

(1997) 09 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Appeal No. 2995 of 1997 and Civil Miscellaneous Appeal No. 5900 of 1997

C. Ruthnawamy

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 70 DLT 451

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : R.K. David, A.N. Kapoor and R.M. Patnaik, for the Appellant;

Judgement

Usha Mehra, J.

(1) RULE.

(2) The petitioner is aggrieved by the action of the respondent thereby not considering his candidature for the post of Vice President on the ground that he was not eligible. Therefore, the question which has been raised in this writ petition is whether the service rendered by the petitioner in officiating capacity as General Manager w.e.f. 10th September, 1992 should be counted or not for the purpose of eligibility.

(3) In order to answer this question we may have few of the relevant facts in consideration. The petitioner joined as Deputy General Manager in the pay scale of the Rs. 3700-5700 on 1st December, 1984 with the Indian Tourism Development Corporation Ltd. (hereinafter called the Corporation). He completed five years services Deputy General Manager on 1st December, 1989. He thus became eligible and fulfilled the required eligibility criteria for promotion to the post of General Manager. On 10th September, 1992 the Corporation appointed him as General Manager on officiating basis. The petitioner continued to officiate as General Manager against the vacant post without any interruption. Ultimately

in February, 1996, the respondent Corporation promoted him on regular basis against that very post of General Manager in the pay scale of Rs. 4500-5700 (CDA). On 22nd November, 1996 the respondent Corporation issued a circular calling applications for the post of Vice President in intergrated Management cadre. Petitioner applied for the same on 9th December, 1996. He was not called for the interview. But other persons were interviewed on 25th July, 1997. On coming to know that he had been ignored for consideration he made representation on 26th July, 1997. He was informed that his tenure as officiating General Manager could not be considered for eligibility criteria and hence he was not called for interview. It is in this background that he approached this Court.

(4) So far as the defense of the respondent is concerned, that is very clear that officiating period cannot be reckoned for the purpose of eligibility. Requirement being either five years satisfactory service in the scale of pay of Rs. 4500-5700(CDA) / Rs. 7000-9600 (IDA) or six years satisfactory service in the pay scale of Rs. 3700-5700 (CDA)/Rs. 6500-9425 (IDA) and two years satisfactory service in the pay scale of Rs. 4500-5700 (CDA)/Rs. 7000-9600(IDA).

(5) The eligibility criteria has already been quoted above. Keeping this criteria in mind we have to see whether the service rendered by the petitioners as General Manager in officiating capacity in the pay scale of Rs. 4500-5700 (CDA) w.e.f. 10th September, 1992 till he was regularly appointed against the same post 27th February, 1996 can be counted to make him eligible for being considered for the post of Vice President. The answer will be in the positive. For arriving at this answer facts are not in dispute. The petitioner became eligible for the post of General Manager as far back as 1st December, 1989 i.e. after he completed five years service as Deputy General Manager. Being eligible he was appointed on officiating basis to work as General Manager. It is also an admitted fact that the post of General Manager was a permanent post lying vacant. Petitioner being eligible was appointed to the same on officiating basis. It is also an admitted fact that he officiated continuously as General Manager in the pay scale of Rs. 4500-5700 (DCA) till he was regularly appointed on that post on 27th February, 1996. A similar question came up for consideration before the Supreme Court in the case of D.K. Mitra & Ors. v. Union of India & Ors., 1985(2) Slr 791 when it observed that "confirmation cannot legitimately constitute the basic norm for drawing up seniority. Seniority should be related to the length of continuous service reckoned from the date of promotion to the post. However, such service should not include any period served in a fortuitous, stop-gap or ad-hoc basis. Similarly in the case of G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, , the Apex Court observed that where the officiating appointment is followed by confirmation unless a contrary rule is shown, service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list. To the same effect are the observations of Punjab & Haryana High Court in the case of J.L. Ghera & Anr. v. State of Haryana & Ors., 1991 (1) Slr 1. Since in this case the petitioner was allowed to officiate continuously for a period of almost four years

without any break and ultimately regularised against the same very post, it clearly indicates that it was not a stop-gap arrangement nor it was a fortuitous appointment. Therefore, the period spent by the petitioner on officiating basis as General Manager in the pay scale of Rs. 4500-5700 (CDA) w.e.f. 10th September, 1992 cannot be ignored.

