

(1997) 12 AHC CK 0126

In the Allahabad High Court

Case No : C.M.W.P. No. 25729 of 1996 and Civil Miscellaneous Writ No. 15462 of 1990

Jay Govind

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Family Courts Act, 1984 — Section 6, 7
Family Courts Rules, 1995 — Rule 22, 36, 50
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 2, 5

Citation : (1997) AWC 907 Supp

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Sunil Ambwani, for the Appellant;

Final Decision : Dismissed

Judgement

O.P. Garg, J.—In these two writ petitions, under Article 226 of the Constitution of India, a dispute has been raised about the selection and appointment to the posts of Senior Administrative Officer. Sadar Munserim in the Judgeship of Bareilly and the Sadar Munserim in the Court of Principal Judge, Family Court, Bareilly.

2. In certain Judgeships of this State, there are posts of Senior Administrative Officer and Sadar Munserim (hereinafter referred to as "S.A.O." and "S.M." respectively). The post of S.A.O. is the highest in rank in the establishment of class III employees and the next below the post of S.A.O. is the post of S.M. The post of S.M. is governed by the provisions of Subordinate Civil Court Ministerial Establishment Rules, 1947. The post of S.A.O. was created by Government Order dated 19.8.1989 in which it was contemplated that the incumbent who is holding the post of S.M. shall be promoted to the post of S.A.O. Any class III employee in the Judgeship may, on the basis of seniority, aspire for appointment on the

two key posts of S.A.O and S.M.

3. In the Judgeship of Bareilly, Sri V.K. Saxena was the S.A.O. who was to retire on 31.7.1995. The question of filling the said post arose and consequential arrangement for the post of S.M. was also to be made. There was also a Court of Principal Judge, Family Court in which the post of S.M. in the pay scale of Rs. 1,640-2,900 was sanctioned. This scale of pay of the post of S.M. of the Principal Judge, Family Court is equivalent to the post of S.M. in the Judgeship. The District Judge, Bareilly was, therefore, required to take a decision for appointment on the post of (1) Senior Administrative Officer, (2) Sadar Munserim in the Judgeship and (3) Sadar Munserim, Principal Judge, Family Court at Bareilly. A Committee was constituted by the District Judge for the purpose. The Committee screened about a dozen of senior officials of the Judgeship. The following four seniormost officials of the Judgeships were:

- (i) Surendra Bahadur,
- (ii) Shaukat Hussain,
- (iii) Jai Govind, and
- (iv) Rama Shankar.

The Committee recommended the name of Surendra Bahadur for appointment to the post of S.A.O. and that of Shaukat Hussain and Jai Govind (Petitioner in W.P. No. 25729 of 1996) for appointment to the two posts of S.Ms. The District Judge, Bareilly by order dated 31.7.1995 appointed Sri Surendra Bahadur as S.A.O. but by-passed and superseded Sri Shaukat Hussain for appointment to the post of S.M. on the ground that he had earned adverse entries and that he was involved in a case u/s 161, Indian Penal Code and Section 5/2 of the Prevention of Corruption Act. The next two seniormost employees of the Judgeship, namely, Jai Govind at Serial No. 3 and Rama Shankar at Serial No. 4 of the seniority list were appointed as S.Ms. Jai Govind was appointed S.M. in the Family Court while Rama Shankar was appointed as S.M. in the Judgeship. Accordingly both Jai Govind and Rama Shankar joined on promotion on 1.8.1995. The Petitioner Jai Govind made representation dated 30.10.1995 to the District Judge, that he may be recalled from the Family Court and be posted as S.M. in Judgeship. The District Judge rejected the representation. Jai Govind has made a statutory representation before the Registrar, High Court of Judicature at Allahabad on the administrative side which is still said to be pending.

4. Sri Shaukat Hussain, who had been superseded by the District Judge in the matter of appointment as S.M. made a representation before the High Court on administrative side, which was allowed by the then Inspecting Judge, Hon''ble Mr. Justice N. L. Ganguli on 12.3.1996. The order of the Hon''ble Inspecting Judge was communicated to the District Judge, Bareilly by Sri M. I. Jafri, Dy. Registrar and in pursuance of the order of the High Court, the District Judge passed an order on 14.3.1996 posting on promotion Sri Shaukat Hussain as S.M. in the

Judgeship and reverting Sri Rama Shankar who was working as S.M. in the Judgeship under the order dated 31.7.1995 passed by the District Judge. Rama Shankar filed Civil Misc. Writ No. 15462 of 1996 to challenge the order dated 12.3.1996 passed by the High Court on the administrative side.

