exercise shall

be completed within a period of two months from the date of an authentic copy of this order is served upon the respondents.

(Kshitij Shailendra, J.) (Arun Bhansali, CJ.)

November 11, 2025
Sazia