(6) Reliance by Counsel for the respondent on the decision of Supreme Court in the case of Union of India (UOI) through Chandigarh Administration (U.T.), Chandigarh and Another Vs. Sh. S.K. Sharma, Professor of Civil Engineering Punjab Engineering College, Chandigarh, is of no help to him. In that case Shri S.K. Sharma, Professor of Civil Engineering was appointed on ad-hoc basis. On the facts of that case it was held that seniority will be counted from the date of selection for the post. Professor S.K. Sharma in that case relinquished his earlier charge as Professor of the Department of Irrigation and Hydraulics in junior scale resumed the charge of his new post w.e.f. the same date. Since another Dr. S.S. Sharma was holding the post of Professor in Junior Scale in Civil Engineering College hence the said post was not available to Professor S.K. Sharma. As such he was adjusted on ad-hoc basis against the vacant post of Professor (P.G. Course) in the Department of Irrigation and Hydraulics. The Court considered that was an interim arrangement made on ad-hoc basis till such time any regular selected candidate by Upsc joined the post of Professor. The said Shri S.K. Sharma worked on ad-hoc basis for different period and on different scales i.e. from 28.6.1969 to 14.2.1971 in the junior scale and from February, 1971 in the senior scale. The said respondent S.K. Sharma appeared for interview for the post of Professor (P.G. Course) before the Upsc in September, 1969 but was rejected. Whereas one Dr. P.P. Rao was selected who jointed the post on 15th February, 1971. In order to adjust the respondent the University appointed him against another vacant post of Professor on ad-hoc basis. Respondent in that case was not eligible to be appointed against the higher scale but in order to adjust him he was given the post of a higher scale. It was in this background Mr. Sharma ad-hoc period against a post for which he was not eligible was ordered not to be counted. But that is not the case in hand. In the present case, the petitioner was eligible for the appointment of General Manager as he had already completed five years service in the pay scale of Deputy General Manager. He had met the required qualification for promotion to the post of General Manager. Petitioner in the present case was appointed by the Competent Authority being eligible to officiate as General Manager on 10th September, 1992. He thereafter was regularly appointed on that very post in February, 1996. Therefore, facts of this case and that of Shri. S.K. Sharma are quite distinguishable. On the facts of this case, it can safely be concluded that the service rendered by the petitioner in officiating capacity against the post of General Manager from September, 1992 to February, 1996 cannot be ignored for the purpose of eligibility to appear in the interview for the post of Vice President.

(7) The other judgments cited by the respondent namely, S.K. Saha and others Vs. Prem Prakash Agarwal and others, , Masood Akhtar Khan and Others Vs.

State of Madhya Pradesh and Others, , Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, , V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, and Keshav Chandra Joshi and others etc. Vs. Union of India and others, are also of no help to the respondent. In the case of Masood Akhtar Khan (supra) initial appointment was not made according to rules. Therefore, it was held that subsequent regularisation of his service did not entitle him to the benefit of the intervening service for seniority. But that is not the case in hand. Nor it has been the case of the respondent that the officiating appointment made of the petitioner was against the rules. No rules have been brought or cited to show that the petitioner was not eligible to officiate as General Manager or that his appointment as officiating was made by an incompetent person or against the rules. Nor any rules have been cited which prohibit or disallow the counting of officiating service towards seniority. Similarly the case of S.K. Saha (supra) is also of no help to the respondent. In that case notional seniority from a retrospective date was given and, Therefore, struck down. That again is not the case in hand. Similarly in the case of Ramakant Shripad Sinai Advalpalkar (supra) the temporary arrangement was not allowed to be counted towards promotion to the post of treasurer. In that case he was merely asked to discharge the duties of higher post. Therefore, in the facts of that case Court observed that the period rendered by him in discharging the duties of a higher post will not be counted towards seniority because he was holding continuously his substantive lower post. Similarly, in the case of V. Srinivasan (supra) Supreme Cour to observed that appointment/ promotion must be in accordance with the rules and further reiterated that ad-hoc or fortuitous appointment will not count towards seniority. But that is not the case in hand. Petitioner's appointment on 10th September, 1992 was neither ad-hoc nor fortuitous nor was made on stopgap basis. In the case of Keshav Chandra Joshi (supra) promotees were appointed on ad-hoc basis as stop-gap arrangement though in substantive post. Therefore, it was observed that the appointment was de hors the rules and until they were appointed by the Governor according to rules they did not become member of the service in substantive capacity. Therefore, their continuous service was not counted towards seniority because their arrangement was stop-gap arrangement till the regular recruiters were appointed. There is no quarrel with this prosecution but the prosecution in hand is totally different. Here the rules do not prohibit the appointment on officiating basis. Moreover, the petitioner got regularisation against that very post. Hence the period of officiating promotion followed by regular promotion without break will also be taken into account for the purpose of calculating minimum qualifying period.

(8) In view of the legal position discussed above, it can safely be concluded that excluding the petitioner from the zone of consideration on the ground that he had not possessed the requisite qualifying period for being considered for the post of Vice President is bad, arbitrary and illegal. Directions are accordingly given to the respondent to consider the candidature of the petitioner for the post of Vice President Along with others and thereafter declare the results.

(9) With these observations, the petition stands disposed with no order as to costs. The rule is made absolute.