5. In course of time Sri Surendra Bahadur, who was appointed as S.A.O. retired on 31.7.1996 and in his place Sri Shaukat Hussain, S.M. in the Judgeship was promoted and appointed as S.A.O. As a consequential arrangement, Rama Shankar, Petitioner in Civil Misc. Writ No. 15462 of 1996 was appointed as S.M. Sri Shaukat Hussain also stands superannuated from the post of S.A.O. on 30.11.1997. Now the dispute is in between Jai Govind and Rama Shankar who are manning the posts of S.Ms. former in Family Court and the latter in the Judgeship. Admittedly, Jai Govind who is S.M. in the Family Court is senior to Rama Shankar who is S.M. in the Judgeship. The apprehension of Jai Govind who is in the Family Court is that his claim for promotion at S.A.O. would not be considered as Rama Shankar is working on the post of S.M. in the Judgeship and, therefore, he has prayed that he may be repatriated or recalled from the Family Court and posted in the Judgeship.

6. In both the writ petitions, counter and rejoinder-affidavits have been exchanged. Heard Sri Sunil Ambwani, learned Counsel for the Petitioner Jai Govind, Sri Janardan Sahai, learned Counsel for Rama Shankar and Sri. S. A. Kazmi learned Counsel appearing on behalf of the High Court as well as the learned standing counsel on behalf of the State.

7. At the outset, it may be mentioned that the Writ Petition No. 15462 of 1996 filed by Rama Shankar has outlived its utility and the relief claimed in it has become infructuous as in course of time, after the appointment of Shaukat Hussain to the post of S.A.O., Rama Shankar Petitioner came to be appointed as S.M. in the Judgeship. Even otherwise, Rama Shankar has no case as against Shaukat Hussain. Admittedly, Shaukat Hussain was senior to Rama Shankar. The Committee constituted by the District Judge has recommended that Shaukat Hussain be appointed as S.M. Learned District Judge, Bareilly by order dated 31.7.1995 did not agree with the recommendation of the Committee and by passed and superseded Shaukat Hussain and instead promoted and appointed Rama Shankar as S.M. The High Court on the administrative side found that the order of the District Judge, superseding Shaukat Hussain was illegal, inasmuch as, the two grounds on which he was superseded were nonexistent. The adverse entries made in the character roll of Shaukat Hussain stood expunged and he had been acquitted of the charges u/s 161, I.P.C. and Section 5/2 of the Prevention of Corruption Act, by Special Judge, Bareilly. The order passed by High Court on 12.3.1996 on the administrative side allowing the representation of Sri Shaukat Hussain is based on objective assessment of his work and taking into consideration his seniority. It was found that since the very basis on which the District Judge, Bareilly has superseded Sri Shaukat Hussain was non-existent and since he was senior to both Jai Govind and Rama Shankar, he (Shaukat

Hussain) was illegally denied the benefit of promotion to the post of S.M. The order passed by High Court does not suffer from any illegality or irregularity. It was under the orders of the High Court that Shaukat Hussain who was admittedly senior to Rama Shankar was promoted and posted as S.M. by District Judge and Rama Shankar was reverted to his original post of Munserim Reader in the Court of Additional District Judge in the pay scale of Rs. 1,400 2,300. Sri Janardan Sahai, on behalf of Rama Shankar Petitioner urged that before passing the order dated 12.3.1996 no opportunity of hearing was given and consequently the order passed by the High Court on the administrative side is bad in law. Learned Counsel placed reliance on a number of rulings on the point to indicate that without affording an opportunity of hearing, Rama Shankar could not have been reverted. This submission of the learned Counsel is wide off the mark for one simple reason that the High Court considered the case of Shaukat Hussain who, as said above, was admittedly senior to Rama Shankar. The Court found that Shaukat Hussain deserved to be promoted and that his claim has been illegally brushed aside by the District Judge. Moreover, Rama Shankar was appointed initially for a period of three months on probation by the District Judge. He was liable to be reverted at any time. Since Rama Shankar was junior to Shaukat Hussain and he got promotion on account of supersession of Shaukat Hussain, it was not necessary to afford an opportunity of hearing to him as he was to swim or sink with the decision on the representation of Shaukat Hussain. If Shaukat Hussain was to be restored in the matter of promotion to his own position. Rama Shankar, of necessity, had to go back. There is yet another aspect of the matter. Rama Shankar has been promoted to the post of S.M. on the promotion of Shaukat Hussain to the post of S.A.O. He can now possibly have no grievance in the matter. The Writ Petition No. 15462 of 1996, therefore, is liable to be dismissed.

