

(2002) 03 DEL CK 0169

In the Delhi High Court

Case No : Civil Writ Petition No. 6368 of 2001

Department of Training and Technical Education

APPELLANT

Vs

Sh. R.L. Yadav and Another

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Financial Power Rules, 1978 — Rule 14

Citation : (2002) 03 DEL CK 0169

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Kailash Gambhir and Pragnya, for the Appellant; Party in person, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The respondent No.1 herein was appointed to the post of the Head of the Department(Electronics), Ambedkar Polytechnic under the Directorate of Training and Technical Education, Government of N.C.T. of Delhi on 22nd June, 1992. While he was working in that capacity, the petitioner passed an order dated 26th August, 1998 asking the respondent No.1 to discharge the duties of Principal of Guru Nanak Dev Polytechnic.

2. This order is in the following terms:

"GOVERNMENT OF DELHI

DIRECTORATE OF TRAINING AND TECHNICAL
EDUCATION

C-BLOCK: VIKAS BHAWAN: I.P.ESTATE:
NEW DELHI.

No.F.1/375/94/TE/AD/11802 dated 26.8.98

ORDER

Shri R.L.Yadav, Head of CWP NO:6368/2001:

Department(Electronics) presently posted at Ambedkar Polytechnic is transferred to Guru Nanak Dev Polytechnic with immediate effect. Shri R.L.Yadav will also look after the work of Principal. He will, however, not be entitled to any additional remuneration for this and will also have no claim for regular appointment to the post.

Ms. Bani Baral, Lecturer (Medical Lab.Technology) is transferred back to Meera Bai Polytechnic.

Sd/

(V.K.JAIN)

DEPUTY SECRETARY(TTE)"

3. Thereafter, another order dated 15th October, 1998 was passed and by this order the respondent No.1 was declared Head of office for the purpose of discharging the financial powers. This order is as under:

"GOVERNMENT OF DELHI

DIRECTORATE OF TRAINING AND TECHNICAL

EDUCATION

C-BLOCK: VIKAS BHAWAN: I.P.ESTATE:

NEW DELHI.

No.F.1/375/94/TE/AD/Vol.II/13574 dated 15.10.98

OFFICE ORDER

In super cession of all previous orders on the subject and in exercise of power conferred upon the Director(Training & Technical Education) under Rule 14 of the delegation of Financial Power Rule, 1978, Sh.R.L.Yadav, Head of Department(Electronics) is declared Head of Office in respect of Guru Nanak Dev Polytechnic, Sector-15, Rohini, Delhi with effect from 27.8.98 till further orders.

The above order issues with the prior approval of the Director(Training and Technical Education).

Sd/

(V.K.JAIN)

DEPUTY SECRETARY(T&TE)"

4. However, as the respondent No.1 continued to get the pay and allowances attached to the post of Head of the Department(Electronics), he demanded the

pay and allowances of the post of Principal(Engineering) on the ground that he was performing the duties of this post since 27th August, 1998. The petitioner did not accede to his request. The respondent approached the Central Administrative Tribunal by way of OA No.1687/2000. In this OA he claimed some other reliefs also. However, at the time of arguments, he pressed the aforesaid relief only.

5. The learned Tribunal by impugned order dated 1st May, 2001 granted this relief to the respondent No.1 by allowing his application and directing the petitioner to pay him pay and allowances of the post of Principal, Guru Nanak Dev Polytechnic after adjusting the pay already drawn by him for the period he actually worked in the higher post of the Principal. The learned Tribunal gave the following reasons in support of this direction:

"Clearly applicant"s posting as Principal and Head of Office Guru Nanak Dev Polytechnic was not a short term arrangement to discharge the routine duties of Principal, but was a long term arrangement during which he was required to discharge all the duties and responsibilities of the Principal, including exercise of financial powers. In similar circumstance, the Hon"ble Supreme Court in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, held that the applicant in that case would be entitled to the difference of salary in the appropriate time scale for the period during which he had actually worked on the higher post."

6. Feeling aggrieved against the aforesaid order, the petitioner has filed the instant writ petition.

7. Mr.Kailash Gambhir, learned counsel appearing for the petitioner, argued that the order dated 26th August, 1998 clearly mentioned that the respondent No.1 would not be entitled to additional remuneration for the work. His submission was that the respondent No.1 was asked to look after the additional work of Principal and in this manner when the respondent No.1 was asked to hold current charge of routine duties of another post, he was not entitled to any additional pay irrespective of the duration of the additional charge.

8. Mr.Gambhir tried to draw sustenance from FR 49(v) and also the judgment of the Apex Court in the case of Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, stipulates that no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge. However, the question that requires to be determined is as to whether such a provision is applicable in the instant case. As would be seen from the orders passed above, the respondent No.1 when he was working as Head of the Department(Electronics) in Amebedkar Polytechnic under the Directorate of Training and Technical Education was transferred from the said post by order dated 26th August, 1998 and was asked to work as Principal. Admittedly he had been working as Acting Principal since then. The respondent No.1, Therefore,

was sent on transfer to another Institute, namely, Guru Nanak Dev Polytechnic to work as Principal. He has also been given financial powers by order dated 15th October, 1998 and in this manner he is discharging all the duties of the post of Principal of Ambedkar Polytechnic. In that view of the matter, it cannot be said that the respondent No.1 is only asked to hold the current charge of the post of Principal in another Institute. In fact he is holding full charge of the duties of a higher post. Therefore, FR 49(v) has no application to the facts of the present case. For same reasons, judgment of the Apex Court in the case of Ramakant Shripad Sinai Advalpalkar(supra) would not apply. In that case the Supreme Court categorically held that where a person continues to hold his substantive lower post and only discharges the duties of the higher post essentially, as a stop-gap arrangement, he would not be entitled to salary of the higher post but only 'charge allowance'. The Supreme Court held so on the ground that asking an officer merely to discharge the duties of a higher post cannot be treated as promotion. Thus, on the facts of that case, when such an arrangement was made as a top-gap arrangement, the Supreme Court passed such an order.

9. This is not the position in the instant case. As already noted above, here the respondent No.1 is made to work as the Principal which duties he is discharging since 27th August, 1998. Not only this, he is given full charge of the post as by specific order dated 15th October, 1998 he is delegated even the financial powers. Having regard to these facts, the learned Tribunal in the impugned judgment rightly relied upon the judgment of the Supreme Court in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, .

10. We, Therefore, do not find any merit in this petition which is accordingly dismissed.

Since the respondent No.1 appeared in person, the registry is directed to send a copy of this judgment/order to the respondent No.1.