8. Now I come to the Writ Petition No. 25729 of 1996 filed by Jai Govind. Sri Sunil Ambwani, learned Counsel for the Petitioner urged that the District Judge was not justified and legally authorised to appoint the Petitioner Jai Govind on the post of S.M. in Family Court as the appointment on the said post could be made only by the Principal Judge of the Family Court in view of the provisions of Section 6 of the Family Courts Act and Rule 22 of the Rules framed thereunder. It was also urged that Rule 36 of the Family Courts Rules, 1995 provides that the Family Court shall function under the superintendence of the High Court. In nutshell, the submission of learned Counsel for Sri Jai Govind was that a S.M. in the Family Court could be appointed either by the Principal Judge of the Family Court or by the High Court but certainly not by the District Judge and since the appointment of Jai Govind was made after the commencement of the Rules, the order dated 31.7.1995 passed by the District Judge, Bareilly is in violation of the Rules and consequently illegal. The submission raised by learned Counsel for the Petitioner Jai Govind is not without force. However, it is now no use to dig up the past. As a matter of fact, what happened is that the Family Courts were established in some districts of the State under the Family Courts Act, 1984. The

Family Courts did not have their own staff. To begin with, Class III and IV staff of the Judgeship of the places where the Family Courts were established, was deputed to work in the Family Court under the orders of the District Judge. The authority of appointment of the staff was conferred on the Principal Judge, Family Court only after the commencement of the Rules, i.e., 4.4.95 on which date the Rules were published and notified. By making an appointment to the post of S.M. Family Court, the District Judge, Bareilly simply meant that he had provided the Principal Judge Family Court with a senior official for being appointed as S.M. As a matter of fact, Sri. Y. K. Raizada the then Principal Judge of the Family Court also passed a specific order appointing Jai Govind as S.M. In substance, therefore, the appointment of Jai Govind was made by the Principal Judge, Family Court and what the District Judge, Bareilly did was to send the name of Jai Govind for appointment. It is not that Jai Govind was forced to join as S.M. in the Family Court. He had himself willingly opted to join the post of S.M. which was in the higher scale than the scale in which the Petitioner Jai Govind was working as Munserim Reader. The Petitioner Jai Govind was at Serial Number 3 in the seniority list and had Sri Shaukat Hussain not been superseded, he had no chance of being appointed as S.M. in the Judgeship. Therefore, in order to get out of turn promotion, he opted to join the post of S.M. in Family Court which is also in the same pay scale as is the post of S.M. in the Judgeship. It was for this reason that Jai Govind after passing of the order dated 31.7.1995, joined his duties as S.M., Family Court on the very next day, i.e., 1.8.1995 and continued to work for a considerable time. He made a representation for repatriation to the Judgeship only when he came to realise that had he continued in the Judgeship, he would have been appointed as S.M. in the Judgeship itself because of the supersession of Sri Shaukat Hussain. Therefore, it cannot be said that Jai Govind-Petitioner was sent to the post of S.M., Family Court against his choice and wish. Luckily Jai Govind escaped his reversion from the post of S.M. as he was in the Family Court. Had he been appointed in the Judgeship as S.M., he would have met the same fate as Rama Shankar faced on account of posting on promotion of Shaukat Hussain under the orders of High Court. Jai Govind, therefore, should thank his stars that he continued to remain posted as S.M. right from 1.8.1995 till the date, though his turn for promotion to the post of S.M. would have come only on 1.8.1996 when Surendra Bahadur had retired and Shaukat Hussain had taken his place.

9. Sri Sunil Ambwani further urged that there can possibly be no objection if Jai Govind now seeks his reversion to the parent Department, i.e., Bareilly Judgeship as his Hen in the parent Department still continues. Sri Janardan Sahai, learned Counsel for Rama Shankar, on the other hand, contended that since Jai Govind has gone to the Family Court of his own choice and volition, he cannot now seek reversion in Bareilly Judgeship to the serious detriment of Rama Shankar.

10. I have given my thoughtful consideration to the matter and find that there are no rules governing deputation of the employees of Judgeship to Family Court. The case of the Petitioner, Jai Govind, therefore, has to be determined on the

principles of justice, equity and relevant judicial precedents. Under the Family Courts Act, 1984, a Court of Principal Judge/Additional Judge, Family Court is constituted specially for the purpose of enforcing the provisions of the Act and to exercise the jurisdiction as is vested by Section 7 of the Act. The Family Courts have been constituted not on permanent basis but as temporary measure. Jai Govind admittedly, is a permanent employee of Bareilly Judgeship. If he has been sent on deputation to Family Court, he would not lose his lien of a permanent employee in his parent Department. In this connection, a reference may be made to Satya Narain Pareek Vs. State of Rajasthan and another, , in which the Supreme Court held that lien of a permanent employee during deputation to a tenure post in another Department survives in the parent Department. The Supreme Court rejected the contention that such an employee had lost lien in the parent Department and could not, therefore, be repatriated. Another ease, which may profitably be referred to is Dr. S.K. Kacker Vs. All India Institute of Medical Sciences and Others, . This case deals with termination of lien in the parent Department. It was a case in which Dr. S. K. Kacker who was Head of the Department of K.&T. switched over to the post of Director of All India Institute of Medical Sciences. The post of Director was outside the cadre on which Dr. Kacker was borne, It was held by the Supreme Court that on appointment to and acquiring a lien in, a permanent post be it under the Central Government or the State Government outside the cadre on which the Government servant is borne, his lien on the previous permanent post stands terminated. Therefore, a person, who has acquired lien on a post outside the cadre cannot be allowed to revert back to his parent Department where he has lost the lien. This ruling proceeds on the premise that a person cannot have lien on two permanent posts either he has lien on the permanent post in the parent Department, or he acquires a lien on a permanent post in the Department outside the cadre of the parent Department and in that event, he loses his lien in the parent Department. In the instant case, the Petitioner has not acquired lien on any permanent post in the Family Court. As a matter of fact, as said above, the establishment of the Family Court is temporary in tenure and there is no permanent post with the result a permanent employee of the Judgeship could not have acquired lien on a temporary post in the Family Court. The matter was further clarified by Supreme Court in the case of R.L. Gupta and Anr Vs. Union of India (UOI) and Ors, . Sri R.L. Gupta who later on became a Judge of High Court was a member of the Higher Judicial Service, Delhi. He went on deputation with Justice Ranganath Misra who was heading a Commission. Sri R. L. Gupta was relieved to join the deputation at his own risk. In the meantime, the High Court of Delhi sought repatriation of Sri Gupta but the Commission refused to relieve him with the result Sri Gupta was superseded and his junior were placed on probation. Supreme Court in the above circumstances, held that merely because an officer has given his consent to go on deputation at his own risk, he should not be allowed to suffer unless there is good ground. There is no reason as to why a deputationist should not be treated as being on probation also in the post held by him in the parent Department even while he is on deputation. It was held

that Sri R. I., Gupta was entitled to maintain his seniority above all those as well who were junior to him and were placed on probation during the period when S,i Gupta was on deputation. To the same effect are the observations made in State of Mysore Vs. M.H. Bellary, , in which one of the questions which arose for consideration was whether Respondent (M. H. Bellary) who had gone on deputation was entitled to claim promotion which he would have got in his parent Department had he not been sent on deputation. It was held:

...The other submission of learned Counsel was that a Government servant though he had a right to increments in a time scale applicable to the post that he held on the date of his transfer on deputation and on which he had a lien, had no legal right to be promoted to a higher post and that the construction adopted by the High Court virtually conceded or guaranteed to officers on deputation a right to an automatic promotion which they would not have had if they had not been posted on deputation. We see no force in this contention either. Learned Counsel is right only insofar as the promotion involved relates to a selection post. But where it is based on seniority-cum-merit, those considerations are not relevant. The service of an officer of deputation in another department is treated by the rule as equivalent to service in the parent department and it is this equation between the services in the two departments that forms the basis of Rule 50 (b). So long, therefore, as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotions which are often on seniority-cum-merit basis. What is indicated here is precisely what is termed in official language the "next below rule" under which an officer on deputation is given a paper-promotion and shown as holding a higher post in the parent Department if the officer next below him there is being promoted. If there are adverse remarks against him in the new department or punishments inflicted on him there, different considerations would arise and these adverse remarks etc., would and could certainly be taken into account in the parent Department also, but that is not the position here. In view of the facts of the case it is not necessary to discuss this aspect in any detail or any further.

[Emphasis added].

11. The decision of M. H. Bellary, case (supra) was followed by the Supreme Court in State of Mysore v. J.N. Nanjundiah (1960) 3 SCC 633, in which it was observed:

...So long as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent Department also so as to entitle him to promotion which are open on seniority-cum-merit basis.

Also see *Narayan Yeshwant Gore v. Union of India* (1993) 4 SCC 470.

12. In the backdrop of the above law, it is well-settled that the Petitioner-Jai Govind who shall be deemed to have been sent on deputation to Family Court and he maintained a lien in his parent Department of Judgeship at Bareilly is entitled to seek repatriation and that it cannot be refused on any ground, whatsoever. Thereafter, District Judge, Bareilly shall pass appropriate orders to repatriate, i.e., take back the Petitioner Jai Govind from Family Court for posting in the Judgeship.

13. Consequent upon the reversion of the Petitioner Jai Govind to the parent Department, i.e., Judgeship of Bareilly, the District Judge shall be faced with the real difficulty as to who, out of the two persons, namely, Jai Govind and Rama Shankar be promoted to the post of S.A.O. in place of Sri Shaukat Hussain who stands superannuated on 30th November, 1997, particularly, keeping in view of the fact that Jai Govind, the Petitioner is senior to Rama Shankar. Under the Government Orders, dated 16.9.1989, a person who is working on the post of S.M. in the Judgeship is to be promoted and posted as S.A.O. Rama Shankar is presently working on the post of S.M. in the Judgeship and had Jai Govind Petitioner continued to man the post of S.M. in the Family Court, he (Rama Shankar) would have, in the normal course, been promoted to the post of S.A.O. From the material placed on record, it is well-established that the service record of Rama Shankar is thoroughly neat. He has earned entries of his being meritorious official who has manned various posts in the Judgeship which involve determination of administrative skill. A comparison of the service record of the two officials, namely, Jai Govind and Rama Shankar would reveal that Rama Shankar's record is far superior than that of Jai Govind. On the other hand, there is a letter addressed by Sri V.P. Gaur, Family Judge, Bareilly dated 4.1.1997 addressed to District Judge, Bareilly, Annexure-12 to the counter-affidavit of Respondent No. 4-Rama Shankar in which it has been mentioned that Jai Govind Petitioner lacks knowledge of rules and that he is not efficient in his work that overall assessment of his work cannot be said to be satisfactory. On the basis of these observations about Sri Jai Govind, he should not be promoted right now on the post of S.A.O. There is yet another aspect of the matter. The date of birth of Rama Shankar is 10.7.1940, meaning thereby he would retire on 31.7.1998 while the Petitioner Jai Govind is younger in age to Rama Shankar and after the retirement of Rama Shankar from the post of S.A.O., he shall have a chance to be promoted to the post of S.A.O. Therefore, Jai Govind even though senior to Rama Shankar, can wait in the matter of promotion to the post of S.A.O. particularly when he has to be given some time to prove his efficiency and ability to man the said post as presently his overall assessment has not been found to be satisfactory.

14. Now the Petitioner Jai Govind has two options left open to him (i) he may seek reversion to the parent Department immediately and work on the post of S.M. in the Judgeship or; (ii) he may continue to work on the equivalent post of

S.M. in the Family Court which is also in the same scale of pay of Rs. 1,640-2,900, and his case for promotion to the post of S.A.O. may be considered on the retirement of Rama Shankar on 31.7.1998. If Jai Govind Petitioner opts to revert back to his parent Department immediately, there should be no difficulty in taking him back on the post of S.M. in the Judgeship except that he will feel embarrassed on account of the fact that Rama Shankar who is junior to him by one place would be working as S.A.O. If the Petitioner Jai Govind has no such inhibition, he shall be taken back on the post of S.M. by the District Judge, Bareilly or in the alternative, if Sri Jai Govind so likes, he may continue on the post of S.M. in the Family Court from which post the question of his appointment as S.A.O. on the retirement of Rama Shankar may be considered.

15. In the result, for the reasons stated above, Civil Misc. Writ Petition No. 15462 of 1996 filed by Rama Shankar is dismissed. Civil Misc. Writ No. 25729 of 1996 filed by Jai Govind is allowed to the extent that the Petitioner Jai Govind shall be reverted back and posted as S.M. in the Judgeship, Bareilly if he makes an application to the District Judge, Bareilly for his immediate repatriation. If the Petitioner Jai Govind prefers to continue on the post of S.M. in the Family Court, he shall be considered for promotion to the post of S.A.O. on the retirement of Sri Rama Shankar on 31.7.1998 and the fact that he is not S.M. In the Judgeship on the relevant date of consideration, would not come in his way as an impediment, meaning thereby, the Petitioner Jai Govind shall be considered for appointment to the post of S.A.O. on the retirement of Rama Shankar on 31.7.1998 and it would not matter whether Jai Govind Petitioner is, at that time, manning the post of S.M. in the Judgeship or S.M. in the Family Court.